

File No. 100269

Committee Item No. 1

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 3/31/10

Board of Supervisors Meeting

Date \_\_\_\_\_

### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

### OTHER

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Completed by: Gail Johnson

Date 3/26/10

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Resolution Approving Commercial Paper Reimbursement Agreement and Dealer Agreement]

2  
3 **Resolution of the City and County of San Francisco approving the form of**  
4 **Reimbursement Agreement or Reimbursement Agreements and the form of Dealer**  
5 **Agreement in connection with its Tax-Exempt and Taxable Lease Revenue Commercial**  
6 **Paper Certificates of Participation, authorizing the execution and delivery of one or**  
7 **more of such Reimbursement Agreement and the execution and delivery of one or**  
8 **more Dealer Agreements and authorizing other related actions.**

9  
10 WHEREAS, Under Resolution 85-09, this Board has previously approved execution  
11 and delivery of Tax-Exempt and Taxable Lease Revenue Commercial Paper Certificates of  
12 Participation (collectively, the "Commercial Paper Certificates"); and,

13 WHEREAS, Under Resolution 85-09, the Controller and the Director of the Office of  
14 Public Finance may appoint one or more banks (each, a "Bank") to provide liquidity for the  
15 payment of principal of and interest on the Commercial Paper Certificates under irrevocable  
16 direct pay letters of credit (each, a "Credit Facility") issued by pursuant to the terms of  
17 reimbursement agreements (each, a "Reimbursement Agreement") each among the Trustee,  
18 the City, and the applicable Bank; and,

19 WHEREAS, In order to carry out the program the City will be required to appoint one or  
20 more commercial paper dealers pursuant to the terms of dealer agreements (each, a "Dealer  
21 Agreement"

22 WHEREAS, This Board has duly considered such transactions and wishes at this time  
23 to approve said transactions in the public interests of the City; now, therefore, be it,

24 **RESOLVED**, By the Board of Supervisors of the City and County of San Francisco as  
25 follows:

1           Section 1. Approval of Reimbursement Agreement. This Board hereby approves the  
2 form of the Reimbursement Agreement, in the form on file with the Clerk of the Board,  
3 together with such additions thereto and changes therein as the Controller shall deem  
4 necessary, desirable or appropriate upon consultation with the City Attorney, the execution of  
5 which by the City shall be conclusive evidence of the approval of any such additions and  
6 changes. The Controller and the Director of the Office of Public Finance (each, a "Designated  
7 Officer"), each acting alone, are hereby authorized to execute the final form of the  
8 Reimbursement Agreement or Reimbursement Agreements, with either Bank or each Bank,  
9 for and in the name of and on behalf of the City. This Board hereby authorizes the  
10 performance by the City of its obligations under the Reimbursement Agreement or  
11 Reimbursement Agreements.

12           Section 2. Terms Approved by this Board. In accordance with Resolution 85-09, the  
13 (a) the term of each Credit Facility will not be less than one (1) year, (b) the interest rate paid  
14 in any year on any Bank Bond or draw on a Credit Facility will not exceed 12% per annum  
15 (including any payments to the Bank pursuant to section 2.15 of the Reimbursement  
16 Agreement), and the amortization of any Bank Bond or loan resulting from a draw on a Credit  
17 Facility will not be less than three (3) years, (c) the commitment fee for each Credit Facility will  
18 not exceed 2% per year, and (d) the form of Reimbursement Agreement contains such  
19 customary indemnity as the Banks require, and the City Attorney has approved.

20           Section 3. Approval of Dealer Agreement. This Board hereby approves the form of the  
21 Dealer Agreement, in the form on file with the Clerk of the Board, together with such additions  
22 thereto and changes therein as the Controller shall deem necessary, desirable or appropriate  
23 upon consultation with the City Attorney, the execution of which by the City shall be  
24 conclusive evidence of the approval of any such additions and changes. The Controller and  
25

1 the Director of the Office of Public Finance (each, a "Designated Officer"), each acting alone,  
2 are hereby authorized to execute the final form of the Dealer Agreement or Dealer  
3 Agreements, with such commercial paper dealers as the Designated Officer shall appoint  
4 based upon experience and cost effectiveness, for and in the name of and on behalf of the  
5 City. This Board hereby authorizes the performance by the City of its obligations under the  
6 Dealer Agreement or Dealer Agreements.

7  
8 Section 4. Official Actions. The Controller, the Director of the Office of Public Finance,  
9 the Clerk of the Board and any and all other officers of the City are hereby authorized, for and  
10 in the name of and on behalf of the Authority, to do any and all things and take any and all  
11 actions, including execution and delivery of any and all documents, assignments, certificates,  
12 requisitions, agreements; notices, consents, instruments of conveyance, warrants and  
13 documents, as may be required by the Reimbursement Agreements or Dealer Agreement.  
14 Any authority delegated under this Resolution to a specified official may also be exercised by  
15 either the Controller or by the specified official's authorized designee.

16  
17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19  
20 By: \_\_\_\_\_

21 MARK D. BLAKE  
22 Deputy City Attorney  
23  
24  
25



CITY AND COUNTY



OF SAN FRANCISCO

**BOARD OF SUPERVISORS**

**BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642  
FAX (415) 252-0461

March 25, 2010

**TO:** Budget and Finance Committee  
**FROM:** Budget and Legislative Analyst  
**SUBJECT:** March 31, 2010 Budget and Finance Committee Meeting

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**Item 1**  
**File 10-0269**

**Department(s):**  
Controller's Office of Public Finance (OPF)

## EXECUTIVE SUMMARY

### Legislative Objective

- Resolution approving the form of the (a) Letter of Credit and Reimbursement Agreement, and (b) a Dealer Agreement, two of the financing documents necessary to issue Commercial Paper debt under the City's \$150,000,000 Commercial Paper program previously approved by the Board of Supervisors.

### Key Points

- On March 17, 2009, the Board of Supervisors (a) approved the creation of a Commercial Paper Program which allows for a maximum amount of outstanding Commercial Paper of \$150,000,000 (File 09-0917), (b) approved various financing documents, and (c) authorized the Director of Public Finance to negotiate the form of two additional financing documents, specifically the Letter of Credit and Reimbursement Agreement and the Dealer Agreement, subject to final approval by the Board of Supervisors. The proposed resolution would approve the final form of the Reimbursement Agreement and Dealer Agreement.
- In File 09-0917, the Board of Supervisors required that the Letter of Credit and Reimbursement Agreement (a) have a term of at least one year, (b) not impose fees of more than 2.0 percent, and (c) not cause the City to be charged interest costs at a rate of more than 12.0 percent per year.
- According to Ms. Nadia Sesay, Director of Public Finance, due to the current financial condition, banks which provide credit support through Letter of Credit and Reimbursement Agreements are not willing to limit interest rate which would be charged to the City. The proposed resolution would eliminate the previously required cap on the interest rate which would be charged to the City, and instead require a limit of 12.0 percent on the interest rate which is used to calculate annual interest payments made by the City to the bank.
- The proposed Letter of Credit and Reimbursement Agreement meet the revised requirement in the proposed resolution by deferring the payment of interest charged at rates above 12.0 percent to a time when interest rates are below 12.0 percent, such that interest payments made by the City to the bank in any year would not be paid at a rate of more than 12.0 percent per year.

### Fiscal Impact

- The services provided under the proposed Letter of Credit and Reimbursement Agreement and the proposed Dealer Agreement would cost up to \$1,325,000 per year, and would be paid by the issuance of long term debt. These costs were anticipated at the time the Board of Supervisors approved the Commercial Paper Program.

### Recommendation

- Because the proposed resolution would eliminate the requirement, as previously approved by the Board of Supervisors, to cap the interest rate charged to the City at 12.0 percent under Letter of Credit and Reimbursement Agreements, approval is a policy matter for the Board of Supervisors.



## BACKGROUND

On March 17, 2009, the Board of Supervisors approved the creation of a Commercial Paper Program which allows for a maximum amount of outstanding Commercial Paper of \$150,000,000 (File 09-0197). According to Ms. Nadia Sesay, Director of the Controller's Office of Public Finance (OPF), Commercial Paper is short term debt which is used as interim financing and issued in anticipation of the issuance of previously authorized, but not yet issued, long term debt. Ms. Sesay stated that the use of commercial paper can reduce overall borrowing costs associated with the issuance of long term debt because commercial paper interest rates are typically lower than long term interest rates.

File 09-0197, in addition to approving a number of supporting financial documents, including the Trust Agreement, the Site Lease and Site Sublease<sup>1</sup>, and the Delivery and Paying Agent Agreement, the Board of Supervisors authorized the Director of Public Finance to determine the form of the Reimbursement Agreement and Dealer Agreement, subject to subsequent approval by the Board of Supervisors. A description of each agreement and any requirements set forth by the Board of Supervisors for such agreements are described below.

### *Letter of Credit and Reimbursement Agreement*

A Letter of Credit and Reimbursement Agreement is an agreement between the City and a bank which (a) provides credit support for the City's commercial paper, which is necessary to sell the City's commercial paper, such that if the City is unable to make required payments to Commercial Paper investors, the bank shall make such payments on behalf of the City, and (b) sets forth the terms under which the City reimburses the bank for those payments made by the bank to the City's commercial paper investors on behalf of the City. The Board of Supervisors, in File 09-0197, required that the Letter of Credit and Reimbursement Agreement (a) have a term of at least one year, (b) not impose a fee on the City of more than 2.0 percent per year on the amount supported by the Letter of Credit and Reimbursement Agreement, and (c) not charge an interest rate above 12.0 percent per year to the City for any payments made by the bank on behalf of the City.

### *Dealer Agreement*

According to Ms. Sesay, the Dealer Agreement sets forth the terms for the Commercial Paper Dealer, who is responsible for the marketing and selling the Commercial Paper on behalf of the City. The Board of Supervisors, in File 09-0197, did not include any minimum requirements for the Dealer Agreement.

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<sup>1</sup> The approved Commercial Paper Program uses City property as security for the commercial paper under an asset transfer procedure. Under such an asset transfer procedure, the City leases property to a Trustee in consideration for the proceeds of any Commercial Paper issued, and the Trustee subsequently subleases the same property back to the City in consideration for rent payments equal to the debt service due on the commercial paper.

**DETAILS OF PROPOSED LEGISLATION**

The Director of Public Finance is requesting (a) revision to the requirements for the Letter of Credit and Reimbursement Agreement previously approved by the Board of Supervisors in File 09-0197, and (b) approval of the final form of the Letter of Credit and Reimbursement Agreement and the Dealer Agreement.

*Letter of Credit and Reimbursement Agreement*

The proposed form of the Letter of Credit and Reimbursement Agreement includes the terms under which (a) the bank would make payments to Commercial Paper investors on behalf of the City if the City was unable to make required payments, and (b) the City would reimburse the bank for any payments made by the bank to the City's Commercial Paper investors on behalf of the City. According to Ms. Sesay, subsequent to a competitive process, the Controller's Office of Public Finance (OPF) has identified two banks which OPF intends to enter into Letter of Credit and Reimbursement Agreements, (a) US Bank, National Association, and (b) JP Morgan Chase Bank, National Association. Ms. Sesay anticipates procuring two \$50,000,000 Letter of Credit and Reimbursement Agreements, such that the City can provide credit support for a total of \$100,000,000<sup>2</sup> in Commercial Paper. The proposed form of the Letter of Credit and Reimbursement Agreement meets two of the three requirements previously established by the Board of Supervisors in File 09-0197, as described below:

Requirement 1: The Letter of Credit and Reimbursement Agreements must have a term of at least one year. The proposed form of the Letter of Credit and Reimbursement Agreement meets this requirement because, according to Ms. Sesay, OPF anticipates awarding the two Letter of Credit and Reimbursement Agreements with terms of three years for each agreement. At the end of each three year agreement, Ms. Sesay stated that OPF will undergo a new competitive process for the Letter of Credit banks.

Requirement 2: The Letter of Credit and Reimbursement Agreements must not impose a fee of more than 2.0 percent. The proposed form of the Letter of Credit and Reimbursement Agreement meets this requirement because, the proposed form of the Letter of Credit and Reimbursement Agreement imposes an annual fee on the City of 1.25 percent of the full amount of the credit support made available by the bank, such that the cost of procuring the two \$50,000,000 Letter of Credit and Reimbursement Agreements would be \$1,250,000 per year ( $\$50,000,000 \times 2 \times .0125$ ).

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<sup>2</sup> As discussed above, the Board of Supervisors approved a \$150,000,000 Commercial Paper Program. Ms. Sesay stated that OPF only sought \$100,000,000 in Letter of Credit and Reimbursement Agreement support because she does not anticipate having more than \$100,000,000 in outstanding Commercial Paper in the near future. Ms. Sesay further noted that if additional Letter of Credit and Reimbursement Agreements are needed to issue additional Commercial Paper, OPF will use the same form of the proposed Letter of Credit and Reimbursement Agreement. Execution of any such additional agreements necessary to support the entire authorized amount of \$150,000,000 in Commercial Paper would not be subject to further Board of Supervisors review unless the cost of such additional Letter of Credit and Reimbursement Agreements exceed the \$1,000,000 cost threshold established in San Francisco Charter Section 9.118.

Requirement 3: The Letter of Credit and Reimbursement Agreements must not charge interest to the City for payments made by the bank to commercial paper investors on behalf of the City of more than 12.0 percent. The proposed form of the Letter of Credit and Reimbursement Agreement does not meet this requirement as previously set forth by the Board of Supervisors in File 09-0197 because the proposed form of the Letter of Credit and Reimbursement Agreement would charge the City interest based on a calculation<sup>3</sup> which is not subject to a maximum interest rate.

However, the proposed resolution would eliminate this requirement for an interest rate cap to allow for the proposed Letter of Credit and Reimbursement Agreement which would allow interest to be charged to the City at a rate above 12.0 percent, but would defer that amount of interest charges attributable to the portion of the interest rate in excess of 12.0 percent to a time when interest rates fall below 12.0 percent. According to Ms. Sesay, any amount of deferred interest would not result in additional interest charges to the City, such that deferred interest would not result in higher costs to the City when compared to not having the City defer interest.

### *Dealer Agreement*

The proposed form of the Dealer Agreement describes the duties of the Commercial Paper Dealer which include the solicitation and sale of the City's Commercial Paper. According to Ms. Sesay, OPF has identified a Dealer, JP Morgan Chase Bank, National Association, through a competitive process and, subsequent to Board of Supervisors approval of the proposed resolution, intends to award a Dealer Agreement to JP Morgan Chase Bank, National Association with a term of at least one year and a cost of approximately 0.075 percent per year of the amount of Commercial Paper outstanding, such that if the City issues \$100,000,000<sup>4</sup> in Commercial Paper, the City would pay JP Morgan Chase Bank, National Association \$75,000 per year ( $\$100,000,000 \times .00075$ ).

## **FISCAL IMPACT**

The proposed form of the Letter of Credit and Reimbursement Agreement would impose a fee of 1.25 percent<sup>5</sup> of the full amount of the credit support provided under the agreement, such that the cost of the two \$50,000,000 Reimbursement Agreements would be \$1,250,000 per year ( $\$50,000,000 \times 2 \times .0125$ ). The City could also be charged interest under the terms of the proposed form of the Letter of Credit and Reimbursement Agreement if the bank makes payments to commercial paper investors on behalf of the City. The amount of such interest costs would be dependent on (a) the amount of payments made by the bank on behalf of the

<sup>3</sup> The annual interest rate would be the higher of (a) the Prime Rate plus 1.50%, (b) the Federal Funds Rate plus 2.00%, or (c) 7.50%.

<sup>4</sup> Although the Board of Supervisors authorized \$150,000,000, as discussed above in Footnote 2, OPF intends to issue up to \$100,000,000 in Commercial Paper in the near future.

<sup>5</sup> The Reimbursement Agreement also allows for a 0.10 percent increase in the fee amount for every rating downgrade should the City's General Obligation Bond rating falls below a rating of Aa3/AA- (the current rating is Aa2/AA).

City, (b) the interest rate at the time the bank makes a payment on behalf of the City, and (c) the time between when the bank makes a payment on behalf of the City and the time when the City reimburses the Letter of Credit bank.

The proposed form of the Dealer Agreement would impose a fee on the City of 0.075 percent of the total amount of outstanding Commercial Paper, such that if the City issues the entire authorized \$100,000,000 of Commercial Paper, the City would pay the Commercial Paper Dealer \$75,000 per year ( $\$100,000,000 \times .00075$ ).

The total fiscal impact of the two proposed agreements would be up to \$1,325,000, including (a) \$1,250,000 under the proposed Letter of Credit and Reimbursement Agreements, and (b) \$75,000 under the proposed Dealer Agreement. This fiscal impact calculation does not include any interest costs which might be charged to the City as the result of reimbursing the bank for payments made to commercial paper investors on behalf of the City.

The cost of the Letter of Credit and Reimbursement Agreement and Dealer Agreement would be paid from the future proceeds of long-term debt issuances, which such issuances subject to Board of Supervisors approval.

## POLICY CONSIDERATIONS

### **The Letter of Credit and Reimbursement Agreement does not cap interest charges at 12.0 percent, as previously required by the Board of Supervisors in File 09-0197.**

Although OPF requested an interest rate cap of 12.0 percent during the competitive bidding process, no qualified bank offered to provide an interest rate cap because, according to Ms. Sesay, as stated in the attached memorandum (Attachment), "due to present market conditions, banks are unwilling to accommodate an absolute cap of 12% interest rates." Ms. Sesay cited the Letters of Credit acquired after the 2008 financial crisis by the Public Utilities Commission and the San Francisco International Airport to support their respective debt programs. Similar to the request to eliminate a cap on interest charged to the City, the PUC and the Airport were not able to include an interest rate cap in their respective Letters of Credit.

Ms. Sesay noted that current interest rates on commercial paper are approximately 0.30 percent, and it is unlikely that interest rates would exceed 12.0 percent unless major disruptions in the financial markets occur, such as those which occurred in the fall of 2008. Ms. Sesay further noted that should interest rates for short term debt become unattractive, the OPF would simply issue the previously approved long term debt and refund the outstanding Commercial Paper.

The Budget and Legislative Analyst notes that while the likelihood of interest rates exceeding 12.0 percent may be low, limiting the City's risk of high interest rates due to unusual financial markets is precisely the benefit of such an interest rate cap.

**Although the City would be charged interest according to a formula which might exceed 12.0 percent, interest charges over 12.0 percent would be deferred until interest rates drop below 12.0 percent.**

According to terms of the proposed Letter of Credit and Reimbursement Agreement, should the formula driven interest rate exceed 12.0 percent, the City will make payments to the bank based on a 12.0 percent interest rate, with interest in excess of 12.0 percent deferred until such time that the formula driven interest rate drops below 12.0 percent. After interest rate drops below 12.0 percent, the City would continue making payments at the 12.0 percent rate, with the excess payment used to repay the deferred interest, until all deferred interest is repaid.

The Budget and Legislative Analyst notes that deferring interest payments above 12.0 percent does not meet the requirement previously set forth by the Board of Supervisors in File 09-0197 to cap overall interest charges to 12.0 percent, but merely spreads the interest costs above 12.0 percent over time.

