

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY PROVIDING FOR THE ISSUANCE OF ITS GENERAL OBLIGATION BONDS, SERIES 2020 (LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT) IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$90,000,000

CITY OF FOSTER CITY

WHEREAS, pursuant to the provisions of Article 1, Chapter 4 of Division 4 of Title 4 of the Government Code of the State of California, as amended (the "Law"), and pursuant to Ordinance No. 613 adopted by the City Council (the "City Council") of the City of Foster City (the "City") on March 5, 2018 (the "Ordinance"), a special election was duly and regularly held on June 5, 2018, in that territory included within the boundaries of the City (the "Election") at which Election there was submitted to the qualified voters of said City the following proposition (the "Bond Measure"):

"To improve the levee protecting essential city services, including fire, police, water, sewer, transportation infrastructure; protect Foster City homes, schools, businesses from flooding; avoid both Foster City being designated a FEMA special flood hazard area and flood insurance requirements for residents/businesses; shall Foster City issue \$90,000,000 in bonds at legal rates, levy approximately \$40 per \$100,000 assessed valuation, averaging \$5,171,000 collected annually while bonds are outstanding, with citizens' oversight, no funds for administrators, all funds staying local?"

WHEREAS, at the Election, the Bond Measure received the affirmative vote of the requisite two-thirds or more of the voters of the City voting on the proposition, as certified by the Registrar of Voters of the County in the official canvassing of votes (the "Authorization"), and all the requirements of the Constitution and laws of the State of California have been complied with in the holding of the Election; and

WHEREAS, pursuant to Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Government Code"), the Bonds are authorized to be issued by the District for the purposes set forth in the ballot submitted to the voters at the Election;

WHEREAS, at this time this City Council has determined that it is necessary and desirable to issue the first series of bonds under the Authorization in an aggregate principal amount not-to-exceed \$90,000,000, and to be styled as "City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning And Improvements Project) (the "Bonds") for the purposes set forth in the Authorization;

WHEREAS, in accordance with the Election, the Ordinance, the Law, and Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, the City now desires to authorize the issuance of the Bonds and approve the forms of certain documents;

WHEREAS, the City Council has determined that U.S. Bank National Association (the "Paying Agent") shall act as the initial paying agent and registrar for the Bonds subsequent to the adoption of this Resolution; and

WHEREAS, in order to effect the issuance of the Bonds, the City Council desires to approve the form of a preliminary official statement for the Bonds and to approve the form of and authorize the execution and delivery of a bond purchase agreement and a continuing disclosure certificate with respect to the Bonds, the forms of which are on file with the City Clerk and presented at this meeting; and

WHEREAS, this City Council desires to appoint certain professionals to provide services related to the issuance of the Bonds;

WHEREAS, the City intends to finance a portion of the projects described in the Authorization with the proceeds of Tax-Exempt Bonds and desires to incur certain capital expenditures (the "Expenditures") from available moneys of the City;

WHEREAS, this City Council has determined that those moneys to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the City for the Expenditures from the proceeds of the Tax-Exempt Bonds; and

WHEREAS, all acts, conditions and things required by law to be done or performed have been done and performed in strict conformity with the laws authorizing the issuance of general obligation bonds of the City, and the indebtedness of the City, including this proposed issue of Bonds, is within all limits prescribed by law;

NOW, THEREFORE, the City Council of the City of Foster City, California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

SECTION 1. Each of the above recitals is true and correct.

SECTION 2. The issuance of the Bonds in a principal amount not to exceed \$90,000,000 pursuant to Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code is hereby approved and such Bonds shall mature on the dates and pay interest at the rates set forth in and all other provisions of the Bonds shall be governed by the terms and conditions of a Supplement to this Resolution to be executed by the Mayor of the City, the City Manager (including any acting or interim City Manager), the Finance Director, or their written designee (each an "Authorized Officer" and collectively, the "Authorized Officers"), each alone, which Supplement to Resolution is hereby approved in substantially the form attached hereto as Exhibit A (the "Supplement to Resolution"), together with such additions thereto and changes therein as Bond Counsel and the Authorized Officers deem necessary. Approval of such changes shall be

conclusively evidenced by the execution and delivery of the Supplement to Resolution by an Authorized Officer. The covenants set forth in the Supplement to Resolution are hereby approved, shall be deemed covenants of the City Council and shall be complied with by the City and its officers. The Supplement to Resolution shall constitute a contract between the City and the Owners of the Bonds.

SECTION 3. The Bonds shall be sold upon the direction of an Authorized Officer, and pursuant to the terms and conditions set forth in the Bond Purchase Agreement (as defined herein). The City Council hereby authorizes the sale of the Bonds at a negotiated sale, which is determined to provide more flexibility in the timing of the sale, an ability to implement the sale in a shorter time period, an increased ability to structure the Bonds to fit the needs of particular purchasers, and a greater opportunity for the Underwriter (as defined herein) to pre-market the Bonds to potential purchasers prior to the sale, all of which will contribute to the District's goal of achieving the lowest overall cost of funds. The Bonds shall be sold pursuant to the terms and conditions set forth in the Bond Purchase Agreement, as described below.

SECTION 4. The preliminary official statement (the "Preliminary Official Statement") presented to this City Council is approved in substantially the form presented. The City Manager is authorized to make such changes in and additions to the Preliminary Official Statement prior to mailing as may be approved by the City Manager or the Finance Director, or their written designees; and each of the City Manager, the Finance Director and their written designees is hereby authorized and directed to deem such form, as modified, "final," except for information relating to the offering prices, interest rates, selling compensation, rating and other terms of the Bonds depending on such matters. The execution of the official statement by the Mayor or the City Manager and the printing and distribution thereof (in both preliminary and final forms) in connection with the sale of the Bonds, with such changes as are approved or required as set forth above, are hereby authorized and approved.

SECTION 5. The form of the Continuing Disclosure Certificate to be executed by the City (the "Continuing Disclosure Certificate"), presented to this City Council is approved in substantially the form presented. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute the Continuing Disclosure Certificate in substantially said form, with such changes therein as such Authorized Officers executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 6. The form of contract for purchase and sale of the Bonds (the "Bond Purchase Agreement") by and between the City and the Underwriter (as defined herein), substantially in the form on file with the City Clerk, is hereby approved and the Authorized Officers, each alone, are hereby authorized and requested to execute such Bond Purchase Agreement, with such changes therein, deletions therefrom and modifications thereto as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof; provided, however, (i) that the interest rates on the Bonds shall not exceed the maximum rate permitted by law; and (ii) the underwriting discount on the Bonds, excluding original issue discount,

shall not exceed 0.40% of the aggregate initial principal amount of Bonds actually issued. The Authorized Officers, each alone, are further authorized to determine the principal amount of the Bonds to be specified in the Bond Purchase Agreement for sale by the City up to \$90,000,000 and to enter into and execute the Bond Purchase Agreement with the Underwriter, if the conditions set forth in this Resolution are satisfied. The City Council estimates that the costs associated with the issuance of the Bonds, including compensation to the Underwriter and bond insurance, will equal approximately 0.56% of the initial principal amount of the Bonds.

