

## FISCAL AGENT AGREEMENT

by and between the

COUNTY OF EL DORADO

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.  
as Fiscal Agent

Dated as of \_\_\_\_\_ 1, 2016

Relating to:

\$ \_\_\_\_\_  
County of El Dorado  
Community Facilities District No. 2005-1  
(Blackstone)  
2016 Series B Junior Lien Special Tax Bonds

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## TABLE OF CONTENTS

<b>ARTICLE I: AUTHORITY AND DEFINITIONS:</b>	
Section 1.01. Authority for this Agreement.....	3
Section 1.02. Agreement for Benefit of Owners of the Bonds.....	3
Section 1.03. Definitions.....	3
<b>ARTICLE II: THE BONDS:</b>	
Section 2.01. Principal Amount; Designation .....	12
Section 2.02. Terms of Bonds .....	12
Section 2.03. Redemption .....	13
Section 2.04. Form of Bonds.....	15
Section 2.05. Execution and Authentication of Bonds.....	15
Section 2.06. Transfer or Exchange of Bonds.....	16
Section 2.07. Bond Register.....	16
Section 2.08. Temporary Bonds.....	16
Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen .....	17
Section 2.10. Book-Entry Only System .....	17
<b>ARTICLE III: ISSUANCE OF BONDS:</b>	
Section 3.01. Issuance and Delivery of Bonds.....	19
Section 3.02. Pledge of Surplus Special Tax Revenues .....	19
Section 3.03. Limited Obligation.....	19
Section 3.04. No Acceleration .....	19
Section 3.05. Validity of Bonds.....	19
Section 3.06. Additional Bonds.....	19
<b>ARTICLE IV: PROCEEDS, FUNDS AND ACCOUNTS</b>	
Section 4.01. Application of Proceeds.....	23
Section 4.02. Reserve Fund.....	23
Section 4.03. Redemption Fund.....	25
Section 4.04. Special Tax Fund.....	26
Section 4.05. Acquisition and Construction Fund.....	26
Section 4.06. Prepayments of Special Taxes.....	26
<b>ARTICLE V: COVENANTS:</b>	
Section 5.01. Collection of Special Tax Revenues.....	28
Section 5.02. Covenant to Foreclose .....	28
Section 5.03. Punctual Payment .....	29
Section 5.04. Extension of Time for Payment .....	29
Section 5.05. Against Encumbrances.....	29
Section 5.06. Books and Records .....	29
Section 5.07. Protection of Security and Rights of Owners.....	29
Section 5.08. Further Assurances .....	30
Section 5.09. Private Activity Bond Limitations .....	30
Section 5.10. Federal Guarantee Prohibition .....	30
Section 5.11. Rebate Requirement .....	30
Section 5.12. No Arbitrage .....	30
Section 5.13. Yield of the Bonds .....	30
Section 5.14. Maintenance of Tax-Exemption.....	30
Section 5.15. Continuing Disclosure.....	31
<b>ARTICLE VI:</b>	

<b>'INVESTMENTS; LIABILITY OF THE CITY':</b>	
Section 6.01. Deposit and Investment of Moneys in Funds .....	32
Section 6.02. Liability of County .....	34
Section 6.03. Employment of Agents by County .....	35
<b>ARTICLE VII:</b>	
<b>THE FISCAL AGENT:</b>	
Section 7.01. The Fiscal Agent.....	36
Section 7.02. Liability of Fiscal Agent.....	37
Section 7.03. Information; Books and Accounts.....	38
Section 7.04. Notice to Fiscal Agent.....	38
Section 7.05. Compensation, Indemnification .....	39
<b>ARTICLE VIII:</b>	
<b>MODIFICATION OR AMENDMENT:</b>	
Section 8.01. Amendments Permitted .....	40
Section 8.02. Owners' Meetings.....	40
Section 8.03. Procedure for Amendment with Written Consent of Owners.....	41
Section 8.04. Disqualified Bonds.....	41
Section 8.05. Effect of Supplemental Agreement.....	41
Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments .....	42
Section 8.07. Amendatory Endorsement of Bonds.....	42
<b>ARTICLE IX:</b>	
<b>MISCELLANEOUS:</b>	
Section 9.01. Benefits of Agreement Limited to Parties .....	43
Section 9.02. Successor and Predecessor.....	43
Section 9.03. Discharge of Agreement.....	43
Section 9.04. Execution of Documents and Proof of Ownership by Owners.....	44
Section 9.05. Waiver of Personal Liability .....	44
Section 9.06. Notices to and Demands on County and Fiscal Agent.....	44
Section 9.07. Partial Invalidity .....	45
Section 9.08. Unclaimed Moneys .....	45
Section 9.09. Applicable Law .....	45
Section 9.10. Conflict with Act.....	45
Section 9.11. Conclusive Evidence of Regularity .....	45
Section 9.12. Payment on Business Day .....	45
Section 9.13. State Reporting Requirements .....	45
Section 9.14. Counterparts.....	47
EXHIBIT A: FORM OF BOND	

## FISCAL AGENT AGREEMENT

**THIS FISCAL AGENT AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_ 1, 2016, by and between the COUNTY OF EL DORADO, a subdivision of, and existing under and by virtue of the laws of, the State of California (the "County") for and on behalf of the County's Community Facilities District No. 2005-1 (Blackstone) (the "CFD"), and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in Los Angeles, California, as fiscal agent (the "Fiscal Agent").

### WITNESSETH:

**WHEREAS**, the Board of Supervisors of the County has formed the CFD under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (section 53311 *et seq.* of the California Government Code) (the "Act"); and

**WHEREAS**, on March 8, 2005, the Board of Supervisors concluded its formal proceedings pursuant to the Act to establish the CFD when it adopted its Resolution No. \_\_\_\_-2005, the Resolution of Formation (the "Resolution of Formation"), and its Resolution No. \_\_\_\_-2001, the Resolution Deeming it Necessary to Incur Bonded Indebtedness (collectively, the "Formation Resolutions"), followed by voter approval of the authority contained in the Formation Resolutions by the landowners within the CFD at a special election conducted on March 8, 2005, and the recording of a Notice of Special Tax Lien pertaining thereto on \_\_\_\_\_, 2005, in the official records of the El Dorado County Recorder; and

**WHEREAS**, these actions conferred authorization upon the Board of Supervisors to annually levy a special tax (the "Special Tax") against the Taxable Parcels within the CFD in accordance with a Rate and Method of Apportionment (the "Rate and Method of Apportionment") and to issue special tax bonds in amounts not to exceed a total of \$35,000,000 to finance the acquisition, construction and installation of certain on-site and off-site public infrastructure facilities specified in Exhibit [A] to the Resolution of Formation (the "Facilities"); and

**WHEREAS**, by further action of the Board of Supervisors, and by a Fiscal Agent Agreement dated August 1, 2005, the County's Community Facilities District No. 2005-1 (Blackstone), Special Tax Bonds (the "Prior Bonds") were issued, sold and delivered for and on behalf of the CFD in the original principal amount of \$32,655,000; and

**WHEREAS**, based on the conferred authorization for the CFD to issue special tax bonds in amounts not to exceed a total of \$35,000,000 to finance the Facilities (as defined herein) and the prior issuance of \$32,655,000, the CFD has a remaining authorization to issue not to exceed \$2,345,000 of special tax bonds; and

**WHEREAS**, it is in the public interest and for the benefit of the County, the CFD and the persons responsible for the payment of special taxes that the County issue its Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds (the "Bonds") to provide a portion of the funds to refund the outstanding principal amount of the Prior Bonds and to provide additional financing for the acquisition, construction and installation of Facilities, and to redeem the Prior Bonds in advance of the scheduled maturities thereof, and to

provide for the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and the administration and payment of the Bonds; and

**WHEREAS**, concurrent with the issuance of the Bonds, the County will issue its Community Facilities District No. 2005-1 (Blackstone) 2016 Series A Senior Lien Special Tax Bonds (the "Senior Lien Bonds") for the purpose of providing the remaining funds required to refund the Prior Bonds and provide additional financing for the acquisition, construction and installation of Facilities, and the Junior Lien Bonds will be subordinate to the Bonds in certain respects; and

**WHEREAS**, the County has determined that all things necessary to cause the Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution (as defined herein) and this Agreement, to be legal, valid and binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

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

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## ARTICLE I

### AUTHORITY AND DEFINITIONS

**Section 1.01. Authority for this Agreement.** This Agreement is entered into pursuant to the Act (as herein defined) and the Resolution.

