

REIMBURSEMENT AGREEMENT

Dated as of [\*], 2016,

between

PUBLIC UTILITIES COMMISSION OF  
THE CITY AND COUNTY OF SAN FRANCISCO

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Relating to

The logo for CleanPowerSF, featuring the text "CleanPowerSF" in a sans-serif font. "Clean" is green, "Power" is orange, and "SF" is blue. A thin blue arc is positioned above the "Power" and "SF" text.

CleanPowerSF

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**REIMBURSEMENT AGREEMENT**

(This Table of Contents is not a part of this  
Reimbursement Agreement and is only for  
convenience of reference)

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## SCHEDULES AND EXHIBITS

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This **REIMBURSEMENT AGREEMENT**, dated as of [\*], 2016 (together with any amendments or supplements hereto, this “*Agreement*”), is between the PUBLIC UTILITIES COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (together with its successors and assigns, the “*Commission*”) and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Bank*”).

**WITNESSETH:**

WHEREAS, pursuant to the charter of the City and County of San Francisco (the “*City*”), the management and control of the City’s community choice aggregation program (the “*CCA Program*”) is the responsibility of the Commission (Board of Supervisors Ordinance No. 146-07, Section 1(a));

WHEREAS, pursuant to Ordinance 86-04 of the Board of Supervisors of the City (the “*Board*”) established the CCA Program, called CleanPowerSF, and pursuant to Ordinances 146-07, 147-07 and 232-09 implemented the CCA Program through the work of the Commission in consultation with the San Francisco Local Agency Formation Commission (Board of Supervisors);

WHEREAS, pursuant to Section 5 of Ordinance 147-07 of the Board, the Board adopted a Draft Implementation Plan and Statement of Intent for the CCA Program (the “*Draft IP Plan*”);

WHEREAS, since its adoption in 2004, the Draft IP Plan has been revised on several occasions, most recently by the Updated Implementation Plan and Statement of Intent submitted to the California Public Utilities Commission on July 27, 2015 (together with all future amendments and modifications thereto, the “*IP Plan*”);

WHEREAS, pursuant to the IP Plan, the Commission desires to purchase power on behalf of CleanPowerSF by entering into power purchase agreements (each, a “*PPA*”) with providers of power (each, a “*PPA Counterparty*”);

WHEREAS, in order to secure the Commission’s termination obligations under a PPA, the Commission is required to deliver to the applicable PPA Counterparty a standby letter of credit in substantially the form attached hereto as Exhibit A (each, a “*Letter of Credit*”);

WHEREAS, in connection therewith, the Commission has requested that the Bank issue Letters of Credit in an aggregate original stated amount not to exceed \$40,000,000 to the PPA Counterparties listed on Schedule 1; and

WHEREAS, the Bank is willing to issue Letters of Credit to the PPA Counterparties listed on Schedule 1 upon the terms and conditions provided herein.

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Commission and the Bank agree as follows:

## ARTICLE 1

### DEFINITIONS

Section 1.1 **Definitions.** As used in this Agreement:

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Annual Budget*” means the budget or budgets prepared by the Commission in substantially the form that has been previously presented to the Bank.

“*Applicable Law*” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“*Authorized Representative*” means each of the General Manager of the San Francisco Public Utilities Commission, Assistant General Manager and Chief Financial Officer, Business Services, Deputy Chief Financial Officer, Financial Services, Debt Manager, Financial Planning, Utility Specialist, Financial Planning, Controller of the City and County of San Francisco, Director of Public Finance, and any other individual designated from time to time as a “*Designated Representative*” in a certificate executed by the General Manager of the San Francisco Public Utilities Commission and delivered to the Bank.

“*Bank*” has the meaning set forth in the introductory paragraph hereof.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Commission secured by or payable from Revenues on parity with, or subordinate to the payment of, the Obligations.

“*Bank Rate*” means for any Term Loan a rate of interest per annum (i) for any day commencing on the date such Term Loan is made up to and including the ninetieth (90th) day succeeding the date such Term Loan is made, equal to the Base Rate from time to time in effect and (ii) for any day commencing on the ninety-first (91st) day succeeding the date such Term Loan is made and thereafter, equal to the Base Rate from time to time in effect *plus* one percent (1.00%); *provided, further, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, “*Bank Rate*” will mean the Default Rate.

“*Base Rate*” means, for any day, the rate of interest per annum equal to the highest of: (i) the Prime Rate plus one and one half percent (1.5%), (ii) the Federal Funds Rate plus two percent (2.0%), and (iii) seven and one half percent (7.5%). Each determination of the Base Rate by the Bank shall be conclusive and binding on the Commission absent manifest error. Each change in the

Base Rate will take effect simultaneously with the corresponding change or changes in the Prime Rate or the Federal Funds Rate, as the case may be.

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) the Master Trust Indenture, (b) this Agreement, (c) the Fee Agreement and (d) the PPAs and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

“*Board*” has the meaning set forth in the recitals hereof.

“*Bonds*” has the meaning set forth in the Master Trust Indenture.

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or San Francisco, California are authorized by law to close or (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed.

“*CCA Program*” has the meaning set forth in the recitals hereof.

“*Change in Law*” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the enforcement, administration, interpretation, implementation or application thereof by any Governmental Authority or compliance by the Bank or any Participant therewith or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) and all laws, requests, rules, regulations, policies, rulings, guidelines, regulations, standards or directives thereunder or issued in connection therewith and any interpretation, application or promulgation implementing, invoking or in any way the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) all laws, requests, rules, rulings, standards, policies, guidelines, regulations or directives promulgated by, or in response to requests, guidelines or directives published by, the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities will, in each case, be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“*Charter*” has the meaning set forth in the recitals hereof.

“*City*” has the meaning set forth in the recitals hereof.

“*Closing Date*” means the date on which the Letters of Credit are issued, which, subject to the satisfaction of the conditions precedent set forth in Section 3.1 hereof, is expected to be [\_\_\_\_\_], 2016.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commission*” has the meaning set forth in the introductory paragraph hereof.



*“Debt”* of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) all obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument.

*“Default”* means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

*“Default Rate”* means, for any day, a per annum rate of interest equal to the sum of the Base Rate from time to time in effect *plus* three percent (3.0%).

*“Designated Jurisdiction”* means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

*“Draft IP Plan”* has the meaning set forth in the recitals hereof.

*“Draw Date”* has the meaning set forth in Section 2.4(a) hereof.

*“Drawing”* has the meaning set forth in Section 2.3 hereof.

*“Employee Plan”* means an employee benefit plan covered by Title IV of ERISA and maintained for employees of the Commission.

*“Environmental Laws”* means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

*“ERISA”* means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

*“Event of Default”* has the meaning set forth in Section 6.1 hereof.

*“Excluded Taxes”* means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it

(in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Commission is located.

*“Federal Funds Rate”* means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank. Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the Commission absent manifest error.

*“Fee Agreement”* means the Fee Agreement dated the Closing Date between the Commission and the Bank, as supplemented and amended from time to time.

*“Fiscal Year”* has the meaning set forth in the Master Trust Indenture.

*“Fitch”* means Fitch Ratings, Inc.