**California Government Code Section 53531 states that “bonds may bear interest at a coupon rate or rates as determined by the legislative body in its discretion but not to exceed 12 percent per year”.**

According to Ms. Sesay, although the interest rate limit imposed by Section 53531 of the State’s Government Code applies to the actual debt instruments of the City, such as bonds and the subject commercial paper, this State-required limit does not apply to Reimbursement Agreements.

## **RECOMMENDATION**

Because the proposed resolution would eliminate the requirement, as previously approved by the Board of Supervisors, to cap the interest rate charged to the City at 12.0 percent under Letter of Credit and Reimbursement Agreements, approval is a policy matter for the Board of Supervisors.



**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**

**Ben Rosenfield**  
**Controller**

**Monique Zmuda**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors

**FROM:** Nadia Sesay, Director of Public Finance *NS*

**SUBJECT:** Resolution Approving the Form of Letter of Credit and Reimbursement Agreement and Dealer Agreement

**DATE:** Tuesday, March 9, 2010

In connection with the City's proposed commercial paper program and in order to issue City & County of San Francisco commercial paper, the Controller's Office of Public Finance (OPF) respectfully requests consideration of the attached resolution (the "Resolution") approving the forms of Letter of Credit and Reimbursement Agreements and Dealer Agreement.

**Background:**

In March 2009, the Board adopted Resolution No. 85-09 (the "Prior Resolution") authorizing the establishment of a not-to-exceed \$150.00 million of Tax-Exempt and Taxable Lease Revenue Commercial Paper Certificates of Participation Program (the "CP Program"). Under the proposed CP Program, City and County of San Francisco Tax-Exempt Lease Revenue Commercial Paper Certificates of Participation, Series 1 and City and County of San Francisco Taxable Lease Revenue Commercial Paper Certificates of Participation, Series 1-T (together, the "CP COPs") will be issued from time to time to provide interim financing in connection with the acquisition, improvement, renovation, and construction of real property and the acquisition of capital equipment and vehicles, with prior approval of such projects and expenditures by the Board and the Mayor. The Prior Resolution also approved forms of the Trust Agreement, Delivery & Paying Agent Agreement, Sublease, and Site Lease, all of which are on file with the Clerk of the Board.

**Reimbursement Agreement:**

The Prior Resolution authorized the Controller and the Director of Public Finance to negotiate with a letter of credit bank(s) (the "Banks") for the execution of a Reimbursement Agreement and/or other credit agreement with the Banks, within financing parameters established in the Prior Resolution. OPF selected via a competitive bidding process and is negotiating currently with U.S. Bank, N.A. and J.P. Morgan Chase Bank, N.A. as the Banks to issue the letter of credit

to provide liquidity support for the CP program.

The Resolution approves the form of Reimbursement Agreement that provides for an Irrevocable Letter(s) of Credit (the "Letter of Credit") in the maximum available amount of \$100.00 million (subject to increases at the discretion of the City and by mutual agreement with the Banks up to the not-to-exceed amount of \$150.00 million) that may be drawn upon by the City in respect of principal and actual interest due on any CP COPs executed and delivered pursuant to the Trust Agreement. The City is required to repay the Banks should there be amounts drawn under the Letter of Credit in accordance with the terms and conditions set forth in the Reimbursement Agreement. It is expected that the Banks will be repaid from the remarketing of commercial paper or the proceeds of long term take-out financing. However, but under extraordinary circumstances such occurred with the financial dislocation in 2008, advances from the Banks might not be immediately repaid. In such event, interest borne by the CP COPs would increase significantly.

#### *Financial Parameters*

The parameters set forth in the Prior Resolution respecting the Reimbursement Agreement and Letter of Credit include:

- the term of any such letter of credit shall not be less than one (1) year,
- the interest rate on any bank bond shall not exceed 12% per annum, and the amortization of any such bank bond shall not be less than three (3) years, and
- the cost of the any such letter of credit shall not exceed 2.0% per year.

These terms and conditions are consistent with those set forth in the Prior Resolution; however, due to present market conditions, banks are unwilling to accommodate an absolute cap of 12% on interest rates on bank bonds. Bank bonds are created if and when the Banks make a payment of principal and/or interest on maturing CP COPs under the Letter of Credit and the City does not reimburse the Banks on the same business day.

At any time that bank bonds are outstanding and should the accruing interest rate on any bank bond exceed 12% per annum due to an increase in general market interest rates, the City will pay on a current basis interest not to exceed 12%, with any current interest in excess of 12% deferred until such time that the accruing interest rate falls below 12%. No interest will accrue on any unpaid and deferred interest due to the interest rate ceiling on the bank bonds in the Prior Resolution. The City will then pay the deferred interest until all amounts due to the Banks respecting deferred interest is paid.

#### *Fees*

OPF currently expects to enter a Reimbursement Agreement with the Banks with a term of approximately three (3) years at a cost negotiated down from 1.75% to 1.25% of the Banks' commitment amounts or approximately \$1.25 million per annum. The Reimbursement Agreement may be terminated by the City pursuant to termination provisions set forth in the Reimbursement Agreement that may be exercised by the City should two of the Bank's short-term credit ratings fall below P-1/A-1/F-1 by Moody's Investors Service ("Moody's"), Standard & Poor's ("S&P"), and Fitch Ratings, respectively (collectively, the "Rating Agencies"), or in the event the City should decide to retire the CP Program. The Reimbursement Agreement may

also be terminated at the option of the City for any reason, subject to a termination fee equal to the amount due to the Banks but for the City's optional termination of the CP Program.

The current fee structure presumes that the City's general obligation bonds credit rating remains at its current rating levels of Aa2/AA, or is downgraded one notch by Moody's or S&P. The commitment fee may be increased in increments of 0.10% for every notch rating downgrade below Aa3/AA-. Should the City's general obligation bond credit rating fall below Baa3/BBB-/BBB-, the Reimbursement Agreement would terminate and amounts owing to the Banks would be immediately due and payable, subject to the limits concerning maximum rent set forth in the Sublease in accordance with State law.

**Dealer Agreement:**

The Resolution also approves the form of Dealer Agreement and delegates to OPF the authority to appoint one or more Commercial Paper Dealers (the "CP Dealer"). The Dealer Agreement sets forth the duties of the CP Dealer, including soliciting and arranging the sales of the CP COPs on behalf of the City at such rates and maturities as then prevailing in the market. The CP COPs will be purchased and/or sold in accordance with the terms and conditions and in the manner provided in the Trust Agreement, the Delivery & Paying Agent Agreement, the Reimbursement Agreement, and the Dealer Agreement.

OPF currently expects to select commercial paper dealers via a competitive bidding process and to enter into Dealer Agreement with a term not less than one (1) year with a cost of approximately 0.075% per annum of the weighted average of the principal amount of CP COPs outstanding each quarter, paid by the City quarterly in arrears.

**Leased Assets:**

As described in my memorandum dated February 10, 2009, under the proposed CP Program the City would lease and lease-back certain real property assets to the third-party trustee in consideration for proceeds of any issued CP COPs. It is anticipated that the real property assets included in the lease structure would have a value of approximately 125% of the borrowing capacity under the proposed CP Program or approximately \$125.00 million.

In consultation with the City's Real Estate Division, the table below identifies real property assets under consideration for the CP Program with an aggregate value of approximately \$197.20 million to support the proposed aggregate amount of approximately \$100.00 million in CP COPs.



**Table 1: Summary Estimated Fair Values of Real Property Assets Under Consideration for the CP Program.**

Allemany Market	\$ 29,800,000
Bureau of Engineering Office	6,800,000
Central Shops	20,000,000
Corporate Yard	46,000,000
Fire College	7,500,000
Fire Station 10	4,000,000
Fire Station 9	6,600,000
Human Services Central Office	25,700,000
Northern Police Station	6,400,000
Police Academy	29,000,000
Public Health Central Office	15,400,000
<b>Total</b>	<b>\$ 197,200,000</b>

Source: City and County of San Francisco, Real Estate Division, Memorandum dated January 30, 2009.

**Additional Information:**

The Resolution will be introduced at the Board of Supervisors meeting on Tuesday, March 9, 2010. The related financing documents—including the Reimbursement Agreement, Letter of Credit, and Dealer Agreement—will also be submitted.

Your consideration of this matter is greatly appreciated. Please contact me at 554-5956 should you have any questions.

CC: Ben Rosenfield, Controller  
Greg Wagner, Mayor's Budget Director  
Starr Terrell, Mayor's Liaison  
John Updike, Department of Real Estate  
José Cisneros, Treasurer  
Pauline Marx, Chief Assistant Treasurer  
Newlin Rankin, Chief Investment Officer  
Harvey Rose, Budget Analyst  
Angela Calvillo, Clerk of the Board  
Mark Blake, Deputy City Attorney





**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**

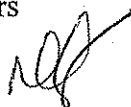
**Ben Rosenfield**  
**Controller**

**Monique Zmuda**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors

**FROM:** Nadia Sesay, Director of Public Finance 

**SUBJECT:** Resolution Approving the Form of Letter of Credit and Reimbursement Agreement and Dealer Agreement

**DATE:** Tuesday, March 9, 2010

In connection with the City's proposed commercial paper program and in order to issue City & County of San Francisco commercial paper, the Controller's Office of Public Finance (OPF) respectfully requests consideration of the attached resolution (the "Resolution") approving the forms of Letter of Credit and Reimbursement Agreements and Dealer Agreement.

**Background:**

In March 2009, the Board adopted Resolution No. 85-09 (the "Prior Resolution") authorizing the establishment of a not-to-exceed \$150.00 million of Tax-Exempt and Taxable Lease Revenue Commercial Paper Certificates of Participation Program (the "CP Program"). Under the proposed CP Program, City and County of San Francisco Tax-Exempt Lease Revenue Commercial Paper Certificates of Participation, Series 1 and City and County of San Francisco Taxable Lease Revenue Commercial Paper Certificates of Participation, Series 1-T (together, the "CP COPs") will be issued from time to time to provide interim financing in connection with the acquisition, improvement, renovation, and construction of real property and the acquisition of capital equipment and vehicles, with prior approval of such projects and expenditures by the Board and the Mayor. The Prior Resolution also approved forms of the Trust Agreement, Delivery & Paying Agent Agreement, Sublease, and Site Lease, all of which are on file with the Clerk of the Board.

**Reimbursement Agreement:**

The Prior Resolution authorized the Controller and the Director of Public Finance to negotiate with a letter of credit bank(s) (the "Banks") for the execution of a Reimbursement Agreement and/or other credit agreement with the Banks, within financing parameters established in the Prior Resolution. OPF selected via a competitive bidding process and is negotiating currently with U.S. Bank, N.A. and J.P. Morgan Chase Bank, N.A. as the Banks to issue the letter of credit

to provide liquidity support for the CP program.

The Resolution approves the form of Reimbursement Agreement that provides for an Irrevocable Letter(s) of Credit (the "Letter of Credit) in the maximum available amount of \$100.00 million (subject to increases at the discretion of the City and by mutual agreement with the Banks up to the not-to-exceed amount of \$150.00 million) that may be drawn upon by the City in respect of principal and actual interest due on any CP COPs executed and delivered pursuant to the Trust Agreement. The City is required to repay the Banks should there be amounts drawn under the Letter of Credit in accordance with the terms and conditions set forth in the Reimbursement Agreement. It is expected that the Banks will be repaid from the remarketing of commercial paper or the proceeds of long term take-out financing. However, but under extraordinary circumstances such occurred with the financial dislocation in 2008, advances from the Banks might not be immediately repaid. In such event, interest borne by the CP COPs would increase significantly.

#### *Financial Parameters*

The parameters set forth in the Prior Resolution respecting the Reimbursement Agreement and Letter of Credit include:

- the term of any such letter of credit shall not be less than one (1) year,
- the interest rate on any bank bond shall not exceed 12% per annum, and the amortization of any such bank bond shall not be less than three (3) years, and
- the cost of the any such letter of credit shall not exceed 2.0% per year.

These terms and conditions are consistent with those set forth in the Prior Resolution; however, due to present market conditions, banks are unwilling to accommodate an absolute cap of 12% on interest rates on bank bonds. Bank bonds are created if and when the Banks make a payment of principal and/or interest on maturing CP COPs under the Letter of Credit and the City does not reimburse the Banks on the same business day.

At any time that bank bonds are outstanding and should the accruing interest rate on any bank bond exceed 12% per annum due to an increase in general market interest rates, the City will pay on a current basis interest not to exceed 12%, with any current interest in excess of 12% deferred until such time that the accruing interest rate falls below 12%. No interest will accrue on any unpaid and deferred interest due to the interest rate ceiling on the bank bonds in the Prior Resolution. The City will then pay the deferred interest until all amounts due to the Banks respecting deferred interest is paid.

#### *Fees*

OPF currently expects to enter a Reimbursement Agreement with the Banks with a term of approximately three (3) years at a cost negotiated down from 1.75% to 1.25% of the Banks' commitment amounts or approximately \$1.25 million per annum. The Reimbursement Agreement may be terminated by the City pursuant to termination provisions set forth in the Reimbursement Agreement that may be exercised by the City should two of the Bank's short-term credit ratings fall below P-1/A-1/F-1 by Moody's Investors Service ("Moody's), Standard & Poor's ("S&P"), and Fitch Ratings, respectively (collectively, the "Rating Agencies"), or in the event the City should decide to retire the CP Program. The Reimbursement Agreement may

also be terminated at the option of the City for any reason, subject to a termination fee equal to the amount due to the Banks but for the City's optional termination of the CP Program.

The current fee structure presumes that the City's general obligation bonds credit rating remains at its current rating levels of Aa2/AA, or is downgraded one notch by Moody's or S&P. The commitment fee may be increased in increments of 0.10% for every notch rating downgrade below Aa3/AA-. Should the City's general obligation bond credit rating fall below Baa3/BBB-/BBB-, the Reimbursement Agreement would terminate and amounts owing to the Banks would be immediately due and payable, subject to the limits concerning maximum rent set forth in the Sublease in accordance with State law.

**Dealer Agreement:**

The Resolution also approves the form of Dealer Agreement and delegates to OPF the authority to appoint one or more Commercial Paper Dealers (the "CP Dealer"). The Dealer Agreement sets forth the duties of the CP Dealer, including soliciting and arranging the sales of the CP COPs on behalf of the City at such rates and maturities as then prevailing in the market. The CP COPs will be purchased and/or sold in accordance with the terms and conditions and in the manner provided in the Trust Agreement, the Delivery & Paying Agent Agreement, the Reimbursement Agreement, and the Dealer Agreement.

OPF currently expects to select commercial paper dealers via a competitive bidding process and to enter into Dealer Agreement with a term not less than one (1) year with a cost of approximately 0.075% per annum of the weighted average of the principal amount of CP COPs outstanding each quarter, paid by the City quarterly in arrears.

**Leased Assets:**

As described in my memorandum dated February 10, 2009, under the proposed CP Program the City would lease and lease-back certain real property assets to the third-party trustee in consideration for proceeds of any issued CP COPs. It is anticipated that the real property assets included in the lease structure would have a value of approximately 125% of the borrowing capacity under the proposed CP Program or approximately \$125.00 million.

In consultation with the City's Real Estate Division, the table below identifies real property assets under consideration for the CP Program with an aggregate value of approximately \$197.20 million to support the proposed aggregate amount of approximately \$100.00 million in CP COPs.

**Table 1: Summary Estimated Fair Values of Real Property Assets Under Consideration for the CP Program.**

Allemany Market	\$ 29,800,000
Bureau of Engineering Office	6,800,000
Central Shops	20,000,000
Corporate Yard	46,000,000
Fire College	7,500,000
Fire Station 10	4,000,000
Fire Station 9	6,600,000
Human Services Central Office	25,700,000
Northern Police Station	6,400,000
Police Academy	29,000,000
Public Health Central Office	15,400,000
<b>Total</b>	<b>\$ 197,200,000</b>

Source: City and County of San Francisco, Real Estate Division, Memorandum dated January 30, 2009.

**Additional Information:**

The Resolution will be introduced at the Board of Supervisors meeting on Tuesday, March 9, 2010. The related financing documents—including the Reimbursement Agreement, Letter of Credit, and Dealer Agreement—will also be submitted.

Your consideration of this matter is greatly appreciated. Please contact me at 554-5956 should you have any questions.

- CC: Ben Rosenfield, Controller  
Greg Wagner, Mayor's Budget Director  
Starr Terrell, Mayor's Liaison  
John Updike, Department of Real Estate  
José Cisneros, Treasurer  
Pauline Marx, Chief Assistant Treasurer  
Newlin Rankin, Chief Investment Officer  
Harvey Rose, Budget Analyst  
Angela Calvillo, Clerk of the Board  
Mark Blake, Deputy City Attorney

Office of the Mayor  
City & County of San Francisco



Gavin Newsom

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Mayor Gavin Newsom  
RE: Resolution Approving Commercial Paper Reimbursement Agreement  
and Dealer Agreement  
DATE: March 9, 2010

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Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is a resolution of the City and County of San Francisco approving the form of Reimbursement Agreement or Reimbursement Agreements and the form of Dealer Agreement in connection with its Tax-Exempt and Taxable Lease Revenue Commercial Paper Certificates of Participation, authorizing the execution and delivery of one or more Dealer Agreements and authorizing other related actions.

I request that this item be scheduled in Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

100269





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LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

Dated as of [ ] 1, 2010

between

CITY AND COUNTY OF SAN FRANCISCO

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

relating to

**[\$50,000,000]**

aggregate principal amount of

CITY AND COUNTY OF SAN FRANCISCO

TAX-EXEMPT LEASE REVENUE

COMMERCIAL PAPER CERTIFICATES OF PARTICIPATION, SERIES 1

and

CITY AND COUNTY OF SAN FRANCISCO

TAXABLE LEASE REVENUE

COMMERCIAL PAPER CERTIFICATES OF PARTICIPATION, SERIES 1-T

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LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, dated as of [\_\_\_\_\_] 1, 2010, between the CITY AND COUNTY OF SAN FRANCISCO (the "City") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the "Bank").

WHEREAS, pursuant to a Trust Agreement, dated as of [\_\_\_\_\_] 1, 2010, by and between the City and [Name of Delivery and Paying Agent], as trustee (the "Trustee") as it is from time to time amended or supplemented in accordance with the terms and provisions thereof (the "Trust Agreement"), the City may from time to time cause the execution and delivery of up to [\$50,000,000] in aggregate principal amount outstanding at any time of its Tax-Exempt Lease Revenue Commercial Paper Certificates of Participation, Series 1 and Taxable Lease Revenue Certificates of Participation, Series 1-T (the "Certificates" and each, a "Certificate");

WHEREAS, the Trust Agreement provides, as a condition precedent to the execution and delivery of the Certificates, for delivery to the Delivery and Paying Agent (as defined in the Trust Agreement) of a letter of credit with respect to the Certificates; and

WHEREAS, the Bank has agreed to issue its irrevocable letter of credit pursuant to this Agreement;

NOW THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

*Section 1.1. Certain Defined Terms.* The following terms, as used herein, have the following meanings:

"*Advance*" means any Principal Advance or Default Advance.

"*Advance Rate*" means a rate per annum equal to (i) the Base Rate per annum for the period from the date of such Principal Advance to but not including the Term Loan Conversion Date; and (ii) the Base Rate plus [1.00%] per annum for the period from and including the Term Loan Conversion Date and thereafter; *provided, however*, that upon the occurrence and during the continuance of any Event of Default hereunder, the Advance Rate shall equal the Default Rate.