**Section 1.02. Agreement for Benefit of Owners of the Bonds.** The provisions, covenants and agreements herein set forth to be performed by or on behalf of the County shall be for the equal benefit, protection and security of the Owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement.

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

"Acquisition and Construction Fund" means the fund designated the "County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds Acquisition and Construction Fund" established and administered under Section 4.05.

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

"Additional Bonds" means one or more additional series of bonds which are ~~issued to pay for costs of financing the Facilities, are~~ issued in accordance with the Act and this Fiscal Agent Agreement and a Supplemental Fiscal Agent Agreement consistent with the terms of this Fiscal Agent Agreement, and are secured by the Special Tax on a parity with the Bonds, all as more specifically prescribed by Section 3.06 of this Fiscal Agent Agreement.

"Administrative Expense Fund" means the fund designated the "County of El Dorado Community Facilities District No. 2005-1 (Blackstone) Administrative Expense Fund" established and administered under the Senior Lien Fiscal Agent Agreement.

"Administrative Expenses" means costs directly related to the administration of the CFD consisting of: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a County employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the County or otherwise); the actual costs of remitting the Special Taxes to the Fiscal Agent; actual costs of the Fiscal Agent (including its legal counsel) in the discharge of its duties under this Agreement; the actual costs of the County or its designee of complying with the disclosure provisions of the Act and this Agreement, including those related to public inquiries regarding the Special Tax and disclosures to Owners of the Bonds and the Original Purchaser; the actual costs of the County or its designee related

to an appeal of the Special Tax; any amounts required to be rebated to the federal government; an allocable share of the salaries of the County staff directly related to the foregoing and a proportionate amount of County general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the County for any administrative purpose of the CFD, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure maintenance of tax exemption, and the costs of prosecuting foreclosure of delinquent Special Taxes, which amounts advanced are subject to reimbursement from other sources, including proceeds of foreclosure.

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

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year.

"Auditor-Controller" means the person who is the duly elected and acting Auditor-Controller of the County.

"Authorized Officer" means the Chief Administrative Officer, the Auditor-Controller, the Clerk of the Board, County Counsel (including any person serving as interim in such position) or any other person duly authorized by the Board of Supervisors to execute any document pertaining to the CFD.

"Board" or "Board of Supervisors" means the Board of Supervisors of the County as the legislative body of the CFD.

"Bond Counsel" means any attorney or firm of attorneys acceptable to the County and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond or Bonds or Series 2016 Bond or Series 2016 Bonds" means the County of El Dorado Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds, at any time Outstanding under this Agreement or any Supplemental Fiscal Agent Agreement.

"Bond Year" means the one-year period beginning on September 1st in each year and ending on August 31 in the following year, except that the first Bond Year shall begin on the Closing Date and shall end on August 31, 2016.

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

"CDIAC" means the California Debt and Investment Advisory Commission of the Office of the State Treasurer, or any successor agency, board or commission.

"CFD" means the County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) formed under the Resolution of Formation.

"Chair of the Board" means the person who is duly elected and acting Chair of the Board.

"Chief Administrative Officer" means the person who is the duly appointed and acting Chief Administrative Officer of the County.

"Clerk of the Board" means the person who is the duly appointed and acting Clerk of the Board.

"Closing Date" means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

"Continuing Disclosure Certificate" shall mean that certain Continuing Disclosure Certificate executed by the County and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the County and related to the authorization, sale, delivery and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the County, initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the County in connection with the issuance of the Bonds, Bond (underwriter's) discount, legal fees and charges, including bond counsel, and counsel to any financial consultant, financial consultant's fees, charges for execution, authentication, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

"County" means the County of El Dorado, and any successor thereto.

"County Counsel" means the any attorney or firm of attorneys employed by the County in the capacity of legal counsel to the County.

"Dated Date" means the dated date of the Bonds, which is the Closing Date.

"Debt Service" means the scheduled amount of interest and amortization of principal payable under Sections 2.02 and 2.03 on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository for book-entry under Section 2.10.

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

"Facilities" means the list of public facilities authorized to be acquired and constructed in and for the CFD under and pursuant to the Act at the special election held in the CFD on June March 8, 2005, and as enumerated in Exhibit [A] to the Resolution of Formation.

"Fair Market Value" means with respect to the Bonds the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the 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, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the County and related parties do not own more than a ten percent (10%) beneficial interest if the return paid by such fund is without regard to the source of the investment.

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

"Fiscal Agent" means The Bank of New York Mellon Trust Company, N.A., the Fiscal Agent appointed by the County and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

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

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by the County, and who, or each of whom: (i) is judged by the Auditor-Controller to have experience in matters relating to the issuance and/or administration of bonds under the Act; (ii) is in fact independent and not under the domination of the County; (iii) does not have any substantial interest, direct or indirect, with or in the County, or any owner of real property in the CFD, or any real property in the CFD; and (iv) is not connected with the County as an officer or employee of the County, but who may be regularly retained to make reports to the County.

"Interest Payment Date" means each September 1 and March 1 of every calendar year, commencing [September 1, 2016].

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

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

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

"Ordinance" means Ordinance No. \_\_\_\_\_, passed and adopted on \_\_\_\_\_, 2005 of the County levying the Special Taxes.

"Original Purchaser" means the first purchaser of the Bonds from the County.

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

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

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

"Permitted Investments" means any of the following, to the extent that they are lawful investments for County funds at the time of investment, and are acquired at Fair Market Value (the Fiscal Agent entitled to rely upon investment direction from the County as a certification that such investment constitutes a legal investment):

- (i) Federal Securities;
- (ii) any of following obligations of federal agencies not guaranteed by the United States of America: (a) debentures issued by the Federal Housing Administration; (b) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation or Farm Credit Banks (consisting of Federal Land Banks, Federal Intermediate Credit Banks or Banks for Cooperatives); (c) bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, bonds of any federal home loan bank established under said act and stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation; and bonds, notes or other obligations issued or assumed by the International Bank for Reconstruction and Development;
- (iii) interest-bearing demand or time deposits (including certificates of deposit) in federal or State of California chartered banks (including the Fiscal Agent and its affiliates), provided that (a) in the case of a savings and loan association, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such savings and loan association shall be rated in one of the top two rating categories by a nationally recognized rating service, and (b) in the case of a bank, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such bank (or the unsecured obligations of the parent bank holding company of which such bank

is the lead bank) shall be rated in one of the top two rating categories by a nationally recognized rating service;

(iv) repurchase agreements with a registered broker/dealer subject to the Securities Investors Protection Corporation Liquidation in the event of insolvency, or any commercial bank provided that: (a) the unsecured obligations of such bank shall be rated in one of the top two rating categories by a nationally recognized rating service, or such bank shall be the lead bank of a banking holding company whose unsecured obligations are rated in one of the top two rating categories by a nationally recognized rating service; (b) the most recent reported combined capital, surplus and undivided profits of such bank shall be not less than \$100 million; (c) the repurchase obligation under any such repurchase obligation shall be required to be performed in not more than 30 days; (d) the entity holding such securities as described in clause (c) shall have a pledged first security interest therein for the benefit of the Fiscal Agent under the California Commercial Code or pursuant to the book-entry procedures described by 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. and are rated in one of the top two rating categories by a nationally recognized rating service;

(v) bankers acceptances endorsed and guaranteed by banks described in clause (iv) above;

(vi) obligations, the interest on which is exempt from federal income taxation under Section 103 of the Code and which are rated in one of the top two rating categories by a nationally recognized rating service;

(vii) money market funds which invest solely in Federal Securities or in obligations described in the preceding clause (ii) of this definition, or money market funds which are rated in the highest rating category by Standard & Poor's Ratings Services or Moody's Investor Service, including such funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Fiscal Agent or an affiliate of the Fiscal Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Fiscal Agent or an affiliate of the Fiscal Agent receives fees from funds for services rendered, (ii) the Fiscal Agent collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Fiscal Agent or an affiliate of the Fiscal Agent;

(viii) units of a taxable government money market portfolio comprised solely of obligations listed in (i) and (iv) above, including such funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Fiscal Agent or an affiliate of the Fiscal Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Fiscal Agent or an affiliate of the Fiscal Agent receives fees from funds for services rendered, (ii) the Fiscal Agent collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Fiscal Agent or an affiliate of the Fiscal Agent;

(ix) any investment which is a legal investment for proceeds of the Bonds at the time of the execution of such agreement, and which investment is made pursuant to an agreement between the County or the Fiscal Agent or any successor Fiscal Agent and a financial institution or governmental body whose long term debt obligations are rated in one of the top two rating categories by a nationally recognized rating service;

(x) commercial paper which at the time of purchase is of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, or Standard and Poor's Corporation, of issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars (\$500,000,000) and having an "AA" or higher rating for the issuer's debentures, other than commercial paper, as provided for by Moody's Investors Service or Standard and Poor's Corporation, and provided that purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10% of the outstanding paper of an issuing corporation;

(xi) any general obligation of a bank or insurance company whose long term debt obligations are rated in one of the two highest rating categories of a national rating service;

(xii) shares in a common law trust established pursuant to Title 1, Division 7, Charter 5 of the Government Code of the State that invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended;

(xiii) shares in the California Asset Management Program;

(xiv) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement: or

(xv) any other lawful investment for County funds.