*“GAAP”* means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

*“Governmental Approval”* means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

*“Governmental Authority”* means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

*“Guarantees”* means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

*“Hetch Hetchy Project”* means the Hetch Hetchy Water and Power Project, including the O’Shaughnessy Dam, the Hetch Hetchy Reservoir, the Canyon and Mountain Tunnels, the Kirkwood, Moccasin and Holms Powerhouses, Cherry Lake and its dam, Lake Eleanor and its dam, the related water storage and transportation and hydro-electric generating facilities down to and including the Moccasin Powerhouse, all located in Yosemite National Park, Stanislaus National Forest and Tuolumne County, the rights to which were granted to the City by the Raker Act of 1913, and the related transmission facilities down to the City of Newark.

*“Indemnified Taxes”* means Taxes other than Excluded Taxes.

*“Investment Policy”* means the investment guidelines of the City as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

*“IP Plan”* has the meaning set forth in the recitals hereof.

*“Law”* means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

*“Letter of Credit”* has the meaning set forth in the recitals hereof.

*“Lien”* means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

*“Master Trust Indenture”* means the Trust Indenture, dated as of May 1, 2015, between the Commission and U.S. Bank National Association, as trustee for the holders from time to time of the Commission’s power revenue bonds.

*“Material Litigation”* shall have the meaning assigned to such term in Section 4.5.

*“Maximum Rate”* means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

*“Obligations”* means all obligations of the Commission to the Bank or any Participant arising under or in relation to this Agreement and the Fee Agreement, including repayment of Drawings and Term Loans.

*“Operation and Maintenance Expenses”* means the costs of the proper operation, maintenance and repair of the Power Enterprise and taxes, assessments or other governmental charges lawfully imposed on the Power Enterprise or the Revenues, or payments in lieu thereof, as determined in accordance with GAAP (as defined in the Master Trust Indenture). Operation and Maintenance Expenses shall include the payment of pension charges and proportionate payments to such compensation and other insurance or outside reserve funds as the Commission may establish or the Board may require with respect to employees of the Power Enterprise, as provided

in Section 16.103(a) of the Charter. Operation and Maintenance Expenses shall also include repairs and maintenance costs that constitute operating expenses in accordance with GAAP (as defined in the Master Trust Indenture). Operation and Maintenance Expenses shall not include (a) any allowance for amortization, depreciation or obsolescence, (b) operation and maintenance expenses of the Water Enterprise, (c) operation and maintenance expenses of the Wastewater Enterprise, (d) operation and maintenance expenses of any Separate System, (e) any expense for which, or to the extent to which, the Commission is or will be paid or reimbursed from or by any source that is not included or includable as Revenues, (e) losses from any sale or other disposition of Power Enterprise assets, and (g) non-cash losses and costs that may be required or permitted under GAAP (as defined in the Master Trust Indenture) to be expensed, including deferred expenses and unrealized mark-to-market losses.

*“Other Revenue Documents”* has the meaning set forth in Section 5.1(c)(i) hereof.

*“Other Taxes”* means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Basic Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Basic Document.

*“Participant”* has the meaning set forth in Section 7.3(b) hereof.

*“Participation”* has the meaning set forth in Section 7.3(b) hereof.

*“Payment Account”* means the payment account for the Bank set forth in Section 7.2 hereof.

*“Person”* means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

*“Power Enterprise”* means the Commission’s Power Enterprise established and existing as of the date of the Master Trust Indenture to provide electric power and related services to the City and its departments, agencies and commissions as well as other customers both in and outside of the City, including that portion of the Hetch Hetchy Project used for power generation, and all other power generation, transmission and distribution facilities and related facilities, streetlights, property and rights constituting a part of the Power Enterprise, together with any and all additions, improvements, betterments, renewals, replacements and repairs thereto and extensions thereof, but shall not include: (a) the Water Enterprise, (b) the Wastewater Enterprise, or (c) any Separate System.

*“Power Enterprise Debt”* means Debt of the Commission secured by, and payable from, Revenues.

*“PPA”* has the meaning set forth in the recitals hereof.

*“PPA Counterparty”* has the meaning set forth in the recitals hereof.

*“Prime Rate”* means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its “prime rate.” The *“prime rate”* is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

*“Principal Payment”* has the meaning set forth in Section 2.4(b) hereof.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*“Qualified Counterparty”* means a party other than the Commission which is the party to a Swap Agreement and, at the time of execution and delivery of the Swap Agreement, (a) (i) whose senior debt obligations are or claims-paying ability is rated in one of the three highest rating categories of each of at least two Rating Agencies (without regard to any gradations within a rating category) or (ii) whose obligations under the Swap Agreement are guaranteed for the entire term of the Swap Agreement by a Person whose senior debt obligations are or claims-paying ability is rated in one of the three highest rating categories of each of at least two Rating Agencies (without regard to any gradations within a rating category) and (b) which is otherwise qualified to act as the party to a Swap Agreement with the Commission under any applicable law.

*“Rating Agency”* and *“Rating Agencies”* means, individually or collectively, as applicable, Fitch and S&P.

*“Refundable Credits”* means amounts payable by the Federal government to the Commission under direct-pay subsidy programs substantially similar to the Build America Bond program under Section 54AA of the Code.

*“Reimbursement Obligations”* means any and all obligations of the Commission to reimburse the Bank for Drawings under the Letters of Credit and all obligations to repay the Bank for any Term Loan, including in each instance all interest accrued thereon.

*“Revenues”* means all revenues, rates and charges received and accrued by the Commission for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Power Enterprise, together with income, earnings and profits therefrom (including interest earnings on the proceeds of any Bonds pending application thereof), as determined in accordance with GAAP (as defined in the Master Trust Indenture). Revenues shall include payments to the Power Enterprise on or with respect to loans from any Separate System maintained by the Commission. Revenues shall not include (a) proceeds from the issuance of any obligations for borrowed money, (b) amounts loaned to the Power Enterprise, (c) Swap Agreement Receipts, (d) proceeds from taxes, (e) customer deposits while retained as such, (f) contributions in aid of construction, (g) gifts, (h) grants, (i) insurance or condemnation proceeds that are properly allocable to a capital account, (j) non-cash revenues or gains that may be required or permitted under GAAP (as defined in the Master Trust Indenture), including mark-to-market gains and deferred revenues, (k) money received by the Commission as the proceeds of the sale of any portion of the properties of the Power Enterprise, (l) amounts by their terms not available for the payment of Operation and

Maintenance Expenses or principal and interest on the Bonds, (m) Refundable Credits; (n) revenues of any Separate System, (n) Water Enterprise revenues as defined in the document or agreement governing the then-outstanding senior lien obligations of the Water Enterprise for borrowed money, and (o) Wastewater Enterprise revenues as defined in the document or agreement governing the then-outstanding senior lien obligations of the Wastewater Enterprise for borrowed money.

*“Risk-Based Capital Guidelines”* means (i) the risk-based capital guidelines in effect in the United States, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations.

*“S&P”* means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

*“Sanction(s)”* means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

*“Separate System”* means any electric power or energy generation, transmission, distribution or other facilities, property and rights that may be hereafter purchased, constructed or otherwise acquired by the Commission where the revenues derived from the ownership and operation of which shall be pledged to the payment of bonds or other obligations for borrowed money issued or incurred to purchase, construct or otherwise acquire such facilities, property and rights and shall not be included in Revenues and the operation and maintenance expenses with respect to which shall not be included in Operation and Maintenance Expenses.

*“Series”* has the meaning set forth in the Master Trust Indenture.

*“State”* means the State of California.

*“Stated Amount”* has the meaning set forth in Section 2.1 hereof.

