

**LOAN AGREEMENT**

Lender: Banc of America Public Capital Corp

County/Lessor: County of Contra Costa Public Financing Authority

County/Lessee: County of Contra Costa

THIS LOAN AGREEMENT dated as of October 1, 2012 (the "Loan Agreement") is among Banc of America Public Capital Corp, a \_\_\_\_\_ corporation, as lender (the "Lender"), the County of Contra Costa Public Financing Authority (the "Authority"), a public instrumentality of the State of California (the "State") and the County of Contra Costa, a political subdivision under the laws of the State (the "County"). Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Trust Agreement.

**WITNESSETH:**

WHEREAS, the Authority is authorized and empowered under the laws of the State to issue its bonds, notes and other evidence of indebtedness to finance the cost of projects, all in furtherance of its public purposes; and

WHEREAS, the County is authorized to sublease, purchase and hold real and personal property; and

WHEREAS, the County desires to finance certain projects (collectively, the "Project") and has agreed to a lease lease-back financing with the Authority; and

WHEREAS, the Authority has entered into a Trust Agreement dated as of October 1, 2012 (the "Trust Agreement") with Wells Fargo Bank National Association as trustee (the "Trustee"); and

WHEREAS, in order to finance the costs of the Project, the Authority will enter into this Agreement with the Lender pursuant to the terms of this Loan Agreement, and to secure its obligations hereunder will designate this Loan Agreement as an Obligation under the Trust Agreement secured by a pledge of Revenues consisting primarily of base rental payments by the County; and

WHEREAS, the County shall make lease payments to the Trustee as assignee of the Authority and the Trustee will make payments to the Lender as holder of an Obligation secured by the Trust Agreement; and

WHEREAS, this Loan Agreement and the Obligations issued under the Trust Agreement are limited obligations of the Authority and are not a lien or charge upon the funds or property of the Authority except to the extent of the aforementioned pledge and assignment under the Trust Agreement. Neither the County nor the Authority shall be obligated to pay the

Obligations or the interest thereon, except from Revenues and neither the faith and credit nor the taxing power of the State, or Authority, or any political subdivision of the State is pledged to the payment of the principal of, premium, if any, or interest on the Obligations. The Obligations are not a debt of the County and the County is not liable for payment thereof;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows.

## **ARTICLE I**

### **DEFINITIONS**

The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise.

“Agreement” means this Loan Agreement and a Schedule, as executed and as the same may be amended or modified from time to time, including the accompanying Attachments and documents relating to such Schedule, which shall constitute a fully integrated transaction existing in accordance with its own terms and conditions separate from and independent of all other transactions, including the execution of other Schedules, pursuant to this Loan Agreement. For the purpose of construing a transaction as an integrated agreement and for the purposes of the provisions of Article III hereof, an Agreement shall be considered a single transaction and a legal and binding agreement.

“Authority” means (i) the County of Contra Costa Public Financing Authority; (ii) any surviving, resulting or transferee entity thereof; and (iii) except where the context requires otherwise, any assignee(s) of the Authority.

“Authority Legal Documents” means the Trust Agreement, the Site Lease and the Sublease.

“Authorized Officer” means: (i) in the case of the Lender, any \_\_\_\_\_, or \_\_\_\_\_, and when used in reference to an act or document of the Lender, also means any other person authorized to perform the act or sign the document; (ii) in the case of the Authority, the Chairperson or any Deputy thereof, Executive Director, or Deputy Executive Director, or any other person authorized by the governing body of the Authority; and (iii) in the case of the County, the County Administrator, the County Finance Director, any designee of either such officers, the Treasurer or other chief financial officer or any assistant Treasurer, and when used with reference to an act or document of the County, also means any other person authorized to perform the act or execute the document.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to the Authority and the Lender.

“County” means the County of Contra Costa, a political subdivision of the State.

“Closing” means the date of delivery of all executed documents related to each Agreement as required under this Loan Agreement.

“Code” means the Internal Revenue Code of 1986, or any successor statute thereto, and any regulations promulgated thereunder.

“County Legal Documents” means the Site Lease and the Sublease.