SECTION 7. In connection with the sale and issuance of the Bonds, the City Council hereby appoints (a) BofA Securities, Inc., as underwriter with respect to the Bonds (the "Underwriter"), (b) Stradling Yocca Carlson & Rauth, a Professional Corporation, as bond counsel ("Bond Counsel"), (c) Jones Hall, a Professional Law Corporation, as disclosure counsel ("Disclosure Counsel"), and (d) Kitahata & Company and William Euphrat Municipal Finance, Inc. (collectively, the "Municipal Advisor"), as municipal advisors with respect to the Bonds.

SECTION 8. Based on a good faith estimate from the Underwriter, the City finds that (a) the True Interest Cost of the Bonds (as defined in Section 5852.1 of Government Code) is expected to be approximately 3.03%, (b) the total Finance Charge of the Bonds (as defined in Government Code Section 5852.1) is expected to be \$490,000, (c) the total proceeds expected to be received by the City from the sale of the Bonds, less the Finance Charge of the Bonds and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$89,735,000, and (d) the City expects that the Total Payment Amount (as defined in Section 5852.1 of Government Code), calculated to the final maturity of the Bonds, will be \$147,205,102. The information presented in this Section 8 is included in satisfaction of Section 5852.1 of Government Code, and shall not abrogate or otherwise limit any provision of this Resolution.

SECTION 9. (a) The City hereby states its intention and reasonably expects to reimburse costs of projects described in the Authorization (the "Project") that are incurred prior to the issuance of any Bonds the interest in which is excludable from gross income for federal income tax purposes and is not treated as an item of tax preference for purposes of calculating the federal alternative minimum tax (as further described in an opinion of Bond Counsel supplied to the original purchasers of such Bonds) (the "Tax-Exempt Bonds") with proceeds of such Tax Exempt Bonds.

(b) The reasonably expected maximum principal amount of the Tax-Exempt Bonds is \$90,000,000.

(c) This resolution is being adopted not later than 60 days after the payment of the earliest original Expenditures (the "Expenditures Dates or Dates").

(d) The City will make a reimbursement allocation, which is a written allocation that evidences the City's use of proceeds of the Tax-Exempt Bonds to reimburse an Expenditure, no later than 18 months after the later of the applicable Expenditure Date or the date the Project is placed in service or abandoned, but in no event more than three

years after the date on which the Expenditure is paid. If both the City and a licensed architect or engineer certify that at least 5 years is necessary to complete construction of the Project, the maximum reimbursement period is changed from 3 years to 5 years.

(e) Each Expenditure will be either (i) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (ii) a cost of issuance with respect to the Tax-Exempt Bonds, (iii) a nonrecurring item that is not customarily payable from current revenues, or (iv) a grant to a party that is not related to or an agent of the City so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the City.

(f) This resolution is consistent with the budgetary and financial circumstances of the City, as of the date hereof. No moneys from sources other than the Tax-Exempt Bonds are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the City (or any related party) pursuant to their budget or financial policies with respect to the Project costs. To the best of our knowledge, this City Council is not aware of the previous adoption of official intents by the City that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax exempt obligations have not been issued.

(g) This resolution is adopted as official action of the City in order to comply with Treasury Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of City expenditures incurred prior to the date of issue of the Tax-Exempt Bonds.

(h) The limitations described in subsection (c) of this Section 9 do not apply to (i) costs of issuance of the Tax-Exempt Bonds, (ii) an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the Tax-Exempt Bonds, or (iii) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than land acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the Tax-Exempt Bonds that finances the Project for which the preliminary expenditures were incurred.

SECTION 10. The Authorized Officers are each hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which each may deem necessary or advisable in order to consummate the sale, execution and delivery of the Bonds and the financing of the Project and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution and the Supplement to Resolution thereto, the Bonds, the Continuing Disclosure Certificate, the Bond Purchase Agreement, the Preliminary Official Statement, and the Official Statement. Such actions heretofore taken by such officers or designees are hereby ratified, confirmed and approved.

SECTION 11. The City Clerk shall certify to the adoption of this Resolution.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 6th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Catherine Mahanpour, Mayor

ATTEST:

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Priscilla Schaus, City Clerk

**EXHIBIT A**  
**FORM OF SUPPLEMENT TO RESOLUTION**

**SUPPLEMENT TO RESOLUTION NO. \_\_\_\_\_**

**GOVERNING TERMS OF THE \$\_\_\_\_\_ CITY OF  
FOSTER CITY GENERAL OBLIGATION BONDS,  
SERIES 2020 (LEVEE PROTECTION PLANNING AND  
IMPROVEMENTS PROJECT)**

**DATED AS OF \_\_\_\_\_, 2020**

**SUPPLEMENT TO RESOLUTION NO. \_\_\_\_\_**

THIS SUPPLEMENT TO RESOLUTION NO. \_\_\_\_\_ executed as of \_\_\_\_\_, 2020 this governs the terms of the City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning and Improvements Project).

*RECITALS:*

WHEREAS, pursuant to the provisions of Article 1, Chapter 4 of Division 4 of Title 4 of the Government Code of the State of California, as amended (the "Law"), and pursuant to Ordinance No. 613 adopted by the City Council (the "City Council") of the City of Foster City (the "City") on March 5, 2018 (the "Ordinance"), a special election was duly and regularly held on June 5, 2018, in that territory included within the boundaries of the City (the "Election") at which Election there was submitted to the qualified voters of said City the following proposition (the "Bond Measure"):

"To improve the levee protecting essential city services, including fire, police, water, sewer, transportation infrastructure; protect Foster City homes, schools, businesses from flooding; avoid both Foster City being designated a FEMA special flood hazard area and flood insurance requirements for residents/businesses; shall Foster City issue \$90,000,000 in bonds at legal rates, levy approximately \$40 per \$100,000 assessed valuation, averaging \$5,171,000 collected annually while bonds are outstanding, with citizens' oversight, no funds for administrators, all funds staying local?"

WHEREAS, at the Election, the Bond Measure received the affirmative vote of the requisite two-thirds or more of the voters of the City voting on the proposition, as certified by the Registrar of Voters of the County in the official canvassing of votes (the "Authorization"), and all the requirements of the Constitution and laws of the State of California have been complied with in the holding of the Election; and

WHEREAS, pursuant to Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Government Code"), the Bonds are authorized to be issued by the City for the purposes set forth in the ballot submitted to the voters at the Election;

WHEREAS, at this time this City Council has determined that it is necessary and desirable to issue the first series of bonds under the Authorization in an aggregate principal amount not-to-exceed \$\_\_\_\_\_, and to be styled as "City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning And Improvements Project) (the "Bonds") for the purposes set forth in the Authorization;

WHEREAS, in accordance with the Election, the Ordinance, the Law, and Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, the City



now desires to authorize the issuance of the Bonds and approve the forms of certain documents;

WHEREAS, the City Council has determined that U.S. Bank National Association (the "Paying Agent") shall act as the initial paying agent and registrar for the Bonds subsequent to the adoption of this Resolution; and

WHEREAS, it is found and determined by this City Council that the best interests of the City would be served by proceeding with the authorization of the issuance of General Obligation Bonds of the City according to the provisions of Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code for the purpose of financing the improvements authorized pursuant to Authorization;

NOW, THEREFORE, in order to establish the terms and conditions upon and subject to which the Bonds are to be issued, the City Council does hereby covenant and agree, for the benefit of the Owners of the Bonds, as follows:

Section 1. *Definitions.* Unless the context clearly otherwise requires the following terms or as defined in the recitals hereof shall have the respective meanings ascribed to them in this Section 1:

*Auditor.* The term "Auditor" means the County Auditor-Controller of the County of San Mateo, California, being the Auditor-Controller of such County.