*“Stated Expiration Date”* means, with respect to a Letter of Credit, the date on which such Letter of Credit is scheduled to expire and terminate in accordance with its terms, which, initially, shall be five years from the date of issuance.

*“Swap Agreement”* means any financial instrument that: (a) is entered into by the Commission with a party that is a Qualified Counterparty at the time the instrument is entered into; (b) is entered into with respect to all or a portion of a Series of Bonds; (c) is for a term not extending beyond the final maturity of the Series of Bonds or portion thereof to which it relates; (d) provides that the Commission shall pay to such Qualified Counterparty an amount accruing at either a fixed rate or a variable rate, as the case may be, on a notional amount equal to or less than the principal amount of the Series of Bonds or portion thereof to which it relates, and that such Qualified Counterparty shall pay to the Commission an amount accruing at either a variable rate or fixed rate, as appropriate, on such notional amount; (e) provides that one party shall pay to the other party any net amounts due under such instrument; and (f) has been designated to the Trustee in the Supplemental Trust Indenture (as defined in the Master Trust Indenture) authorizing the

issuance of the related Series of Bonds or portion thereof or in a Certificate (as defined in the Master Trust Indenture) of the Commission as a Swap Agreement with respect to such Bonds.

“*Swap Agreement Receipts*” means the regularly scheduled net amounts required to be paid by a Qualified Counterparty to the Commission pursuant to a Swap Agreement.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“*Term Loan*” and “*Term Loans*” each has the meaning set forth in Section 2.4(a) hereof.

“*Term Loan Maturity Date*” has the meaning set forth in Section 2.4(b) hereof.

“*2014 Audited Financial Statements*” has the meaning set forth in Section 4.6

“*Unpaid Drawing*” has the meaning set forth in Section 2.3 hereof.

“*Wastewater Enterprise*” means the municipal sanitary waste and storm water collection, treatment and disposal system, as located partially within and partially without the City, and all additions, betterments, and extensions to said sanitary waste and storm water system.

“*Water Enterprise*” means the municipal water supply, storage and distribution system of the Commission, as located partially within and partially without the City, including all of the presently existing municipal water system of the City, and all additions, betterments, and extensions to said water system, but excluding any water supply, storage or distribution facilities which constitute part of the Hetch Hetchy Project.

The foregoing definitions are equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein have the same meanings herein as in the Master Trust Indenture. All references in this Agreement to times of day are references to New York City time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms are interpreted and all accounting determinations hereunder are made in accordance with GAAP.

## ARTICLE 2

### LETTERS OF CREDIT

Section 2.1 **Issuance of Letter of Credits.** Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein, the Bank agrees to issue at the request and for the account of the Commission a Letter of Credit to each PPA Counterparty with a stated amount (“*Stated Amount*”) in the amount set forth opposite the name of the PPA Counterparty on Schedule 1; provided, that the maximum stated amount of all Letters of Credit in the aggregate shall not exceed \$40,000,000.

Section 2.2 **Letter of Credit Drawings.** Each PPA Counterparty is authorized to make Drawings under the Letter of Credit issued to such PPA Counterparty in accordance with its terms.

The Commission authorizes the Bank to make payments under each Letter of Credit in the manner therein provided. The Commission irrevocably approves reductions of the Stated Amount as provided in each Letter of Credit.

**Section 2.3 Reimbursement.** Subject to the provisions of Section 2.4 hereof, the Commission agrees to pay, or to cause to be paid, to the Bank (i) on each date on which the Bank honors any demand for payment under any Letter of Credit (each such payment by the Bank being referred to as a “*Drawing*”) a sum equal to the amount so paid under the applicable Letter of Credit (any amount so paid until reimbursed being referred to as an “*Unpaid Drawing*”), plus (ii) interest on the amount of each such Unpaid Drawing from and including the date such Drawing is paid until the Bank is reimbursed in full for such Drawing equal to the Default Rate. Subject to the provisions of Section 2.4 hereof respecting Term Loans (each of which Term Loans when made will constitute reimbursement of a Unpaid Drawing in an amount equal to the amount of such Term Loan), the Commission is obligated, without notice of a Drawing or demand for reimbursement (which notice is waived by the Commission), to reimburse the Bank for all Drawings on the same day as made. The Commission and the Bank agree that the reimbursement in full of each Drawing on the day such Drawing is made is intended to be a contemporaneous exchange for new value given to the Commission by the Bank. If a Drawing is reimbursed at or prior to 4:00 p.m. New York City time on the same day on which it is made, no interest will be payable on such Drawing.

**Section 2.4 Term Loans.**

(a) If (i) the representations and warranties of the Commission contained in Article Four of this Agreement are true and correct as of the date the Bank honors payment of a Drawing (the “*Draw Date*”), (ii) no Material Litigation shall be pending on the Draw Date; (iii) no event has occurred and is continuing on the Draw Date which has or is having a material adverse effect on the Commission’s obligations under this Agreement, the Fee Agreement or the Indenture or the ability of the Commission to perform its obligations in connection herewith or therewith; (iv) no Default or Event of Default has occurred and is continuing on the Draw Date; and (v) the Drawing made on such Draw Date is not reimbursed in full on or before 4:00 p.m. New York City time on the Draw Date, the amount of such Drawing which remains unpaid shall automatically without further action be converted to a term loan (individually, a “*Term Loan*” and, collectively, the “*Term Loans*”) on the applicable Draw Date and such Unpaid Drawing (or unpaid portion thereof) shall be deemed paid with the proceeds of such Term Loan. Unless the Commission has otherwise previously advised the Bank in writing, payment by the Bank of any Drawing under a Letter of Credit will be deemed to constitute a representation and warranty by the Commission that on the date of such Drawing (w) the representations and warranties of the Commission contained in Article Four hereof are true and correct on the applicable Draw Date, (x) no Material Litigation shall be pending on the applicable Draw Date, (y) no event has occurred and is continuing on the applicable Draw Date which has or is having a material adverse effect on the Commission’s obligations under this Agreement, the Fee Agreement or the Indenture or the ability of the Commission to perform its obligations in connection herewith or therewith and (z) no Default or Event of Default has occurred and is continuing on the applicable Draw Date.

(b) The Commission agrees to pay to the Bank an amount equal to the unpaid principal amount of each Term Loan made by the Bank, together with interest thereon from and including the Draw Date on which such Term Loan is made to but excluding the date the Bank is reimbursed therefor in full at a rate per annum equal to the Bank Rate; *provided* that, from and after the



occurrence of an Event of Default, each Term Loan will bear interest at the Default Rate. Interest on the unpaid balance of each Term Loan must be paid to the Bank monthly in arrears on the first Business Day of each calendar month during the term of such Term Loan (commencing with the first such date to occur after the applicable Draw Date) and on the seventh anniversary of such Draw Date (the “*Term Loan Maturity Date*”). Each Term Loan must be repaid in equal (or as nearly as possible) semiannual installments (each such installment referred to as a “*Principal Payment*”), such Principal Payments to commence on the date that is six months following the applicable Draw Date and on each six month anniversary thereafter and with the final installment being due and payable on the Term Loan Maturity Date therefor; *provided* that if the Commission elects to prepay a Term Loan in part, such prepayment will be applied to the remaining Principal Payments in inverse order of the due dates of such Principal Payments.

(c) The Authority may prepay any Term Loan in whole, or in part in a minimum amount of \$500,000 and in integral multiples of \$100,000 in excess thereof, in each case without penalty, on two Business Days’ prior written notice, such prepayment to be applied as set forth in paragraph (b) above.