"*Agreement*" means this Letter of Credit and Reimbursement Agreement as the same may from time to time be amended, supplemented or otherwise modified in accordance with its terms.

"*Alternate Credit Facility*" shall have the meaning set forth in the Trust Agreement.

"*Authorized Representative*" shall have the meaning set forth in the Trust Agreement.

“*Bank*” means JPMorgan Chase Bank, National Association, and its successors and assigns.

“*Base Rate*” shall mean the highest of (i) the Prime Rate plus 1.50% per annum, (ii) the Federal Funds Rate plus 2.00% per annum and (iii) 7.50% per annum.

“*Base Rental Payments*” shall have the meaning set forth in the Sublease.

“*Base Rental Period*” shall have the meaning set forth in the Trust Agreement.

“*Business Day*” means any day other than (i) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California or in New York for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon which commercial banks are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under the Letter of Credit.

“*CAFR*” has the meaning set forth in Section 5.1(a)(i).

“*Certificateholder*,” “*Holder of Certificates*” or “*Holder*” or any similar term, when used with reference to a Certificate or Certificates, means any person who shall be the bearer of any Outstanding Certificates not registered, or the registered owner of any Outstanding Certificate which shall at the time be registered other than to bearer as provided in the Trust Agreement.

“*Certificate*” and “*Certificates*” each has the meaning assigned in the first recital of this Agreement.

“*City*” means the City and County of San Francisco, California and its successors and assigns.

“*Components*” shall have the meaning set forth in the Sublease.

“*Contingent Obligation*” means, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any indebtedness, leases, dividends, or other obligations (“*primary obligations*”) of any other Person (the “*primary obligor*”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation, or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities, or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not

include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“*Credit Event*” means any one of the following: the issuance of the Letter of Credit; the execution and delivery of any Certificate or the Revolving Bank Certificate; the making of any Principal Advance; or the conversion of a Principal Advance to a Term Loan.

“*Date of Issuance*” shall mean the date on which the conditions precedent set forth in Section 3.1 of this Agreement are met or waived by the Bank and the Letter of Credit is issued.

“*Dealer*” means, with respect to the Certificates, any Dealer appointed by the City pursuant to a Dealer Agreement, or any successors or assigns permitted under such Dealer Agreement or any other dealer for the Certificates appointed by the City pursuant to the Trust Agreement.

“*Dealer Agreement*” means (i) the Dealer Agreement, dated as of [\_\_\_\_\_] 1, 2010, by and between the City and [\_\_\_\_\_] , as a Dealer, providing for the acceptance by such Dealer of the duties and obligations imposed thereby and imposing certain other duties and obligations as the same shall have been amended, supplemented or otherwise modified as permitted thereby and (ii) any other similar agreement by and between the City and any other dealer for the Certificates appointed by the City pursuant to the Trust Agreement.

“*Debt*” shall mean, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person as lessee under capital leases; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under capital leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith; (e) all Guarantees by such Person of Debt of another Person; (f) the face amount of any letter of credit issued for the account of such Person and, without duplication, all drafts drawn and reimbursement obligations arising thereunder; (g) all Debt of a second Person secured by any lien on any property owned by such first Person, whether or not such Debt has been assumed; (h) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, including but not limited to, take-or-pay or similar obligations; (i) all Contingent Obligations of such Person and (j) all obligations of such Person due and payable under Swap Contracts; *provided, however*, that Debt shall not include trade payables arising in the ordinary course of business; and *provided, further, however* that with respect to the City, Debt shall exclude conduit, enterprise and other Debt that have no claim on the General Fund of the City.

“*Default*” means an event which with the giving of notice or passage of time, or both, shall constitute an Event of Default.

*"Default Advance"* has the meaning assigned that term in Section 2.6.

*"Default Rate"* means, on any particular date, a rate of interest per annum equal to the Base Rate in effect on such date, plus 2.00% per annum.

*"Delivery and Paying Agent Agreement"* means the Delivery and Paying Agent Agreement, dated as of [ ] 1, 2010, by and between the City and [Name of Delivery and Paying Agent], as Delivery and Paying Agent for the Certificates, providing for the acceptance by such Delivery and Paying Agent of the duties and obligations imposed thereby and imposing certain other duties and obligations, as the same shall have been amended, supplemented or otherwise modified as permitted thereby.

*"Delivery and Paying Agent"* means the Delivery and Paying Agent appointed with respect to the Certificates pursuant to Article V of the Trust Agreement, and having the duties, responsibilities and rights provided for therein, and its successor or successors and any other bank or trust company which may at any time be substituted in its place pursuant thereto.

*"Environmental Regulation"* means any federal, state, or local statute, law, rule, regulation, ordinance, code, policy, or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to health, safety, or the environment or to Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 3608 et seq.; the California Superfund Statute, Cal. Health & Safety C. § 25300 et seq.; legislation promulgated pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (*"Proposition 65"*), Cal. Health & Safety C. § 25249.5 et seq.; Environmental Protection Agency regulations pertaining to asbestos, including 40 C.F.R. Part 61, Subpart M; and Occupational Safety and Health Administration regulations pertaining to asbestos, including 29 C.F.R. § 1910.1001 and 1926.58.

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

*"Event of Default"* has the meaning assigned that term in Section 6.1.

*"Excess Interest Fee"* has the meaning assigned that term in Section 2.15.

*"Federal Funds Rate"* shall mean for any day, the overnight rate of interest per annum quoted by the Bank for the overnight sale to other major banks and financial institutions of federal funds on such day (or, if such day is not a Business Day, the next preceding Business

Day). Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the City absent manifest error.

*"Final Drawing Notice"* has the meaning assigned that term in the Letter of Credit.

*"Fiscal Year"* shall mean the twelve-month period commencing on July 1 of each year; *provided, however*, that the City may, from time to time, agree on a different twelve-month period as the Fiscal Year.

*"Fitch"* means Fitch, Inc., and its successors and assigns.

*"GAAP"* shall mean 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 Governmental 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.

*"General Obligation Debt"* means any Debt of the City, the payment of which is secured by the full faith and credit of the City.

*"Guarantee"* by any Person shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings, *provided* that the term *Guarantee* shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) performance or completion guarantees. The term *"Guarantee"* used as a verb has a corresponding meaning.

*"Hazardous Materials"* means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" extremely hazardous wastes, "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes," or "pollutants," or words of similar import, under any applicable Environmental Regulation; and (c) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority.

*"Interest Coverage Amount"* has the meaning assigned that term in the Letter of Credit.



“*Letter of Credit*” means an irrevocable direct-pay letter of credit issued by the Bank in substantially the form of Exhibit A hereto.

“*Letter of Credit Termination Date*” has the meaning assigned to that term in the Letter of Credit.

“*Letter of Credit Fee Rate*” means, as of any date, the percentage per annum set forth below opposite the rating level (or, in the event of split ratings, the lowest rating level) applicable on such date to the highest rated of the City’s unenhanced General Obligation Debt:

LEVEL	RATINGS OF CITY’S UNENHANCED GENERAL OBLIGATION DEBT (S&P/MOODY’S)	APPLICABLE LETTER OF CREDIT FEE RATE
Level 1:	AA-/Aaa3 or above	1.25%
Level 2:	A+/A1	1.35%
Level 3:	A/A2	1.45%
Level 4:	A-/A3	1.55%
Level 5:	BBB+/Baa1 or below	1.75%

The term “*Rating*” as used above shall mean the lowest long-term unenhanced debt rating assigned by S&P or Moody’s to any unenhanced General Obligation Debt of the City (without giving effect to any bond insurance policy or other credit enhancement securing such General Obligations Debt). In the event of a split Rating (i.e. one of the foregoing Rating Agency’s Rating is at a different level than the Rating of the other Rating Agency), the Letter of Credit Fee Rate shall be based upon the level in which the lower rating appears. Any change in the Letter of Credit Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Bank agrees, that as of the Date of Issuance the Letter of Credit Fee Rate is that specified above for Level 1. In the event that any Rating is suspended, withdrawn or otherwise unavailable from either Rating Agency or upon the occurrence and during the continuance of an Event of Default, the Letter of Credit Fee Rate shall be increased by an additional 1.00% from the rate indicated above for Level 5.

“*Material City Debt*” shall mean any Debt of the City which is outstanding in a principal amount of \$25,000,000 or more.

“*Maximum Base Rental*” shall have the meaning set forth in the Sublease.

*"Maximum Rate"* means twelve percent (12%) per annum.

*"Minimum Required Rental Payment"* shall have the meaning set forth in the Sublease.

*"Moody's"* means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term *"Moody's"* shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

*"No-Delivery Notice"* has the meaning assigned that term in Section 3.3.

*"Notice of Extension"* shall mean a notice from the Bank to the Delivery and Paying Agent substantially in the form of Annex E to the Letter of Credit.

*"Offering Memorandum"* shall mean the Offering Memorandum with respect to the Certificates, prepared in connection with the Certificates and any supplements or amendments thereto, and the documents, if any, incorporated therein by reference.

*"Original Stated Amount"* means [\$50,000,000].

*"Outstanding,"* when used in reference to Certificates means, as of a particular date, all Certificates authenticated and delivered pursuant to the Trust Agreement except: (i) any Certificate cancelled at or before such date, (ii) any Certificate deemed to have been paid in accordance with the Trust Agreement and (iii) any Certificate in lieu of or in substitution for which another Certificate shall have been authenticated and delivered pursuant to the Trust Agreement.

*"Participant Bank"* means any institution to which the Bank has granted a participation in or assigned, sold, or otherwise transferred the whole or any part of the Bank's rights or obligations (or both) under this Agreement or any other Related Document.

*"Payment Draft"* has the meaning assigned to that term in the Letter of Credit.

*"Payment Office"* means JPMorgan Chase Bank, National Association, ABA #: \_\_\_\_\_, A/C # \_\_\_\_\_, Attention: \_\_\_\_\_, Ref: \_\_\_\_\_, or such other office as the Bank may designate from time to time.

*"Permitted Encumbrances"* shall have the meaning set forth in the Trust Agreement.

*"Person"* means any natural person, firm, partnership, association, corporation, joint exercise of powers authority or public body.

*"Pledged Property"* shall have the meaning set forth in the Trust Agreement.

*"Prime Rate"* means the rate of interest announced by the Bank from time to time as its prime commercial rate or equivalent, as in effect on such day for United States dollar loans, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate.

*"Principal Advance"* has the meaning assigned that term in Section 2.5.

*"Property"* shall have the meaning set forth in the Sublease.

*"Quarterly Date"* means the first day of each January, April, July and October.

*"Rating Agency"* means Moody's or S&P.

*"Reimbursement Obligations"* means any and all amounts including, but not limited to, fees, expenses, amounts drawn under the Letter of Credit, Principal Advances, Default Advances and Term Loans, which may from time to time be owing by the City to the Bank or any Participant Bank under this Agreement.

*"Related Documents"* means this Agreement, the Trust Agreement, the Letter of Credit, this Agreement, the Certificates, the Revolving Bank Certificate, the Delivery and Paying Agent Agreement, the Offering Memorandum, the Site Lease, the Sublease and the Dealer Agreements.

*"Request for Extension"* shall mean a notice from the City to the Bank substantially in the form of Exhibit C attached hereto.

*"Revolving Bank Certificate"* means the revolving bank certificate, substantially in the form of Exhibit B attached hereto, executed and delivered to the Bank pursuant to Section 2.11 hereof, and as from time to time amended or supplemented in accordance therewith, to evidence the indebtedness of the City due and owing to the Bank under this Agreement with respect to amounts drawn on the Letter of Credit.

*"S&P"* means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

*"Site Lease"* means the Site Lease, dated as of [\_\_\_\_\_] 1, 2010 by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

*"State"* means the State of California.

*"Stated Amount"* has the meaning assigned that term in the Letter of Credit.

*"Stated Expiration Date"* has the meaning assigned that term in the Letter of Credit.

"*Sublease*" means the Sublease dated as of [\_\_\_\_\_] 1, 2010, by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

"*Swap Contract*" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "*Master Agreement*"), including any such obligations or liabilities under any Master Agreement.

"*Taxes*" has the meaning assigned that term in Section 2.9(b).

"*Term Loan*" has the meaning assigned that term in Section 2.6.

"*Term Loan Conversion Date*" in respect of any Principal Advance, means the earlier of (i) the 90th day after the date that such Principal Advance is made and (ii) the Letter of Credit Termination Date.

"*Termination Fee*" has the meaning assigned that term in Section 2.13.

"*Trust Agreement*" means the Trust Agreement dated as of [\_\_\_\_\_] 1, 2010, by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

"*Trustee*" shall mean [Name of Delivery and Paying Agent], and its successor or successors, and any other person which may at any time be substituted in its place pursuant to the Trust Agreement.

"*US Bank Reimbursement Agreement*" means that certain Letter of Credit and Reimbursement Agreement dated as of April 1, 2010, between the City and U.S. Bank National Association.

*Section 1.2. Computation of Time Periods.* In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word "from" means "from and including" and the words "till" and "until" each mean "to but excluding." All references to time shall mean New York City time, whether or not so expressed.

*Section 1.3. Accounting Terms.* All accounting terms not specifically defined herein shall be construed in accordance with generally accepted United States accounting principles consistently applied.

*Section 1.4. Terms Defined in Trust Agreement.* Any capitalized term not defined herein shall have the meaning ascribed to such term in the Trust Agreement.

*Section 1.5. Construction.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

## ARTICLE II

### AMOUNT AND TERMS OF THE LETTER OF CREDIT

*Section 2.1. The Letter of Credit.* The Bank agrees, on the terms and conditions hereinafter set forth, to issue the Letter of Credit to the Delivery and Paying Agent in the Original Stated Amount and expiring by its terms not later than the Stated Expiration Date.

*Section 2.2. Issuance of the Letter of Credit.* The Bank will issue the Letter of Credit to the Delivery and Paying Agent on the Date of Issuance upon fulfillment of the applicable conditions precedent set forth in Section 3.1.

*Section 2.3. Letter of Credit Fees.* The City will pay or cause to be paid to the Bank:

(a) a non-refundable commitment fee equal to the product of the applicable Letter of Credit Fee Rate and the daily average Stated Amount of the Letter of Credit in effect from time to time for the period from and including the Date of Issuance to and including the Letter of Credit Termination Date;

(b) on the date of each drawing under the Letter of Credit, a draw fee of \$250; *provided, however,* that the City will not be required to pay more than \$1,500 in draw fees during any twelve-month period following the Date of Issuance or any anniversary thereof; and

(c) upon any amendment, modification or extension of the Letter of Credit, the Bank's customary administrative fees.

The fees set forth in Section 2.3(a) above shall be computed using a 360-day year for the actual number of days elapsed, and shall be payable quarterly in arrears (together with interest on such fees from the date payment is due until payment in full at the Default Rate), commencing on \_\_\_\_ 1, 2010, and thereafter on each Quarterly Payment Date and on the Letter of Credit Termination Date.

*Section 2.4. Payment of Amounts Drawn on Letter of Credit.* (a) The City will pay or cause to be paid to the Bank an amount equal to that amount drawn on the Bank under the Letter of Credit pursuant to any Payment Draft with respect to the payment of accrued interest on maturing Certificates or, subject to the provisions of Section 2.5 hereof, any Payment Draft with respect to the payment of principal of maturing Certificates, on the same Business Day such drawing is honored.

(b) Any amount drawn under the Letter of Credit pursuant to a Payment Draft that is not repaid to the Bank when due as provided in clause (a) of Section 2.4, shall bear interest at the Default Rate until paid in full, payable on demand. Principal Advances, Default Advances and Term Loans shall be repaid to the Bank as provided in Sections 2.5 and 2.6 hereof.

(c) Any amount drawn under the Letter of Credit shall be noted by the Bank as principal due and owing on the grid attached to the Revolving Bank Certificate pursuant to Section 2.11.

*Section 2.5. Principal Advances.* If the Bank shall make any payment under the Letter of Credit pursuant to a Payment Draft with respect to the payment of principal of maturing Certificates and the conditions precedent set forth in Section 3.2 shall have been fulfilled, and the City (at its option) does not reimburse or cause to be reimbursed the Bank in connection therewith on the same Business Day, then such payment shall constitute a principal advance made by the Bank to the City on the date and in the amount of such payment (each such advance being a "*Principal Advance*" and, collectively, the "*Principal Advances*"). The City shall pay or cause to be paid interest on the unpaid amount of each Principal Advance from the date that such Principal Advance is made by the Bank until such amount is repaid in full. Such interest shall be payable monthly in arrears (based on the actual days elapsed since the date of such Principal Advance, divided by 360), on the first day of each calendar month during the term of each Principal Advance and, with respect to any such amount repaid, on the date any such amount is repaid, at a rate per annum equal to the applicable Advance Rate.

*Section 2.6. Conversion of Principal Advances to Term Loans; Term Loans; Default Advances.* (a) Subject to the satisfaction of the conditions set forth in Section 3.2 hereof, any amount of a Principal Advance (but not a Default Advance) remaining unpaid by the City to the Bank under Section 2.5 on the Term Loan Conversion Date shall be converted to a term loan (each, a "*Term Loan*" and, collectively, the "*Term Loans*"). The City shall repay the principal amount of each Term Loan in installments as to principal, commencing on the first Quarterly Date following the Term Loan Conversion Date, and on each Quarterly Date thereafter, with the

final installment in an amount equal to the then outstanding principal amount due and payable on the date which is the fifth anniversary of the date the related Payment Draft was honored. The principal amount of each Term Loan shall be amortized over such five-year period in equal quarterly installments of principal; *provided, however*, that the unpaid amount of each Term Loan shall be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, such Term Loan shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and such Term Loan shall continue to be an obligation of the City pursuant to the Sublease. The City may prepay or cause to be prepaid the outstanding amount of any Term Loan in whole or in part with accrued interest to the date of such prepayment on the amount prepaid. The amount of the Letter of Credit and the amounts available to be drawn thereunder by the Delivery and Paying Agent by any Payment Draft shall not be increased with respect to the conversion of a Principal Advance to a Term Loan.

(b) Each Term Loan shall bear interest at the applicable Advance Rate, payable monthly in arrears on the first Business Day of each calendar month during the term of such Term Loan and on the date on which the final installment of principal of the Term Loan is payable.

(c) If (i) the Bank shall make any payment under the Letter of Credit pursuant to a Payment Draft with respect to the payment of principal of maturing Certificates and the conditions set forth in Section 3.2 shall not have been fulfilled, and the City fails to reimburse or cause to be reimbursed the Bank in connection therewith, (ii) if the Bank shall have made a Principal Advance to the City and the conditions set forth in Section 3.2 shall have not been fulfilled on the Term Loan Conversion Date, or (iii) if an Event of Default shall have occurred while any Principal Advance remains outstanding, such payment or Principal Advance shall then constitute or become a default advance (and not a Principal Advance) made by the Bank to the City on the date and in the amount of such payment under the Letter of Credit or on such other date (each such default advance being a "*Default Advance*" and, collectively, the "*Default Advances*"). The City hereby agrees to pay or cause to be paid to the Bank (i) interest at the Default Rate on any amount of the Default Advance remaining unpaid by the City to the Bank from the date of such Default Advance until payment in full, payable monthly in arrears on the last Business Day of each calendar month with respect to the month then ended, and (ii) the unpaid amount of each Default Advance payable on each Quarterly Date in an amount equal to the then fair rental value with respect to the Components subject to the Sublease for such quarterly period; *provided, however*, that the unpaid amount of each Default Advance shall be paid or caused to be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, such Default Advance shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and such Default Advance shall continue to be an obligation of the City pursuant to the Sublease.