“Costs of Issuance” means the cost of preparation and delivery of the Agreement, including, but not limited to, legal fees and expenses of Bond Counsel, County’s Counsel and Lender’s Counsel as more fully set forth in a Schedule.

“Lender” means (i) Banc of America Public Capital Corp; (ii) any surviving, resulting or transferee corporation of Banc of America Public Capital Corp; and (iii) if this Loan Agreement has been assigned by a Lender pursuant to Section 7.01 hereof, the assignee, or if an Agreement has been assigned by a Lender pursuant to Section 7.01, such assignee shall be considered a Lender with respect to such Agreement.

“Loan Payments” means those scheduled payments (but excluding, administrative fees, indemnifications and Additional Payments (defined below) payable to the Lender and the Authority hereunder) payable by the Authority from Revenues pursuant to the provisions of this Loan Agreement and each Schedule, as specifically set forth in applicable Schedules to this Loan Agreement. As provided in Article V hereof, Loan Payments shall be payable by the Trustee directly to Lender in the amounts and at the times as set forth in the applicable Schedule.

“Loan Agreement” means, collectively, this Loan Agreement, including Exhibit A hereto, as any of the same may be supplemented or amended from time to time in accordance with the terms hereof.

“Prepayment Price” means the amount which the Authority may pay or cause to be paid to the Lender in order to prepay its obligations under an Agreement, as provided in Article VI hereof, such amount being set forth in the Schedule comprising a part of such Agreement, plus all other amounts then owed under such the Agreement by the County.

“Prime” means the highest rate of interest published in The Wall Street Journal listing of prime or base rates for major lending institutions, or if such listing is no longer published, then the highest rate of interest announced by any member of the New York Clearinghouse Association as its “prime” or “base” lending rate for commercial loans of short term maturities.

“Project” means “project” as defined in the Trust Agreement.

“Schedule” means, with respect to the provision of this Loan Agreement, a Schedule of Loan Payments in substantially the same form set forth as Exhibit A, which has been executed by the Lender, the Authority and the County, that sets forth the Loan Payments and Prepayment Price payable in respect thereof, and certain other matters. Schedules shall be numbered consecutively beginning with 1.

“State” means the State of California.

“Tax Agreement” means the Tax Certificate and Agreement executed and delivered by the Authority and the County in connection with the Closing of each Schedule.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AUTHORITY AND THE COUNTY

Section 2.01. Authority’s Representations, Warranties, Covenants and Findings.  
The Authority represents, warrants and covenants, for the benefit of the Lender and the County, as follows:

(a) The Authority has taken official action by resolution (the “Authority Resolution”) adopted by at least a majority of the members of the Authority Board of Directors at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on \_\_\_\_\_, all action necessary to be taken by it for the execution and delivery of the Authority Legal Documents and this Agreement and for the due performance of the Authority Legal Documents and this Agreement, and any and all action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby and thereby has been taken, and the Authority Resolution has not been modified or amended and is in full force and effect;

(b) The Authority is a joint exercise of powers agency duly organized and validly existing pursuant to the Constitution and laws of the State with the full power and authority to adopt the Authority Resolution, to issue the Obligations for the purposes described in the Trust Agreement and to enter into and perform its duties under the Authority Legal Documents and this Agreement, and to consummate the transactions contemplated hereby and thereby;

(c) This Agreement constitutes, and upon their execution and delivery, the Authority Legal Documents will each constitute legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or creditors’ rights generally, to the application of equitable principles, to the exercise of judicial discretion and to the limitations on legal remedies against joint powers authorities in California; and the execution and delivery of the Authority Legal Documents and this Agreement, and compliance with the provisions of the Authority Legal Documents and this Agreement will not conflict with or constitute a breach of or a default under any applicable law or administrative regulation of the State or the United States, or any applicable judgment or decree or any lease, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority under the terms of any such California or federal law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Authority Legal Documents;

(d) The Authority is not in material breach of or in material default under any existing law or administrative regulation of the State or the United States or any applicable judgment or decree or any lease, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a material default under any such instrument;