**Section 2.5 Fees.** The Commission agrees to pay and perform its obligations provided for in the Fee Agreement, including the payment of all fees and expenses provided for therein in the amounts and on the dates set forth therein. The terms and provisions of the Fee Agreement are incorporated herein by reference. All references to amounts due under this Agreement will be deemed to include all amounts and obligations (including, but not limited to, fees and expenses) due under the Fee Agreement. All fees paid under this Agreement and the Fee Agreement will be fully earned when due and nonrefundable when paid.

**Section 2.6 Termination or Replacement of a Letter of Credit.** If the beneficiary of a Letter of Credit so agrees, the Commission may terminate or replace the Letter of Credit issued to such beneficiary prior to the expiration thereof upon not less than thirty (30) days’ prior written notice to the Bank and upon payment in full on or prior to such termination or replacement date of all Obligations owing in respect of such Letter of Credit.

**Section 2.7 Computation of Interest and Fees.** Fees payable hereunder and under the Fee Agreement will be calculated on the basis of a year of 360 days and the actual number of days elapsed. Interest payable hereunder will be calculated on the basis of a year of 365 and the actual number of days elapsed. Interest will accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

**Section 2.8 Payment Due on Non-Business Day to Be Made on Next Business Day.** If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof will be extended, without penalty, to the next succeeding Business Day, and such extended time will be included in the computation of interest and fees.

**Section 2.9 Default Rate.** If any Obligation is not paid when due, such Obligation will bear interest until paid in full at a rate per annum equal to the Default Rate, payable on demand. Upon the occurrence and during the continuance of an Event of Default, the Obligations of the Commission hereunder will bear interest at the Default Rate, which interest will be payable by the Commission to the Bank upon demand therefor and be calculated on the basis of a 365 day year and actual days elapsed.

Section 2.10 **Source of Funds.** All payments made by the Bank under each Letter of Credit will be made from funds of the Bank and not from the funds of any other Person.

Section 2.11 **Extension of Stated Expiration Date.** If the Commission on any date which is not more than one hundred twenty (120) days nor less than sixty (60) days prior to the Stated Expiration Date (as the same may be extended from time to time) of any Letter of Credit submits to the Bank a written request for an extension of the Stated Expiration Date of such Letter of Credit for a period as specified in such written request, the Bank shall make reasonable efforts to respond to such request within thirty (30) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. If the Bank fails to definitively respond to such request within such period of time, the Bank will be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension, and no extension will become effective unless the Bank has consented thereto in writing. The consent of the Bank, if granted, is conditioned upon the preparation, execution and delivery of documentation in form and substance reasonably satisfactory to the Bank and consistent with this Agreement. If such an extension request is accepted by the Bank in its sole and absolute discretion, the then current Stated Expiration Date for the Letter of Credit will be extended to the date agreed to by the Commission and the Bank.

Section 2.12 **Taxes.**

(a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Commission hereunder or under the Fee Agreement must be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Commission is required by Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank or any Participant receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Commission shall make such deductions and (iii) the Commission shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) *Payment of Other Taxes by the Commission.* Without limiting the provisions of paragraph (a) above, the Commission shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) *Indemnification by the Commission.* The Commission shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank or such Participant and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating the amount of such payment or liability delivered to the Commission by the Bank or any Participant will be conclusive absent manifest error. In addition, the Commission shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank or such Participant as a result of any failure of the Commission to pay any Taxes when due to

the appropriate Governmental Authority or to deliver to the Bank or such Participant pursuant to paragraph (d) below, documentation evidencing the payment of Taxes.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Commission to a Governmental Authority, the Commission shall deliver to the Bank or the applicable Participant the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank or such Participant, as applicable.

(e) *Treatment of Certain Refunds.* If the Bank or any Participant determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the Commission pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank or such Participant, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the applicable indemnifying party, upon the request of the Bank or such Participant, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank or such Participant in the event the Bank or such Participant is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank or any Participant be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Bank or such Participant in a less favorable net after-Tax position than the Bank or such Participant would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph will not be construed to require the Bank or any Participant to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Commission or any other Person.

(f) *Survival.* Without prejudice to the survival of any other agreement of the Commission hereunder, the agreements and obligations of the Commission contained in this Section will survive the termination of this Agreement and the Letters of Credit and the payment in full of the Obligations.

### Section 2.13 **Increased Costs.**

(a) *Increased Costs Generally.* If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, liquidity ratio, special deposit, insurance premium, fee, financial charge, monetary burden, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant, or funding any Drawing under any Letter of Credit or maintaining any Letter of Credit, or complying with any term of this Agreement, or against assets held by, or deposits with or for the account of, the Bank or such Participant;

(ii) subjects the Bank or any Participant to any Tax of any kind whatsoever with respect to this Agreement, the Fee Agreement or any Letter of Credit or changes the basis of taxation of payments to the Bank or such Participant in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.12 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Bank or any Participant);

(iii) subject credits or commitments to extend credit extended by the Bank or any Participant to any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto; or

(iv) imposes on the Bank or any Participant any other condition, cost or expense affecting this Agreement, the Fee Agreement or any Letter of Credit;

and the result of any of the foregoing is to increase the cost to the Bank or such Participant related to funding any Drawing under any Letter of Credit or issuing or maintaining the Letters of Credit or its participation therein, as the case may be, or to reduce the amount of any sum received or receivable by the Bank or such Participant hereunder or under the Fee Agreement (whether of principal, interest or any other amount), then, upon written request of the Bank or such Participant as set forth in paragraph (c) of this Section, the Commission shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank or any Participant determines that any Change in Law affecting the Bank or such Participant or the Bank's or such Participant's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's or such Participant's capital or liquidity or on the capital or liquidity of the Bank's or such Participant's holding company, if any, as a consequence of this Agreement, the Fee Agreement or any Letter of Credit, to a level below that which the Bank or such Participant or the Bank's or such Participant's holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Participant's policies and the policies of the Bank's or such Participant's holding company with respect to capital adequacy), then from time to time, upon written request of the Bank or such Participant as set forth in paragraph (c) of this Section, the Commission will pay to the Bank or such Participant such additional amount or amounts as will compensate the Bank or such Participant or the Bank's or such Participant's holding company for any such reduction suffered. Notwithstanding the foregoing, the amount that any Participant will be entitled to receive under this Section 2.13(b) will in no event exceed the amount that the Bank would have been entitled to receive under this Section 2.13(b) had such Participant's funding obligation been a direct obligation of the Bank.

(c) *Certificates for Reimbursement.* A certificate of the Bank or a Participant setting forth the amount or amounts necessary to compensate the Bank or such Participant or the Bank's or such Participant's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Commission, will be conclusive absent manifest error. The Commission shall pay the Bank or such Participant, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Bank or any Participant to demand compensation pursuant to this Section will not constitute a waiver of the Bank's or such Participant's right to demand such compensation; *provided* that the Commission is not required to compensate the Bank or such Participant pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that the Bank or such Participant, as the case may be, notifies the Commission of the Change in Law giving rise to such increased costs or reductions, and of the Bank's or such Participant's intention to claim compensation therefor (except that (i) if the Change of Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty day period referred to above will be extended to include the period of retroactive effect thereof and (ii) if the Bank or any such Participant had no actual knowledge of the action resulting in such increased costs as of the date six months prior to the date of notice to the Commission, then the six-month period referred to above will not apply).