"Prepayment Fund" means the fund designated the "County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) Prepayment Fund" established and administered under the Senior Lien Fiscal Agent Agreement.

"Principal Office" means such corporate trust office of the Fiscal Agent as may be designated from time to time by written notice from the Fiscal Agent to the County, initially being at the address set forth in Section 9.06, or such other office designated by the Fiscal Agent from time to time.

"Prior Bonds" means the \$36,555,000 original principal amount of County of El Dorado Community Facilities District No. 2005-1 (Blackstone) Special Tax Bonds.

"Proceeds" when used with reference to the Bonds, means the face amount of the Bonds, plus any accrued interest and premium, less any original issue and/or underwriter's discount.

"Qualified Reserve Account Credit Instrument" means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent, provided that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) S&P or Moody's have assigned a long-term credit rating to such bank or insurance company of "A" or higher; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; and (c) such letter of credit, insurance policy or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released.

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

"Redemption Fund" means the fund designated the "County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds Redemption Fund" established and administered under Section 4.03.

"Regulations" means temporary and permanent regulations promulgated under the Tax Code.

"Reserve Fund" means the fund designated the "County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds Reserve Fund" established and administered under Section 4.02.

"Reserve Requirement" means an amount equal to the least of (i) Maximum Annual Debt Service on the Outstanding Bonds, (ii) 125% of average Annual Debt Service as of the date of issuance of the Bonds and (iii) 10% of the initial offering price to the public of the Bonds.

"Resolution or Resolution of Issuance" means Resolution No. \_\_\_\_-2016 adopted by the Board on \_\_\_\_\_, 2016 which resolution, among other matters, authorized the issuance of the Bonds.

"Resolution of Formation" means Resolution No. \_\_\_\_-2005, entitled ["Resolution of Formation of Community Facilities District,"] adopted by the Board on March 8, 2005, including Exhibits A, B, and C attached thereto and by reference incorporated therein.

"S&P" means Standard & Poor's Ratings Service, a division of McGraw-Hill, and its successors and assigns.

"Securities Depositories" means The Depository Trust Company and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the County may designate in an Officer's Certificate delivered to the Fiscal Agent.

"Senior Lien Bonds" means the County of El Dorado Community Facilities District No. 2005-1 (Blackstone) 2016 Series A Senior Lien Special Tax Bonds issued in the aggregate principal amount of \$\_\_\_\_\_ and authorized by, and at any time outstanding pursuant to, the Senior Lien Fiscal Agent Agreement.

"Senior Lien Fiscal Agent" means The Bank of New York Mellon Trust Company, N.A., its successors and assigns, acting as fiscal agent for the Senior Lien Bonds pursuant to the Senior Lien Fiscal Agent Agreement.

"Senior Lien Fiscal Agent Agreement" means the Fiscal Agent Agreement dated as of \_\_\_\_\_ 1, 2016, by and between the County and the Senior Lien Fiscal Agent, authorizing the issuance of the Senior Lien Bonds.

"Special Taxes" means the special taxes levied by the Board within the CFD under the Act, the Ordinance and this Agreement

"Special Tax Fund" means the special fund designated "County of El Dorado, Community Facilities District No. 2005-1 (Blackstone) Special Tax Fund" established and administered under the Senior Lien Fiscal Agent Agreement.

"Special Tax Revenues" means the proceeds of the Special Taxes received by the County, including any scheduled payments thereof, interest and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said interest, but shall not include any interest in excess of the interest due on the Bonds or any penalties collected in connection with any such foreclosure.

"State" means the State of California.

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

"Surplus Special Tax Revenues" means those Special Tax Revenues available for payment of the Bonds after meeting the obligations payable from Special Tax Revenues (as defined in the Senior Lien Fiscal Agent Agreement) under the Senior Lien Fiscal Agent Agreement[, including any amounts due to the Insurer under the Insurance Policy (both as described in the Senior Lien Fiscal Agent Agreement)].

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

**ARTICLE II**

**THE BONDS**

**Section 2.01. Principal Amount; Designation.** The Bonds in the aggregate principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) are hereby authorized to be issued by the County for the CFD under and subject to the terms of the Act, the Resolution, this Agreement and other applicable laws of the State of California.

**Section 2.02. Terms of Bonds.**

**(A) Denominations.** The Bonds shall be issued as fully registered Bonds without coupons. Bonds shall be lettered and numbered in a customary manner as determined by the Fiscal Agent.

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

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

**(D) Maturities; Interest Rates.** The Bonds shall mature and become payable on each September 1, and shall bear interest at the rates per annum indicated below.

Maturity (September 1)	Principal Amount	Interest Rate	Maturity (September 1)	Principal Amount	Interest Rate
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**(E) Interest.** The Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each Bond shall bear interest from the Interest

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

**(F) Method of Payment.** Principal of and interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable by check of the Fiscal Agent mailed on the applicable Interest Payment Date by first class mail to the registered Owner thereof at such registered Owner’s address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the County, issue a certificate of destruction of such Bonds to the County.

**Section 2.03. Redemption.**

**(A) (i) Optional Redemption.** The Bonds maturing on or after September 1, 20\_\_ are subject to redemption prior to their stated maturities, at the option of the County, from any source of available funds, other than prepayments of Special Taxes, in whole or in part among maturities and among the Bonds on a pro rata basis or as selected by the County and by lot within a maturity, on any Interest Payment Date on or after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

**(ii) Mandatory Redemption From Prepayments.** The Bonds are subject to mandatory redemption from prepayments of the Special Tax by property owners, in whole or in part on a pro-rata basis according to principal among the Bonds, and among maturities therein, by lot within a maturity, on March 1, 2017 or on any Interest Payment Date thereafter, at the following respective redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
March 1, 20__ and Interest Payment Dates through March 1, 20__	103%
September 1, 20__ and March 1, 20__	102%
September 1, 20__ and March 1, 20__	101%
September 1, 20__ and any Interest Payment Date thereafter	100%

(iii) Mandatory Sinking Fund Redemption. The Bonds maturing September 1, 20\_\_ are subject to mandatory sinking payment redemption in part on September 1, 20\_\_, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to 100% of their principal amount to be redeemed, without premium, in the aggregate respective principal amounts as set forth in the following table:

\$\_\_\_\_\_ Term Bond Maturing September 1, 20\_\_

Mandatory Redemption Date (September 1)	Sinking Fund Payment \$
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(Maturity)

The amounts in the foregoing tables will be reduced pro rata, in order to maintain substantially uniform debt service, as a result of any prior partial optional redemption or mandatory redemption of the respective series of Bonds, and the County shall provide the Fiscal Agent with a revised sinking fund schedule.

**(B) Notice to Fiscal Agent.** The County shall give the Fiscal Agent written notice of its intention to redeem Bonds under subsection (A)(i) not less than sixty (60) days prior to the applicable redemption date.

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

**(D) Redemption Procedure by Fiscal Agent.**

(i) Notices. The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least 30 days but not more than 60 days prior to the date fixed for redemption to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds.

(ii) Contents of Notices. Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that

further interest on such Bonds will not accrue from and after the redemption date. The cost of mailing any such redemption notice and any expenses incurred by the Fiscal Agent in connection therewith shall be paid by the County.