*Section 2.7. Prepayment of Principal Advances or Term Loans; Reinstatement of Letter of Credit Amounts.* (a) The City may prepay or cause to be prepaid the amount of any Principal Advance or Term Loan outstanding in whole or in part with accrued interest to the date of such repayment on the amount prepaid. Any prepayment in part under this Section 2.7(a) shall be applied by the Bank against each such Principal Advance or Term Loan, as the case may be, in the order in which each such Principal Advance or Term Loan, as the case may be, was made.

(b) Any prepayment made under Section 2.7(a) shall be applied by the Bank as a reimbursement of the related drawing (and as a prepayment of the Principal Advance or Term Loan, as the case may be, resulting from such drawing) and, in the case of a prepayment of a Principal Advance, the City irrevocably authorizes the Bank to reinstate the amount available to be drawn under the Letter of Credit by the amount of such prepayment; *provided, however*, that the Delivery and Paying Agent shall not deliver any Certificates (the aggregate principal and interest of which is payable from the amount of the Letter of Credit so reinstated) for sale or otherwise until the Letter of Credit has been reinstated pursuant to the terms of this Agreement and the Letter of Credit. The amount of the Letter of Credit and the amounts available to be drawn thereunder by the Delivery and Paying Agent by any Payment Draft shall not be increased with respect to repayments of Term Loans or Default Advances, unless otherwise agreed to by the Bank.

(c) In the event that the Delivery and Paying Agent delivers any Certificates while any Principal Advance or Term Loan or any portion of any Principal Advance or any Term Loan remains unpaid, the City shall apply the proceeds of any such Certificates to the prepayment of such outstanding Principal Advance or Term Loan, as the case may be. Any prepayment in part under this Section 2.7(c) shall be applied against each such Principal Advance or Term Loan in the order in which each such Principal Advance or Term Loan, as the case may be, was made.

*Section 2.8. Increased Costs; Capital Adequacy.* (a) In the event of the adoption after the date hereof of any law, rule or regulation (domestic or foreign), or any change after the date hereof in any law, rule or regulation, or the interpretation or application thereof by any court, governmental authority, central bank or comparable authority charged with the enforcement or administration or interpretation thereof, or the compliance with any guidelines or request from any governmental authority, central bank or comparable authority (whether or not having the force of law):

(i) subjects the Bank or any Participant Bank to any tax, deduction or withholding with respect to this Agreement, the Letter of Credit or the Revolving Bank Certificate (other than any tax based upon the overall net income of the Bank or such Participant Bank), or

(ii) imposes, modifies or deems applicable any reserve, special deposit, insurance premium (including any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto) or similar requirement against credits (including letters of credit) or commitments to extend credit extended by, or assets (funded or contingent) held by, or deposits with or for the account of, or loans by, or other acquisitions of funds or bonds by, the Bank or any Participant Bank, or



(iii) imposes upon the Bank or any Participant Bank any other condition or expense with respect to this Agreement, the commitment or obligations of the Bank or such Participant Bank hereunder, the Letter of Credit or the Revolving Bank Certificate,

and the result of any of the foregoing is to increase the cost to the Bank or such Participant Bank, reduce the income receivable by the Bank or the Participant Bank, impose any expense upon the Bank or such Participant Bank or reduce the amount of any payment receivable by the Bank or such Participant Bank, with respect to this Agreement, the Letter of Credit or the Revolving Bank Certificate, as reasonably determined and allocated by the Bank or such Participant Bank, by an amount which the Bank or such Participant Bank deems to be material, the Bank shall notify the City thereof by delivery of a certificate of an officer of the Bank or such Participant Bank of the nature described in the next sentence, and the City shall pay or cause to be paid to the Bank promptly, and in any event within 30 days after receipt of such notice, that amount which shall compensate the Bank or such Participant Bank (on an after tax basis, grossing up to cover any taxes payable by the Bank or such Participant Bank on such amount) for such increase in cost, reduction in income, additional expense or reduced amount. A certificate setting forth such increase in cost, reduction in income or additional expense or reduced amount (including such detail as the City may reasonably request), and the manner of calculating the same as determined by the Bank or such Participant Bank, shall be submitted by the Bank to the City and, absent manifest error, shall be conclusive as to the amount thereof. In making the determinations contemplated by the above referenced certificate, the Bank or such Participant Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank or such Participant Bank in good faith determines to be appropriate.

(b) If the Bank or any Participant Bank shall have determined that the adoption after the date hereof of any law, rule, regulation or guideline (whether or not having the force of law) regarding capital adequacy, or any change in any applicable law, rule, regulation or guideline, as the case may be, or any change in the enforcement or interpretation or administration thereof by any court or any administrative or governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank or any Participant Bank (or any lending office thereof) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of the Bank or such Participant Bank as a consequence of its rights or obligations hereunder, under the Letter of Credit or with respect to the Revolving Bank Certificate to a level below that which the Bank or such Participant Bank could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank or such Participant Bank with respect to liquidity and capital adequacy) by an amount deemed by the Bank to be material, the Bank shall notify the City thereof by delivery of a certificate of an officer of the Bank of the nature described in the next sentence, and the City shall pay or cause to be paid to the Bank promptly, and in any event within 30 days after receipt of such notice, that amount which shall compensate the Bank or such Participant Bank (on an after tax basis, grossing up to cover any taxes payable by the Bank or such Participant Bank on such amount) for such reduction in rate of return on capital. A certificate setting forth such reduction in rate of return on capital (including such detail as the City may reasonably request), and the manner of calculating the same as determined by the Bank or such Participant Bank, shall be submitted by the Bank to the City and, absent

manifest error, shall be conclusive as to the amount thereof. In making the determinations contemplated by the above referenced certificate, the Bank or such Participant Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank or such Participant Bank in good faith determines to be appropriate.

(c) The Bank shall notify the City of any such impending or announced change in law, regulation or interpretation referred to in subsection (a) or (b) of this Section 2.8 promptly upon receipt by it of actual notice of such change; *provided, however*, that any delay or failure to so notify the City shall not in any manner relieve the City of their obligations under this Section 2.8.

(d) Notwithstanding anything to the contrary in this Section 2.8, in the event the Bank grants any participation to any Participant Bank pursuant to Section 7.7(b) hereof, the City shall not have any obligation to pay amounts pursuant to this Section 2.8 in an amount greater than that which it would have been required to pay if the Bank had not granted such participation.

(e) The obligations and liabilities under this Section 2.8 shall survive the termination of this Agreement and the Sublease and the obligations of the City hereunder and thereunder and the payment in full of all Rental Payments.

*Section 2.9. Payments and Computations.* (a) The City shall make or cause to be made each payment hereunder (i) representing reimbursement pursuant to Section 2.4 hereof to the Bank of the amount drawn on the Bank pursuant to a Payment Draft made under the Letter of Credit not later than [4:00 p.m.] (New York City time), and (ii) not later than 1:00 p.m. (New York City time) for all other payments, on the day when due, in lawful money of the United States of America to the account of the Bank at its Payment Office in immediately available funds; *provided, however*, that whenever any payment hereunder shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time; and *provided, further* that the City shall be permitted to make any payment pursuant to Section 2.3 in next day funds if such payment is made (i) on the Business Day immediately preceding the date on which such payment would otherwise have been due and (ii) in an amount equal to the amount that would have been required to have been paid had the payment not been made in next day funds in reliance upon this proviso. Payment received by the Bank after the applicable time set forth in this Section 2.9 shall be considered to have been made on the next succeeding Business Day. Computations of the Base Rate, the Prime Rate, the Federal Funds Rate, the Advance Rate and the Default Rate hereunder shall be made by the Bank on the basis of a year of 360 days for the actual number of days elapsed.

(b) All such payments will be made without counterclaim, setoff, condition or defense, free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding any tax imposed on the overall net income of the Bank or such Participant Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant Bank is located) and all interest, penalties or similar liabilities with respect thereto (collectively, "*Taxes*"); *provided*,

*however*, that the City shall have no liability with respect to any Taxes which are imposed on the Bank or any Participant Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant Bank is located unless (i) the Bank or such Participant Bank is entitled to the benefits of an income tax treaty with the United States that provides for an exemption from United States withholding tax on interest and other amounts payable to the Bank or such Participant Bank, as the case may be, pursuant to the terms of this Agreement, the Revolving Bank Certificate and any other Related Document, or (ii) all interest and other amounts payable to the Bank or such Participant Bank pursuant to the terms of this Agreement, the Revolving Bank Certificate or any other Related Documents will be effectively connected with the conduct by the Bank or such Participant Bank of a trade or business within the United States. If any Taxes are so levied or imposed, the City agrees to pay or cause to be paid to the Bank on demand the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder, under the Revolving Bank Certificate or under any Related Document, after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein, in the Revolving Bank Certificate or in such Related Document. The City will deliver to the Bank within 45 days after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the City. To the extent permitted by law, the City will indemnify and hold harmless the Bank or such Participant Bank and reimburse the Bank upon written request, for the amount of any Taxes so levied or imposed and paid by the Bank or such Participant Bank.

(c) Unless otherwise provided herein, amounts not paid when due shall bear interest at the Default Rate and shall be payable upon demand.

*Section 2.10. Extension of Stated Expiration Date.* On the Date of Issuance, the Stated Expiration Date shall be [\_\_\_\_\_], 2013; *provided* that such date shall be subject to extension at any time following the then scheduled Stated Expiration Date, as set forth below and in the Letter of Credit. On any date which is not more than **[one year]** prior to the Stated Expiration Date, the City may request in writing that the Bank extend the Stated Expiration Date for an additional term of one year or such other period as the parties may agree by delivery to the Bank of a Request for Extension. Within 45 days of the date of any such Request for Extension, the Bank will notify the City in writing of the decision by the Bank in its absolute discretion whether to extend for such additional period, the Stated Expiration Date for purposes of this Agreement and the Letter of Credit, including in such notice the extended Stated Expiration Date and the conditions of such consent (including conditions relating to legal documentation and the consent of the Delivery and Paying Agent). If the Bank does so agree to extend, the Bank shall deliver an executed Notice of Extension to the Delivery and Paying Agent. If the Bank elects not to extend or fails to send such written notice of such election to extend within such 45-day period, the Bank shall not provide a Notice of Extension to the Trustee, and the Bank shall be deemed to have denied the City's request to extend. The failure of the Bank to give such Notice of Extension shall be deemed a denial of the City's request for extension.

*Section 2.11. Evidence of Obligation; Revolving Bank Certificate.* The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the obligations resulting from each drawing under the Letter of Credit and from each Advance and Term Loan

made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such accounts shall be prima facie evidence of the existence and amounts of the obligations of the City therein evidenced.

To evidence the obligations of the City due and owing to the Bank under this Agreement with respect to amounts drawn under the Letter of Credit, the City will cause the execution and delivery of the Revolving Bank Certificate, substantially in the form of Exhibit B attached hereto, to the Bank on the Date of Issuance. The Bank shall note on the grid attached to the Revolving Bank Certificate principal amounts owing to the Bank, and the maturity schedule therefor pursuant to Sections 2.5 and 2.6 respecting outstanding Advances and Term Loans converted from Principal Advances with interest until payment in full pursuant to the terms of the Revolving Bank Certificate. The obligations of the City under this Agreement are payable solely from the Pledged Property.

*Section 2.12. Obligations Absolute.* The obligations of the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms thereof, under all circumstances whatsoever, including without limitation the following circumstances:

- (a) any lack of validity or enforceability of any of the Related Documents;
- (b) any amendment to, waiver of or consent to departure from any provision of, this Agreement or any of the Related Documents;
- (c) the existence of any claim, set-off, defense or other right which the City may have at any time against the Trustee, the Delivery and Paying Agent, a Dealer or the Bank (other than the defense of the payment to the Bank in accordance with the terms of this Agreement), any beneficiary or any transferee of the Letter of Credit (or any person or entity for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, any Related Document or any unrelated transaction;
- (d) any demand, statement or any other document presented under the Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
- (e) any non-application or misapplication by the Delivery and Paying Agent of the proceeds of any drawing under the Letter of Credit;
- (f) payment by the Bank under the Letter of Credit to the person entitled thereto against presentation of a draft or certificate which does not comply strictly with the terms of the Letter of Credit, *provided* that such payment shall not have been the result of the gross negligence or willful misconduct of the Bank; or

(g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding the foregoing, the obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property.

*Section 2.13. Termination; Acceptance of Alternate Credit Facility.* Notwithstanding any provision of this Agreement or the Letter of Credit to the contrary, the City shall not terminate or replace the Letter of Credit prior to the Stated Expiration Date except upon (i) the payment to the Bank of a termination fee in an amount equal to the commitment fees payable pursuant to Section 2.3(a) hereof (based upon the Original Stated Amount) for a term beginning on the Date of Issuance and ending on the third anniversary of the Date of Issuance at the Letter of Credit Fee Rate in effect as of the date of such termination, less the actual amount of commitment fees the City has previously paid to the Bank pursuant to Section 2.3(a) hereof (the "*Termination Fee*"), (ii) the payment to the Bank of all fees, expenses and other amounts payable hereunder, (iii) the payment to the Bank of all principal and accrued interest owing on the Revolving Bank Certificate and (iv) providing the Bank notice of its intention to do so at least sixty (60) days prior to the date of such termination or replacement; *provided* that all payments to the Bank referred to in clauses (i), (ii) and (iii) above shall be made with immediately available funds. Notwithstanding any provisions of this Section 2.13 to the contrary, the City may terminate or replace the Letter of Credit in accordance with the Trust Agreement at any time without paying the Termination Fee (i) if any two of the following shall have occurred; (A) if the Bank is then rated by Moody's, the date on which Moody's shall have lowered or withdrawn the short-term rating on the Bank below "*P-1*", (B) if the Bank is then rated by S&P, the date on which S&P shall have lowered or withdrawn the short-term rating on the Bank below "*A-1*", or (C) if the Bank is then rated by Fitch, the date on which Fitch shall have lowered or withdrawn the short-term rating on the Bank below "*F-1*", or (ii) upon the repayment or refunding of the Certificates with the proceeds of long-term bonds fixed to maturity.

*Section 2.14. Pledge by the City.* To provide security to the Bank for the payment by the City of the Reimbursement Obligations and any and all amounts now or hereafter owing to the Bank under this Agreement and the Revolving Bank Certificate, the City hereby pledges to the Bank the Pledged Property. The pledge of the Pledged Property made by the City hereunder is valid, binding and perfected from the time when it is made and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof. No instrument by which such pledges are created nor any financing statement need be recorded or filed. Such lien shall be on a parity with the lien in favor of the Bank and the Delivery and Paying Agent and the Trustee on the Pledged Property under the Trust Agreement. The obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property.

*Section 2.15. Maximum Interest Rate; Payment of Fee.* If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period

and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such maximum interest rate, at which time the City shall pay or cause to be paid to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such maximum interest rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the City shall pay or cause to be paid to the Bank a fee equal to the amount of all unpaid deferred Excess Interest (the "*Excess Interest Fee*"); *provided* that the Excess Interest Fee shall be payable as and to the extent that the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period exceeds the sum of all other Reimbursement Obligations remaining unpaid hereunder and the amount of interest accruing on the Certificates during such Base Rental Period. In accordance with Section 5922 of the California Government Code, the City hereby represents and warrants that the obligations of the City under the Revolving Bank Certificate and all other Reimbursement Obligations hereunder are not subject to any limitation as to maximum interest rate.

*Section 2.16. Adjustment of Base Rental.* (a) To the extent any Reimbursement Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Letter of Credit Termination Date and for so long thereafter as any Reimbursement Obligations remain unpaid, the City shall increase the amount of the Base Rental payable under the Sublease for the Property to the greater of (i) the Maximum Base Rental for the Property or (ii) the maximum fair rental value of the Property determined in accordance with subsection (b) below.

(b) To the extent any Reimbursement Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Letter of Credit Termination Date and for so long thereafter as any Reimbursement Obligations remain unpaid, unless the Sublease has terminated in accordance with its terms, the City agrees, at the Bank's sole written request, from time to time (but not more than once in any twelve month period), to determine or cause to be determined, the fair rental value for one or more Components. Upon consultation with special counsel and the Bank, such determination shall be by a Class C appraisal conducted by an employee of the City and shall be at the sole expense of the City. In addition, the City agrees to extend the term of (i) the Site Lease in accordance with Section 4 thereof and (ii) the Sublease in accordance with Section 2.2 thereof, if, on the stated expiration thereof, any amounts remain owing to the Bank hereunder or under any of the other Related Documents.

## ARTICLE III

### CONDITIONS OF ISSUANCE

*Section 3.1. Conditions Precedent to Issuance of the Letter of Credit.* The obligation of the Bank to issue the Letter of Credit is subject to the fulfillment of the following conditions precedent on or before the Date of Issuance in form and substance and in a manner satisfactory to the Bank:

(a) The Bank shall have received:

(i) Certified copies of the resolutions of the City approving this Agreement, the other Related Documents and the other matters contemplated hereby and thereby, and all other documents, including records of proceedings of the City, instruments, governmental approvals, third party approvals and opinions as the Bank and its counsel may reasonably request evidencing any other necessary action.

(ii) A certificate of the City stating the names and true signatures of the officers of the City authorized to sign this Agreement and the other documents to be delivered by the City hereunder.

(iii) Executed or conformed copies of each of the Related Documents in form and substance satisfactory to the Bank.

(iv) A letter addressed to the Bank from Jones Hall, A Professional Law Corporation, Special Counsel, entitling the Bank to rely on such firm's approving opinion addressed to the City.

(v) An opinion of Jones Hall, Special Counsel, in form and substance satisfactory to the Bank and its counsel, addressed to the Bank, to the effect that (A) this Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except that (i) the enforcement of the Agreement may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (B) the Revolving Bank Certificate has been duly executed and delivered pursuant to the Trust Agreement in evidence of Advances and Term Loans made by the Bank hereunder, (C) the Letter of Credit satisfies the terms and conditions of the Trust Agreement, (D) the Bank is entitled to the benefits of the Trust Agreement on a parity with all holders of the Certificates, and (E) the City has the authority and power to execute this Agreement.

(vi) Evidence that the rating assigned to the Certificates by S&P is "A-1+" and by Moody's is "P-1".

(vii) The Revolving Bank Certificate, duly executed and delivered to the Bank.

(viii) A certificate of the City setting forth the annual fair rental value of each Component.

(ix) Certificate(s) of the City stating that (A) on the Date of Issuance, no event has occurred and is continuing, or would result from the issuance of the Letter of Credit, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, and that (B) on the Date of Issuance and after giving effect to the issuance of the Letter of Credit, all representations and warranties of the City contained herein or otherwise made in writing in connection herewith shall be true and correct with the same force and effect as though such representations and warranties had been made on and as of such time.

(x) An opinion of the City Attorney of the City as counsel to the City, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xi) Audited financial statements for the City for the two most recently available fiscal years and the most recent operating budget summaries for the City's General Fund for the current fiscal year.