(e) There is no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any California or federal court, public board or body pending or, to the best knowledge of the Authority after due inquiry, threatened against the Authority, wherein an unfavorable decision, ruling or finding would: (i) adversely affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers, (ii) enjoin or restrain the execution or delivery of the Authority Legal Documents or this Agreement or the receipt of Base Rental Payments under the Sublease or challenging, directly or indirectly, the location of the Facilities, or the proceedings to lease the Facilities from the County, (iii) in any way question or adversely affect any authority for the execution and delivery of the Authority Legal Documents or this Agreement, or the validity or enforceability of the Authority Legal Documents or this Agreement, (iv) in any way question or adversely affect this Agreement, the Authority Legal Documents or the transactions contemplated by this Agreement or any other agreement or instrument to which the Authority is a party relating to the execution and delivery of this Agreement, or (v) in any way question or affect the federal tax-exempt status of the interest on the loan repayments;

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority required for the execution and delivery of this Agreement or the consummation by the Authority of the other transactions contemplated by this Agreement or the Authority Legal Documents;

(g) The Agreement will be an Obligation under the Trust Agreement;

(h) The Agreement will be a validly outstanding Obligation of the Authority, entitled to the benefits of the Trust Agreement, and the Trust Agreement will provide, for the benefit of the Lender, a legally valid and binding pledge of and lien on the Revenues and the funds and accounts pledged under the Trust Agreement, subject only to the provisions of the Trust Agreement permitting the application thereof on the terms and conditions set forth in the Trust Agreement;

(i) The Authority shall apply the loan proceeds from the Agreement, and earnings thereon, in accordance with the Trust Agreement;

(j) The Authority is not in default, and at no time has defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding; and

(k) Any certificate signed by a duly authorized officer of the Authority and delivered to the Lender pursuant to this Agreement or any document contemplated hereby shall

be deemed a representation and warranty by the Authority to the Lender as to the statements made therein.

Section 2.02. County's Representations, Warranties and Covenants. The County represents, warrants and covenants, for the benefit of the Lender and the Authority as follows:

(a) The County has taken official action by resolution (the "County Resolution") adopted by at least four-fifths of the members of the County Board of Supervisors at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on \_\_\_\_\_, all action necessary to be taken by it for the execution and delivery of the County Legal Documents and this Agreement and for the due performance of the County Legal Documents and this Agreement, and any and all action as may be required on the part of the County to carry out, give effect to and consummate the transactions contemplated hereby and thereby has been taken, and the County Resolution has not been modified or amended and is in full force and effect;

(b) The County is a political subdivision, duly organized and existing under the laws of the Constitution and the State and has all necessary power and authority to adopt the County Resolution, to enter into and perform its duties under the County Legal Documents and this Agreement, and to consummate the transactions contemplated hereby and thereby;

(c) This Agreement and the County Legal Documents each constitute, legal, valid and binding obligations of the County enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or creditors' rights generally, to the application of equitable principles, to the exercise of judicial discretion and to the limitations on legal remedies against counties in California; and the execution and delivery of the County Legal Documents and this Agreement, and compliance with the provisions of the County Legal Documents and this Agreement will not conflict with or constitute a breach of or a default under any applicable law or administrative regulation of the State or the United States, or any applicable judgment or decree or any lease, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the County under the terms of any such California or federal law, administrative regulation, judgment or decree or any lease, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the County Legal Documents;

(d) The County is not in material breach of or in material default under any existing law or administrative regulation of the State or the United States or any applicable judgment or decree or any lease, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a material default under any such instrument;

(e) There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body pending or, to the best knowledge of the County

after due inquiry, threatened against the County, wherein an unfavorable decision, ruling or finding would: (i) adversely affect the creation, organization, existence or powers of the County, or the titles of its members or officers, (ii) enjoin or restrain the execution and delivery of this Agreement or the County Legal Documents or the payment of Base Rental Payments under the Sublease or challenging, directly or indirectly, the location of the Facilities, or the proceedings to lease the Facilities from the Authority, (iii) in any way question or adversely affect any authority for the execution and delivery of this Agreement or the County Legal Documents, or the validity or enforceability of the County Legal Documents or this Agreement, (iv) in any way question or adversely affect this Agreement, the County Legal Documents or the transactions contemplated by this Agreement or any other agreement or instrument to which the County is a party relating thereto or (v) in any way question or affect the federal tax-exempt status of the interest on the loan repayment;