(iii) Redemption. Whenever provision is made in this Agreement for the redemption of less than all of the Bonds of any maturity or any given portion thereof, the Fiscal Agent shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption, by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate; provided, however, that if Bonds are to be redeemed as a result of the prepayment of Special Taxes, Bonds shall be selected for redemption on a pro-rata basis among maturities. In the event of redemption pursuant to Section 2.03(a)(i) and (ii), the County shall provide the Fiscal Agent with a revised sinking fund schedule giving effect to the redemption so completed.

(iv) New Bonds. Upon surrender of Bonds redeemed in part only, the County shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the County, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds of such registered Owner.

The County shall have the right to rescind any notice of prepayment delivered by the Fiscal Agent prior to the date fixed for prepayment.

**(E) Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Redemption Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in the notice of redemption. All Bonds redeemed and purchased by the Fiscal Agent under this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds in accordance with the Fiscal Agent's retention policy then in effect.

**Section 2.04. Form of Bonds.** The Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

#### **Section 2.05. Execution and Authentication of Bonds.**

**(A) Execution.** The Bonds shall be executed on behalf of the County by the manual or facsimile signatures of its Chair of the Board and its Clerk of the Board who are in office on the date of execution of this Agreement or at any time thereafter, and the seal of the County shall be impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Owner. Any Bond may be signed and attested on behalf of the County by such persons as at the actual date of the execution of such Bond shall be the proper officers of the County although at the nominal date of such Bond any such person shall not have been such officer of the County.

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

**Section 2.06. Transfer or Exchange of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept under the provisions of Section 2.07 by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent. Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or exchange shall be paid by the County. The Fiscal Agent shall collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for transfer or exchange, the County shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount. No transfers or exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

**Section 2.07. Bond Register.** The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series number, date, amount, rate of interest and last known owner of each Bond and shall at all times be open to inspection by the County during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided. The County and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the County and the Fiscal Agent shall not be affected by any notice to the contrary. The County and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond register for any and all purposes.

**Section 2.08. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the County, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the County upon the same conditions and in substantially the same manner as the definitive Bonds. If the County issues temporary Bonds, it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized

denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

**Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.**

**(A) Mutilated.** If any Bond shall become mutilated, at the expense of the Owner of such Bond, the County shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

**(B) Lost, Destroyed or Stolen.** If any Bond shall be lost, destroyed or stolen, the County shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen, at the expense of the Owner, but only following provision by the Owner to the Fiscal Agent of indemnity for the County and the Fiscal Agent satisfactory to the Fiscal Agent. The County may require payment of a sum not exceeding the actual cost of preparing each replacement Bond delivered under this Section and the County and the Fiscal Agent may require payment of the expenses which may be incurred by the County and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the County whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued under this Agreement.

**(C) Additional Stock.** If the Fiscal Agent has an insufficient stock of unauthenticated printed Bonds for such purpose, it shall communicate with the Authorized Officer with respect to the printing of an additional stock of Bonds, in such quantities and as otherwise approved in writing by the Authorized Officer.

**Section 2.10. Book-Entry Only System.** DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Bond Register kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The Authorized Officers of the County and the Fiscal Agent are hereby authorized to take any and all actions as may be necessary and consistent with this Agreement to qualify the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, neither the County nor the Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds Bonds as Depository from time to time (the "DTC Participants") or to any person for which a DTC Participant acquires an interest in the Bonds (the "Beneficial Owners"). Without limiting the immediately preceding sentence, neither the County nor the Fiscal Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with

respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any Bonds to be redeemed in the event the County elect to redeem the Bonds, in part, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the County elects to redeem the Bonds in part, (iv) the payments to any DTC Participant, any Beneficial Owner, or any person, other than DTC, of any amount with respect to the principal of or interest or premium on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

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

No person other than an Owner, as shown on the Bond Register, shall receive a physical Bond. Upon delivery by DTC to the County and the Fiscal Agent of written notice to the effect the DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.10 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the County and to the Fiscal Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The County may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfer through DTC is not in the best interest of the Beneficial Owners, and the County shall mail notice of such termination to the Fiscal Agent.

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

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

## ARTICLE III

### ISSUANCE OF BONDS

**Section 3.01. Issuance and Delivery of Bonds.** At any time after the execution of this Agreement, the County may issue the Bonds for the CFD in the aggregate principal amount set forth in Section 2.01 and deliver the Bonds to the Fiscal Agent for authentication and delivery to the Original Purchaser. The Authorized Officers of the County are hereby authorized and directed to execute and deliver any and all documents and instruments necessary to cause the issuance of the Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the Facilities by the Fiscal Agent from the proceeds of the Bonds and to do and cause to be done any and all acts and things necessary or convenient for the timely delivery of the Bonds to the Original Purchaser. The Fiscal Agent is hereby authorized and directed to authenticate the Bonds and deliver them to the Original Purchaser, upon receipt of the purchase price for the Bonds.

**Section 3.02. Pledge of Surplus Special Tax Revenues.** The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Surplus Special Tax Revenues and all moneys deposited in the Redemption Fund and the Reserve Fund. Until disbursed as provided in the Senior Lien Fiscal Agent Agreement, the Bonds shall be secured by a pledge of all moneys in the Special Tax Fund, subordinate to the Senior Lien Bonds. The Surplus Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

**Section 3.03. Limited Obligation.** All obligations of the County under this Agreement and the Bonds shall not be general obligations of the County, but shall be limited obligations, payable solely from the Surplus Special Tax Revenues and the funds pledged therefore hereunder. Neither the faith and credit of the County nor of the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

**Section 3.04. No Acceleration.** The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the redemption of Bonds under Section 2.03, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03.

**Section 3.05. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the acquisition of the Facilities or upon the performance by any person of his obligation with respect to the Facilities.

**Section 3.06. Additional Bonds.** The Board may, at any time after the issuance and delivery of the Bonds hereunder, issue (and the Fiscal Agent shall upon an Officer's Certificate authenticate and deliver) Additional Bonds secured by a lien and charge upon the Special Tax and the respective funds and accounts established hereunder equal to and on a parity with the lien and charge securing the Outstanding Series 2016 Bonds and any Additional Bonds issued, authenticated and delivered prior thereto pursuant to this Fiscal Agent Agreement and a Supplemental Fiscal Agent Agreement consistent with this Fiscal Agent Agreement, but only [for](#)

the purpose of refunding a portion of the Series 2016 Bonds or Additional Bonds issued previously for refunding purposes, upon satisfaction of the following specific conditions, which are hereby made conditions precedent to the issuance of any such Additional Bonds:

(a) — The County shall have delivered or caused to be delivered to the Fiscal Agent the following:

(i) — A copy of the resolution adopted by the Board approving the Supplemental Fiscal Agent Agreement and the execution and delivery by the County of the Supplemental Fiscal Agent Agreement, duly certified by the Clerk of the Board to have been duly adopted by the Board and to be in full force and effect on the date of such certification;

(ii) — An original executed counterpart of the Supplemental Fiscal Agent Agreement pertaining to the Additional Bonds;

(iii) — An Officer's Certificate, addressed to the Fiscal Agent and directing the Fiscal Agent to authenticate the Additional Bonds and containing instructions as to the delivery of the Additional Bonds;

(iv) — The proceeds of sale of the Additional Bonds;

(v) — An Officer's Certificate stating that the County is not in default in the performance of any of the agreements, conditions, covenants or terms contained in the Fiscal Agent Agreement and any Supplemental Fiscal Agent Agreement previously executed and delivered, if any; and

(vi) — An Opinion of Counsel addressing the validity and tax exempt status of the Additional Bonds.