*Authorized Investments.* The term "Authorized Investments" means any investment permitted by law to be made with any moneys belonging to or in the custody of the City and by any policy guidelines promulgated by the City; including:

1. Generally approved qualifying investment instruments:
  - a. Obligations of the U.S. Government, its agencies, and instrumentalities.
  - b. Certificates of deposit with banks and savings and loans doing business in the State of California.
  - c. Prime Banker's Acceptances.
  - d. Prime Commercial Paper.
  - e. Repurchase Agreements and Money Market Funds whose underlying collateral consists of the foregoing.
  - f. San Mateo County's Investment Pool for local agencies, which includes the purchase of Reverse Repurchase Agreements.

- g. Pools and other investment structures incorporating investments listed in a through e.

2. Generally approved qualifying investment instruments for City funds, as further limited by the investment policy:

- a. United States Treasury Bills, Bonds, and Notes, or those for which the full faith and credit of the United States are pledged for payment of principal and interest.
- b. Obligations issued by the United States Government Agencies such as the Government National Mortgage Association (GNMA), Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank Board (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), and the Student Loan Marketing Association (SLMA).
- c. Bills of exchange or time drafts drawn on and accepted by a commercial bank otherwise known as banker's acceptances. Purchases of banker's acceptances may not exceed 180 days to maturity.
- d. Commercial paper ranked P1 by Moody's Investor Services and A1 by Standard and Poor's, and issued by a domestic corporation having assets in excess of \$500 million and having an A or better rating on its long-term debentures as provided by Moody's or Standard and Poor's.
- e. Local Agency Investment Fund. The City may invest in the Local Agency Investment Fund (LAIF) established by the State Treasurer for the benefit of local agencies up to the maximum amount permitted by State law.
- f. Money market funds rated in the highest category of Moody's or Standard and Poor's, or administered by a domestic bank with long-term debt rated in one of the top two categories of Moody's or Standard and Poor's.

*Authorized Representative of the City.* The term "Authorized Representative of the City" means the Mayor, the City Manager, the Finance Director or any other person or persons designated by any of them in a written certificate or by the City Council of the City and authorized to act on behalf of the City by a written certificate signed on behalf of the City by the Mayor of the City and containing the specimen signature of each such person.

*Bond Counsel.* The term “Bond Counsel” means an attorney or firm of attorney of whose opinions are nationally accepted in matters pertaining to the tax-exempt status of interest on bonds issued by states and their political subdivisions.

*Bond Law.* The term “Bond Law” means Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

*Bonds.* The term “Bonds” means the \$\_\_\_\_\_ City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning and Improvements Project).

*Closing Date.* The term “Closing Date” is the date the bonds are delivered to the initial purchaser thereof.

*Code.* The term “Code” means the Internal Revenue Code of 1986, as amended, and any regulations, rulings, judicial decisions, and notices, announcements, and other releases of the United States Treasury Department or Internal Revenue Service interpreting and construing it.

*Computation Year.* The term “Computation Year” means, with respect to the Bonds, the period beginning on the Delivery Date and ending on August 1, 2021, and each 12-month period ending on August 1 thereafter until there are no longer any Bonds outstanding, or such other computation year as may be established pursuant to the Tax Certificate.

*Costs of Issuance.* The term “Costs of Issuance” means all of the costs of issuing the Bonds, including, but not limited to, all printing and document preparation expenses in connection with this Resolution, the Bonds, the Official Statement pertaining to the Bonds, the Bond Purchase Agreement, and any and all other agreements, instruments, certificates or other documents prepared in connection therewith; financial advisory fees; bond counsel fees; underwriter’s fees; rating agency fees; auditor’s fees; CUSIP service bureau charges; legal fees and expenses of counsel with respect to the financing; the initial fees and expenses of the Paying Agent; other fees for professional consulting services fees for credit enhancement relating to the Bonds; and other fees and expenses incurred in connection with the issuance of the Bonds, to the extent such fees and expenses are approved by the City.

*Costs of Issuance Account.* The term “Costs of Issuance Account” means the account by that name established pursuant to the Fiscal Agent Agreement, providing for payment of Costs of Issuance from amounts deposited in the Costs of Issuance Account pursuant to Section 2 hereof.

*Costs of Issuance Custodian.* The term “Costs of Issuance Custodian” means U.S. Bank National Association, in its capacity as Fiscal Agent under the Fiscal Agent Agreement.

*Debt Service Fund.* The term “Debt Service Fund” means the fund of that name established under Section 13 hereof and the Law.

*Depository.* The term “Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under this Indenture.

*Depository System Participant.* The term “Depository System Participant” means any participant in the Depository’s book-entry system.

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

*Finance Director.* The term “Finance Director” means the Finance Director or Treasurer of the City.

*Fiscal Agent Agreement.* The term “Fiscal Agent Agreement” means the agreement by that name, dated as of the date of issuance of the Bonds, by and between the City and the Costs of Issuance Custodian.

*Government Obligations.* The term “Government Obligations shall mean:

Direct and general obligations of the United States of America, or obligations that are unconditionally guaranteed as to principal and interest by the United States of America (which may consist of obligations of the Resolution Funding Corporation that constitute interest strips), and obligations secured or otherwise guaranteed, directly or indirectly, as to principal and interest by a pledge of the full faith and credit of the United States of America. In the case of direct and general obligations of the United States of America, Government Obligations shall include evidences of direct ownership of proportionate interests in future interest or principal payments of such obligations. Investments in such proportionate interests must be limited to circumstances where (i) a bank or trust company acts as custodian and holds the underlying United States obligations; (ii) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; and (iii) the underlying United States obligations are held in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated; provided that such obligations are rated or assessed at least as high as direct and general obligations of the United States of America by either Moody’s or S&P.

*Interest Payment Date.* The term “Interest Payment Date” means each February 1 and August 1, commencing February 1, 2021.

*Moody’s.* The term “Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successor and assigns or, if such corporation shall be dissolved or liquidated or no longer shall perform the functions of a securities rating agency, such other nationally recognized securities rating agency as may be designated by the City.

*Outstanding.* The term “Outstanding” means, when used with reference to the Bonds, as of any date, Bonds theretofore issued or thereupon being issued under this Resolution except:

- (1) Bonds canceled at or prior to such date;
- (2) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to Section 7 hereof; or
- (3) Bonds for the payment or redemption of which funds or Government Obligations in the necessary amount shall have been set aside (whether on or prior to the maturity or redemption date of such Bonds), in accordance with Section 16 of this Resolution.

*Owner.* The term “Owners” or “Bond Owner” or any similar term, when used with respect to the Bonds, means any person in whose name a Bond is registered in the books of registration maintained by the Paying Agent.

*Participants.* The term “Participants” means those broker-dealers, banks and other financial institutions from time to time for which DTC holds Bonds as securities depository.