(e) *Survival.* Without prejudice to the survival of any other agreement of the Commission hereunder, the agreements and obligations of the Commission contained in this Section will survive the termination of this Agreement and the Letter of Credit and the payment in full of the obligations of the Commission thereunder and hereunder.

**Section 2.14 Maximum Rate; Payment of Fee.** Anything in Section 2.3, 2.4, 2.5 or 2.9 hereof to the contrary notwithstanding, the amount of interest payable hereunder for any interest period will not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Bank of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the latest Term Loan Maturity Date. Upon the latest Term Loan Maturity Date or, if no Term Loan is outstanding on the last Letter of Credit expiration date, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Commission shall pay to the Bank a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section that has not previously been paid to the Bank in accordance with the immediately preceding sentence.

**Section 2.15 Security of Obligations.** Notwithstanding any other provision of this Agreement to the contrary, all obligations to the Bank under this Agreement and the Fee Agreement, are limited obligations of the Commission payable solely from Revenues available to the Commission from time to time pursuant to Section 5.5(k) of the Master Trust Indenture (Eleventh, for any other lawful purpose of the Commission). The Obligations are Subordinate Obligations (as defined in the Master Trust Indenture).

**Section 2.16 Method of Payment; Etc.** All payments to be made by the Commission under this Agreement or the Fee Agreement must be made to the Payment Account not later than 4:00 p.m. New York City time on the date when due and must be made in lawful money of the United States of America in freely transferable and immediately available funds. Any payment received after such time shall be deemed to be received on the next succeeding Business Day for purposes of calculating any interest payable in respect thereof.

## ARTICLE 3

### CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Issuance.** As conditions precedent to the obligation of the Bank to issue the Letters of Credit, each of the following conditions precedent must have been fulfilled to the satisfaction of the Bank and its counsel:

(a) *Opinions.* The Bank has received (i) an opinion of the City Attorney of the City dated the Closing Date and addressed to the Bank (or on which the Bank may rely) to the effect that (A) the Commission is duly organized and validly existing as a commission of the City pursuant to the Charter with full legal power and authority to execute and deliver the Basic Documents; (B) the Basic Documents are valid and binding agreements of the Commission enforceable against the Commission in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies; (C) no authorization, approval, consent or order of any agency or body having jurisdiction over the Commission is required in connection with the CCA Program, the IP Plan or the execution and delivery of the Basic Documents which has not been obtained; (D) the execution, delivery and performance of the Basic Documents do not conflict with any law or material agreements to which the Commission is a party or cause a default under any material documents to which the Commission is a party; and (E) no litigation is pending or, to the best knowledge of the City Attorney, threatened against the Commission threatening its existence or power, the CCA Program, the IP Plan or the power and authority of the Commission to enter into and perform its obligations under the Basic Documents or in which a final adverse decision could materially adversely affect the business, operations or financial condition of the Commission, such opinion (or, in lieu thereof, a reliance letter) to be addressed to the Bank, dated the Closing Date and in form and substance satisfactory to the Bank; and (ii) an opinion of Orrick Herrington & Sutcliffe LLP, special counsel to the Commission, dated the Closing Date and addressed to the Bank to the effect that (1) the Commission is duly organized and validly existing as a commission of the City pursuant to the Charter with full legal power and authority to execute, deliver and perform the Basic Documents; and (2) the Basic Documents are valid and binding agreements of the Commission enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies.

(b) *Documents.* The Bank has received executed copies of the Basic Documents certified by the Secretary of the Commission, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Commission set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Commission, threatened (i) in connection with the CCA Program, the IP Plan or

the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Commission, the result of which could have a material adverse effect on the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents.

(e) *No Material Adverse Change.* Since the date of the 2014 Audited Financial Statements, (i) no material adverse change has occurred in the status of the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents and (ii) no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Bank has received (i) certified copies of all proceedings of the Commission authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d) and (e) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Commission pursuant hereto or thereto, on which certification the Bank may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* The Bank has received all fees and expenses due and payable to the Bank and/or its legal counsel pursuant to the Fee Agreement or alternative arrangements satisfactory therefor have been made with the Bank.

(h) *Financial Statements.* The Bank has received the 2014 Audited Financial Statements, internally prepared quarterly budget reports of the Commission for the most recent fiscal quarter end and a copy of the current quarterly budgeting status report, if not previously provided.

(i) *Other Matters.* The Bank has received such other statements, certificates, agreements, documents and information with respect to the Commission and matters contemplated by this Agreement as the Bank may have requested.

The execution and delivery of this Agreement by the Bank signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to issue the Letters of Credit, the Commission represents and warrants to the Bank as follows:

Section 4.1 **Organization, Powers, Etc.** The Commission (a) is a commission of the City and County of San Francisco organized and existing under the Charter; (b) has the full legal

right, power and authority to (i) own and operate the Power Enterprise and control its properties and to carry on its business as now conducted and as contemplated to be conducted, including without limitation, by the CCA Program and the IP Plan, (ii) execute, deliver and perform its obligations under the Basic Documents and (iii) provide for the security of this Agreement and the Fee Agreement pursuant to the Charter and the Master Trust Indenture; and (c) has complied with all Laws in all matters related to such actions of the Commission as are contemplated by the CCA Program, the IP Plan and the Basic Documents.

**Section 4.2 Authorization, Absence of Conflicts, Etc.** The adoption of the CCA Program, the implementation of the IP Plan and the execution, delivery and performance by the Commission of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Commission, (b) do not and will not conflict with, or result in a violation of, any Laws, including the Charter, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Commission which violation would result in a material adverse impact on the Commission and (c) do not and will not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Commission is a party or by which the Commission or any of its property is bound which, in any case, would result in a material adverse impact on the Commission.

**Section 4.3 Binding Obligations; Security.**

(a) The Basic Documents are valid and binding obligations of the Commission (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Commission in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State, if any.

(b) The obligations of the Commission under this Agreement and under the Fee Agreement are revenue obligations and are not secured by the taxing power of the Commission or the City and are payable as to both principal and interest from, and are secured solely by a pledge of, Revenues with the priority set forth in Section 5.5(k) of the Master Trust Indenture. The Revenues constitute a trust fund for the security and payment of the interest on and principal of the obligations of the Commission under this Agreement and under the Fee Agreement.

**Section 4.4 Governmental Consent or Approval.** No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Commission for the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the Commission of the Basic Documents.

**Section 4.5 Absence of Material Litigation.** There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Commission, threatened against or affecting the Commission questioning the validity of the Charter, the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the



Commission of the Basic Documents or any proceeding taken or to be taken by the Commission or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the Commission of the Basic Documents, or which, if adversely determined, could reasonably be expected to result in any material adverse change in the financial condition, operations or prospects of the Commission, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as "*Material Litigation*").

**Section 4.6 Financial Condition.** The audited financial statements of the Power Enterprise as at and for the period ended June 30, 2014 (the "*2014 Audited Financial Statements*"), and all other financial statements of the Power Enterprise furnished to the Bank were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and are subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Bank. The 2014 Audited Financial Statements were audited by KPMG LLP. The audited financial statements of the Power Enterprise for fiscal year 2015 will be prepared by KPMG LLP or a similar qualified independent auditing firm. The data on which such financial statements and budget reports are based were true and correct. The 2014 Audited Financial Statements and the budget reports present fairly the net position of the Power Enterprise as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since June 30, 2014, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the Power Enterprise.