(b) — The issuance of such Additional Bonds shall have been duly authorized under all applicable laws, and the Supplemental Fiscal Agent Agreement providing for issuance of such Additional Bonds shall specify the following:

(i) — The authorized principal amount of such Additional Bonds;

(ii) — The date and maturity date or dates of such Additional Bonds; provided that (A) the principal of the Additional Bonds shall mature on and otherwise be payable on the same principal payment date annually as the Series 2016 Bonds, (B) all Additional Bonds of like maturity and series shall be identical in all respects, except as to number, and (C) fixed serial maturities or mandatory sinking account installments, or any combination thereof, shall be established to provide for the retirement of all such Additional Bonds on or before their respective maturity dates;

(iii) — The semiannual interest payment dates for the Additional Bonds shall be the same as for the Series 2016 Bonds; provided that the Additional Bonds may provide for compounding of interest in lieu of current payment of interest on such dates;

(iv) — The denomination and method of numbering of the Additional Bonds;

(v) — The redemption premiums, if any, and the additional terms, if any, for redemption of the Additional Bonds in advance of maturity

~~(vi) — The amount and due date of each mandatory sinking account installment, if any, for any of the Additional Bonds which are structured as term bonds;~~

~~(vii) — The amount, if any, to be deposited from the proceeds of the Additional Bonds into the Redemption Fund on account of interest on the Additional Bonds;~~

~~(viii) — The amount, if any, to be deposited from the proceeds of the Additional Bonds into the Reserve Fund; provided that the amount on deposit in the Reserve Fund shall be increased at or prior to the time the Additional Bonds become Outstanding to an amount at least equal to the Reserve Requirement on all then Outstanding Bonds (exclusive of the Additional Bonds) and such Additional Bonds; and~~

~~(ix) — The form of the Additional Bonds.~~

~~(c) — The Fiscal Agent shall have received a certificate of the County's special tax consultant to the effect that:~~

~~(i) — The proceeds that would have been available to the County if the Special Tax had been levied and collected at the Maximum Annual Special Tax rates and amounts on all Taxable Parcels (as defined in the Rate and Method) in the CFD based upon the Rate and Method are equal to at least 110% of Debt Service on all Outstanding Bonds and Senior Lien Bonds in each Bond Year after the issuance of the Additional Bonds;~~

~~(ii) — With respect to the period of time preceding the receipt of proceeds of the Special Tax calculated in accordance with the Rate and Method, the proceeds of the Special Tax anticipated to be available to the County during such period plus other revenue, if any, including but not limited to capitalized interest, legally available for payment of Debt Service on the Outstanding Senior Lien Bonds and the Outstanding Bonds, and as shown by a Certificate of the County on file with the Fiscal Agent, shall be equal to at least 100% of the Debt Service payable on all Outstanding Bonds and Senior Lien Bonds during such period; and~~

~~(iii) — The fair market value of the Taxable Parcels (including the then-existing private improvements thereon), as determined by assessed valuation as shown on the most recent equalized assessment roll of the El Dorado County Assessor or by an MAI appraisal is an amount equal to at least ~~[[three]]~~ times the sum of (1) the aggregate principal amount of all Outstanding Bonds and Senior Lien Bonds following issuance of the Additional Bonds plus (2) the aggregate principal amount of all special assessment bonds then outstanding and payable from special assessments levied on the Taxable Parcels plus (3) the proportion of the aggregate principal amount of any other special tax bonds issued under the Act and then outstanding which are payable from special taxes to be levied on the Taxable Parcels~~

~~(d) — Te foregoing provision (c)(iii) of this Section 3.06 shall not apply to the issuance of any series of Additional Bonds if following the issuance and delivery of the Additional Bonds, there will be no increase in Debt Service on the Outstanding Bonds, including the Additional Bonds, by reason of issuance of the Additional Bonds, in any Bond Year to and including the Bond Year of the scheduled retirement of the last maturing Outstanding Bonds.~~

~~(e) — Nothing in this Section 3.06 shall apply to or be construed to limit the ability of the County to issue one or more series of special tax bonds of the CFD, within the limitation of \$35,000,000 in principal amount of special tax bonds of the CFD, which are secured by the~~

~~proceeds of the Special Tax on a subordinated basis to the Series 2016 Bonds and any Additional Bonds.~~

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## ARTICLE IV

### PROCEEDS, FUNDS AND ACCOUNTS

**Section 4.01. Application of Proceeds.** The Proceeds of the Bonds received from the Original Purchaser in the amount of \$\_\_\_\_\_ (representing the principal of amount of the Series 2016 Bonds, less an underwriter's discount of \$\_\_\_\_\_ and less a net original issue discount of \$\_\_\_\_\_) shall be paid to the Fiscal Agent, who shall forthwith set aside, pay over and deposit such proceeds and other amounts on the Closing Date as follows:

- (i) Deposit in the Reserve Fund \$\_\_\_\_\_, equaling the Reserve Requirement;
- (ii) Deposit in the Acquisition and Construction Fund \$\_\_\_\_\_;
- (iii) Transfer to the County for deposit in the Administrative Expense Fund \$\_\_\_\_\_; and
- (iv) Transfer to the Senior Lien Fiscal Agent the amount of \$\_\_\_\_\_, equaling the Costs of Issuance amount associated with the Bonds, to be deposited in the Costs of Issuance Fund established under the Senior Lien Fiscal Agent Agreement.

The Fiscal Agent, in its discretion, may establish one or more temporary funds or accounts to facilitate or properly account for the foregoing transfers and deposits.

#### **Section 4.02. Reserve Fund.**

**(A) Establishment of Fund.** The Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date, is equal to the initial Reserve Requirement, and deposits shall be made as provided in Section 4.02(E). Moneys in the Reserve Fund, shall be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds as a reserve for the payment of the principal of, and interest and any premium on, the Bonds and shall be subject to a lien in favor of the Owners of the Bonds.

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

**(C) Transfer of Excess of Reserve Requirement.** Fifteen days prior to each Interest Payment Date, the Fiscal Agent shall provide written notice to the Auditor-Controller of the amount in the Reserve Fund. If, on the respective Interest Payment Date, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal

Agent shall transfer an amount equal to the excess from the Reserve Fund to the Redemption Fund, to be used to pay interest on the Bonds on the next Interest Payment Date.

Whenever transfer is made from the Reserve Fund to the Redemption Fund due to a deficiency in the Redemption Fund, the Fiscal Agent shall provide written notice thereof to the Auditor-Controller, specifying the amount withdrawn.

**(D) Transfer for Rebate Purposes.** Amounts in the Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such amount is needed for rebate purposes; *provided, however*, that no amounts in the Reserve Fund shall be used for rebate unless the amount in the Reserve Fund following such withdrawal equals the Reserve Requirement.

**(E) Transfer When Balance Exceeds Outstanding Bonds.** Whenever on or before any Interest Payment Date, the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Authorized Officer, transfer any cash or Permitted Investments in the Reserve Fund to the Redemption Fund to be applied, on the redemption date to the payment and redemption, in accordance with Section 4.03 or 2.03, as applicable, of all of the Outstanding Bonds. In the event that the amount so transferred from the Reserve Fund to the Redemption Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund shall be transferred to the Auditor-Controller to be used by the County for any authorized CFD purpose.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund under this Section 4.02(E) until after: (i) the calculation of any amounts due to the federal government under Section 5.11 and withdrawal of any such amount under Section 4.02(D) for purposes of making such payment to the federal government; and (ii) payment of any fees and expenses due to the Fiscal Agent.

**(F) Investment.** Moneys in the Reserve Fund shall be invested under Section 6.01.

**(G) Qualified Reserve Account Credit Instrument.** If, at any time, the Reserve Fund is funded with in whole or in part with cash, the County has the right at any time to cause the Fiscal Agent to release funds from the Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (1) a Qualified Reserve Account Credit Instrument, and (2) an opinion of Bond Counsel stating that such release will not, of itself, cause the portion of the Proceeds of the Bonds designated as and comprising interest to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, the Fiscal Agent will transfer such funds from the Reserve Fund to the County.

### **Section 4.03. Redemption Fund.**

**(A) Establishment of Redemption Fund.** The Redemption Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which deposits shall be made from moneys available for payment of the Bonds after meeting the obligations of the County for payment of the Senior Lien Bonds as set forth in the Senior Lien Fiscal Agent Agreement and transferred by the Senior Lien Fiscal Agent pursuant to the Senior Lien Fiscal Agent Agreement, and as required by Section 4.05, and any other amounts required to be deposited therein by this Agreement or the Senior Lien Fiscal Agent Agreement. Moneys in the Redemption Fund shall be held by the Fiscal Agent for the benefit of the County and the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below.

**(B) Disbursements.** At least fifteen (15) Business Days before each Interest Payment Date, the Fiscal Agent shall notify the Auditor-Controller in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date. On each Interest Payment Date, the Fiscal Agent shall withdraw from the Redemption Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least five (5) Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Redemption Fund are sufficient to pay the debt service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Redemption Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Auditor-Controller by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Redemption Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall withdraw from the Reserve Fund, in accordance with the provisions of Section 4.02, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Redemption Fund insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited in the Redemption Fund.

If, after the foregoing transfers, there are insufficient funds in the Redemption Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.03(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds.

**(C) Investment.** Moneys in the Redemption Fund shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Redemption Fund.