(xii) Evidence that the City has appropriated amounts sufficient to pay the Base Rental due, or anticipated to be due, in the Fiscal Year ending June 30, 2010 with respect to the Components.

(xiii) Evidence of title insurance on the Components insuring the Trustee and naming the Bank an additional insured, in an amount not less than the Original Stated Amount, subject only to such exceptions as shall be acceptable to the Bank, with such endorsements and affirmative coverages as may be reasonably required by the Bank, including such endorsements as may be reasonably required by the Bank, and otherwise in form and substance satisfactory to the Bank and its counsel and issued by an insurance company acceptable to the Bank and its counsel and authorized to issue such insurance in the State of California.

(xiv) Evidence of the City's current hazard and rental interruption insurance for the Components [**for a period of at least two (2) years, assuming an interest rate of at least \_\_\_\_%**], and such insurance shall be satisfactory to the Bank. The Bank shall also have received a certificate from the City's Risk Manager stating that the City's current policies of insurance and any self-insurance maintained by the City comply with the provisions of Section 4.3 of the Sublease. Any such commercial insurance policies shall name the Bank as loss



payee and additional insured and shall be issued by insurers rated "A" or better by Best's or approved by the Bank.

(xv) A copy of the investment policy of the City.

(xvi) Certificates of the Trustee and the Delivery and Paying Agent evidencing the signatures and offices of officers of each executing the Related Documents and with respect to the Delivery and Paying Agent, authorized to draw on the Letter of Credit, and with respect to such other matters as the Bank may reasonably request, and an opinion of counsel to each of the Delivery and Paying Agent and the Trustee, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xvii) Written evidence satisfactory to the Bank that (A) a separate CUSIP number has been obtained and reserved from Standard and Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. for the Revolving Bank Certificate (such CUSIP number shall also be made available on the Bloomberg Municipal Bond Description Screen or otherwise provided electronically to the Bank pursuant to a third party provider of such information) and (B) the Revolving Bank Certificate (and its related CUSIP number) shall have been assigned a rating of at least "Baa3" by Moody's.

(xviii) Such other documents, certificates, opinions, approvals and filings with respect to the Related Documents and this Agreement as the Bank may reasonably request.

(b) All other legal matters pertaining to the execution and delivery of this Agreement, the Related Documents and the execution and delivery of the first installment of the Certificates shall be reasonably satisfactory to the Bank and its counsel.

(c) The City shall have made payment to the Bank of all amounts due on the Date of Issuance under Section 7.6 hereof.

*Section 3.2. Conditions Precedent to Each Credit Event.* As a condition precedent to the occurrence of each Credit Event hereunder, including the initial Credit Event, the following conditions shall be satisfied on the date of such Credit Event:

(a) no Event of Default shall have occurred and be continuing; and

(b) the representations and warranties made by the City in Article 4 hereof (other than in Section 4.1(g)) shall be true and correct on and as of such date, as if made on and as of such date.

On the occurrence of each Credit Event, the City shall be deemed to have represented and warranted that the foregoing conditions precedent have been satisfied.

*Section 3.3. No-Delivery Notice; Final Drawing Notice.* The Bank may deliver a notice, in accordance with Section 6.2 hereof, to the Delivery and Paying Agent in the form of Annex F to the Letter of Credit (a “*No-Delivery Notice*”) at any time that the Bank shall have determined that the conditions precedent to the execution and delivery of a Certificate set forth in Section 3.2 have not been satisfied. The Bank may deliver a notice, in accordance with Section 6.2 hereof, to the Delivery and Payment Agent in the form of Annex A-1 to the Letter of Credit (the “*Final Drawing Notice*”) at any time when an Event of Default shall have occurred and be continuing. Upon receipt of a No-Delivery Notice or a Final Drawing Notice, the Delivery and Paying Agent shall cease authenticating Certificates, as provided in Section 3.1 of the Trust Agreement, unless and until such No-Delivery Notice or Final Drawing Notice is rescinded. Any such notice received after 10:00 a.m. (New York City time) shall be deemed to have been received on the next following Business Day. The Bank shall not incur any liability as a result of the Bank’s giving of any No-Delivery Notice or Final Drawing Notice which, in its good faith judgment, the Bank determines to be in accordance with this Section 3.3. Notwithstanding anything in this Section 3.3 which may be to the contrary, a No-Delivery Notice or Final Drawing Notice shall not affect the obligation of the Bank to honor demands for payment under the Letter of Credit with respect to Certificates authenticated prior to the receipt by the Delivery and Paying Agent of such No-Delivery Notice or Final Drawing Notice, and the Delivery and Paying Agent shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates authenticated prior to the receipt by the Delivery and Paying Agent of such No-Delivery Notice or Final Drawing Notice.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

*Section 4.1. City Representations and Warranties.* The City represents and warrants that, as of the date on which this Agreement is executed and as of the date of each draw honored by the Bank under the Letter of Credit:

(a) *Existence.* The City is validly existing as a charter city and county duly organized and created and validly existing under the laws and Constitution of the State, with full right and power to own its properties and to carry on its affairs as now being conducted and to cause the execution and delivery of the Certificates, to pledge the security and to execute, deliver and perform its obligations under this Agreement and each Related Document to which it is a party.

(b) *Authorization; Contravention.* The execution, delivery and performance by the City of this Agreement, the Revolving Bank Certificate and the other Related Documents to which it is a party are within the City’s powers, have been duly authorized by all necessary action, require no further consent or action by or in respect of, or filing with, any governmental body, agency, official or other Person and do not violate or contravene, or constitute a default under, any provision of applicable law, charter, ordinance or regulation or of any material agreement, judgment, injunction, order, writ, determination, award, decree or instrument binding upon the City or by which the City or its properties may be bound or affected, or result in the creation or imposition of any lien

or encumbrance on any asset of the City (other than pursuant to such enumerated documents). The City is not a party to, or otherwise subject to, any provision contained in any instrument evidencing indebtedness of the City, any agreement relating thereto, or any other contract or agreement (including its charter) that limits the amount of, or otherwise imposes restrictions on, the incurring of obligations of the City that would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(c) *Binding Effect.* Assuming due execution by the other parties thereto, this Agreement and the other Related Documents to which the City is a party each constitutes a valid, binding and enforceable agreement of the City, subject to applicable laws affecting creditors' rights generally and general principles of equity regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) *No Default.* It is not, in any material respect, in breach of or default under its organizational documents, or any applicable law or administrative regulation of the State or of the United States, relating, in each case, to the transactions contemplated hereby or by the other Related Documents, or any applicable judgment, decree, loan agreement, note, resolution, ordinance or other material agreement to which it is a party or is otherwise subject. Late delivery of financial statements or other reporting documentation shall not be deemed material for purposes of this Section.

(e) *Litigation.* Except as disclosed in writing to the Bank prior to the Date of Issuance, there is no action, suit or proceeding pending with service of process having been accomplished against, or to the knowledge of the City, threatened against or affecting, the City before any court or arbitrator or any governmental body, agency or official seeking to restrain or enjoin the sale, execution or delivery of the Certificates or in any way contesting or affecting the validity of the Certificates or in which there is a reasonable possibility of an adverse decision which could have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the Related Documents to which it is a party or (ii) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(f) *No Sovereign Immunity.* The City does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations hereunder or under any Related Document to which it is a party or by which it is bound.

(g) *Incorporation of Representations and Warranties by Reference.* As of the Date of Issuance, the City hereby makes to the Bank the same representations and warranties made by the City as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to

which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Bank.

(h) *No Proposed Legal Changes.* There is no amendment, or, to the knowledge of the City, no proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the City is a party, or (ii) the performance by the City of its obligations under this Agreement or the other Related Documents to which the City is a party.

(i) *Offering Memorandum.* The information contained in the Offering Memorandum under the caption "CITY AND COUNTY OF SAN FRANCISCO," as of the Date of Issuance, and as of the date of each execution and delivery of Certificates under the Trust Agreement, does not contain any untrue statement of any material fact.

(j) *Title to Property; Sublease.* The City has good and marketable fee simple title to all of the Components, subject only to Permitted Encumbrances. The Sublease is in full force and effect. The City, as lessee under the Sublease, is in peaceable possession of the Property. No waiver, indulgence or postponement of any of the City's obligations under the Sublease has been granted by the Trustee. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Sublease.

(k) *Disclosure.* Except as disclosed in writing to the Bank prior to the Date of Issuance, there is no fact known to the City, as of the date this representation is made, that would have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of any of the Related Documents.

(l) *Financial Information.* The consolidated statement of financial position of the City as of June 30, 2009, as well as each CAFR of the City as of any more recent date, delivered to the Bank pursuant to this Agreement (the "*Submitted Financial Statements*"), were prepared in accordance with GAAP consistently applied throughout the periods involved and fairly present the financial condition of the City as at such date and the results of the operations of the City for the period ended on such date, all in accordance with GAAP consistently applied, and since the date of such financial information, there has been no change in the business, financial condition, results of operations, or prospects of the City which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party which has not been disclosed by the City to the Bank.

(m) *Legal Matters.* The City is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the City, non-compliance with which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(n) *Environmental Matters.* In the ordinary course of its business, the City conducts an ongoing review of Environmental Regulations on the business, operations and properties of the City, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently 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 City has reasonably concluded that Environmental Regulations are unlikely to have a material adverse effect on the Property or the ability of the City to make any Rental Payments or any of its obligations hereunder or under any other Related Document.

(o) *Regulations T, U and X.* The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any Certificates will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(p) *ERISA.* The City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA.

(q) *No Tax or Fee.* Neither the execution or delivery of this Agreement or the advance of any amounts pursuant to this Agreement will give rise to any tax or fee imposed by any local or state agency or governmental body.

(r) *Usury.* The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

## ARTICLE V

### COVENANTS

*Section 5.1. Covenants.* The City agrees that so long as the Letter of Credit remains outstanding or any amount payable hereunder remains unpaid:

(a) *Information.* The City will prepare or cause to be prepared and deliver to the Bank the following:

(i) as promptly as available, and in any event no later than 270 days after the end of each fiscal year of the City, the complete Comprehensive Annual Financial Report (“CAFR”) of the City, certified as to the fairness of presentation and conformity with GAAP consistently applied, by a recognized firm of independent certified public accountants;

(ii) concurrently with the delivery of the financial statements delivered to the Bank pursuant to (a)(i) above, a certificate from an Authorized Representative certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing and a certificate from an Authorized Representative of the City certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing;

(iii) upon the request of the Bank, within 90 days of adoption of the most recently adopted annual operating budget of the City with respect to the City’s General Fund, evidence that such annual operating budget with respect to the City’s General Fund includes therein as a separate line item all Minimum Required Rental Payments and Additional Payments due during such period, if not otherwise paid from capitalized interest funded by proceeds of the Certificates; and

(iv) such other information respecting the affairs, conditions and/or operations, financial or otherwise, of the City or the Property, as the Bank may from time to time reasonably request.

All factual information hereinafter delivered by City in writing to the Bank will be, to the knowledge of the authorized person delivering such information after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified.

(b) *No Amendment Without Consent of the Bank.* Without the prior written consent of the Bank, the City will not agree or consent to any amendment, supplement,

waiver or modification of any provision of any Related Document to which the City is a party that affects the rights, interests, security or remedies of the Bank hereunder.

(c) *Incorporation of Covenants by Reference.* The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Bank and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank.

(d) *Delivery and Paying Agent.* The City will at all times have a Delivery and Paying Agent meeting the requirements of and performing the duties thereof contemplated by the Trust Agreement and the Delivery and Paying Agent Agreement.

(e) *Dealer.* The City will at all times have one or more Dealers meeting the requirements of and performing the duties thereof contemplated by the Trust Agreement and the Dealer Agreements.

(f) *Outstanding Certificates Plus Interest Coverage Amount Not to Exceed Stated Amount; No-Delivery after Receipt of No-Delivery Notice.*

(i) The City will instruct the Delivery and Paying Agent not to authenticate or deliver any Certificate if, immediately after the authentication and delivery of, and receipt of payment for, such Certificate, the aggregate principal amount of Certificates then to be Outstanding under the Trust Agreement plus the Interest Coverage Amount with respect to such Certificates, would exceed the Stated Amount.

(ii) The City shall not instruct the Delivery and Paying Agent to authenticate or deliver any Certificate if the Delivery and Paying Agent has received (A) a Final Drawing Notice or (B) a No-Delivery Notice, unless and until such No-Delivery Notice is rescinded.

(g) *Defaults.* The City will promptly (and in any event within five Business Days) notify the Bank of the occurrence of any Default or Event of Default specifying the details of such Default or Event of Default or event of default and the action that the City proposes to take with respect thereto.

(h) *Books, Records.* The City will permit, during normal business hours and from time to time, upon reasonable prior notice, the Bank or any of its agents or

representatives to examine and make copies of and abstracts from the records and books of account of the City (except records and books of accounts the examination of which by the Bank is prohibited by law), and to discuss the affairs, finances and accounts of the City with any representative or any other appropriate officer of the City or the City's independent public accountants. Without limiting the foregoing, upon reasonable prior notice the City shall permit the Bank to visit and inspect any of the Property during regular business hours as often as the Bank may reasonably request.

(i) *Other Obligations.* The City will comply with and observe all other obligations and requirements set forth in the Trust Agreement and each other Related Document to which it is a party (including without limitation all provisions therein for the benefit of the Bank) in all material respects and in all laws, statutes and regulations binding upon it, noncompliance with which would materially adversely affect the City's ability to perform its obligations under the Certificates, this Agreement or any of the Related Documents.

(j) *Litigation; Material Change.* The City shall promptly notify the Bank of (i) the existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, or (ii) the occurrence of any other event or change which could have a material adverse effect on (A) the ability of the City to perform its obligations hereunder or under the other Related Documents or (B) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(k) *Repayment of Drawings.* On and after the date of any drawing on the Letter of Credit, the City will use its best efforts to cause one or more Dealers to sell Certificates as soon as practicable and to use the proceeds of the sale of such Certificates to repay such drawing.

(l) *Obligations under Related Documents.* The City shall take all actions as may be reasonably requested by the Bank to enforce the obligations under the Related Documents of each of the other parties thereto.

(m) *Dealer(s); Trustee; Delivery and Paying Agent.* The City will not, without the prior written consent of the Bank (which consent shall not be unreasonably withheld or delayed), appoint or permit the appointment of a successor Dealer, Trustee or Delivery and Paying Agent. The City shall at all times maintain one or more Dealers and a Trustee and a Delivery and Paying Agent under the Trust Agreement. The City shall cause each Dealer and the Delivery and Paying Agent to market, issue, and deliver, as applicable, Certificates up to the Maximum Rate. If any Dealer fails to sell the Certificates for sixty (60) consecutive days, then the City shall, at the written request of the Bank, cause the applicable Dealer to be replaced with a Dealer reasonably satisfactory to the Bank. Any dealer agreement with a successor Dealer shall provide that (a) such Dealer may resign upon at least 60-days' prior written notice to the City, Delivery and Paying Agent and the Bank and (b) such Dealer shall use its best efforts to sell the Certificates up to the Maximum Rate.



(n) *Limitation on Voluntary Liens.* The City shall not create a pledge, lien or charge on any part of the Property or the Pledged Property, other than the lien in favor of holders of the Certificates and the Bank. The City covenant (i) to keep the Components and all parts thereof free from judgments, and materialmen's and mechanics' liens, claims, demands, encumbrances, liabilities and other liens of whatever nature or character, which, in each case, might hamper the City in utilizing the Components; and (ii) promptly, upon request of the Bank, to take such action from time to time as may be reasonably necessary or proper to remedy or cure any cloud upon or defect in the title to the Components or any part thereof, whether now existing or hereafter developing, to prosecute all actions, suits, or other proceedings as may be reasonably appropriate for such purpose.

(o) *City to Maintain Existence.* The City agrees that it will maintain its existence as a charter city and county under the laws and Constitution of the State of California.

(p) *Further Assurances.* The City will execute, acknowledge where appropriate, and deliver from time to time promptly at the request of the Bank all such instruments and documents as in the opinion of the Bank are reasonably necessary or desirable to carry out the intent and purposes of this Agreement.

(q) *No Impairment.* The City will not take any action, or cause or permit the Trustee or the Delivery and Paying Agent to take any action, under the Trust Agreement, the Sublease or any other Related Document inconsistent with the rights and remedies of the Bank under this Agreement.

(r) *Additional Obligations.* The City will not issue or authorize the issuance of any obligation payable from the Rental Payments due under the Sublease (other than the Certificates).

(s) *References to the Bank.* The City will not refer to the Bank in any official statement, offering memorandum, or private placement memorandum or make any changes in reference to the Bank in any revision of the Offering Memorandum without the Bank's prior written consent thereto, which consent shall not be unreasonably withheld or delayed.

(t) *Title Insurance.* Title insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease.

(u) *Maintenance of Insurance.* Insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease.

(v) *Covenants and Legal Duties.* Subject to Section 3.1(g) of the Sublease, the City agrees to include all Minimum Required Rental Payments and Additional Rental due under the Sublease in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Minimum Required Rental Payments and

Additional Rental, and for all Minimum Supplemental Rental Payments, if any, subject to Section 3.5 of the Sublease. The covenants on the part of the City herein contained and in the Sublease shall be deemed to be and shall be construed to be duties imposed by law, and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform such covenants and agreements.

(w) *Use of Letter of Credit Proceeds.* The City shall cause the Delivery and Paying Agent to use the proceeds of drawings made under the Letter of Credit solely to pay the principal of and interest on maturing Certificates.

(x) *Ratings.* The City shall give written notice to the Bank as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by the City at Moody's or S&P in respect of its unenhanced general obligation bonds, unless such rating is terminated due to the payment in full of such certificates of participation.

(y) *Voluntary Rent Abatement.* Except as required by law and the terms of the Sublease, the City shall not seek or assert a claim for abatement of rental payments under the Sublease.

(z) *Immunity.* To the fullest extent permitted by law, the City agrees not to assert the defense of immunity (on the grounds of sovereignty or otherwise) in any proceeding by the Bank to enforce any of the obligations of the City under this Agreement or any other Related Document.

(aa) *Alternate Letter of Credit.* The City agrees to use its best efforts to obtain an Alternate Credit Facility for the Letter of Credit in the event that (i) the Bank decides not to extend the Stated Expiration Date (such replacement to occur on the then current Stated Expiration Date) or (ii) the Letter of Credit shall otherwise terminate in accordance with their terms.

(bb) *ERISA.* The City will comply in all material respects with Title IV of ERISA, if, when and to the extent applicable.

(cc) *Swap Agreements.* The City will use its best efforts to enter into all future Swap Contracts with counterparties rated "AA-" (or its equivalent) or better by at least one Fitch, S&P or Moody's. In no event shall any swap counterparty with respect to any such Swap Contract be rated lower than "A" (or its equivalent) by any one of Fitch, S&P or Moody's, without the prior written consent of the Bank, at the time of entering into such Swap Contract.