**Section 4.7 Incorporation of Representations and Warranties.** The representations and warranties of the Commission set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Commission makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Bank, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Bank.

**Section 4.8 Accuracy and Completeness of Information.** The IP Plan, the Basic Documents and all certificates, financial statements, documents and other written information furnished to the Bank by or on behalf of the Commission on or prior to the Closing Date in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Bank true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

**Section 4.9 No Default.**

(a) No Default or Event of Default under this Agreement has occurred and is continuing that is or would, with the passage of time or the giving of notice, or both, constitute a default by the Commission in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Basic Document to which it is a party.

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking to which the Commission is a party or which purports to be binding on the Commission or on any of its property.

Section 4.10 **No Proposed Legal Changes.** There is no amendment or, to the knowledge of the Commission, proposed amendment to the Constitution of the State, any State law or the Charter or any administrative interpretation of the Constitution of the State, any State law, or the Charter, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a material adverse effect on the CCA Program, the IP Plan or the ability of the Commission to perform its obligations under the Basic Documents.

Section 4.11 **Compliance with Laws, Etc.** The Commission is in compliance with the Investment Policy and all Laws applicable to the Commission, non-compliance with which might have a material adverse effect on the security for the obligations under this Agreement and the Fee Agreement or the validity and enforceability of the Basic Documents. In addition, no benefit plan maintained by the Commission for its employees is subject to the provisions of ERISA, and the Commission is in compliance with all Laws in respect of each such benefit plan.

Section 4.12 **Environmental Matters.** In the ordinary course of its business, the Commission conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Commission does not believe that Environmental Laws are likely to have a material adverse effect on the ability of the Commission to perform its obligations under the Basic Documents.

Section 4.13 **Regulation U.** The Commission is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14 **Liens.** The Master Trust Indenture creates a valid Lien on and pledge of the Revenues, subject only to the provisions of the Master Trust Indenture permitting the application thereof for purposes and on the terms and conditions set forth therein, of the obligations of the Commission under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Commission, the Bank or any other Person to create or perfect such Lien.

Section 4.15 **Sovereign Immunity.** The Commission is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

Section 4.16 **Usury.** The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17 **Insurance.** As of the Closing Date, the Commission maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18 **ERISA.** The Commission does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

#### Section 4.19 **Sanctions Concerns and Anti-Corruption Laws.**

(a) Neither the Commission, nor, to the knowledge of the Commission, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Commission has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## ARTICLE 5

### COVENANTS

Section 5.1 **Affirmative Covenants.** So long as any Letter of Credit and/or Obligation remains outstanding, the Commission shall perform and observe the covenants set forth below, unless the Bank otherwise consents in writing:

(a) *Accounting and Reports.* The Commission shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Bank:

(i) as soon as practicable and, in any event, within one hundred eighty (180) days after the end of each Fiscal Year of the Commission, a statement of net position of the Power Enterprise as at the end of such Fiscal Year and statements of income, changes in fund balances and cash flows for the Fiscal Year then ended, all in reasonable detail and prepared in accordance with GAAP consistently applied, accompanied by (A) a report and opinion of the Commission's independent accountants (which will be of nationally recognized standing or an independent certified public accountant otherwise acceptable to the Bank), which report and opinion will have been prepared in accordance with generally accepted auditing standards and (B) a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status

thereof and any remedial steps taken or proposed to correct such Event of Default or Default;

(ii) at the time the Commission delivers the financial statements pursuant to subsection (i) above, the independent public accountants' report on internal controls over financial reporting of the Power Enterprise;

(iii) as soon as practicable and, in any event, within forty-five (45) days after the end of each the first three fiscal quarters of the Commission, the budgetary status report for the Power Enterprise for the fiscal quarter then ended;

(iv) as soon as practicable but, in any event, within ten (10) days after the issuance thereof, copies of any prospectus, official statement, offering circular, placement memorandum or similar document, and any supplements thereto and updates and amendments thereof (including any filings made pursuant to Rule 15c2-12 under the Securities Act of 1933, as amended), that the Commission makes available in connection with the offering for sale of any bonds or notes secured by Revenues of which it is the issuer and copies of any other financial reports or other written information distributed generally to holders of bonds or notes issued by the Commission;

(v) within ten (10) days after the publication thereof, a copy of the Commission's Annual Budget for the Power Enterprise for the next Fiscal Year and such additional period as may be covered by such Annual Budget, which budget shall include all obligations due under the Basic Documents for the next Fiscal Year and such additional period as may be covered by such Annual Budget; and

(vi) with reasonable promptness, such other data regarding the financial position or business of the Power Enterprise or its property as the Bank may reasonably request from time to time.

As and to the extent that any financial statement, audit report or other filing described in this Section 5.1(a) (x) has been filed electronically in accordance with the terms thereof with any nationally recognized municipal securities information repository and with the Municipal Securities Rulemaking Board, or posted to the Commission's website, as applicable, (y) is available without charge or other restriction and (z) the Commission has provided written notice thereof to the Bank, the requirements of Section 5.1(a) hereof with respect thereto will be deemed satisfied.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Commission shall permit the Bank or any of its agents or representatives to visit and inspect any of the properties of the Commission and the other assets of the Commission, to examine the books of account of the Commission (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Commission with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Bank may reasonably request.

(c) *Compliance with Documents and Other Revenue Documents; Operation and Maintenance of Power Enterprise.*

(i) The Commission shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing obligations of the Commission secured by Revenues and owing to a bank, investment bank, broker dealer or other similar financial institution or any affiliate thereof (the foregoing documents (exclusive of the Basic Documents) being referred to herein as “*Other Revenue Documents*”). By the terms of this Agreement, the Bank is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement) and in each Other Revenue Document, and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. The Commission shall take, or cause to be taken, all such actions as may be reasonably requested by the Bank to strictly enforce the obligations of the other parties to any of the Basic Documents and any Other Revenue Documents, as well as each of the covenants set forth therein.

(ii) The Commission covenants that it will maintain and preserve the Power Enterprise in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal water and power systems of like size and character. The Commission will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the Power Enterprise, so that at all times business carried on in connection with the Power Enterprise shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the Power Enterprise in an efficient and economical manner and shall not commit or allow any waste with respect to the Power Enterprise.

(d) *Defaults.* The Commission shall notify the Bank of any Default or Event of Default of which the Commission has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Commission has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Commission shall comply in all material respects with all Laws binding upon or applicable to the Commission (including Environmental Laws) and material to the Basic Documents.

(f) *Litigation Notice.* The Commission shall promptly give notice to the Bank of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of the Commission to implement the IP Plan or perform its obligations under any Basic Document.

(g) *Bank Agreements.* In the event that Commission shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies (“*Improved Provisions*,” which for the avoidance of doubt does not include pricing, termination fees and

provisions related to interest rates but does include improved term-out provisions), then the Commission shall provide the Bank with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Bank shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Commission shall promptly cooperate with the Bank to enter into an amendment of this Agreement to include such Improved Provisions.

(h) *Further Assurances.* The Commission shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Bank, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(i) *Notices.* The Commission shall promptly furnish, or cause to be furnished, to the Bank (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any Other Revenue Document, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other Power Enterprise Debt which are not restricted or prohibited from being shared with the Bank under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed substitution of any Letter of Credit, (iv) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Commission has knowledge, which could reasonably be expected to have a material adverse effect on the Commission’s ability to perform its obligations under the Basic Documents or to result in a material adverse effect on the enforceability or validity of any Basic Document.