**(D) Deficiency.** If at any time it appears to the Fiscal Agent that there is a danger of deficiency in the Redemption Fund and that the Fiscal Agent may be unable to pay Debt Service on the Bonds in a timely manner, the Fiscal Agent shall report to the Auditor-Controller such fact. The County covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation and the Act) in accordance with the procedures set forth in the Act for the purpose of curing Redemption Fund deficiencies.

**(E) Excess.** Any excess moneys remaining in the Redemption Fund following the disbursements referred to in subsection (B) above, shall be transferred to the Senior Lien Fiscal Agent for deposit in the Redemption Fund established under the Senior Lien Fiscal Agent Agreement.

**Section 4.04. Special Tax Fund.** The Special Tax Fund is established and shall be administered pursuant to the Senior Lien Fiscal Agent Agreement. Moneys in the Special Tax Fund shall be held by the Auditor-Controller for the benefit of the County and the Owners of the Bonds and the Senior Lien Bonds, disbursed as provided in the Senior Lien Fiscal Agent Agreement and, pending any disbursement, shall be subject to a lien in favor of the Owners of the Bonds subordinate to the lien of the Senior Lien Bonds.

**Section 4.05. Acquisition and Construction Fund.**

**(A) Establishment of Acquisition and Construction Fund.** The Fiscal Agent shall establish and maintain a fund to be known as the "County of El Dorado Community Facilities District No. 2005-1 (Blackstone) Junior Lien Acquisition and Construction Fund," into which fund shall be deposited the amounts required to be deposited therein by the provisions of Section 4.01 hereof and by the provisions of each Supplemental Fiscal Agent Agreement, if any, providing for the issuance of each additional series of Bonds, if any. All money in the Acquisition and Construction Fund shall be applied by the Fiscal Agent and in accordance with subsection (B) below for financing the acquisition and construction of the Facilities (or for making reimbursements to the County for such costs theretofore paid by it), including payment of costs incidental to or connected with financing such acquisition and construction, or for the repayment of funds advanced to or for the CFD.

**(B) Disbursements.** Amounts in the Acquisition and Construction Fund shall be applied by the Fiscal Agent solely as directed in a Certificate of the County, each of which shall be separately numbered as "Requisition No.\_\_\_\_," and each of which shall state (i) the amounts, purposes and payees of the disbursements, (ii) that the disbursements are proper charges against the Acquisition and Construction Fund as provided in this Agreement and the Act and (iii) that the disbursements have not previously been paid from the Acquisition and Construction Fund. Each such Certificate of the County shall be sufficient evidence to the Fiscal Agent of the facts stated therein, and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

Any amount remaining in the Acquisition and Construction Fund after the completion of the Facilities, as evidenced by an Officer's Certificate, shall be transferred to the Special Tax Fund, and following such transfer the Acquisition and Construction Fund shall be closed.

**Section 4.06. Prepayments of Special Taxes.** There is established under the Senior Lien Fiscal Agent Agreement a fund to be known as the "County of El Dorado Community Facilities District No. 2005-1 (Blackstone) Prepayment Fund," which fund shall be held and maintained in trust by the County under the Senior Lien Fiscal Agent Agreement, and upon receipt of any prepayments of the Special Tax (including any payments pursuant to Section 53317.5 of the Act), the County shall, from the money in the Special Tax Fund constituting such prepayments, deposit in the Prepayment Fund the amount of money constituting such prepayments, and all money in the Prepayment Fund shall be used and withdrawn by the County for deposit in the Redemption Fund to implement an extraordinary redemption of

Bonds in accordance with Section 2.03 of this Fiscal Agent Agreement. To implement an extraordinary redemption, the County shall deliver to the Fiscal Agent an Officer's Certificate which includes directions to the Fiscal Agent of the Bonds to be redeemed, and the amount, if any, to be withdrawn from the Reserve Fund in connection with such prepayment and related extraordinary redemption, and the amount so withdrawn from the Reserve Fund shall also be deposited in the Redemption Fund in connection with implementation of the extraordinary redemption of Bonds.

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**ARTICLE V**  
**COVENANTS**

**Section 5.01. Collection of Special Tax Revenues.** The County shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

**(A) Levy.** The Auditor-Controller shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each August 1 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor-Controller will accept the transmission of the Special Tax amounts for the parcels within the CFD for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, an Authorized Officer shall prepare or cause to be prepared, and shall transmit to the Auditor-Controller, such data as the Auditor-Controller requires to include the levy of the Special Taxes on the next real property tax roll.

**(B) Computation.** The Auditor-Controller shall fix and levy the amount of Special Taxes within the CFD required for the payment of principal of and interest on any outstanding Bonds of the CFD becoming due and payable during the ensuing calendar year, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses (defined in the Senior Fiscal Agent Agreement), including amounts necessary to discharge any rebate obligation, during such year, taking into account the balances in such funds and in the Special Tax Fund. The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

**(C) Collection.** The Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installments as the general taxes on real property are payable, or by direct billing of the property owner, and, in either case, have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property.

**Section 5.02. Covenant to Foreclose.** The County will annually on or before October 1 of each year review the public records of the County relating to the collection of the Special Tax in order to determine the amount of the Special Tax collected in the prior Fiscal Year, and (a) on the basis of such review the County will, not later than the succeeding December 1, institute foreclosure proceedings as authorized by the Act against all parcels that are delinquent in the payment of such Special Tax in such Fiscal Year by [[one thousand dollars (\$1,000)]] or more in order to enforce the lien of all such delinquent installments of such Special Tax, and will diligently prosecute and pursue such foreclosure proceedings to judgment and sale, and (b) on the further basis of such review, if the County determines that the total amount so collected is less than [[ninety-five per cent (95%)]] of the total amount of the special tax levied in such Fiscal Year, the County will, not later than the succeeding December 1, institute foreclosure proceedings as authorized by the Act against all parcels that are delinquent in the payment of such Special Tax in such Fiscal Year to enforce the lien of all the delinquent installments of

such Special Tax, and will diligently prosecute and pursue such foreclosure proceedings to judgment and sale; provided, that any actions taken to enforce delinquent Special Tax liens shall be taken only consistent with Sections 53356.1 through 53356.7, both inclusive, of the Government Code of the State of California.

**Section 5.03. Punctual Payment.** The County will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

**Section 5.04. Extension of Time for Payment.** In order to prevent any accumulation of claims for interest after maturity, the County shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the County, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

**Section 5.05. Against Encumbrances.** The County will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, or their Owners, except as permitted by this Agreement.

**Section 5.06. Books and Records.**

**(A) County.** The County will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the County, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Administrative Expense Fund and the Special Tax Fund and to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**(B) Fiscal Agent.** The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it relating to the expenditure of amounts disbursed from the funds, and, if any, accounts in such funds held by the Fiscal Agent hereunder. Such books of record and accounts shall at all times during business hours be subject to the inspection of the County and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing upon reasonable prior notice.

**Section 5.07. Protection of Security and Rights of Owners.** The County will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant

and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the County, the Bonds shall be incontestable by the County.

**Section 5.08. Further Assurances.** The County will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

**Section 5.09. Private Activity Bond Limitations.** The County 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.

**Section 5.10. Federal Guarantee Prohibition.** The County shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

**Section 5.11. Rebate Requirement.** The County shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds. The Auditor-Controller shall take note of any investment of monies hereunder in excess of the yield on the Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11 and the Tax Code, such as increasing the portion of the Special Tax levy for Administration Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the County may use:

- (A) Earnings on the Reserve Fund if the amount on deposit in the Reserve Fund, following the proposed transfer, is equal to the Reserve Requirement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the CFD, including amounts advanced by the County, in its sole discretion, to be repaid by the CFD as soon as practicable from amounts described in the preceding clauses (A) and (B).

**Section 5.12. No Arbitrage.** The County shall not take, or permit or suffer to be taken by the Fiscal Agent 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 date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Tax Code.

**Section 5.13. Yield of the Bonds.** In determining the yield of the Bonds to comply with Sections 5.11 and 5.12, the County will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the County, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the Bonds, without regard to whether or not prepayments are received or Bonds redeemed.

**Section 5.14. Maintenance of Tax-Exemption.** The County 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 date of issuance of the Bonds.