*Paying Agent.* The term “Paying Agent” means that entity so designated from time to time by the City Council of the City to serve as, paying agent, transfer agent and registrar for the Bonds. The initial Paying Agent shall be U.S. Bank National Association.

*Project Costs.* The term “Project Costs” means all of the expenses of and incidental to the construction and/or acquisition of the works and the payment of the costs described in the recitals hereof, in the Bond Measure and in the Ordinance, which are permitted under the Law to be financed with the proceeds of the Bonds, including Costs of Issuance.

*Project Fund.* The term “Project Fund” means the fund of that name established under Section 11 hereof and the Law.

*Securities Depository.* “Securities Depository” means The Depository Trust Company, 55 Water Street, New York, New York 10041, Tel: (212) 855-1000 or Fax: (212) 855-7320.

*S&P.* The term “S&P” means S&P Global Ratings, its successor and assigns, or if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, such other nationally recognized securities rating agency as may be designated by the City.

*Rebate Regulations.* The term “Rebate Regulations” means the Treasury Regulations issued under Section 148(f) of the Code.

*Record Date.* The term “Record Date” shall mean the fifteenth day of the month preceding an Interest Payment Date.

*Resolution.* The term “Resolution” shall mean, collectively, Resolution No. \_\_\_\_\_ of the City Council, together with this Supplement to Resolution.

*Tax Certificate.* The term “Tax Certificate” shall mean that certain certificate of such name executed by the City on the Closing Date to establish certain facts and expectations and which contains certain covenants relevant to compliance with the Code.

*Term Bonds.* The term “Term Bonds” means those Bonds for which mandatory redemption dates have been established in Section 10 hereof.

Section 2. *Authorization to Issue.* Bonds of the City in the sum of \$ \_\_\_\_\_ shall be issued for the purpose stated in the Proposition set out in the recitals hereof. Said Bonds are further issued pursuant to the provisions of the Law and the Bond Law. Said Bonds shall be designated the “City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning and Improvements Project).” The Bonds shall be issued in the form of fully registered bonds in the denomination of \$5,000 each or any whole multiple thereof and shall mature on the dates and in the amounts, and shall bear interest at the rates, per annum, for each of the years as follows:

<u>Year</u> <u>(August 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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The Bonds shall bear interest at the rates set forth above, from the Closing Date, payable on February 1, 2021 and thereafter semiannually on each February 1 and August 1. Each Bond shall bear interest until its principal sum has been paid; provided, however, that if funds are available for the payment thereof on such Bonds applicable maturity date in full accordance with the terms of this Resolution, such Bond shall then cease to bear interest. Interest on the Bonds shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The Bonds shall be numbered No. 1 and sequentially upwards and shall be dated the Closing Date, except that Bonds issued upon exchanges and transfers of other Bonds shall be dated so that no gain or loss of interest shall result from the exchange or transfer. Interest on each Bond shall be paid by the Paying Agent by check mailed by first class mail, postage prepaid, on the Interest Payment Date to the Owner as his/her name and address appear on the register kept by the Paying Agent at the close of business on the applicable Record Date. At the request of any owner of at least \$1,000,000 in aggregate principal amount of Bonds, interest on the Bonds will be paid by wire transfer in immediately available funds if such request is made at least fifteen days before the Record Date for such payment, any such designation to remain in effect until withdrawn. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication with respect to which interest has been paid or provided for (unless (i) the date of authentication is prior to the first Record Date, in which event from the Closing Date, (ii) the date of authentication is after a Record Date and before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated as of an Interest Payment Date, in which event it shall bear interest from such date) until the principal hereof shall have been paid.

\$ \_\_\_\_\_ of proceeds of the Bonds (comprising \$ \_\_\_\_\_ aggregate principal amount, plus/minus \$ \_\_\_\_\_ in net original issue premium/discount, less \$ \_\_\_\_\_ of underwriter's discount) shall be disbursed, as follows:

\$ _____	to the Project Fund to be applied to pay Project Costs in accordance with Section 11
_____	to the Costs of Issuance Account to be applied to pay certain Costs of Issuance
_____	to the Debt Service Fund to be applied to pay interest on the Bonds
\$ _____	TOTAL

Section 3. *Place of Payment.* The Bonds shall be payable in lawful money of the United States of America and principal of the Bonds shall be payable upon surrender thereof at the principal corporate trust office of the Paying Agent in San Francisco, California.

Section 4. *Paying Agent.* The initial Paying Agent for the Bonds shall be U.S. Bank National Association. The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Resolution by giving at least 60 days' written

notice to the City. The Paying Agent may be removed at any time by an instrument filed with such Paying Agent and signed by the City. A successor Paying Agent shall be appointed by the City and shall be a bank or trust company organized under the laws of any state of the United States, a national banking association or any other financial institution, having capital stock and surplus aggregating at least \$75,000,000 and doing business in the State and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution. Such Paying Agent shall signify the acceptance of its duties and obligations hereunder by executing and delivering to the City a written acceptance thereof. Resignation or removal of the Paying Agent shall be effective upon appointment and acceptance of a successor Paying Agent.

In the event of the resignation or removal of the Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or, if there is no successor, to the Finance Director. In the event that for any reason there shall be a vacancy in the office of the Paying Agent, the Finance Director shall act as such Paying Agent. The City shall cause the new Paying Agent appointed to replace any resigned or removed Paying Agent to mail notice of its appointment and the address of its principal office to all registered Owners.

Section 5. *Form of Bonds.* The Bonds shall be substantially in the form attached hereto as Exhibit "A." Such form is hereby approved and adopted as the form of the Bonds and of the redemption, exchange, registration and assignment provisions pertaining to them, with necessary or appropriate variations, omissions, and insertions, as permitted or required by this Resolution.

Any Bonds issued pursuant to this Resolution may be initially issued in temporary form exchangeable for definitive Bonds when the same are ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, shall be in fully registered form and may contain references to any of the provisions of this Resolution as may be appropriate. Every temporary Bond shall be executed by the City and be authenticated by the Paying Agent upon the same conditions and in substantially the same form and manner as the definitive fully registered bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and, thereupon, the temporary Bonds shall be surrendered for cancellation at the principal office of the Paying Agent in San Francisco, California, or at such other place in California as the City may approve. The Paying Agent shall deliver in exchange for the surrendered temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of this same issue. Until exchanged, the temporary Bonds shall be entitled to the same benefits under this Resolution as definitive Bonds of this same issue.

Section 6. *Execution and Authentication of the Bonds.* The Bonds shall be signed on behalf of the City by its Mayor and by its Finance Director by facsimile signatures and by its City Clerk, or authorized Deputy City Clerk, by facsimile signature. The foregoing officers are hereby authorized and directed to sign the Bonds in accordance with this Section 6. If any City officer whose facsimile signature appears on



the Bonds ceases to be an officer before delivery of the Bonds, his or her signature is as effective as if he or she had remained in office.

The Paying Agent shall authenticate the Bonds on registration and/or exchange to effectuate the registration and exchange provisions set forth in Section 7 below; and only those Bonds that have endorsed on them a certificate of authentication, substantially in the form set forth in the form of Bond, duly executed by the Paying Agent, shall be entitled to any rights, benefits or security under this Resolution. No Bond shall be valid or obligatory for any purpose unless and until the certificate of authentication thereon has been duly executed by the Paying Agent. The certificate of the Paying Agent upon any Bond shall be conclusive and the only evidence required that the Bond has been duly authenticated and delivered under this Resolution. The Paying Agent's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder.