(j) *Maintenance of Insurance.* The Commission shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however,* that the Commission may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Bank, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Commission. The Commission shall, upon request of the Bank, furnish evidence of such insurance to the Bank. The Commission shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the Power Enterprise, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the Power Enterprise.

(k) *Preservation of Security.* The Commission shall take any and all actions necessary to preserve the pledge of Revenues set forth in the Master Trust Indenture.

(l) *Rates.* The Commission shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the Power Enterprise, which shall be fair and nondiscriminatory and adequate to provide the Commission with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts the Commission is obligated to pay or set aside from the Revenues by law or contract in such Fiscal Year, including, without limitation and without duplication, amounts payable to the Bank under this Agreement and the Fee Agreement.

(m) *Budget.* The Commission shall include in each annual budget of the Commission all amounts reasonably anticipated to be necessary to pay all obligations due to the Bank hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, the Commission shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Bank during the course of the Fiscal Year to which such annual budget applies.

(n) *Payment of Taxes, Etc.* The Commission shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Commission on account of the Power Enterprise or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Commission to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Commission shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the Power Enterprise or any part thereof.

(o) *Notice of Rating Change.* The Commission shall use its best efforts to notify the Bank as soon as practicable of any suspension, reduction or withdrawal in the senior long-term rating of any Power Enterprise Debt.

**Section 5.2 Negative Covenants.** So long as any Letter of Credit and/or Obligation remains outstanding, the Commission shall not, unless the Bank otherwise consents in writing:

(a) *Amendments.* Amend, supplement or modify the Master Trust Indenture, except that the Commission may amend, supplement or modify the Master Trust Indenture in a manner not having an adverse effect on (i) the ability of the Commission to pay when due amounts owing to the Bank or any Participant under this Agreement or the Fee Agreement or (ii) the pledge of Revenues or the priority of payments from Revenues. The Commission agrees to deliver to the Bank copies of all such amendments, modification, supplements or other changes at least ten (10) Business Days prior to the effective date of any such amendment, modification, supplement or other change. The Bank shall, within five (5) Business Days, inform the Commission in writing if, in its reasonable discretion, such amendment, modification, supplement or other change requires the prior written consent of the Bank in accordance with this Section 5.2(a). Notwithstanding the foregoing, the Commission, without the Bank's prior written consent, may perform ministerial duties, make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, as the Commission may deem necessary or desirable, in any case which do not materially adversely affect the security, rights or remedies of the Bank under any Basic Document.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the Power Enterprise or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a body politic and corporate and a political subdivision of the State or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by the Master Trust Indenture.

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Commission under any Basic Document or the transactions contemplated thereby.

(g) *Power Enterprise.* Construct, operate or maintain, and shall not within the scope of its powers permit any other public or private corporation, political subdivision, district or agency or any Person whatsoever to construct, operate or maintain, within the City or any part thereof, any system or utility competitive with the Power Enterprise. The Commission shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Power Enterprise to pay the fees, rates and charges applicable to the services and facilities furnished by the Power Enterprise. The Commission shall not provide any service of the Power Enterprise free of charge to any Person, except (i) for free use by the City and its agencies, (ii) to the extent that any such free use is required by the terms of any existing contract or agreement and (iii) for incidental insignificant free use so long as such free use does not prevent the Commission from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the Power Enterprise with any other entity or enterprise, unless and until the Commission has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Revenues set forth in the Master Trust Indenture to be no longer valid. If the Commission does effect such a merger, the Commission shall provide written notice thereof to the Bank and shall deliver a copy of the aforementioned opinion to the Bank.

(i) *Use of Proceeds.* Use the proceeds of any credit extension (including Drawings and Term Loans), whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System.



## ARTICLE 6

### DEFAULTS

Section 6.1 **Events of Default and Remedies.** If any of the following events occurs, each such event will be an “*Event of Default*”:

(a) the Commission fails to pay, or cause to be paid, as and when due, (i) any Reimbursement Obligation or (ii) any Obligation (other than a Reimbursement Obligation) hereunder or under the Fee Agreement and, in such case, such failure continues for five (5) Business Days;

(b) any representation or warranty made by or on behalf of the Commission in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Commission defaults in the due performance or observance of any of the covenants set forth in Section 5.1(c), 5.1(d), 5.1(g), 5.1(k), 5.1(l) or 5.2 hereof;

(d) the Commission defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Commission or the City and County of San Francisco, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Commission or the City and County of San Francisco or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Commission or the City and County of San Francisco and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest

on any Debt of the Commission by the Commission or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Charter or any other Basic Document at any time for any reason ceases to be valid and binding on the Commission as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Commission, or the Commission publicly contests the validity or enforceability of any obligation to pay Power Enterprise Debt, including, without limitation, the Master Trust Indenture, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Charter, any other Basic Document or any operative document related to Power Enterprise Debt, including, without limitation, the Master Trust Indenture;

(i) dissolution or termination of the existence of the Commission;

(j) the Commission (i) defaults on the payment of the principal of or interest on any Power Enterprise Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Power Enterprise Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Power Enterprise Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Power Enterprise Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Power Enterprise Debt;

(k) the Commission (i) defaults on the payment of the principal of or interest on any Debt (other than Power Enterprise Debt) aggregating in excess of \$10,000,000 beyond the period of grace, if any, provided in the instrument or agreement under which such Debt (other than Power Enterprise Debt) was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Debt (other than Power Enterprise Debt) aggregating in excess of \$10,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt (other than Power Enterprise Debt);

(l) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$10,000,000 are entered or filed against the Commission or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(m) (i) the Commission shall default in the due performance or observance of any material term, covenant or agreement contained in the Master Trust Indenture (and the same shall not have been cured within any applicable cure period or (ii) any “event of default” under the Master Trust Indenture has occurred;

(n) either of Fitch and S&P (i) downgrades its long-term unenhanced rating of any senior lien Power Enterprise Debt of the Commission to below “A-” (or its equivalent), “A3” (or its equivalent), or “A-” (or its equivalent), respectively, and such rating remains below “A-” (or its equivalent), “A3” (or its equivalent), or “A-” (or its equivalent) for sixty (60) days, or (ii) suspends or withdraws its rating of the same; or

(o) the passage of any Law has occurred which could reasonably be expected to have a material adverse effect on the Commission’s ability to perform its obligations under this Agreement or the other Basic Documents or to result in a material adverse effect on the enforceability or validity of this Agreement or any of the other Basic Documents.