(dd) *Additional Rights.* In the event that the City shall enter into or otherwise consent to any credit agreement, reimbursement agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) pursuant to which a financial institution or financial institutions

(each, a "Lender") undertakes to make loans or advances or extend credit or liquidity to the City as support for any commercial paper notes of the City (each, a "Bank Agreement"), which Bank Agreement contains (i) covenants that are more restrictive on the part of the City than those contained in this Agreement and/or (ii) events of default and/or remedies that are more favorable to the Lender than those contained in this Agreement (collectively, the "Additional Rights"), such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Additional Rights. Upon entering into or consenting to any Bank Agreement, the City shall promptly enter into an amendment to this Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the City fails to provide such amendment. If the City shall amend the Bank Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Bank, this Agreement shall automatically no longer contain the Additional Rights and the Bank shall no longer have the benefits of any of the Additional Rights.

## ARTICLE VI

### EVENTS OF DEFAULT

*Section 6.1. Events of Default.* The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) The City shall fail to pay (i) any Reimbursement Obligation or interest thereon as and when due hereunder, subject to the proviso in Section 2.6(c) hereof, or (ii) any other Obligation as and when due hereunder and the continuance of such failure for a period of 30 days after written notice thereof;

(b) The City shall default in the performance of any of the covenants set forth in Section 5.1( ); **[to discuss; City should have ability to cure defaults other than payment defaults]**

(c) The City shall default in the performance of any other term, covenant or agreement set forth herein and such failure shall continue for a period of 30 days after written notice thereof shall have been given to the City by the Bank;

(d) Any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or by the City in any other Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Related Document shall prove to have been incorrect in any material respect when made or deemed made;

(e) The City shall (A) fail to make any payment on any Material City Debt (other than the Certificates) or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement

or instrument relating to such Material City Debt; or (B) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any Material City Debt when required to be performed or observed, and such failure shall not be waived and shall continue after the later of (1) five Business Days after notice of such failure or (2) the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate the maturity of such Material City Debt; or (C) any Material City Debt shall be declared to be due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment or an optional prepayment), prior to the stated maturity thereof; *provided, however*, that in the case of clause (A) or (B) any such failure shall not be considered an Event of Default hereunder if the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the acceleration of the maturity of such Material City Debt;

(f) The City or the Trustee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall declare a moratorium, or shall take any action to authorize any of the foregoing;

(g) A case or other proceeding shall be commenced against the City or the Trustee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against the City or the Trustee under the federal bankruptcy laws as now or hereafter in effect, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the City or the Trustee, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, appealed, vacated or fully bonded, within the time permitted by law after commencement, filing or levy, as the case may be;

(h) Any provision of this Agreement or any Related Document shall cease for any reason whatsoever to be a valid and binding agreement of the City or the Trustee, or the City or the Trustee shall contest the validity or enforceability thereof;

(i) Any pledge or security interest created hereunder or under the Trust Agreement to secure any amounts due under this Agreement shall fail to be valid or fully enforceable;

(j) An event of default shall occur under any of the Related Documents (other than this Agreement) or the City shall fail to make any payment under the Sublease when and as due;

(k) The long-term unenhanced rating by Moody's or S&P on any General Obligation Debt of the City shall be withdrawn, suspended or otherwise unavailable for credit related reasons or reduced below "Baa3" (or its equivalent) or "BBB-" (or its equivalent), respectively;

(l) One or more final, nonappealable judgments or orders for the payment of money in the aggregate amount of \$25,000,000 or more shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days; or

(m) Any "Event of Default" as defined in the US Bank Reimbursement Agreement shall have occurred.

*Section 6.2. Upon an Event of Default.* If any Event of Default shall have occurred and be continuing, the Bank may by notice to the City and the Delivery and Paying Agent, (i) issue a No-Delivery Notice, (ii) issue the Final Drawing Notice (the effect of which shall be to cause the Letter of Credit Termination Date to occur on the fifteenth (15<sup>th</sup>) day after the date of receipt thereof by the Delivery and Paying Agent), (iii) declare the Revolving Bank Certificate, in whole or in part, all or some Advances or Term Loans, as well as any other Reimbursement Obligation, and all interest thereon to be a Default Advance hereunder due and payable in the manner set forth in Section 2.6 hereof, or (iv) take any other action permitted by law. Notwithstanding anything to the contrary contained in the preceding sentence, upon the occurrence or existence of an Event of Default of the type described in Section 6.1(f) or (g) above, the remedies described in clauses (ii) and (iii) above shall occur immediately and automatically without notice or further action on the part of the Bank or any other person and the remedy described in clause (i) above shall occur by the giving of such No-Delivery Notice only to the Delivery and Paying Agent. Anything in Article 2 hereof the contrary notwithstanding, from and after the occurrence an Event of Default, all Reimbursement Obligations shall bear interest at the Default Rate. Upon any action by the Bank as contemplated in the foregoing clauses (i) and (ii), the Stated Amount shall be permanently reduced upon, and by the amount of, each drawing under the Letter of Credit following the occurrence of an Event of Default. Notwithstanding the foregoing, the occurrence of an Event of Default shall not affect the Bank's obligation under the Letter of Credit with respect to Certificates that are outstanding at the time of the occurrence of such Event of Default, and the Delivery and Paying Agent shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates that are outstanding at the time of the occurrence of such Event of Default.

Nothing contained in Section 6.2 shall result in, or be construed to require, an acceleration of Base Rental under the Sublease and nothing contained in this Section 6.2 is intended to abrogate abatement of Base Rental made in accordance with the terms of the Sublease. Nothing contain in Section 6.2 shall abrogate the obligation of the Bank to honor

properly presented and conforming Drawings under the Letter of Credit prior to the termination of the Letter of Credit in accordance with its terms.

## ARTICLE VII

### MISCELLANEOUS

*Section 7.1. Amendments and Waivers.* No amendment, change, discharge or waiver of any provision of this Agreement, nor consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

*Section 7.2. Notices.* All notices and other communications provided for hereunder shall be in writing (including facsimiles) and mailed or faxed or delivered:

If to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to the Bank:

JPMorgan Chase Bank, National Association  
270 Park Avenue, 6<sup>th</sup> Floor  
New York, New York 10017-2014  
Attention: David Bayer  
Telephone: (212) 270-4186  
Facsimile: (917) 546-2657

With a copy to:

JPMorgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Attention: Standby Service Unit  
Telephone: (800) 634-1696, option 1  
Facsimile: (312) 954-6163

If to the Issuing and Paying Agent:

[Name of Delivery and Paying Agent]

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to the Trustee:

[Name of Delivery and Paying Agent]

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed or faxed, be effective when deposited in the mails or faxed, respectively, addressed as aforesaid, except that notice to the Bank pursuant to the provisions of Article II shall not be effective until received by the Bank.

*Section 7.3. No Waiver; Remedies.* No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action in any circumstances without notice or demand. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

*Section 7.4. Indemnification.* (a) The City, to the extent permitted by law, hereby indemnify and hold the Bank, and its directors, officers, employees and agents (the "*Indemnified Parties*") harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which such Indemnified Parties may incur or which may be claimed against such Indemnified Parties by any person, as well as to the extent set forth in Section 5.1(z) hereof or by reason of or in connection with (i) the offering, sale, remarketing or resale of the Certificates (including, without limitation, by reason of any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Related Documents or in any supplement or amendment to the Offering Memorandum or any similar disclosure document (other than in connection with a description of the Bank), or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances in which they are or were made, not misleading (other than in connection with a description of the Bank)); (ii) the validity, sufficiency, enforceability or genuineness of any Related Document;

(iii) the issuance of the Letter of Credit or the use of any proceeds of the Letter of Credit; (iv) the execution, delivery and performance of this Agreement, or the making or the failure to honor a properly presented and conforming drawing under the Letter of Credit; or (v) any Property; *provided, however*, that the City shall not be required to indemnify an Indemnified Party pursuant to this Section 7.4 for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank.

(b) To the extent not prohibited by applicable law, the City agrees to indemnify and hold the Bank harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Certificates and the other Related Documents, or any amendment thereto.

*Section 7.5. Liability of the Bank.* Neither the Bank nor any of its officers, directors, employees or agents shall be liable or responsible for (i) the use which may be made of the proceeds of any Certificates or any drawings under the Letter of Credit, (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon (other than the validity as against the Bank of any agreement to which the Bank is a party), even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iii) the lack of validity or enforceability of this Agreement, the Certificates, any other Related Document or any other agreement or instrument relating thereto (other than the validity or enforceability as against the Bank of any agreement to which the Bank is a party), (iv) payment by the Bank against presentation of documents that do not comply strictly with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit, (v) errors, omissions, interruptions or delays in transmission or delivery of any messages, by telex, mail, cable, telegraph, facsimile or otherwise, whether or not they have been in cipher, including any drawings under the Letter of Credit, (vi) errors in interpretation of technical terms, (vii) any consequences arising from causes beyond the control of the Bank, including, without limitation, any acts of governmental entities, or (viii) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided*, that the City shall have claims against the Bank, and the Bank shall be liable to the City to the extent of any direct, as opposed to consequential, special, punitive, exemplary or indirect damages suffered by the City which the City proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether any drawing presented under the Letter of Credit complied with the terms thereof, or (ii) the Bank's willful failure to honor a properly presented and conforming drawing required to be honored by it under the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information (other than actual knowledge to the contrary) to the contrary.

*Section 7.6. Expenses; Documentary Taxes.* The City shall pay or cause to be paid (a) fees and document production costs and disbursements of Chapman and Cutler LLP, special counsel for the Bank, in connection with the preparation of this Agreement and the Letter of Credit, (b) all reasonable out-of-pocket travel and other expenses incurred by the Bank in connection with this Agreement and the Letter of Credit, (c) all reasonable out-of-pocket



expenses of the Bank, including fees and disbursements of counsel, in connection with any waiver or consent hereunder or any amendment hereof or any Default or alleged Default or Event of Default hereunder, and (d) all out-of-pocket expenses incurred by the Bank, including fees and disbursements of counsel, in connection with any Event of Default or any investigation or enforcement proceedings with respect to this Agreement or any Related Document. The City shall reimburse the Bank for any transfer taxes, documentary taxes, assessments or charges made by any governmental authority by reason of the execution a delivery of this Agreement or any Related Document or the acquisition or disposition by the Bank of the Revolving Bank Certificate pursuant to this Agreement.

*Section 7.7. Binding Effect.* (a) This Agreement shall become effective when it shall have been executed by the City and the Bank and thereafter shall be binding upon and inure to the benefit of the City and the Bank and their respective successors and assigns, except that the City shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Bank.

(b) The Bank shall have the right to grant participations from time to time (to be evidenced by one or more participation agreements or certificates of participation) in this Agreement, the Revolving Bank Certificate and the Letter of Credit to one or more Participant Banks, *provided* that the grant of any such participation shall not terminate or otherwise affect any obligation of the Bank hereunder. Each Participant Bank purchasing such a participation shall in the discretion of the Bank have all rights of the Bank hereunder to the extent of the participation purchased, including, without limitation, the benefits of Sections 2.8, 7.4 and 7.6 hereof. In connection with the granting of participations, the Bank may disclose to any proposed participant any information that the City discloses pursuant to this Agreement. The Bank shall give notice to the City of any Participant Bank that is granted a participation pursuant to this Section 7.7(b).

(c) Any assignment by the Bank of its rights hereunder or any interests herein shall satisfy the conditions precedent to the acceptance of an Alternate Credit Facility under the Trust Agreement. Notwithstanding any other provision of this Agreement, the Bank may assign and pledge all or any portion of the obligations owing to it hereunder or under the other Related Documents 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 City to the Bank in accordance with the terms of this Agreement shall satisfy the City's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

(d) Notwithstanding any participation granted by the Bank pursuant hereto, the City shall continue to deal solely and exclusively with the Bank in connection with the respective rights and obligations of the City and the Bank hereunder and under the other Related Documents, the grant of such participation interest shall not limit the obligations of the Bank hereunder and the Bank will continue to serve as the only contact for the City for all matters relating to this Agreement

*Section 7.8. Severability.* Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

*Section 7.9. Governing Law; Jurisdiction; Waiver of Jury Trial.* (a) This Agreement shall be governed by, and construed in accordance with, the internal laws of the State.

(b) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 7.2 hereof.

(c) To the extent permitted by law, each of the City and the Bank irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to legal claims based on the City's or the Bank's performance of its obligations under this Agreement or any other Related Document. If and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, the City and the Bank hereby consent to the adjudication of any and all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine any and all issues in such reference whether fact or law. The City and the Bank represent that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following the opportunity to consult with legal counsel of its choice on such matters. 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.

(d) The waivers made pursuant to this Section 7.9 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement.

*Section 7.10. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

*Section 7.11. Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

*Section 7.12. Integration.* This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

*Section 7.13. Patriot Act.* The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), the Bank is required to obtain, verify and record information that includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act.

**[Section 7.14. City Requirements. The Bank hereby agrees to the City's requirements, as provided in Exhibit D attached hereto and incorporated hereby by this reference.]**

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Letter of Credit and Reimbursement Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

CITY ATTORNEY

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

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

EXHIBIT A

[FORM OF IRREVOCABLE LETTER OF CREDIT]

IRREVOCABLE LETTER OF CREDIT NO. [LETTER OF CREDIT NO.]

[ ], 2010

[Name of Delivery and Paying Agent],  
as Delivery and Paying Agent

[ ]

[ ]

Attention: [ ]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of the City and County of San Francisco (the "City"), in your favor, as delivery and paying agent (the "Delivery and Paying Agent") with respect to the City and County of San Francisco Tax-Exempt Lease Revenue Certificates of Participation, Series 1 and the City and County of San Francisco Taxable Lease Revenue Commercial Paper Certificates of Participation, Series 1-T (the "Certificates"), executed and delivered pursuant to the Trust Agreement dated as of [ ] 1, 2010 (the "Trust Agreement"), by and between the City and [Name of Delivery and Paying Agent], as trustee (the "Trustee") pursuant to which up to [\$50,000,000] in aggregate principal amount of the Certificates are being executed and delivered, our Irrevocable Letter of Credit No. [Letter of Credit No.] in the maximum available amount of \$[Initial Stated Amount] (as more fully described below) (the "Stated Amount"), which may be drawn upon from time to time in respect of the principal of and actual interest accrued on the Certificates, effective on the date hereof and expiring at 4:00 p.m. (Chicago time), at our office in Chicago, Illinois on [ ], 2013, unless extended by us in our sole discretion by delivery of a certificate in the form of Annex E attached hereto (the "Stated Expiration Date") or terminated earlier as hereafter provided; *provided, however*, that if such date is not a Business Day, the Stated Expiration Date shall be the next preceding Business Day. The Stated Amount is subject to reductions and reinstatements as provided herein. All drawings under this Letter of Credit will be paid with our own immediately available funds and will not be paid directly or indirectly from funds or collateral on deposit with or for the account of, or pledged with or for the account of, us by the City. This Letter of Credit is being issued pursuant to that certain Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2010 (as the same may at any time be amended or modified in effect, the "Reimbursement Agreement"), between the City and the Bank.

We hereby irrevocably authorize you to draw on us in an aggregate amount not to exceed the Stated Amount of this Letter of Credit set forth above and in accordance with the terms and conditions and subject to the reductions and reinstatements in amount as hereinafter set forth, (a) in one or more Payment Drafts (as hereinafter defined) (subject to the provisions contained in the second following paragraph), payable as set forth herein on any day other than (i) a Saturday

or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California, the State of Illinois or the State of New York for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon which commercial banks are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under this Letter of Credit (a "*Business Day*"), signed by you in the form of (A) Annex A-1 (with respect to the payment at maturity of the principal of and interest at maturity on Certificates issued in accordance with the Trust Agreement), or (B) Annex A-2 (with respect to the payment at maturity of the principal of and interest at maturity on Certificates issued in accordance with the Trust Agreement and that otherwise mature on or after the date that you receive notice from us in the form of Annex G hereto (the "*Final Drawing Notice*")), attached hereto attached hereto (any such certificate being a "*Payment Draft*"), in each case in an aggregate amount not exceeding the Stated Amount of this Letter of Credit.

Upon our honoring any Payment Draft, the Stated Amount and the amount available to be drawn hereunder by you pursuant to any subsequent Payment Draft shall be automatically decreased by an amount equal to the amount of such Payment Draft. In connection therewith, the Stated Amount and the amounts from time to time available to be drawn by you hereunder by any Payment Draft (except in the case of a Payment Draft resulting from delivery of the Final Drawing Notice) shall be increased when and to the extent, but only when and to the extent (i) of transfer by you to us on the date such Payment Draft is honored of proceeds of new Certificates issued on such date or other funds furnished by or on behalf of the City to us for such purpose, in either case in an aggregate amount equal to the amount of such Payment Draft, or upon written notice from us to you that we have been reimbursed by or on behalf of the City for any amount drawn hereunder by any Payment Draft and (ii) you have not received from us a No-Delivery Notice in the form attached hereto as Annex F.

Each Payment Draft shall be dated the date of its presentation, and shall be presented by facsimile (at facsimile number (312) 954-6163 or alternatively (312) 954-3140), Attention: Standby Letter of Credit Unit, without further need of documentation, including the original of this Letter of Credit, it being understood that each Payment Draft so submitted is to be the sole operative instrument of drawing. Each Payment Draft shall be immediately confirmed by telephone (telephone number: (312) 954-1922 or alternatively to 1-800-634-1969, Option 1)), notifying us of such Payment Draft; *provided*, that, the failure to confirm such Payment Draft by telephone shall not affect the validity or effectiveness of the Payment Draft. If we receive any Payment Draft at such office, in strict conformity with the terms and conditions of this Letter of Credit, not later than 10:00 a.m. (Chicago time), on a Business Day prior to the termination hereof, we will honor the same by 2:00 p.m. (Chicago time), on the same day in accordance with your payment instructions. If we receive any Payment Draft at such office, all in strict conformity with the terms and conditions of the Letter of Credit, after 10:00 a.m. (Chicago time) on a Business Day prior to the termination hereof, we will honor the same by 2:00 p.m. (Chicago time), on the next succeeding Business Day in accordance with your payment instructions.

Payment under this Letter of Credit shall be made by the Bank by wire transfer of immediately available funds to the Delivery and Paying Agent in accordance with the instructions specified by the Delivery and Paying Agent in the related Payment Draft. Such

account may be changed only by presentation to the Bank of a letter in form satisfactory to the Bank specifying a different account with the Delivery and Paying Agent and executed by the Delivery and Paying Agent.

This Letter of Credit shall expire at 4:00 p.m. (Chicago time) on the date (the earliest of such date to occur referred to herein as the "*Letter of Credit Termination Date*") which is the earliest of (i) the Stated Expiration Date, (ii) the later of the date on which we receive written notice from you in the form of Annex C attached hereto that an Alternate Credit Facility has been substituted for this Letter of Credit in accordance with the Trust Agreement or the effective date of any such Alternate Credit Facility, (iii) the date on which we receive written notice from you in the form of Annex D attached hereto that there are no longer any Certificates Outstanding within the meaning of the Trust Agreement and that you elect to terminate the Letter of Credit or (iv) the earlier of (a) the fifteenth (15<sup>th</sup>) calendar day after the date on which you receive the Final Drawing Notice, and (b) the date on which the Payment Draft resulting from the delivery of the Final Drawing Notice is honored hereunder.

This Letter of Credit is transferable in its entirety to any transferee whom you have certified to us has succeeded you as Delivery and Paying Agent under the Trust Agreement, and may be successively transferred. Transfer of the available balance under this Letter of Credit to such transferee shall be effected by the presentation to us of this Letter of Credit accompanied by a Transfer Request in the form of Annex B attached hereto signed by the transferor and the transferee together with the original Letter of Credit.