Section 7. Registration, Transfers and Exchanges. Any Bond may, in accordance with its terms, be transferred, upon the registration books required to be kept by the Paying Agent, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such fully registered Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed.

Whenever any Bond or Bonds shall be surrendered for transfer, the Paying Agent shall authenticate and deliver a new Bond or Bonds of the same series and maturity, for the like aggregate principal amount of Bond or Bonds surrendered.

Bonds may be exchanged at the principal corporate trust office of the Paying Agent in San Francisco, California, for a like aggregate principal amount of Bonds of other authorized denominations of the same series and maturity.

The person, firm or corporation requesting the transfer or exchange shall pay any costs or charges in connection with the transfer or exchange as are established by the Paying Agent, in addition to paying any tax or governmental charge that may be imposed in connection with the transfer or exchange. The Paying Agent shall not be required, however, to register a transfer or make an exchange of any Bond (i) during the 15 days before the selection of Bonds for redemption, or (ii) if such Bond has been called for redemption in whole or in part.

Section 8. Registration Books. The Paying Agent will keep at its principal corporate trust office in San Francisco, California, or at such other place as the City may approve, sufficient books for the registration and transfer of the Bonds. The books shall at all times be open to inspection by the City; and, upon presentation for such purpose, the Paying Agent shall under such reasonable regulations as it may prescribe, register or transfer, or cause to be registered or transferred, on the register, the Bonds as hereinbefore provided.

Section 9. *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 Paying Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The representatives of the City and the Paying Agent are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Resolution 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 City nor the Paying 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 City nor the Paying 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 notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payment to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds; except that so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, anyone representing themselves to be the Beneficial Owner of \$1,000,000 or more in aggregate principal amount of Bonds who has filed a written request with the Paying Agent to receive notices, containing such Beneficial Owner's name and address, shall be provided with all notices relating to such Bonds by the Paying Agent.

Except as set forth above, the Paying 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 of and interest on such Bonds, for the purpose of giving notices of prepayment 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 Paying Agent 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.

Upon delivery by DTC to the Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the

transfer provisions hereof, references to “Cede & Co.” in this Section 9 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 Paying Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City 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 transfers through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Paying Agent.

Upon the 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 able to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the Bonds that they be able to obtain certificated Bonds, the Bonds shall no longer be restricted to being registered in the Bond Register of the Paying 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 7.

Section 10. *Redemption.*

(a) *Optional Redemption.* The Bonds maturing on or after August 1, 20\_\_ are subject, at the option of the City, to redemption prior to their stated maturities in whole or in part on any date commencing August 1, 20\_\_, at a redemption price equal to the principal amount thereof, together with accrued interest to the date fixed for redemption, without premium.

(b) *Mandatory Sinking Fund Redemption.* The Bonds maturing on August 1, 20\_\_, are subject to mandatory sinking fund redemption, in part by lot, prior to their stated maturity, on each August 1 on and after August 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, without premium, plus accrued interest thereon to the date of redemption in the aggregate respective principal amounts set forth in the following table:

<b>Redemption Date (August 1)</b>	<b>Principal Amount of 20__ Bonds to be Redeemed</b>
20__	
20__	
20__ (Maturity)	

The Bonds maturing on August 1, 20\_\_, are subject to mandatory sinking fund redemption, in part by lot, prior to their stated maturity, on each August 1 on and after August 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, without premium, plus accrued interest thereon to the date

of redemption in the aggregate respective principal amounts set forth in the following table:

<b>Redemption Date (August 1)</b>	<b>Principal Amount of 20__ Bonds to be Redeemed</b>
20__	
20__	
20__	
20__	
20__	
20__	
20__ (Maturity)	

(c) *Selection of Bonds For Redemption.* If less than all of the Bonds outstanding are to be redeemed, the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and, in selecting portions of such Bond for redemption, the Paying Agent shall treat each such Bond as representing that number of Bonds of \$5,000 denominations which is obtained by dividing the principal amount of such Bond to be redeemed in part by \$5,000. The Paying Agent shall promptly notify the City in writing of the Bonds, or portions thereof, selected for redemption.

Whenever provision is made in this Resolution for the optional redemption of Bonds and less than all Outstanding Bonds are to be redeemed, the Paying Agent, upon written instruction from the City, shall select Bonds for redemption as so directed and if not directed, in inverse order of maturity. Within a maturity, the Paying Agent shall select Bonds for redemption as directed by the City and, if not so directed, by lot. Redemption by lot shall be in such manner as the Paying Agent shall determine; provided, however, that the portion of any Bond to be redeemed in part shall be in the principal amount of \$5,000 or any integral multiple thereof.

In the event that a portion of any Term Bond is optionally redeemed prior to maturity pursuant to Section 10(a) hereof, the remaining mandatory sinking fund payments with respect to such Term Bonds shall be reduced proportionately, or as otherwise directed by the City, in integral multiples of \$5,000 principal amount, in respect of the portion of such Bonds optionally redeemed.

(d) *Notice of Recemption.* The Paying Agent shall further provide written notice to Bond Owners of all Bonds to be redeemed pursuant to this section by first class mail within 45 days, but in no event later than 20 days prior to the date of such redemption. The date on which the Bonds which are called for redemption are to be presented for redemption is herein sometimes called the "redemption date." The notice of redemption shall (a) state the redemption date; (b) state the redemption price; (c) state the dates of maturity of the Bonds and, if less than all of any such maturity is called for redemption the distinctive numbers of the Bonds of such maturity to be redeemed, and in the case of Bonds redeemed in part only, the respective portions of the principal amount thereof, to

be redeemed; (d) state the CUSIP number, if any, of each Bond to be redeemed; (e) give notice that further interest on such Bonds will not accrue after the designated redemption date; and (f) any other descriptive information regarding the Bonds needed to identify accurately the Bonds being redeemed. The actual receipt by the Owner of notice of such redemption shall not be a condition precedent to redemption, and failure to receive such notice shall not affect the validity of the proceedings for the redemption of such Bonds or the cessation of interest on the date fixed for redemption.

At least 20 days before the redemption date, notice shall also be given (i) registered or certified mail, postage prepaid, (ii) confirmed facsimile transmission or (iii) overnight delivery service, to the Securities Depository and in accordance with then current guidelines of the Securities and Exchange Commission, to any other firm or service regularly providing information with respect to the redemption of Bonds designated to the Paying Agent by the City.

(e) *Conditional Notice of Optional Redemption of Bonds.* With respect to the optional redemption of Bonds pursuant to the foregoing subsection (a), at the direction of the City filed with the Paying Agent, the notice of such redemption shall state that such redemption is conditioned upon the receipt by the Paying Agent on or before the date fixed for such redemption of sufficient funds for such purpose from any issue of refunding bonds. In the event that sufficient funds shall not have been deposited with the Paying Agent on or before the date fixed for redemption, the Paying Agent shall promptly notify the Owners of the Bonds by telephone, facsimile transmission or other form of telecommunication, promptly confirmed in writing; and thereupon such redemption and the notice thereof shall be deemed to be canceled and rescinded.