(f) There is no material consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the County required for the execution and delivery of this Agreement or the execution and delivery of the County Legal Documents or the consummation by the County of the other transactions contemplated by this Agreement or the County Legal Documents;

(g) The Agreement will be an Obligation payable in accordance with the Trust Agreement;

(h) The Agreement will be entitled to the benefits of the Trust Agreement, and the Trust Agreement will provide, for the benefit of the Lender, a legally valid and binding pledge of and lien on the Revenues (as defined in the Trust Agreement) and the funds and accounts pledged under the Trust Agreement, subject only to the provisions of the Trust Agreement permitting the application thereof on the terms and conditions set forth in the Trust Agreement;

(i) Except as disclosed to the Lender, there has not been any material adverse change in the financial condition of the County since June 30, \_\_\_\_\_, and the Lender is assumed to have knowledge of the State's fiscal situation and its potential effect on County finances. The financial statements of, and other financial information regarding, the County that have been provided to the Lender fairly present the financial position and results of the operations of the County as of the dates and for the periods therein, set forth, including that (i) the audited financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, and (ii) the other financial information provided to the Lender has been determined on a basis substantially consistent with that of the County's audited financial statements provided to the Lender;

(j) The County is not in default, and at no time has defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding;

(k) Any certificate signed by a duly authorized official of the County and delivered to the Lender pursuant to this Agreement or any document contemplated hereby shall

be deemed a representation and warranty by the County to the Lender as to the statements made therein;

(l) The items listed in Exhibit B hereto (the “County Information”) provided to the Lender by the County are true and correct in all material respects as of its date;

(m) The County will provide the Lender with audited financial statements within two hundred seventy (270) days after each fiscal year end and agrees to deliver to the Lender any other financial information regarding the County, including annual budgets and budget updates, that the Lender may from time to time reasonably request; and

(n) The County has sufficient budgeted funds for the current fiscal year to make Base Rental Payments and Additional Payments coming due this fiscal year.

Section 2.03. Tax Covenants.

(a) It is the intention of the parties hereto that the interest on the loan repayment be and remain excludable from gross income for purposes of federal income taxation.

(b) The Authority covenants that it will at all times do and perform all acts and things permitted by law that are necessary or desirable in order to assure that the interest paid on the loan repayment will be excluded from gross income for purposes of federal income taxes and it will not intentionally perform any act that shall have the effect of terminating such exclusion from gross income of the interest on the loan repayment for federal income tax purposes. Without limiting the generality of the foregoing, the Authority agrees to comply with the provisions of the Tax Agreement. This covenant shall survive payment in full or defeasance of the loan.

(c) The County covenants that it will pay any arbitrage rebate due to the United States of America in connection with this Loan Agreement and any Schedule hereto and that it will take any and all other actions lawfully within its powers and applicable to the acts done or omitted by the County so as to maintain an exclusion from gross income for federal income tax purposes of the interest on the loan repayment under any Schedule hereto, and that it will not perform any act or enter into any agreement or use or permit the use of the Project or any portion thereof in a manner that shall have the effect of terminating such exclusion from gross income for federal income tax purposes of the interest on the loan repayment received by the Lender. The County acknowledges having read the Tax Agreement and agrees to perform all duties imposed upon it by the Tax Agreement. This covenant shall survive payment in full or defeasance of the loan.

Section 2.04. Compliance with Rebate Requirement.

(a) The County covenants to comply with the Tax Agreement and its Closing Certificate delivered at the Closing of each Schedule, the terms of which are hereby incorporated by reference into this Loan Agreement.

(b) The requirements of this Section 2.04 and the Tax Agreement may be modified or amended in whole or in part upon receipt by Authority and Lender of an opinion of



Bond Counsel to the effect that such modifications and amendments will not adversely affect the exclusion from gross income of the interest on any loan repayment.