This Letter of Credit sets forth in full our undertaking but not any of our rights (whether under applicable law or otherwise), and such undertaking but not any of our rights (whether under applicable law or otherwise) shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Certificates), except only the Payment Draft referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such Payment Drafts.

If a Payment Draft does not conform to the terms and conditions of the Letter of Credit, we will notify the Delivery and Paying Agent thereof within the time set forth above for honor of such demand for payment, such notice to be confirmed in writing to the Delivery and Paying Agent within one Business Day, and we shall return all documents to you.

Communications with respect to this Letter of Credit shall be addressed to us at JPMorgan Chase Bank, National Association, 300 South Riverside Plaza, Mail Code IL1-0236, Chicago, Illinois 60606-0236, Attention: Standby Letter of Credit Unit, specifically referring to the number of this Letter of Credit, or as otherwise provided in writing by us. For telephone assistance, please contact the Standby Client Service Unit at 1-800-634-1969, select Option 1, and have the Letter of Credit number available.

Communications with respect to this Letter of Credit shall be addressed to you at [\_\_\_\_\_] , Attention: [\_\_\_\_\_] , specifically referring to the number of this Letter of Credit, or as otherwise provided in writing by you.



Except as expressly stated herein, this Letter of Credit is governed by, and construed in accordance with, the terms of the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "*ISP98*"). As to matters not governed by *ISP98*, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in the State of New York, without regard to conflict of laws.

All payments made by us hereunder shall be made from our funds and not with the funds of any other person.

Very truly yours,

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

ANNEX A-1

[FORM OF CERTIFICATE FOR PAYMENT DRAFT]

CERTIFICATE FOR DRAWING IN CONNECTION  
WITH THE PAYMENT OF PRINCIPAL AND INTEREST

IRREVOCABLE LETTER OF CREDIT NO. [LETTER OF CREDIT NO.]

JPMorgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Chicago, Illinois 60606-0236  
Facsimile Number: (312) 954-6163  
Alternate Facsimile Number: (312) 954-3140

Attention: Standby Letter of Credit Unit

The undersigned, a duly authorized officer of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to JPMorgan Chase Bank, National Association (the "*Bank*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement and is acting as the agent for the holders of the Certificates.

2. The undersigned is making a drawing under the Letter of Credit with respect to a payment of the principal of and accrued interest on maturing Certificates, which payment is due on \_\_\_\_\_.

3. The amount of the Payment Draft is equal to \$\_\_\_\_\_, with \$\_\_\_\_\_ being drawn in respect of the payment of principal of maturing Certificates and \$\_\_\_\_\_ representing \_\_\_\_\_ days' interest thereon. Such amounts were computed in compliance with the terms and conditions of the Certificates and the Trust Agreement. The amount of the Payment Draft being drawn in respect of the payment of principal of and accrued interest on maturing Certificates does not exceed the Stated Amount of the Letter of Credit. The amount payable by the Bank with respect to this Payment Draft is \$\_\_\_\_\_.

4. Each such Certificate was authenticated and delivered by us (or a predecessor Delivery and Paying Agent) pursuant to authority under the Trust Agreement.

5. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will deposit the same directly into the Payment Account maintained by the Delivery and Paying Agent pursuant to the Trust Agreement and the Delivery and Paying Agent Agreement and shall apply the same directly to the payment when due of the principal amount of the Certificates and the interest amount owing on account of the Certificates pursuant to the Trust Agreement, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) no portion of said amount shall be commingled with other funds held by the undersigned, except for other funds drawn under the Letter of Credit, and (d) when such Certificates have been presented for payment and paid by us, we will cancel such matured Certificates.

6. Payment by the Bank pursuant to this drawing shall be made to [\_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention \_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[NAME OF DELIVERY AND PAYING AGENT], as  
Paying Agent

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

ANNEX A-2

[FORM OF CERTIFICATE FOR PAYMENT DRAFT]

CERTIFICATE FOR DRAWING IN CONNECTION WITH THE  
PAYMENT OF PRINCIPAL AND INTEREST AFTER FINAL DRAWING NOTICE

JP Morgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Chicago, Illinois 60606-0236  
Facsimile Number: (312) 954-6163  
Alternate Facsimile Number: (312) 954-3140

Attention: Standby Letter of Credit Unit

The undersigned, a duly authorized officer of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to JP Morgan Chase Bank, National Association (the "*Bank*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement and is acting as the agent for the holders of the Certificates.
2. The Delivery and Paying Agent has received the Final Drawing Notice.
3. The undersigned is making a Payment Draft under the Letter of Credit with respect to a payment of the principal of and accrued interest on Certificates issued in accordance with the Trust Agreement but which matures on or after the date of a Final Drawing Notice.
4. The amount of the Payment Draft is equal to \$\_\_\_\_\_, with \$\_\_\_\_\_ being drawn in respect of the payment of principal of maturing Certificates and \$\_\_\_\_\_ representing \_\_\_ days' interest thereon. Such amounts were computed in compliance with the terms and conditions of the Certificates and the Trust Agreement. The amount of the Payment Draft being drawn in respect of the payment of principal of, accrued interest on, and interest payable to maturity of, the Certificates does not exceed the Stated Amount of the Letter of Credit. The amount requested for payment hereunder has not been and is not the subject of a prior or contemporaneous request for payment under the Letter of Credit.

5. The Certificates was authenticated and delivered by us (or a predecessor Delivery and Paying Agent) pursuant to authority under the Trust Agreement.

6. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will deposit the same directly into the [Note Payment Fund] maintained by the Delivery and Paying Agent pursuant to the Trust Agreement and the Issuing and Paying Agency Agreement and apply the same directly to the payment when due of the principal amount of Certificates and the interest amount owing on account of the Certificates pursuant to the Trust Agreement, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) no portion of said amount shall be commingled with other funds held by the undersigned, except for other funds drawn under the Letter of Credit, and (d) when such Certificates has been presented for payment and paid by us, we will cancel such matured Certificates.

7. This Certificate is being presented to the Bank on a date which is no later than the fifteenth (15<sup>th</sup>) calendar day after receipt by the Delivery and Paying Agent of the Final Drawing Notice.

8. Payment by the Bank pursuant to this drawing shall be made to [\_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention \_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as Delivery and Paying Agent

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

ANNEX B

[FORM OF REQUEST FOR TRANSFER]

REQUEST FOR TRANSFER

Date: \_\_\_\_\_

JPMorgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Chicago, Illinois 60606-0236  
Facsimile Number: (312) 954-6163  
Alternate Facsimile Number: (312) 954-3140

Attention: Standby Letter of Credit Unit  
Re: JPMorgan Chase Bank, National Association Irrevocable Letter of Credit No.  
\_\_\_\_\_ dated \_\_\_\_\_, 2010

We, the undersigned "Transferor", hereby irrevocably transfer all of our rights to draw under the above referenced Letter of Credit ("Credit") in its entirety to:

NAME OF TRANSFEREE

\_\_\_\_\_  
(Print Name and complete address of the Transferee)

"Transferee"

ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP  
\_\_\_\_\_

In accordance with ISP98, Rule 6, regarding transfer of drawing rights, all rights of the undersigned Transferor in such Credit are transferred to the Transferee, who shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned Transferor.

The original Credit, including amendments to this date, is attached and the undersigned Transferor requests that you endorse an acknowledgment of this transfer on the reverse thereof.

The undersigned Transferor requests that you notify the Transferee of this Credit in such form and manner as you deem appropriate, and the terms and conditions of the Credit as transferred. The undersigned Transferor acknowledges that you incur no obligation hereunder and that the transfer shall not be effective until you have expressly consented to effect the transfer by notice to the Transferee.

If you agree to these instructions, please advise the Transferee of the terms and conditions of this transferred Credit and these instructions.

Payment of transfer fee of U.S. \$\_\_\_\_ is for the account of the City, who agrees to pay you on demand any expense or cost you may incur in connection with the transfer. Receipt of such shall not constitute consent by you to effect the transfer.

Transferor represents and warrants to Transferring Bank that (i) our execution, delivery, and performance of this request to Transfer (a) are within our powers (b) have been duly authorized (c) constitute our legal, valid, binding and enforceable obligation (d) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting us or any of our properties (e) do not require any notice, filing or other action to, with, or by any governmental authority (f) the enclosed Credit is original and complete, (g) there is no outstanding demand or request for payment or transfer under the Credit affecting the rights to be transferred, (h) the Transferee's name and address are correct and complete and the Transferee's use of the Credit as transferred and the transactions underlying the Credit and the requested Transfer do not violate any applicable United States or other law, rule or regulation.

The Effective Date shall be the date hereafter on which Transferring Bank effects the requested transfer by acknowledging this request and giving notice thereof to Transferee.

WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

(Signature Page Follows)



This Request is made subject to ISP98 and is subject to and shall be governed by the laws of the State of New York, without regard to principles of conflict of laws.

Sincerely yours,

\_\_\_\_\_  
(Print Name of Transferor)

\_\_\_\_\_  
(Transferor's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

<b>SIGNATURE GUARANTEED</b> Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.  _____ (Print Name of Bank)  _____ (Address of Bank)  _____ (City, State, Zip Code)  _____ (Print Name and Title of Authorized Signer)  _____ (Authorized Signature)
--

Acknowledged:

\_\_\_\_\_  
(Print Name of Transferee)

\_\_\_\_\_  
(Transferee's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

<b>SIGNATURE GUARANTEED</b> Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.  _____ (Print Name of Bank)  _____ (Address of Bank)  _____ (City, State, Zip Code)  _____ (Print Name and Title of Authorized Signer)  _____ (Authorized Signature)
--

ANNEX C

**[FORM OF CERTIFICATE RE: ALTERNATE CREDIT FACILITY]**

CERTIFICATE RE: ALTERNATE CREDIT FACILITY

IRREVOCABLE LETTER OF CREDIT NO. [LETTER OF CREDIT NO.]

JPMorgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Chicago, Illinois 60606-0236  
Facsimile Number: (312) 954-6163  
Alternate Facsimile Number: (312) 954-3140

Attention: Standby Letter of Credit Unit

The undersigned, a duly authorized signatory of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to JPMorgan Chase Bank, National Association (the "*Bank*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement for the holders of the Certificates.
2. The conditions precedent to the acceptance of an Alternate Credit Facility set forth in the Trust Agreement have been satisfied.
3. An Alternate Credit Facility in full and complete substitution for the Letter of Credit has been accepted by the Delivery and Paying Agent and is in effect.
4. There will be no further drawings requested from the Bank under the Letter of Credit.
5. Upon receipt by the Bank of this Certificate the Letter of Credit shall terminate with respect to all outstanding Certificates, and the Letter of Credit is returned to you herewith for cancellation.
6. No payment is demanded of you in connection with this notice.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[NAME OF DELIVERY AND PAYING AGENT], as  
Paying Agent

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

ANNEX D

[FORM OF CERTIFICATE RE: NO OUTSTANDING COMMERCIAL PAPER CERTIFICATES]

CERTIFICATE RE: NO OUTSTANDING COMMERCIAL PAPER CERTIFICATES

IRREVOCABLE LETTER OF CREDIT NO. LETTER OF CREDIT NO.]

JPMorgan Chase Bank, National Association  
300 South Riverside Plaza  
Mail Code IL1-0236  
Chicago, Illinois 60606-0236  
Facsimile Number: (312) 954-6163  
Alternate Facsimile Number: (312) 954-3140

Attention: Standby Letter of Credit Unit

The undersigned, a duly authorized signatory of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to JPMorgan Chase Bank, National Association (the "*Bank*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement for the holders of the Certificates.
2. No Certificates (other than Certificates with respect to which an Alternate Credit Facility is in effect) remain outstanding under the Trust Agreement nor does the City intend to issue any additional Certificates under the Trust Agreement.
3. There will be no further Payment Drafts requested from the Bank under the Letter of Credit, and we hereby elect to terminate the Letter of Credit and return such Letter of Credit to you herewith for cancellation.
4. No payment is demanded of you in connection with this notice.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[NAME OF DELIVERY AND PAYING AGENT], as  
Paying Agent

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

ANNEX E

[FORM OF NOTICE OF EXTENSION OF STATED EXPIRATION DATE]

NOTICE OF EXTENSION OF STATED EXPIRATION DATE

IRREVOCABLE LETTER OF CREDIT NO. [LETTER OF CREDIT NO.]

[Name of Delivery and Paying Agent],  
as Delivery and Paying Agent

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

The undersigned, duly authorized signatory of JPMorgan Chase Bank, National Association (the "*Bank*"), hereby certifies to [Name of Delivery and Paying Agent] (the "*Delivery and Paying Agent*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. We hereby notify you that, in accordance with the terms of the Letter of Credit and Reimbursement Agreement dated as of [\_\_\_\_\_] 1, 2010 (the "*Reimbursement Agreement*"), as the same may at any time be amended or modified and in effect, between the City and County of San Francisco and the Bank, the Stated Expiration Date of the Letter of Credit has been extended to \_\_\_\_\_.
2. This letter should be attached to the Letter of Credit and made a part thereof.
3. The City's acknowledgment hereof shall be deemed to be the certification by the City that all of its representations and warranties contained in Article IV of the Reimbursement Agreement are true and correct as of the date hereof and that no Default or Event of Default has occurred and is continuing.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Notice as of the  
day of \_\_\_\_\_, \_\_\_\_\_.

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

Acknowledged as of \_\_\_\_\_, \_\_\_\_\_

[NAME OF DELIVERY AND PAYING AGENT],  
as Delivery and Paying Agent

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

ANNEX F

[FORM OF NO-DELIVERY NOTICE]

NO-DELIVERY NOTICE

IRREVOCABLE LETTER OF CREDIT NO. [LETTER OF CREDIT NO.]

[Name of Delivery and Paying Agent],  
as Delivery and Paying Agent

[ ]

[ ]

Attention: [ ]

The undersigned, duly authorized signatories of JPMorgan Chase Bank, National Association (the "Bank"), hereby certify to [Name of Delivery and Paying Agent] (the "Delivery and Paying Agent"), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. We hereby notify you that, in accordance with the terms of the Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2010 (as the same may at any time be amended or modified and in effect, the "Reimbursement Agreement"), between the City and County of San Francisco and the Bank, *[insert one of the following phrases]* [the conditions precedent to the occurrence of a Credit Event (as defined in the Reimbursement Agreement) set forth in Section 3.2 of the Reimbursement Agreement have not been satisfied] [an Event of Default (as defined in the Reimbursement Agreement) has occurred and is continuing].

2. Subject to the following sentence, you shall cease authenticating Certificates, as provided in [Section 3.1] of the Trust Agreement, unless and until we rescind this No-Delivery Notice. If you receive this No-Delivery Notice after 9:00 a.m., Chicago time, on a Business Day you shall cease authenticating Certificates on the next Business Day.

3. This No-Delivery Notice shall not affect our obligation to honor demands for payment under the Letter of Credit with respect to Certificates authenticated prior to your receipt of this No-Delivery Notice (or, subject to paragraph 2 above, on the same Business Day that you receive this No-Delivery Notice), and you shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates authenticated prior to your receipt of this No-Delivery Notice (or, subject to paragraph 2 above, authenticated on the same Business Day that you receive this No-Delivery Notice).



IN WITNESS WHEREOF, the undersigned have executed and delivered this No-Delivery Notice as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

ANNEX G

[FORM OF CERTIFICATE RE: FINAL DRAWING]

CERTIFICATE RE: FINAL DRAWING

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

Attention: \_\_\_\_\_

Reference is made to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*"; the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in your favor as Delivery and Paying Agent.

Please be advised that:

(1) An Event of Default under and as defined in the Reimbursement Agreement has occurred and is continuing.

(2) The Bank hereby instructs the Delivery and Paying Agent, effective upon receipt of this Notice, to cease issuing Certificates.

(3) The Bank hereby notifies the Delivery and Paying Agent that (i) effective upon receipt of this Notice, the Stated Amount available to be drawn under the Letter of Credit will not be reinstated in accordance with the Letter of Credit, (ii) the Delivery and Paying Agent is instructed to honor the final Payment Draft under the Letter of Credit to provide for the payment of Certificates issued in accordance with the Trust Agreement which is outstanding and is maturing or is hereafter to mature, and (iii) the Letter of Credit Termination Date will occur and the Letter of Credit will expire on the earlier of (a) date which is the fifteenth (15<sup>th</sup>) calendar day after the date of receipt by the Delivery and Paying Agent of this notice, and (b) the date on which the Payment Draft resulting from the delivery of this notice is honored by us.

JP MORGAN CHASE BANK, NATIONAL  
ASSOCIATION

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

Acknowledged as of \_\_\_\_\_, \_\_\_\_ by [Name  
of Delivery and Paying Agent] as Delivery and  
Paying Agent

By \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

### [FORM OF REVOLVING BANK CERTIFICATE] REVOLVING BANK CERTIFICATE

[**\$50,000,000**]

CITY AND COUNTY OF SAN FRANCISCO (the "*City*"), for value received, hereby promises to pay to JPMorgan Chase Bank, National Association (the "*Bank*"), or registered assigns, at the principal office of the Bank in [New York, New York], the sum of [Fifty Million Dollars (**\$50,000,000**)] or, if less, the aggregate principal amount of all drawings paid by the Bank under the Letter of Credit and all Advances and Term Loans made by the Bank pursuant to the Reimbursement Agreement (as defined below). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Reimbursement Agreement.

The unpaid principal amount hereof from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Reimbursement Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the "*Grid*") on which shall be shown all drawings paid by the Bank and all Advances and Term Loans outstanding from time to time under the Reimbursement Agreement and the amounts of principal and interest payable and paid from time to time under the Reimbursement Agreement. The City hereby appoints the Bank as its agent to endorse the principal amounts owing to the Bank and the maturity schedule therefor pursuant to Section 2.5 and 2.6 of the Reimbursement Agreement respecting outstanding Advances and Term Loans with interest until payment in full pursuant to the terms of this Revolving Bank Certificate, and the date and the amount of each such drawing, Advance or Term Loan or principal or interest repayment made hereunder. In any legal action or proceeding in respect of this Revolving Bank Certificate, the entries made in such accounts shall be prima facie evidence of the existence and the amounts of the obligations of the City recorded therein.

This Revolving Bank Certificate evidences indebtedness incurred under, and is subject to the terms and provisions of, a Letter of Credit and Reimbursement Agreement dated as of [ ] 1, 2010, as the same may at any time be amended or modified and in effect (the "*Reimbursement Agreement*"), between the City and County of San Francisco and the Bank, to which reference is hereby made for a statement of said terms and provisions, including those under which this Revolving Bank Certificate may be paid prior to its due date or its due date accelerated. The obligations of the City hereunder are payable solely from the Pledged Property in accordance with the terms of the Related Documents.

The City hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Revolving Bank Certificate in

endeavoring to collect any amounts payable hereunder which are not paid when due whether by acceleration or otherwise.

This Revolving Bank Certificate is made under the laws of the [State of California], and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Reimbursement Agreement precedent to and in the issuance of this Revolving Bank Certificate, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Revolving Bank Certificate have been duly authorized by resolution of the City duly adopted.

The City hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Revolving Bank Certificate to be duly executed in its name and on its behalf by a duly authorized officer as of dated [\_\_\_\_\_], 2010.