**Section 5.15. Continuing Disclosure.** The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the County to comply with the Continuing Disclosure Certificate shall not be considered an event of default for the purposes of the Continuing Disclosure Certificate. However, any Owner or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

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## ARTICLE VI

### INVESTMENTS; LIABILITY OF THE COUNTY

#### Section 6.01. Deposit and Investment of Moneys in Funds.

**(A) General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent or the Auditor-Controller, respectively, shall be invested by the Fiscal Agent or the Auditor-Controller, respectively, in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in clause (vii) of the definition thereof which by their terms mature prior to the date on which such moneys are required to be paid out hereunder to the extent reasonably practicable, provided, however, that any such investment shall be made by the Fiscal Agent only if, prior to the date on which such investment is to be made, the Fiscal Agent shall have received a written direction from the County specifying a specific money market fund and, if no such written direction is so received, the Fiscal Agent shall hold such moneys uninvested. The Auditor-Controller shall make note of any investment of funds hereunder in excess of the yield on the Bonds so that appropriate actions can be taken to assure compliance with Section 5.11.

**(B) Moneys in Funds.** Moneys in any fund or account created or established by this Agreement and held by the Auditor-Controller shall be invested by the Auditor-Controller in any Permitted Investment provided that amounts on deposit in the Administrative Expense Fund may be invested in any lawful investment the County may make. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the County to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

**(C) Actions of Officials.** The Fiscal Agent and its affiliates or the Auditor-Controller may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor any Authorized Officer shall incur any liability for losses arising from any investments made pursuant to this Section. The Fiscal Agent shall not be required to determine the legality of any investments.

**(D) Valuation of Investments.** Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the Reserve Fund shall be valued by the County at their present value (within the meaning of section 148 of the Tax Code). The Fiscal Agent shall not be liable for verification of the application of such sections of the Tax Code or for any determination of Fair

Market Value or present value and may conclusively rely upon an Officer's Certificate as to such valuations.

**(E) Commingled Money.** Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Auditor-Controller hereunder, provided that the Fiscal Agent or the Auditor-Controller, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

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

**(G) Sale of Investments.** The Fiscal Agent or the Auditor-Controller, as applicable, shall sell at Fair Market Value, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the Auditor-Controller shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

**(H) Unavoidable Delays.** The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

**(I) Instruction Transmissions.** The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the County shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions and containing specimen signatures of such authorized officers, which incumbency certificate shall be amended by the County whenever a person is to be added or deleted from the listing. If the County elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The County understands and

agrees that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The County shall be responsible for ensuring that only authorized officers transmit such Instructions to the Fiscal Agent and that the County and all authorized officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the County. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The County agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the County; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

#### **Section 6.02. Liability of County.**

**(A) General.** The County shall not incur any responsibility whatsoever in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly stated herein or in the Bonds. The County shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful default. The County shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(B) Reliance.** In the absence of bad faith, the County, including any of its officers, employees, agents or attorneys, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the County by the Fiscal Agent or an Independent Financial Consultant and conforming to the requirements of this Agreement. The County, including any of its officers, employees, agents or attorneys, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was grossly negligent in ascertaining the pertinent facts. The County may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The County may consult with counsel, who may be the County Counsel, 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; provided, however, that the County's reliance on such opinion shall not give rise to any claim or cause of action by any party other than County.

**(C) No General Liability.** No provision of this Agreement shall require the County to expend or risk its own general funds or otherwise incur any financial liability (other than with

respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers.

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

**Section 6.03. Employment of Agents by County.** In order to perform its duties and obligations hereunder, the County may employ such persons or entities as it deems necessary or advisable. The County shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

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**ARTICLE VII**  
**THE FISCAL AGENT**

**Section 7.01. The Fiscal Agent.**

**(A) Appointment.** The Fiscal Agent is hereby appointed as the fiscal, authentication, paying and transfer agent hereunder for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied duties, covenants or obligations shall be read into this Agreement against the Fiscal Agent.

**(B) Merger.** Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section 7.01 shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Auditor-Controller written notice of any such succession hereunder.

**(C) Removal.** Upon 30 days written notice, the County may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

**(D) Resignation.** The Fiscal Agent may at any time resign by giving written notice to the County by certified mail return receipt requested, and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the County shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

**(E) No Successor.** If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 7.01 within forty-five (45) days after the Fiscal Agent shall have given to the County written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the County, or any Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

**(F) Court Order.** If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Auditor-Controller of the

County in trust for the benefit of the Owners. The County covenants for the direct benefit of the Owners that its Auditor-Controller in such case shall be vested with all of the rights and powers of the Fiscal Agent hereunder, and shall assume all of the responsibilities and perform all of the duties of the Fiscal Agent hereunder, in trust for the benefit of the Owners of the Bonds.

**Section 7.02. Liability of Fiscal Agent.**

**(A) General.** The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the County, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

**(B) Reliance.** The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, written instructions or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates, documents, written instructions or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, requisition, facsimile transmission, electronic mail or other paper or document which it shall reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

**(C) No Duty to Inquire.** The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the County or the CFD herein or of any of the documents executed by the County or the CFD in connection with the Bonds, or as to the existence of a default or event of default thereunder.

**(D) Errors in Judgment.** The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

**(E) No Expenditures.** No provision of this Agreement shall require the Fiscal Agent 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.

**(F) No Action.** The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners

under this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

**(G) Owner of Bonds.** The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

**(H) Actions of Fiscal Agent.** The permissive right of the Fiscal Agent to do things enumerated in this Agreement shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct.

**(I) Release of Moneys.** The Fiscal Agent shall not be responsible for or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

**(J) Agents.** The Fiscal Agent may execute any its powers hereof and perform the duties required of it hereunder by or through attorneys, agents, affiliates, or receivers, and the Fiscal Agent shall not be answerable for any willful misconduct or negligence on the part of any such attorney, agent, or receiver selected by it with reasonable care.

**Section 7.03. Information; Books and Accounts.** The Fiscal Agent shall provide to the County such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the County shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent, including the value of any investments held by the Fiscal Agent. The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Redemption Fund, the Reserve Fund and, the Cost of Issuance Fund. Such books of record and accounts shall, upon reasonable notice, during business hours be subject to the inspection of the County, and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

**Section 7.04. Notice to Fiscal Agent.** The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, requisition, Officer's Certificate, facsimile transmission, electronic mail resolution, request, consent, order, certificate, written instructions, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be counsel to the County, 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, suffered or omitted by it hereunder in good faith and in accordance therewith.

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

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by an Officer's Certificate, and such

certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

**Section 7.05. Compensation, Indemnification.** The County shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys (including the allocated costs of in-house attorneys), agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The County further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities, costs, claims or expenses, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligations of the County under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement, and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the County arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

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## ARTICLE VIII

### MODIFICATION OR AMENDMENT

#### Section 8.01. Amendments Permitted.

**(A) With Consent.** This Agreement and the rights and obligations of the County and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the County to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the County of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof.

**(B) Without Consent.** This Agreement and the rights and obligations of the County and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(i) (a) to add to the covenants and agreements of the County herein, other covenants and agreements thereafter to be observed; or (b) to limit or surrender any right or power herein reserved to or conferred upon the County;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect;

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

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for federal income tax purposes of interest on the Bonds.

**(C) Fiscal Agent's Consent.** Any amendment of this Agreement may not modify any of the rights or obligations of the Fiscal Agent without its written consent. The Fiscal Agent shall be furnished an opinion of counsel that any such Supplemental Agreement entered into by the County and the Fiscal Agent complies with the provisions of this Section 8.01 and the Fiscal Agent may conclusively rely on such opinion and shall be absolutely protected in so relying.

**Section 8.02. Owners' Meetings.** The County may at any time call a meeting of the Owners. In such event the County is authorized to fix the time and place of said meeting and to

provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

**Section 8.03. Procedure for Amendment with Written Consent of Owners.** The County and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01, to take effect when and as provided in this Section 8.03. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent, at the expense of the County), to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section 8.03 provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section 8.03 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section 8.03 provided for has been mailed.