### **ARTICLE III**

#### **FINANCING OF PROJECT**

Section 3.01. Project. The Authority hereby agrees to cause the proceeds of the loan received hereunder to be paid to the County pursuant to the County Legal Documents and the Trust Agreement in order to finance the Project and pay the Costs of Issuance.

Section 3.02. Loans to Finance Project. Upon execution of each Schedule, Lender shall pay to the Trustee the principal amount of the loan specified in such Schedule in order to finance the Project pursuant to the Trust Agreement. In exchange for such consideration, the Authority shall acknowledge and the Trustee shall authenticate the agreement as an Obligation issued under and secured by the Trust Agreement, payable from Revenues. As security for the Agreement issued under such Schedule, the Authority shall acknowledge the Agreement as an Obligation under the Trust Agreement secured by the pledge and assignment under the Trust Agreement.

### **ARTICLE IV**

#### **TERM OF AGREEMENT**

Section 4.01. Commencement of Term. The term applicable to any Agreement shall commence on the date specified in the applicable Schedule and shall terminate as provided in Section 4.02.

Section 4.02. Termination of Term. The term applicable to any Agreement will terminate upon the earliest to occur of any of the following events:

(a) The exercise by the Authority of the option granted under the provisions of Articles VI hereof to prepay its Loan Payments with respect to such Agreement and the payment of any Additional Payments, any rebate payments and any other payments required to be paid by Authority hereunder; or

(b) The payment by the Authority when due of all Loan Payments with respect to such Agreement, any Additional Payments, any rebate payments and any other payments required to be paid by Authority hereunder.

### **ARTICLE V**

#### **LOAN PAYMENTS**

Section 5.01. Payment of Loan Payments. The Authority shall pay or cause the Trustee to pay the principal of, premium if any, and interest on each loan made hereunder, but only out of Revenues, consisting primarily of the amounts paid by the County pursuant to the Sublease. As security for its obligation to pay the principal of, premium if any, and interest on

the loan, the Authority has assigned to the Trustee all of its right to receive Base Rental Payments from the County, as well as all rights and remedies of the Authority as lessor under the Sublease and all of the Authority's rights, title and interest in the Site Lease; provided, that so long as no Event of Default (as defined in the Sublease) shall have occurred or be continuing, the Authority shall have and may exercise all rights as lessee under the Site Lease and of the Lessor under the Sublease other than the right to receive Base Rental Payments and Additional Rental Payments due and owing under the Sublease and the right to grant any waivers to the County under the Sublease. The County, pursuant to the Sublease, shall pay to the Trustee, as the assignee of the Authority, the Base Rental Payments in lawful money of the United States of America in the amounts and on the dates set forth in the Sublease. The County hereby consents and agrees to the foregoing assignments and agrees to make the Base Rental Payments directly to the Trustee. The Lender hereby acknowledges that the Authority has no liability to make payments on the loan, except from the Base Rental Payments that are paid by the County and other Revenues under the Trust Agreement. No provision, covenant or agreement contained in this Loan Agreement or any obligation herein imposed on Authority, or the breach thereof, shall constitute or give rise to or impose upon Authority a pecuniary liability, a charge upon its general credit, or a pledge of its general revenues. The Authority has no taxing power. In making the provisions, covenants and agreements set forth in this Loan Agreement, the Authority has not obligated itself except with respect to the Revenues held by the Trustee under the Trust Agreement.

The loan agreement obligations hereunder are limited obligations of the Authority and are not a lien or charge upon the funds or property of the Authority except to the extent of the aforementioned pledge and assignment. Neither the State nor the Authority shall be obligated to pay the loan or the interest thereon, except from Revenues and neither the faith and credit nor the taxing power of the State, or the Authority, or any political subdivision of the State is pledged to the payment of the principal of, premium, if any, or interest on the loan.

Section 5.02. Interest and Principal Components. A portion of each Loan Payment is paid as, and represents payment of, interest, and the balance of, each Loan Payment is paid as, and represents payment of principal. Each Schedule hereto shall set forth the principal and interest components of each Loan Payment payable hereunder during the term of the loan.