Section 6.2 **Remedies.** Upon the occurrence of any Event of Default the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) declare all Obligations (including, without limitation, all Terms Loans) to be immediately due and payable, whereupon the same are immediately due and payable without any further notice of any kind, which notice is waived by the Commission; *provided, however*, that in the case of an Event of Default described in Section 6.1(e), (f) or (g) hereof, such acceleration will automatically occur (unless such automatic acceleration is waived by the Bank in writing); or

(b) (i) instruct the Commission to remit all Revenues received by it from time to time pursuant to Section 5.5(k) of the Master Trust Indenture to the Bank for deposit into a cash collateral account to be established and maintained by the Bank until the amount on deposit therein is equal to the aggregate then undrawn and unexpired amount of all outstanding Letters of Credit and (ii) to apply amounts on deposit in the cash collateral account to the repayment of Unpaid Drawings and other Obligations; *provided, however*, if amounts on deposit in the cash collateral account at any time exceed the aggregate then undrawn and unexpired amount of all outstanding Letters of Credit and if no Obligations then due remain unpaid, such excess shall be returned to the Commission by the Bank; or

(c) pursue any rights and remedies it may have under the Basic Documents; or

(d) pursue any other action available at law or in equity.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 **Amendments, Waivers, Etc.** No amendment or waiver of any provision of this Agreement, or consent to any departure by the Commission therefrom, will in any event be effective unless the same is in writing and signed by the Bank and an Authorized Representative of

the Commission, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

**Section 7.2 Notices.** All notices and other communications provided for hereunder must be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Commission:

City and County of San Francisco  
Public Utilities Commission  
Attention: Chief Financial Officer  
525 Golden Gate Avenue, 13<sup>th</sup> Floor  
San Francisco, California 94102  
Telephone: (415) 554-3155  
Facsimile: (415) 554-3161

(b) if to the Bank:

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 8th Floor  
Mail Code: NY1-M076  
New York, New York 10179  
Attention: James Millard, Executive Director, Public  
Finance -- Credit Origination  
Telephone: (212) 270-2198  
Telecopy: (917) 456-3538  
Email: james.g.millard@jpmorgan.com

And, for compliance-related items, with a copy to:

[public.finance.notices@jpmchase.com](mailto:public.finance.notices@jpmchase.com)

In the case of communications to the Bank with respect to Drawings under the Letter of Credit:

JPMorgan Chase Bank, N.A.  
JPM-Delaware Loan Operations  
500 Stanton Christiana Road, Ops 2, Floor 03  
Newark, DE 19713  
Attention: Lorie Paulin  
Telephone: 302-634-8789  
Telecopy: 302-634-8459  
Email/Fax: [12012443557@tls.ldsprod.com](mailto:12012443557@tls.ldsprod.com)

In the case of payments to the Bank:

JPMorgan Chase Bank, N.A.  
ABA: 021-000-021

A/C: 9008113381H2178  
Reference: SFPUC CleanPowerSF

or such other account as the Bank may from time to time designate in writing to the Commission,

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that requests for Drawings submitted to the Bank will not be effective until received by the Bank.

### Section 7.3 **Survival of Covenants; Successors and Assigns.**

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Drawing or Term Loan hereunder and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Commission which are contained in this Agreement will inure to the benefit of the successors and assigns of the Bank. The Commission may not transfer its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Letter with the prior written consent of the Commission (which consent may not be withheld unreasonably), *provided* that the Bank shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Commission and the Bank, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement; *provided, further*, that the Commission's liability to any Participant will not in any event exceed that liability which the Commission would owe to the Bank but for such participation.

(b) Notwithstanding the foregoing, the Bank will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Bank's rights and benefits and obligations under this Agreement, the Fee Agreement and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of the Commission. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Commission may continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Commission agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Bank, *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof.

Section 7.4 **Unconditional Obligations.** The obligations of the Commission under this Agreement and under the Fee Agreement are absolute, unconditional, irrevocable and payable strictly in accordance with the terms of the Basic Documents under all circumstances whatsoever, including, without limitation, the following:

- (a) any lack of validity or enforceability of any Basic Document or any Letter of Credit;
- (b) any amendment or waiver of or any consent to departure from the terms of any Basic Document to which the Bank has not consented in writing;
- (c) the existence of any claim, counterclaim, set-off, recoupment, defense or other right which any Person may have at any time against the Bank, the Commission, any PPA Counterparty or any other Person, whether in connection with any Basic Document or any transaction related thereto;
- (d) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (e) payment by the Bank under any Letter of Credit against presentation of a draft or certificate which does not comply with the terms of such Letter of Credit; and
- (f) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing.

Section 7.5 **Liability of Bank; Indemnification.**

(a) To the extent permitted by the law of the State, the Commission assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude the Commission from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Bank nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the Drawings or the Term Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Bank against presentation of requests for Drawings or requests which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that the Commission is not required to indemnify the Bank for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Bank.

(b) To the extent permitted by the law of the State, the Commission indemnifies and holds harmless the Bank from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Bank may incur (or which may be claimed against the Bank by any Person whatsoever)

by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that the Commission is not required to indemnify the Bank to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Bank's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Bank is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Commission, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Commission shall not assert, and waives, any claim against the Bank, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Letter of Credit, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Commission under this Section 7.5 will survive the termination of this Agreement.

**Section 7.6 Expenses.** Upon receipt of a written invoice, the Commission shall promptly pay (i) the reasonable fees and expenses of counsel to the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (*provided* that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Bank with respect to advising the Bank as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Bank. In addition, and notwithstanding the foregoing, the Commission agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the Commission hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Commission under this Section 7.6 will survive the termination of this Agreement.

**Section 7.7 No Waiver; Conflict.** Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this

Agreement and any other Basic Documents, this Agreement will control solely as between the Commission and the Bank.

Section 7.8 **Modification, Amendment, Waiver, Etc.** No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9 **Dealings.** The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Commission and/or any PPA Counterparty regardless of the capacity of the Bank hereunder or under any Letter of Credit.

Section 7.10 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

Section 7.12 **Table of Contents; Headings.** The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13 **Entire Agreement.** This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14 **Governing Law Waiver of Jury Trial.**

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); *PROVIDED*, THAT THE OBLIGATIONS OF THE COMMISSION HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.



(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**Section 7.15 Governmental Regulations.** The Commission shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Commission is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Bank from making any advance or extension of credit to the Commission or from otherwise conducting business with the Commission and (b) ensure that the proceeds of Drawings under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Commission shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

**Section 7.16 USA PATRIOT Act.** The Bank notifies the Commission that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Commission, which information includes the name and address of the Commission and other information that will allow the Bank to identify the Commission in accordance with the Act. The Commission agrees to provide such documentary and other evidence of the Commission’s identity as may be requested by the Bank at any time to enable the Bank to verify the Commission’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

**Section 7.17 Electronic Transmissions.** The Bank is authorized to accept and process any amendments, transfers, assignments of proceeds, Drawings, consents, waivers and all documents relating to the Letters of Credit which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated

telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Commission. The Bank may, but shall not be obligated to, require authentication of such electronic transmission or that the Bank receives original documents prior to acting on such electronic transmission.

Section 7.18 **Assignment to Federal Reserve Bank.** The Bank may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the Commission to the Bank in accordance with the terms of this Agreement will satisfy the Commission's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Bank from its obligations hereunder.

Section 7.19 **City Requirements.** The Bank agrees to the City's contracting requirements, as provided in Exhibit C attached hereto.

Section 7.20 **Arm's Length Transaction.** The transaction described in this Agreement is an arm's length, commercial transaction between the Commission and the Bank in which: (i) the Bank is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Commission; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Commission with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Commission on other matters); (iv) the only obligations the Bank has to the Commission with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Bank is not recommending that the Commission take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Commission should discuss the information contained herein with the Commission's own legal, accounting, tax, financial and other advisors, as the Commission deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Commission and the Bank have duly executed this Agreement as of the date first written above.

PUBLIC UTILITIES COMMISSION OF THE  
CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Name: Harlan L. Kelly, Jr.  
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney of the City and  
County of San Francisco

By: \_\_\_\_\_  
Name: Mark D. Blake  
Title: Deputy City Attorney

ACKNOWLEDGED:

\_\_\_\_\_  
Name: Nadia Sesay  
Title: Director of Public Finance of the City  
and County of San Francisco

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

Name: James G. Millard

Title: Executive Director