(f) *Effect of Redemption.* When notice of redemption has been given, substantially as provided for herein, and when the amount necessary for the redemption of the Bonds called for redemption (principal and premium, if any) is set aside for that purpose in the Debt Service Fund, as provided for herein, the Bonds designated for redemption shall become due and payable on the date fixed for redemption thereof, and upon presentation and surrender of said Bonds at the place specified in the notice of redemption, such Bonds shall be redeemed and paid at said redemption price out of said Debt Service Fund, and no interest will accrue on such Bonds called for redemption after the redemption date specified in such notice and the owners of the Bonds so called for redemption after such redemption date shall look only to the funds held for such purpose in the Debt Service Fund (or held for such specific purpose in the Bond Fund held by the Paying Agent). All Bonds redeemed shall be cancelled forthwith by the Paying Agent and shall not be reissued. The City shall establish a separate account in the Debt Service Fund to hold funds available for payment of called bonds after the redemption date.

(g) *Bonds No Longer Outstanding.* When any Bonds (or portions thereof), which have been duly called for redemption prior to maturity under the provisions of this Resolution, or with respect to which irrevocable instructions to call for redemption prior to maturity at the earliest redemption date have been given to the Paying Agent, in form satisfactory to it, and sufficient moneys shall be held irrevocably in trust as provided in Section 16 for the payment of the redemption price of such Bonds or portions thereof,

and accrued interest (if applicable) with respect thereto to the date fixed for redemption, all as provided in this Resolution, then such Bonds shall no longer be deemed Outstanding and shall be surrendered to the Paying Agent for cancellation.

All Bonds paid at maturity or redeemed prior to maturity pursuant to the provisions of this Section 10 shall be cancelled upon surrender thereof and be delivered to or upon the order of the City. All or any portion of a Bond purchased by the City shall be cancelled by the Paying Agent.

Section 11. *Project Fund.*

(a) The proceeds of the sale of the Bonds identified in Section 2 for deposit into the Project Fund shall be deposited with the City to the credit of the "City of Foster City General Obligation Bonds, Series 2020 Project Fund," (the "Project Fund"), established as an improvement fund within the meaning of the Law. Such proceeds shall be kept separate and distinct from all other funds of the City, and the moneys in said Project Fund shall be applied exclusively to pay Project Costs in accordance with the Law and the Bond Law.

(b) The City shall disburse moneys in the Project Fund to the City from time to time to pay the Project Costs. If, upon completion of the project to be funded from the Project Fund, amounts remain therein, the City shall transfer such amounts to the Debt Service Fund. At such time that no amounts remain on deposit in the Project Fund, the City shall close the Project Fund.

(c) Nothing in this Resolution shall limit the authority of the City to cause the appointment of a fiscal agent to hold and disburse the Project Fund, to the extent permitted by the Law.

Section 12. *Rebate Fund.* The City shall establish the General Obligation Bonds, Series 2020 (Levee Protection Planning And Improvements Project) Rebate Fund (the "Rebate Fund"). All money at any time deposited in the Rebate Fund shall be held by the City in trust for payment to the United States Treasury. All amounts on deposit in the Rebate Fund shall be governed by this Section and the Tax Certificate, unless the City obtains an opinion of Bond Counsel that the exclusion from gross income of interest on the Bonds shall not be adversely affected for federal income tax purposes if such requirements are not satisfied.

(a) *Annual Computation.* Within 55 days of the end of each Computation Year with respect to the Bonds, the City shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Rebate Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code), and taking into account whether the 1-1/2% Penalty has been elected), for this purpose treating the last day of the applicable Computation Year as a computation date, within the meaning of Section 1.148-1(b) of the Rebate Regulations (the "Rebatable

Arbitrage”). The City shall obtain expert advice as to the amount of the Rebatale Arbitrage to comply with this Section.

(b) *Annual Transfer.* Within 55 days of the end of each applicable Computation Year with respect to the Bonds, an amount shall be transferred by the City to be deposited to the Rebate Fund from any legally available funds, including the other funds and accounts established herein, so that the balance in the Rebate Fund shall equal the amount of Rebatale Arbitrage so calculated in accordance with clause (i) of this Subsection (a). In the event that immediately following the transfer required by the previous sentence, the amount then on deposit to the credit of the Rebate Fund exceeds the amount required to be on deposit therein, the Finance Director shall withdraw the excess from the Rebate Fund and then credit the excess to the Debt Service Fund.

(c) *Payment to the Treasury.* The City shall pay to the United States Treasury, out of amounts in the Rebate Fund:

(1) Not later than 60 days after the end of (A) the fifth Computation Year with respect to the Bonds, and (B) each applicable fifth Computation Year thereafter, an amount equal to at least 90% of the Rebatale Arbitrage calculated as of the end of such Computation Year; and

(2) Not later than 60 days after the payment of all the Bonds, an amount equal to 100% of the Rebatale Arbitrage calculated as of the end of such applicable Computation Year, and any income attributable to the Rebatale Arbitrage, computed in accordance with Section 148(f) of the Code.

In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate or cause to be calculated the amount of such deficiency and deposit an amount received from any legally available source, including the other funds and accounts established herein, equal to such deficiency in the Rebate Fund prior to the time such payment is due. Each payment required to be made pursuant to this Subsection (1) shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T prepared by the City, or shall be made in such other manner as provided under the Code.

(d) *Disposition of Unexpended Funds.* Any funds remaining in the Rebate Fund after redemption and payment of the Bonds and the payments described in Subsection (1), may be utilized in any lawful manner by the City.

(e) *Survival of Defeasance.* Notwithstanding anything in this Section or the Resolution to the contrary, the obligation to comply with the requirements of this Section shall survive the defeasance of the Bonds.

Section 13. Security/Debt Service Fund. The City Council, so far as is practicable, shall fix such rate or rates for a tax to be levied in the City as will result in revenues which will pay the interest on the Bonds, and provide a sinking or other fund for the payment of the principal of the Bonds as such principal may become due. The City Council shall determine the fiscal year for all of the amounts above set forth, and shall fix the rate or rate of tax to be levied which will raise the amounts of money required by the City for such purposes, and as required by the provisions of the Law, the City Council shall certify to the County Auditor-Controller of the County of San Mateo (the "Auditor") the rate or rates so fixed and shall furnish to the Auditor a statement in writing containing the following: (a) an estimate of the minimum amount of money required to be raised by taxation during the fiscal year for the payment of the principal of and interest on the Bonds, as will become due before the proceeds of a tax levied at the next general tax levy will be available; (b) an estimate of the minimum amount of money required to be raised by taxation during the fiscal year for all other purposes of the City; and (c) any other items required by the provisions of the Law. The Auditor shall compute and enter in the county assessment roll the respective sums to be paid as a City tax on the property within the City using the rate or rates of levy as fixed by the City Council and the assessed value as found on the assessment roll for the property subject to the tax.

It shall be the duty of all county officers charged with the duty of collecting taxes to collect such tax in time, form and manner as county taxes are collected and when collected to pay the same to the City.

All such taxes for the payment of principal and interest on the Bonds shall be established, levied and collected as provided in the provisions of the Law.