Section 5.03. Loan Payments. As to each Agreement, the Trustee on behalf of the Authority shall be instructed to pay to the Lender the Loan Payments, including the interest components thereof, equal to the amounts specified in the Schedule comprising a part of such Agreement and equal to the principal and interest payable on the loan and shall pay to Lender and Authority all other payments and fees due hereunder from Additional Payments made by the County. The Loan Payments shall be payable without notice or demand when due at such place as the Lender shall direct in writing at the time the Schedule is executed or such other place as the Lender or the Authority, as the case may be, may from time to time designate in writing to the Trustee. The obligations of the Authority to make payment of the Loan Payments and all other payments and fees due hereunder, as well as to perform and observe all other covenants hereunder, shall be absolute and unconditional in all events, without abatement, diminution, deduction, set off or defense for any reason, except such payments shall be limited to Revenues.

Section 5.04. Appointment of Trustee. The Lender hereby acknowledges that the Trustee shall administer payment of the Loan Payments and the security thereof pursuant to the Trust Agreement.

Section 5.05. Non Liability of Authority. The Authority shall not be obligated to pay the principal of, and premium, if any, and interest on the Loan Payments, except from Revenues. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or premium or interest on the Loan Payments.

The County and Lender hereby acknowledge that the Authority's sole source of moneys to repay the loan will be provided by the payments made by the County pursuant to the Sublease and through the exercise by the Trustee of remedies pursuant to Section 6.01 of the Sublease or Article VII of the Trust Agreement.

## **ARTICLE VI**

### **PREPAYMENT**

Section 6.01. Prepayment Rights. The Authority shall be entitled to prepay its Loan Payments with respect to a particular Schedule, in whole but not in part, on any date on which a Loan Payment is due from and after the Loan Payment date on or next following the date when one half of the Agreement term has passed, upon written notice delivered at least thirty (30) days in advance of any date on which a Loan Payment is due, and upon the payment on such date of the Loan Payment due and the applicable Prepayment Price, which prepayment price will be without premium if paid from prepayments made by the County pursuant to Section 7.02 of the Sublease and at all other times will be at the Prepayment Price set forth in the Schedule.

## **ARTICLE VII**

### **ASSIGNMENT**

Section 7.01. Assignment by Lender. This Loan Agreement and/or an Agreement, the Obligations and the right to receive Loan Payments and the Prepayment Price from Authority hereunder, may be assigned and reassigned in whole or in part by the Lender at any time subsequent to its execution, without the necessity of obtaining the consent of the Authority or the County so long as notice is given to the Authority, the Trustee and the County and the assignee is a sophisticated investor and the Lender shall have obtained, prior to such assignment, a sophisticated investor's letter in the form of Exhibit D to the Trust Agreement; provided, however, that no such assignment shall be effective and binding on the Authority, the Trustee or the County unless and until the Authority, the Trustee and the County shall have received notice of the assignment disclosing the name and address of the assignee. Upon any such assignment of all or a portion of the Loan Agreement, the right to receive Loan Payments and the Prepayment Price from the Authority under the corresponding Agreement and other provisions of the Agreement shall also be registered under the Trust Agreement.

Section 7.02. Representations of Lender. The Lender has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Agreements and is able to bear the economic risk of such investment. The Lender has made its own inquiry and analysis with respect to the County, the Authority, the loan and the security therefor, and other material factors affecting the security and payment of the loan.

The Lender has either been supplied with or had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the County, the Authority, the Obligations and the security therefor so that as a reasonable investor, it has been able to make its decision to enter into the Agreements.

The Lender represents to the Authority that it is making the loan for investment for its own account and not with a present view toward resale or the distribution thereof.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES**

Section 8.01. Events of Default. The following constitute “Events of Default” under this Loan Agreement:

- (a) failure by the Authority to pay (following 30 days notice to the County and the Authority with an opportunity to cure) when due any Loan Payment; or
- (b) an “Event of Default” has occurred under the Trust Agreement; or
- (c) failure by the Authority or the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 60 days after written notice is given to the Authority or the County by the Lender, specifying such failure and requesting that it be remedied; or
- (d) initiation by the County or the Authority of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the County or the Authority.