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

**Section 8.04. Disqualified Bonds.** Bonds owned or held for the account of the County, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request of the Fiscal Agent, the County shall specify in a certificate to the Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

**Section 8.05. Effect of Supplemental Agreement.** From and after the time any Supplemental Agreement becomes effective under this Article VIII, this Agreement shall be

deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the County, the Fiscal Agent and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

**Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments.**

The County may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the County, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the County may select and designate for that purpose, a suitable notation shall be made on such Bond. The County may determine that new Bonds, so modified as in the opinion of the County is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

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

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## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Benefits of Agreement Limited to Parties.** Nothing in this Agreement, expressed or implied, is intended to give to any person other than the County, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the County shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

**Section 9.02. Successor and Predecessor.** Whenever in this Agreement or any Supplemental Agreement either the County, or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the County or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Agreement.** If the County shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

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

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Redemption Fund and the Reserve Fund hereof is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

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

and if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the County, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the County under this Agreement with respect to all Bonds Outstanding shall cease and terminate, except only the obligations of the County under Section 5.12 and of the County to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, and the obligation of the County to pay all amounts owing to the Fiscal Agent under Section 7.05; and thereafter Special Taxes shall not be payable to the Fiscal Agent. Notice of such election shall be filed with the Fiscal Agent. The satisfaction and discharge of this Fiscal Agent Agreement shall be without prejudice to the rights of the Fiscal Agent to charge and be

reimbursed by the County for the expenses which it shall thereafter incur in connection therewith.

Any funds thereafter held by the Fiscal Agent upon payment of all fees and expenses of the Fiscal Agent which remain unclaimed for two (2) years after the principal of all Bonds has become due and payable, shall be paid over to the County as provided in Section 9.08 and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the County for payment of such Bonds.

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

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

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained by the Fiscal Agent under Section 2.07.

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

**Section 9.05. Waiver of Personal Liability.** No member, officer, agent or employee of the County shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.06. Notices to and Demands on County and Fiscal Agent.** Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the County may be given or served by being deposited postage prepaid in a post office letter box, by overnight courier or electronic means (with receipt confirmed by telephone) addressed (until another address is filed by the County with the Fiscal Agent) as follows:

County of El Dorado  
330 Fair Lane  
Placerville, California 95667  
Attention: Auditor-Controller  
Fax: (530) 295-2535  
Telephone: (530) 621-5456

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the County to or on the Fiscal Agent may be given or served by being

deposited postage prepaid in a post office letter box, by overnight courier or electronic means (with receipt confirmed by telephone) addressed (until another address is filed by the Fiscal Agent with the County) as follows:

The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Street, Suite 400  
Los Angeles, California 90017  
Attention: Corporate Trust Administration  
Fax: (213) 630-6210

**Section 9.07. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The County hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

**Section 9.08. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the County as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the County for the payment of the principal of, and interest and any premium on, such Bonds. Any right of any Owner to look to the County for such payment shall survive only so long as required under applicable law.

**Section 9.09. Applicable Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 9.10. Conflict with Act.** In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

**Section 9.11. Conclusive Evidence of Regularity.** Bonds issued under this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

**Section 9.12. Payment on Business Day.** In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of any Bonds, or the date any action is to be taken under this Agreement, is other than a Business Day, the payment of interest or principal (and premium, if any) or the action shall be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

**Section 9.13. State Reporting Requirements.** In addition to Section 5.15, the following requirements shall apply to the Bonds:

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

**(B) Other Reporting.** If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, or if funds are withdrawn from the Reserve Fund to pay principal and interest on the Bonds, the Fiscal Agent shall notify the Auditor-Controller of such failure or withdrawal in writing. The Auditor-Controller shall notify CDIAC and the Original Purchasers of such failure or withdrawal within 10 days of such failure or withdrawal.

**(C) Amendment.** The reporting requirements of this Section 9.13 shall be amended from time to time, without action by the County or the Fiscal Agent, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act.

**(D) No Liability.** None of the County and its officers, agents and employees, any Authorized Officer or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section 9.13.

The Auditor-Controller shall provide copies of any such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the County to photocopy and pay any postage or other delivery cost to provide the same, as determined by the Auditor-Controller. The term "Bondowner" for purposes of this Section 9.13 shall include any beneficial owner of the Bonds as described in Section 2.13.

**Section 9.14. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

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**IN WITNESS WHEREOF**, the County and the Fiscal Agent have caused this Agreement to be executed as of \_\_\_\_\_ 1, 2016.

**COUNTY OF EL DORADO,**  
for and on behalf of COMMUNITY FACILITIES  
DISTRICT NO. 2005-1 (BLACKSTONE)

By: \_\_\_\_\_  
Auditor-Controller

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,**  
*as Fiscal Agent*

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

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**EXHIBIT A**  
**FORM OF BOND**

No. \_\_\_\_

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

**UNITED STATES OF AMERICA**  
**STATE OF CALIFORNIA**  
**COUNTY OF EL DORADO**  
**COMMUNITY FACILITIES DISTRICT No. 2005-1**  
**(BLACKSTONE)**  
**2016 SERIES B JUNIOR LIEN SPECIAL TAX BONDS**

**INTEREST RATE:** \_\_\_\_\_%      **MATURITY DATE:** September 1, \_\_\_\_\_      **DATED DATE:** \_\_\_\_\_, 2016      **CUSIP:** \_\_\_\_\_

REGISTERED OWNER:      CEDE & CO

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

The County of El Dorado (the "County") for and on behalf of the County's Community Facilities District No. 2005-1 (Blackstone) (the "CFD"), for value received, hereby promises to pay solely from the Special Tax (as hereinafter defined) to be collected in the CFD or amounts in certain funds and accounts held under the Agreement (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from Dated Date set forth above, or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for (unless this Bond is authenticated on or before an Interest Payment Date (as hereinafter defined) and after the close of business on the Record Date (as hereinafter defined) preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to [August 15, 2016], in which event it shall bear interest from the Dated Date identified above), payable semiannually on each March 1 and September 1, commencing [September 1, 2016] (each an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment.

Principal of and interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable by check of The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent") mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day (the

"Record Date"), or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent.

This Bond is one of a series of bonds duly approved by resolution of the Board of Supervisors of the County (the "Board") on \_\_\_\_\_, 2016 (the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of refunding certain prior special tax bonds and funding certain facilities for the CFD, and authorized in the aggregate principal amount of \$\_\_\_\_\_ designated "County of El Dorado Community Facilities District No. 2005-1 (Blackstone) 2016 Series B Junior Lien Special Tax Bonds" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of \_\_\_\_\_ 1, 2016, between the County and the Fiscal Agent (the "Agreement") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, the Resolution and the Agreement, the principal of and interest on this Bond are payable solely from the annual special tax authorized under the Act to be collected within the CFD (the "Special Tax") and certain funds held under the Agreement. Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the County, as may be permitted by law. The Bonds do not constitute obligations of the County for which the County is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith and credit nor the taxing power of the County (except to the limited extent set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

The Bonds maturing on or after September 1, 20\_\_ are subject to redemption prior to their stated maturities, at the option of the County, from any source of available funds, other than prepayments of Special Taxes, in whole or in part among maturities and among the Bonds on a pro rata basis or as selected by the County and by lot within a maturity, on any Interest Payment Date on or after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

The Bonds are subject to mandatory redemption from prepayments of the Special Tax by property owners, in whole or in part on a pro-rata basis according to principal among the Bonds, and among maturities therein, by lot within a maturity, on March 1, 2017 or on any Interest Payment Date thereafter, at the following respective redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
March 1, 2017 and Interest Payment Dates through March 1, 20__	103%
September 1, 20__ and March 1, 20__	102%
September 1, 20__ and March 1, 20__	101%
September 1, 20__ and any Interest Payment Date thereafter	100%

The Bonds maturing September 1, 20\_\_ are subject to mandatory sinking payment redemption in part on September 1, 20\_\_, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to 100% of their principal amount to be redeemed, without premium, in the aggregate respective principal amounts as set forth in the following table:

\$\_\_\_\_\_ Term Bond Maturing September 1, 20\_\_

Mandatory Redemption Date (September 1)	Sinking Fund Payment \$
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(Maturity)

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

This Bond shall be registered in the name of the owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

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

The Agreement and the rights and obligations of the County thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

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

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

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

IN WITNESS WHEREOF, the County of El Dorado has caused this Bond to be to be signed by the facsimile signature of its Chair of the Board and countersigned by the facsimile signature of the Clerk of the Board, all as of the Dated Date stated above.

\_\_\_\_\_  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Chair of the Board of Supervisors

**[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION AND REGISTRATION]**

This is one of the Bonds described in the Agreement which has been authenticated on \_\_\_\_\_, 2016.



**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**  
*as Fiscal Agent*

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

**FORM OF ASSIGNMENT**

For value received, the undersigned do(es) hereby sell, assign and transfer unto

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(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer the same on the registration books of the Fiscal Agent, with full power of substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guarantor.

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

DRAFT