All moneys derived from such taxes and all other moneys allocated and designated for payment of said Bonds and the interest thereon shall be placed in a fund of the City and designated "City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning And Improvements Project) Debt Service Fund" (the "Debt Service Fund"), (and accounts therein to the extent created pursuant to Section 10 or 16 hereof) shall be kept separate and apart from all other funds of the City (and are hereby irrevocably pledged for the payment of the Bonds in accordance with the purpose and intent of this Resolution), and until all of said Bonds and all interest thereon have been fully paid (or defeased) the moneys in said fund shall be used for no other purpose than the payment of said Bonds and the interest thereon; provided, however, that when all of the principal and interest on all of the Bonds have been paid, any balance of money then remaining in said funds shall be transferred to the general fund of the City. Interest earned on the investment of monies in the Debt Service Fund shall be retained in the Debt Service Fund and used by the City to pay principal and interest on the Bonds when due.

The Finance Director shall transfer available monies from the Debt Service Fund to the Paying Agent in amounts sufficient and at such time as are necessary to promptly pay principal (including mandatory sinking fund payments), interest and redemption premium, if any, on the Bonds as such shall become due; and the Paying Agent shall establish a fund designated the "City of Foster City General Obligation Bonds, Series 2020 (Levee Protection Planning And Improvements Project) Bond Fund" (the



“Bond Fund”) for such purpose and shall make payments to the Bond Owners of principal (including mandatory sinking fund payments), interest and redemption premium, if any, on the Bonds as such shall become due; provided that, in the event of any deficiencies, moneys on deposit in the Bond Fund shall be applied first to the payment of interest and then to the payment of principal and, in all such cases, ratably and without preference among all maturities.

Section 14. Investments.

(a) Moneys in the Project Fund shall be invested in Authorized Investments which will by their terms mature, or in the case of an investment agreement are available without penalty, as close as practicable to the date the City estimates the moneys represented by the particular investment will be needed for withdrawal from the Project Fund. Earnings on investments of monies in the Project Fund shall be retained therein and applied in accordance with authorized uses thereof and applicable law.

(b) Moneys in the Debt Service Fund and the Bond Fund shall be invested only in Authorized Investments which will by their terms mature, or in the case of an investment agreement are available for withdrawal without penalty, on such dates so as to ensure the payment of principal of, premium, if any, and interest on the Bonds as the same become due. The Paying Agent shall be under no obligation to invest moneys in the Bond Fund except on the written instruction of the Finance Director. Investment earnings, if any, in the Bond Fund in excess of amounts held for the benefit of Owners shall be returned to the City for deposit in the Debt Service Fund.

In the event that an Authorized Representative of the City does not so direct the Paying Agent, the Paying Agent shall invest moneys in the Bond Fund in the Authorized Investments described in paragraph 2(f) of the definition contained herein and as set forth in the letter of authorization and directions executed by the City and delivered to the Paying Agent. If no investment directions are provided, such amount shall be held in cash, uninvested.

The City and the Paying Agent, at the direction of the City, shall sell at the best price obtainable, or present for redemption, any obligations so purchased whenever it may be necessary to do so in order to provide moneys to meet any payment or transfer to such funds and accounts or from such funds and accounts. For the purpose of determining at any given time the balance in any such funds, any such investments constituting a part of such funds and accounts shall be valued at their market value. Notwithstanding anything herein to the contrary, the Paying Agent shall not be responsible for any loss from investments, sales or transfers undertaken in accordance with the provisions of this Resolution.

Section 15. Tax Covenants. The City hereby covenants and agrees with the owners of the Bonds to take no action or refrain from taking any action which, in the opinion of Bond Counsel, would result in the interest received by the Owners being includable in gross income for federal income tax purposes. In order to preserve the exclusion from gross income of interest on the Bonds for federal income tax purpose, the

City covenants to comply with all applicable requirements of the Code, and any Regulations which are necessary to preserve such exclusion from gross income and specifically covenants, without limiting the generality of the foregoing, that:

(a) *Private Activity.* The City will take no action or refrain from taking any action or make any use of the proceeds of the Bonds issued on a tax-exempt basis or of any other monies or property which would cause the Bonds issued on a tax-exempt basis to be “private activity bonds” within the meaning of Section 141 of the Code;

(b) *Arbitrage.* The City will make no use of the proceeds of the Bonds issued on a tax-exempt basis or of any other amounts or property, regardless of the source, or take any action or refrain from taking any action which will cause the Bonds issued on a tax-exempt basis to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(c) *Federal Guaranty.* The City will make no use of the proceeds of the Bonds issued on a tax-exempt basis or take or omit to take any action that would cause the Bonds issued on a tax-exempt basis to be “federally guaranteed” within the meaning of Section 149(b) of the Code;

(d) *Information Reporting.* The City will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code;

(e) *Hedge Bonds.* The City will make no use of the proceeds of the Bonds issued on a tax-exempt basis or any other amounts or property, regardless of the source, or take any action or refrain from taking any action that would cause the Bonds issued on a tax-exempt basis to be considered “hedge bonds” within the meaning of Section 149(g) of the Code unless the City takes all necessary action to assure compliance with the requirements of Section 149(g) of the Code to maintain the exclusion from gross income of interest on the Bonds issued on a tax-exempt basis for federal income tax purposes;

(f) *Miscellaneous.* The City will take no action or refrain from taking any action inconsistent with its expectations stated in that certain Tax Certificate executed by the City in connection with each issuance of Bonds issued on a tax-exempt basis and will comply with the covenants and requirements stated therein and incorporated by reference herein;

(g) *Subsequent Opinions.* If the City obtains a subsequent opinion of Bond Counsel other than Stradling Yocca Carlson & Rauth, a Professional Corporation (“SYCR”), where such opinion is required in connection with a change or amendment to this Resolution or the procedures set forth in the Tax Certificate, it will obtain an opinion substantially to the effect originally delivered by SYCR that interest on the Bonds is excluded from gross income for federal income tax purposes.

Section 16. *Defeasance.* The Bonds may be defeased in whole or in part prior to maturity by irrevocably depositing with the City in a separate account of the Debt

Service Fund to be held separate and apart from all other funds of the City, and which is irrevocably pledged to the Bonds so defeased (or an entity designated by the Finance Director to act as escrow agent with respect thereto):

(a) An amount of cash which together with amounts then on deposit in the Debt Service Fund, is sufficient, without reinvestment, to pay and discharge all or part of the Bonds outstanding (including all principal, interest and premium, if any) at or before their stated maturity date; or

(b) Government Obligations not subject to call, together with cash, if required, in such amount as will, without reinvestment, in the opinion of an independent certified public accountant, together with interest to accrue thereon and moneys transferred from the Debt Service Fund together with the interest to accrue thereon, be fully sufficient to pay and discharge all of the corresponding Bonds (including all principal and interest and premium, if any) to be defeased at or before their stated maturity date.

In such event, notwithstanding that any of the Bonds shall not have been surrendered for payment, all obligations of the City with respect to all said outstanding Bonds shall cease and terminate, except only the obligation of the City to pay or cause to be paid from funds deposited pursuant to paragraphs (a) or (b) of this Section, to the owners of said Bonds not so surrendered and paid all sums due with respect thereto; provided that the City shall have received an opinion of bond counsel for said Bonds, that said Bonds have been defeased.