Section 8.02. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing, the Lender shall have the right, subject to the Trust Agreement, without any further demand or notice, to declare the unpaid principal amount of all Loan Payments (and the related Obligations) under any or all of the Agreements to be immediately due and payable and upon any such declaration to take any action or remedies permitted by applicable law; including directing the Trustee to take appropriate action in accordance with the Trust Agreement.

Lender hereby agrees to notify the Authority and the Trustee promptly of any Event of Default under this Loan Agreement and of the initiation by the Lender of the exercise of remedies in connection therewith.

Section 8.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Trustee or the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article VIII. All remedies herein conferred upon or reserved to the Lender shall survive the termination of this Loan Agreement.

## **ARTICLE IX**

### **APPLICATION OF PROCEEDS**

Section 9.01. Application of Proceeds. At the Closing of each Agreement, the Lender shall pay or provide the principal amount of the loan in the amount identified on the applicable Schedule to the Trustee for administration on behalf of the Authority. As provided in the Trust Agreement, the costs associated with executing the Schedule may be disbursed by the Trustee at the execution of each Agreement as payment of the costs associated with execution of such Agreement and issuance of the related Obligation.

## **ARTICLE X**

### **MISCELLANEOUS**

Section 10.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their addresses specified below:

If to the Authority:

County of Contra Costa Public Financing Authority  
c/o County Administrator  
County of Contra Costa  
County Administration Building  
651 Pine Street  
Martinez, California 94553

If to the County: County of Contra Costa  
c/o Clerk of the Board of Supervisors  
County of Contra Costa  
County Administration Building  
651 Pine Street  
Martinez, California 94553

If to the Lender: [\_\_\_\_\_]

Section 10.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Lender, the Authority, the County and their respective successors and assigns, if any.

Section 10.03. Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.04. Amendments. To the extent permitted by law, the terms of this Loan Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The Authority covenants and agrees not to amend the Trust Agreement or other Authority Documents without the Lender's prior written consent.

Section 10.05. Execution in Counterparts. This Loan Agreement and each Schedule hereunder may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Loan Agreement and each Schedule hereunder by signing any such counterpart.

Section 10.06. Applicable Law; Jurisdiction. This Loan Agreement shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State. The Authority, the County and the Lender each agree that any legal action or proceeding by or against the Authority or with respect to or arising out of this Loan Agreement, the Obligations or any Agreement to which the Authority is a party, shall be brought and maintained in a court located in the County of Contra Costa or a federal court located in the Northern District of California. By execution of this Loan Agreement, the County and the Lender each accept, for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforementioned courts. The Authority, the County and the Lender hereby waive any right to stay or dismiss any action or proceeding to which the Authority is a party under or in connection with this Loan Agreement, the Obligations or any Agreement brought before the foregoing courts on the basis of forum non-conveniens. The Authority, in its sole discretion, may waive the foregoing venue requirement.

Section 10.07. Waiver of Jury Trial. THE PARTIES TO THIS LOAN AGREEMENT TO THE EXTENT PERMITTED BY LAW HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE

OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS LOAN AGREEMENT, ANY AGREEMENT HEREUNDER, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN THEM. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims). THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LOAN AGREEMENT, ANY AGREEMENT HEREUNDER, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 10.08. Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 10.09. Entire Agreement. This Loan Agreement (together with Schedules, and the attachments thereto, attached hereto) together with the Authority Legal Documents constitute the entire agreement between the Lender, the Authority and the County. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Loan Agreement or the Project financed hereunder. The Authority and the County hereby agree that the Lender shall be a third party beneficiary of each of the Authority Legal Documents. Any terms and conditions of any document submitted by the County in connection with this Loan Agreement which are in addition to or inconsistent with the terms and conditions of this Loan Agreement will not be binding on the Lender and will not apply to this Loan Agreement. An Agreement, including the respective Schedule and exhibits hereto, shall not be effective or binding upon the County until it is signed on its behalf by one of its Authorized Officers or upon the Authority until it is signed on its behalf by one of its Authorized Officers and it has been authenticated by the Trustee as an Obligation under the Trust Agreement.

Section 10.10. Waiver. The Lender's, the Authority's or the County's failure to enforce at any time or for any period of time any provision of an Agreement shall not be construed to be a waiver of such provision or of the right of the Lender, the County or the Authority thereafter to enforce each and every provision. No express or implied waiver by the Lender, the Authority or the County of any default or remedy of default shall constitute a waiver of any other default or remedy of default, or a waiver of any of the Lender's, the County's or the Authority's rights.

Section 10.11. Survivability. All of the limitations of liability and indemnities contained in an Agreement shall continue in full force and effect notwithstanding the expiration or early termination of the Agreement and are expressly made for the benefit of, and shall be enforceable by, the Lender and the Authority, or their successors and assigns.





IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement under seal in their respective corporate names by their duly Authorized Officers, all as of the date first written above.

BANC OF AMERICA PUBLIC CAPITAL  
CORP

By: \_\_\_\_\_  
Title: \_\_\_\_\_

COUNTY OF CONTRA COSTA PUBLIC  
FINANCING AUTHORITY

By: \_\_\_\_\_

[SEAL]

ATTEST:

\_\_\_\_\_

COUNTY OF CONTRA COSTA

By: \_\_\_\_\_

**EXHIBIT A TO LOAN AGREEMENT**

Form of Schedule

**SCHEDULE NO. 1  
TO LOAN AGREEMENT**

By and Between  
BANC OF AMERICA PUBLIC CAPITAL CORP, AS LENDER  
and  
COUNTY OF CONTRA COSTA PUBLIC FINANCING AUTHORITY, AS  
BORROWER/LESSOR  
and  
COUNTY OF CONTRA COSTA,  
as Lessee  
Dated as of October 1, 2012

THIS SCHEDULE NO. 1 (this "Schedule") to the Loan Agreement identified above (the "Loan Agreement") is entered into as of this October 1, 2012, by and among BANC OF AMERICA PUBLIC CAPITAL CORP ("Lender"), COUNTY OF CONTRA COSTA PUBLIC FINANCING AUTHORITY ("Authority") and COUNTY OF CONTRA COSTA ("County"). All of the provisions of the Loan Agreement are incorporated herein by reference and capitalized terms used herein and not defined shall have the meanings assigned them in the Loan Agreement.

1. The Loan Agreement and this Schedule No. 1 jointly constitute an Agreement (this "Agreement"). Lender hereby loans to the Authority the Principal Amount of \$\_\_\_\_\_ and the Authority hereby agrees to repay such amount, plus interest thereon in accordance with Exhibit 1 hereto.

[Conditions to closing to come]

IN WITNESS WHEREOF, the parties hereunto affix their signatures to this Schedule No. 1 as of the day and year first written above.

BANC OF AMERICA PUBLIC CAPITAL  
CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
An Authorized Officer

COUNTY OF CONTRA COSTA PUBLIC  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy

ATTEST:

\_\_\_\_\_  
COUNTY OF CONTRA COSTA,

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

[Add Trustee Certificate of Authentication]

**EXHIBIT I TO SCHEDULE NO. 1**  
**AMORTIZATION SCHEDULE**

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>	<u>Prepayment Price</u>
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## **EXHIBIT B**

### **COUNTY INFORMATION**

1. Contra Costa County's [20\_\_] through 2011 Comprehensive Annual Financial Reports (CAFR)
2. Contra Costa County's 2010/11, 2011/12, and 2012/13 Budgets

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**LOAN AGREEMENT**

among

**BANC OF AMERICA PUBLIC CAPITAL CORP**  
as Lender

and

**COUNTY OF CONTRA COSTA PUBLIC FINANCING AUTHORITY,**  
as County/Lessor

and

**COUNTY OF CONTRA COSTA,**  
as County/Lessee

Dated as of October 1, 2012

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**LOAN AGREEMENT**

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## **LIST OF ATTACHMENTS TO SCHEDULE**