Section 17. *Supplemental Resolutions.*

(a) This Resolution, and the rights and obligations of the City and of the Owners of the Bonds issued hereunder, may be modified or amended at any time by a supplemental resolution adopted by the City with the written consent of Owners owning at least 60% in aggregate principal amount of the outstanding Bonds, exclusive of Bonds, if any, owned by the City; provided, however, that no such modification or amendment shall, without the express consent of the Owner of each Bond affected, reduce the principal amount of any Bond, reduce the interest rate payable thereon, advance the earliest redemption date thereof, extend its maturity or the times for paying interest thereon or change the monetary medium in which principal and interest is payable, nor shall any modification or amendment reduce the percentage of consents required for amendment or modification. No such supplemental resolution shall change or modify any of the rights or obligations of any Paying Agent without its written assent thereto. Notwithstanding anything herein to the contrary, no such consent shall be required if the Owners are not directly and adversely affected by such amendment or modification.

(b) This Resolution, and the rights and obligations of the City and of the Owners of the Bonds issued hereunder, may be modified or amended at any time by a supplemental resolution adopted by the City without the written consent of the Owners;

(i) To add to the covenants and agreements of the City in this Resolution, other covenants and agreements to be observed by the City which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(ii) To add to the limitations and restrictions in this Resolution, other limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(iii) To confirm as further assurance any pledge under, and the subjection to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;

(iv) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution; or

(v) To amend or supplement this Resolution in any other respect, provided such supplemental resolution does not adversely affect the interests of the Owners.

(c) Any act done pursuant to a modification or amendment so consented to shall be binding upon the Owners of all the Bonds and shall not be deemed an infringement of any of the provisions of this Resolution, whatever the character of such act may be, and may be done and performed as fully and freely as if expressly permitted by the terms of this Resolution, and after consent relating to such specified matters has been given, no Owner shall have any right or interest to object to such action or in any manner to question the propriety thereof or to enjoin or restrain the City or any officer or agent of the City from taking any action pursuant thereto.

Section 18. *Resolution to Constitute Contract.* In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Resolution shall be deemed to be and shall constitute a contract by and between the City and the Owners from time to time of the Bonds; and the pledge made in this Resolution shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which, regardless of 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.

Section 19. *Continuing Disclosure.* The City hereby covenants and agrees that it will comply with and carry out all of its obligations under its Continuing Disclosure Certificate to be executed and delivered by the City in connection with the issuance of the Bonds. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default under this Resolution; however, any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section 19. For purposes of this Section, "Beneficial Owner" means any person which

has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

SIGNED AND APPROVED as of July 6, 2020.

CITY OF FOSTER CITY

[SEAL]

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT A

R-\_\_

\$\_\_\_\_\_

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE SUPPLEMENT TO RESOLUTION NO. \_\_\_\_\_) TO THE PAYING 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 THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), 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.**

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF SAN MATEO**

**CITY OF FOSTER CITY  
GENERAL OBLIGATION BONDS  
SERIES 2020 (LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT)**

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DATED DATE</b>	<b>CUSIP NO.</b>
_____ %	_____	_____	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ AND NO/100 DOLLARS

THE CITY OF FOSTER CITY, a general law city situated in the County of San Mateo, State of California (the "City"), duly organized and existing under and by virtue of the Constitution and laws of the State of California, hereby acknowledges its indebtedness and promises to pay to the registered owner named above or registered assigns (the "Registered Owner"), the Principal Amount stated above on the Maturity Date stated above, and to pay such registered owner by check mailed by first class mail, postage prepaid, thereto at its address as it appears on the register kept by the Paying Agent at the close of business on the fifteenth day of the month preceding the Interest Payment Date (as hereinafter defined) (the "Record Date"), or, at the request of an owner of in excess of \$1,000,000 aggregate principal amount of bonds, by wire transfer, interest on such principal amount on each February 1 and August 1, commencing February 1, 2021 (each, an "Interest Payment Date") next preceding the date of authentication (unless

(i) the date of authentication is prior to the first Record Date in which event from the Dated Date shown above, (ii) the date of authentication is after a Record Date and before the following Interest Payment Date in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated as of an Interest Payment Date, in which event it shall bear interest from such date until the Principal Amount hereof shall have been paid or provided for in accordance with Resolution No. \_\_\_\_\_ adopted by the City Council of the City on July 6, 2020, as supplemented by Supplement to Resolution No. \_\_\_\_\_, dated as of \_\_\_\_\_, 2020, executed in connection therewith (as supplemented, the "Resolution"), at the interest rate stated above, payable on each Interest Payment Date. Principal and any premium upon the redemption prior to the maturity of all or part hereof are payable at the principal corporate trust office of U.S. Bank National Association, Paying Agent for the Bonds (the "Paying Agent"), in San Francisco, California. All such amounts are payable in lawful money of the United States of America.

Capitalized terms used herein and not defined shall have the meanings given such terms in the Resolution.

The principal of and interest on the Bonds shall be paid from taxes levied for the payment thereof as set forth in the Resolution, which taxes shall be levied exclusively upon the taxable property in the City.

This Bond is issued in fully registered form. It may be exchanged for a like aggregate principal amount of bonds of other authorized denominations of the same series and maturity, all as more fully set forth in the Resolution. This Bond is transferable by the Registered Owner hereof, in person or by its attorney duly authorized in writing, at the designated corporate trust office of the Paying Agent, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution, upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond of authorized denomination or denominations for the same aggregate principal amount of the same series and maturity will be issued to the transferee in exchange therefor.

Bonds are not subject to optional or mandatory sinking fund redemption prior to maturity.

The City and the Paying Agent may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the City and the Paying Agent shall not be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Paying Agent.

The rights and obligations of the City and of the registered owners of the Bonds may be amended at any time, and in certain cases without notice to or consent of the registered owners, to the extent and upon the terms provided in the Resolution.

It is hereby recited, certified and declared that the total amount of indebtedness of the City, including the amount of this Bond, is within the limit provided by law and that any



and all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of California.

IN WITNESS WHEREOF, THE CITY OF FOSTER CITY has caused this Bond to be signed by the Mayor and the Finance Director of said City, and countersigned by the City Clerk of said City, by their facsimile signatures.

CITY OF FOSTER CITY

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: Finance Director

COUNTERSIGNED:

\_\_\_\_\_  
City Clerk of the City of Foster City

[FORM OF CERTIFICATE OF AUTHENTICATION]

This is one of the fully registered Bonds described in the within-mentioned Resolution.

Date of Authentication: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Paying Agent

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

[FORM OF LEGAL OPINION]

The following is a true copy of the opinion rendered by Stradling Yocca Carlson & Rauth, a Professional Corporation, in connection with the issuance of, and dated as of the date of the original delivery of, the Bonds. A signed copy is on file in my office.

\_\_\_\_\_  
City Clerk of the City of Foster City

[FORM OF ASSIGNMENT]

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

\_\_\_\_\_  
\_\_\_\_\_

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

the within Bond and do(es) hereby irrevocably constitute(s) and appoint(s)

\_\_\_\_\_  
attorney, to transfer the same on the registration books of the Paying Agent with full power of substitution in the premises.

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

Signature Guarantee:

\_\_\_\_\_  
Notice: Signature(s) must be guaranteed by a qualified 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.