CITY AND COUNTY OF SAN FRANCISCO

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

**REVOLVING BANK CERTIFICATE GRID**

**DRAWINGS, ADVANCES AND TERM LOANS  
AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date	Drawing, Advance or Term Loan	Amount of Drawing, Advance or Term Loan	Principal Amount of Advances or Term Loans Repaid	Amount of Interest on Advances or Term Loans Repaid	Aggregate Advance or Term Loan Balance	Notation Made By

Note: Additional pages of this Revolving Bank Certificate and Revolving Bank Certificate Grid may be attached to the Revolving Bank Certificate as may be necessary to record certain information regarding each drawing, Advance or Term Loan.

**EXHIBIT C**

**[FORM OF REQUEST FOR EXTENSION OF STATED EXPIRATION DATE]**

REQUEST FOR EXTENSION OF STATED EXPIRATION DATE

The undersigned, duly authorized signatories of the undersigned City and County of San Francisco (the "*City*"), hereby certify to JPMorgan Chase Bank, National Association (the "*Bank*"), with reference to Irrevocable Letter of Credit No. [Letter of Credit No.] (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

Pursuant to Section 2.10 of the Letter of Credit and Reimbursement Agreement dated as of [\_\_\_\_\_] 1, 2010 (the "*Reimbursement Agreement*", to which reference is made for the definition of capitalized terms not otherwise defined herein), between the City and the Bank, the City hereby requests an extension of the Stated Expiration Date to \_\_\_\_\_.

All representations and warranties contained in Article IV of the Reimbursement Agreement are true and correct and will be true and correct as of the date of this Certificate as if made on and as of the date hereof and no Event of Default has occurred and is continuing and no event has occurred and is continuing which is or with the passage of time or giving of notice or both would be an Event of Default on and as of the date hereof or will occur as a result of the extension of the Stated Expiration Date of the Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO

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

**EXHIBIT D**

**CITY REQUIREMENTS**



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**COMMERCIAL PAPER DEALER AGREEMENT**

**Between the**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**[DEALER]**

**CP Dealer**

**Dated as of \_\_\_\_\_1, 2009**

**Relating to**

**City and County of San Francisco**

**Tax-Exempt Commercial Paper Certificates**

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## COMMERCIAL PAPER DEALER AGREEMENT

This COMMERCIAL PAPER DEALER AGREEMENT, dated as of \_\_\_\_1, 2009 (the "Agreement"), between City and County of San Francisco (the "City") and [DEALER] (the "CP Dealer").

For and in consideration of the mutual covenants made herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Background and Definitions.** (a) The City has authorized the delivery and redelivery from time-to-time of its tax-exempt commercial paper certificates of participation (the "Certificates") in the aggregate principal amount not to exceed \$\_\_\_\_\_ outstanding at any time.

(b) The City has authorized the delivery of the Certificates pursuant to a Trust Agreement, dated as of \_\_\_\_1, 2009 (the "Trust Agreement"), between the City and [Trustee], as trustee, and an Delivery and Paying Agent Agreement dated as of \_\_\_\_1, 2009 (the "Delivery and Paying Agent Agreement") between the City and [Paying Agent], as delivery and paying agent (collectively, the "Authorizing Document").

(c) [Bank] (the "Bank") has issued an irrevocable direct-pay letter of credit (the "Facility") with respect to the Certificates to [Paying Agent], as delivery and paying agent (the "Account Party") in accordance with the terms of the Authorizing Document and the Reimbursement Agreement, dated as of \_\_\_\_1, 2009 (the "Reimbursement Agreement"), between the City and the Bank.

(d) The Authorizing Document provides for the appointment of the CP Dealer to perform certain duties, including the offering and sale from time-to-time of the Certificates on behalf of the City.

(e) [Dealer] has agreed to accept the duties and responsibilities of the CP Dealer with respect to the Certificates under the Authorizing Document and this Agreement.

(f) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Authorizing Document.

**Section 2. Appointment of CP Dealer.** Subject to the terms and conditions contained herein, the City hereby appoints [Dealer] as the CP Dealer for the Certificates, and [Dealer] hereby accepts such appointment.

**Section 3. Responsibilities of CP Dealer.** (a) Subject to the terms and conditions set forth in this Agreement, [Dealer] agrees to perform the duties of CP Dealer set forth in this Agreement. It is understood that in undertaking to perform such duties, and in the performance thereof, it is the intention of the parties that the CP Dealer will act solely as an agent and not as a principal, except as expressly provided in this Agreement. The CP Dealer will use its best efforts to solicit and arrange sales of the Certificates on behalf of the City at such rates and maturities as may prevail from time to time in the market. The CP Dealer and the City agree that any Certificates which the Dealer may arrange the sale of or which, in the Dealer's sole discretion, it may elect to purchase, will be purchased or sold on the terms and conditions and in

the manner provided in the Authorizing Document and this Agreement. Anything herein to the contrary notwithstanding, to the extent of any conflict between the provisions hereof and of the Authorizing Document, the provisions of the Authorizing Document will be controlling.

(b) Notwithstanding anything to the contrary contained herein, the CP Dealer:

(i) will suspend its efforts with respect to the offer or sale of the Certificates on behalf of the City upon the receipt of notice of the occurrence of an event of default under the Authorizing Document, the Facility or the Reimbursement Agreement; and

(ii) may, in its sole discretion, suspend its efforts with respect to the offer or sale of the Certificates on behalf of the City immediately upon the occurrence of any of the following events, which suspension will continue so long as, in the CP Dealer's reasonable judgment, such event continues to exist as to the Certificates:

(1) suspension or material limitation in trading in securities generally on the New York Stock Exchange;

(2) a general moratorium on commercial banking activities in New York is declared by either federal or New York State authorities;

(3) the engagement by the United States in hostilities if the effect of such engagement, in the CP Dealer's judgment, makes it impractical or inadvisable to proceed with the solicitation of offers to purchase the Certificates;

(4) legislation will be introduced by committee, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate of the Congress of the United States, or a decision by a court of the United States will be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter will be made or proposed, to the effect that the offering or sale of obligations of the general character of the Certificates, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended (the "Securities Act") as then in effect, or the Securities Exchange Act of 1934, as amended (the "Exchange Act") as then in effect, or with the purpose or effect of otherwise prohibiting the offering or sale of obligations of the general character of the Certificates, or the Certificates themselves, as contemplated hereby;

(5) any event will occur or information will become known, which, in the CP Dealer's reasonable opinion, makes untrue, incorrect or misleading in any material respect any statement or information contained in any disclosure documents provided to the CP Dealer in connection with the performance of its duties hereunder, whether provided pursuant to Section 5 hereof or otherwise, or causes such documents to contain an untrue, incorrect or misleading statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading;

(6) any governmental authority will impose, as to the Certificates, or obligations of the general character of the Certificates, any material restrictions

regarding the ownership or transfer of the Certificates not now in force, or increase materially those now in force;

(7) any of the representations and warranties of the City made hereunder will not have been materially true and correct on the date made;

(8) the City fails to observe any of the covenants or agreements made herein and such failure continues for a period of not to exceed thirty days from the time the CP Dealer notifies the City of such failure;

(9) any of the rating agencies then rating the Certificates or the Bank will either (i) downgrade the ratings assigned to either the Certificates or the Bank so that such Certificates are not "Eligible Certificates" as defined under Rule 2a-7 of the Investment Company Act of 1940, as amended or (ii) suspend or withdraw the then current ratings assigned to either the Certificates or the Bank; or

(10) an actual or imminent default or a moratorium in respect of payment of any U.S. Treasury bills, bonds or notes the effect of which in the CP Dealer's reasonable judgment makes it impractical to market the Certificates or to enforce contracts for the sale of the Certificates.

**Section 4. Transactions in Certificates.** (a) All transactions in Certificates between the CP Dealer and the City will be in accordance with the Authorizing Document, this Agreement, the Reimbursement Agreement and with the customs and practices in the commercial paper market regarding settlement and delivery formally adopted in writing from time to time by the New York Clearinghouse, to the extent not inconsistent with the Authorizing Document. As early as possible, but not later than 12:30 p.m. (New York City time) on the day on which any Certificates are to be issued, the CP Dealer will notify the City of the proposed final maturities, prices and interest rates (which interest rates will not exceed 10% per annum unless the City otherwise notifies the CP Dealer in writing that the Authorizing Documents and the Credit Facility have been amended to provide for a higher maximum interest rate for the Certificates) at which the CP Dealer will purchase or cause the purchase of the Certificates, and provide the City with any other information as required for delivery of such Certificates. Except as described below, the CP Dealer will not be obligated to purchase or cause the purchase of any Certificates unless and until agreement has been reached in each case on the foregoing points and the CP Dealer has agreed to such purchase. Not later than 1:00 p.m. (New York City time) on the date of each transaction the CP Dealer will either (a) confirm each transaction made with or arranged by it or (b) notify the City and the Delivery and Paying Agent of the difference, if any, between the amount of maturing Certificates and the amount of Certificates which the CP Dealer has arranged to sell or has agreed to purchase. Such confirmation or notification will be given by telephone (or by other telecommunications medium acceptable to the City) and in writing to the City and the Delivery and Paying Agent.

**Section 5. Payment for Certificates.** The CP Dealer will pay the Delivery and Paying Agent for the Certificates sold by the CP Dealer (or purchased by the CP Dealer for its own account) in immediately available funds by 2:15 p.m. (New York City time) on the Business Day such Certificates are delivered to the CP Dealer (provided that such Certificates are to be delivered to the CP Dealer by no later than 3:00 p.m. (New York City time) on such Business Day). All Certificates will be sold at par, and will be evidenced either by (i) a global certificate

immobilized with The Depository Trust Company of New York or (ii) if not, will be executed in the manner provided for in the Authorizing Document.

**Section 6. Designated Representative.** Certificate transactions with the City, pursuant to Section 4 hereof, will be with any one of the officers or employees of the City who are designated as a Designated Representative by certificate signed by the Director of Public Finance of the City. The initial written designation of the Designated Representatives is appended hereto as Appendix A. The City agrees to provide the CP Dealer with revised written designations in the form of Appendix A when and as required by changes in the Designated Representatives. The CP Dealer may rely upon such designation unless and until otherwise notified in writing by the City.

**Section 7. Resignation and Removal of CP Dealer.** The CP Dealer may at any time resign and be discharged of its duties and obligations hereunder upon providing the City and the Delivery and Paying Agent and the Bank with not less than sixty (60) days' prior written notice, which resignation will become effective only upon the appointment of a successor CP Dealer. The City will use its best efforts to appoint a successor CP Dealer within 60 days after receipt of notice of the CP Dealer's resignation. The CP Dealer may be removed at any time, at the direction of the City upon not less than fourteen (14) days' prior written notice to the CP Dealer and the Delivery and Paying Agent. Upon removal or resignation of the CP Dealer, the City will promptly cause the Delivery and Paying Agent to give notice thereof by mail to all owners of the Certificates and to any rating agency which has assigned a rating to the Certificates. The CP Dealer will assign and deliver this Agreement to its successor if requested by the City.

**Section 8. Furnishing of Disclosure Materials.**

(a) The City agrees to furnish the CP Dealer with as many copies as the CP Dealer may reasonably request of the offering memorandum dated \_\_\_\_\_, 2009 of the City relating to the Certificates (the "Offering Memorandum"), and such other information with respect to the City and the Certificates as the CP Dealer will reasonably request from time to time.

(b) The City agrees to cooperate with the CP Dealer in the preparation from time-to-time of a new Offering Memorandum of the City for the Certificates in the event the CP Dealer reasonably determines that the preparation and distribution of such Offering Memorandum is necessary or desirable in connection with offering and sale on behalf of the City of the Certificates, and to furnish or to cause to be furnished to the CP Dealer as many copies of such new Offering Memorandum as the CP Dealer will request.

(c) Notwithstanding that the Certificates are exempt from the continuing disclosure requirements of Rule 15c2-12 promulgated under the Securities and Exchange Act of 1934, as amended (the "1934 Act"), the City will provide prompt notice to the Dealer of the occurrence of any event with respect to the Certificates referred to in Rule 15c2-12(b)(5)(i)(C) promulgated under the 1934 Act, as amended, except that draws on the Letter of Credit will not require such notice be given.

(d) The City agrees to promptly furnish to the CP Dealer a copy of each filing or notice made to anyone (whether in connection with the Certificates or not) pursuant to any undertaking or other agreement of the City made with respect to general fund debt of the City under any provision of Rule 15c2-12 promulgated under the 1934 Act.

(e) It is expressly understood and agreed by the City and the CP Dealer that, after the initial delivery of the Certificates, the City will not undertake to determine or to inform any person (including the CP Dealer) whether or not the Offering Memorandum omits to state any fact necessary to make the Offering Memorandum not misleading. The City will have no obligation to provide any ongoing information to the CP Dealer regarding corrections to the Offering Memorandum other than as expressly provided herein.

**Section 9. Fees and Expenses.** For the CP Dealer's services under this Agreement, the City will pay the CP Dealer a fee of \_\_\_ basis points per annum of the weighted average of the principal amount of Certificates outstanding during each three month period, computed on the basis of a 365 or 366 day year. The City will pay the fee quarterly in arrears commencing \_\_\_\_, 2009, and each July 1, October 1, January 1 and April 1 thereafter. The City will also pay, or cause to be paid to, the CP Dealer, upon the initial delivery and sale of the Certificates, a one-time payment of \$\_\_\_\_\_ as reimbursement for word-processing and production costs associated with the preparation of the Offering Memorandum. The City also agrees to pay the reasonable out-of-pocket expenses of the CP Dealer, incurred in connection with the performance of its obligations hereunder.

**Section 10. Representations and Warranties of the City.** The City, by its acceptance hereof, represents and warrants that:

(a) It is a charter city and county organized and existing under the laws of the State of California.

(b) The Certificates have been duly authorized and, when executed and delivered as provided in the Authorizing Document and paid for, will be duly and validly issued and delivered and will constitute legal, valid and binding obligations of the City in accordance with their terms.

(c) It has full power and authority to take all actions required or permitted to be taken by the City by or under, and to perform and observe the covenants and agreements on its part contained in, this Agreement, the Authorizing Document, the Reimbursement Agreement, and any other instrument or agreement relating thereto to which the City is a party (the "Financing Documents").

(d) The Financing Documents have been duly authorized, executed and delivered by the City and constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms, except to the extent enforceability may be limited by the City's bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There are no consents, authorizations or approvals of, or filings with, any Federal or state government authority (other than the City and the City) required in connection with the delivery or sale by the City of the Certificates or the performance of its obligations thereunder except as may be required by state securities laws and those which have already been obtained or made.

(f) To the knowledge of the Director of Public Finance, after reasonable due inquiry, the execution, delivery and performance by the City of the Certificates and the

Financing Documents will not result in a breach or violation of, conflict with, or constitute a default under any law, regulation, order, judgment, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

(g) Each delivery of Certificates to the CP Dealer will be deemed a representation and warranty by the City, as of the date thereof, that (i) the Certificates issued on such date have been duly authorized, issued and delivered and, upon payment therefor, will constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms, except to the extent enforceability may be limited by the City's bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. and (ii) the representations and warranties of the City set forth in paragraphs (b) through (g) of this Section 10 are true and correct as if made on such date.

#### **Section 11. Covenants and Agreements of the City.**

(a) The City will provide [Dealer] at its address set forth below, as promptly as available, and in no event no later than 270 days after the end of each fiscal year of the City, the complete Comprehensive Annual Financial Report ("CAFR") of the City, certified as to the fairness of presentation and conformity with generally accepted accounting principles by a recognized firm of independent certified public accountants.

(b) The City will promptly notify the CP Dealer of any fact or circumstance which may constitute, or with the passage of time will constitute, an event of default under the Certificates, the Authorizing Document, the Facility or the Reimbursement Agreement.

(c) The City will notify the CP Dealer in the event that the Treasurer has received actual notice that opinions from Certificate Counsel delivered in connection with the initial delivery of the Certificates have been withdrawn, adversely modified or retracted.

(d) The City will take all action within its control necessary to maintain the exclusion of interest with respect to the Certificates from the gross income of the Holders thereof for Federal income tax purposes.

(e) The City will notify the CP Dealer of the replacement or substitution of any Credit Facility provider in accordance with Section 6.02 of the Trust Agreement.

**Section 12. Conditions Precedent.** At or promptly following the execution of this Agreement and as a condition precedent to any obligations of the CP Dealer hereunder, the Authority will furnish to the CP Dealer the following documents, in form and substance satisfactory to the CP Dealer.

(1) Certified copies of the Trust Agreement and documents authorizing the execution and delivery of this Agreement.

(2) An opinion of Special Counsel to the City substantially in the form attached as Appendix A to the Offering Memorandum for the Certificates.

- (3) All other pertinent legal documents supporting this transaction.

**Section 13. Term of Agreement.** This Agreement will become effective on the date hereof and will continue in full force and effect until the cessation of the Certificates program, subject to the right of suspension and termination as provided herein.

**Section 14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

**Section 15. Dealing in Certificates by the CP Dealer; No Obligation to Purchase Certificates.**

(a) The CP Dealer, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Certificates, including, without limitation, any Certificates offered and sold by the CP Dealer pursuant to this Agreement, and may join in any action which any Owner may be entitled to take with like effect as if it did not act in any capacity hereunder. The CP Dealer, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the City and may act as depositary, Account Party, or agent for any committee or body of owners of the Certificates or other obligations of the City as freely as if it did not act in any capacity hereunder.

(b) Nothing in this Agreement will be deemed to constitute the CP Dealer an underwriter of the Certificates or to obligate the CP Dealer to purchase any Certificates for its own account at any time.

**Section 16. City Requirements.**

(a) CP Dealer Shall Not Discriminate. In the performance of this Agreement, the CP Dealer agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, weight, height, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or associated with members of such protected classes, or in retaliation for opposition to discrimination against such classes against any employee of, any City employee working with, or applicant for employment with the CP Dealer in any of the CP Dealer's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by the CP Dealer.

(b) Subcontracts. The CP Dealer shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Section 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from purchasing) and shall require all subcontractors to comply with such provisions. The CP Dealer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. The CP Dealer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, California, or on real property owned by San Francisco, California, or



where the work is being performed for the City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. The CP Dealer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC 12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The CP Dealer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the CP Dealer understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the CP Dealer and/or deducted from any payments due the CP Dealer; provided, however that such damages shall not be set off against the payment of rental or other contract related to bonds, certificates of participation or other debt obligation of the City.

(f) Drug-Free Workplace Policy. The CP Dealer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The CP Dealer agrees that any violation of this prohibition by the CP Dealer, its employees, agents or assigns will be deemed a material breach of this Agreement.

(g) Compliance with Americans with Disabilities Act. Without limiting any other provisions of this Agreement, the CP Dealer shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. The CP Dealer agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the CP Dealer, its employees, agents or assigns shall constitute a material breach of this Agreement.

(h) Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit.

Information provided which is covered by this paragraph will be made available to the public upon request.

(i) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the CP Dealer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services provided under this Agreement. The CP Dealer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the CP Dealer violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the CP Dealer from bidding on or receiving any new City contract for a period of two (2) years.

(j) MacBride Principles—Northern Ireland. The City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(k) Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product or any virgin redwood or virgin redwood product.

(l) Repeal of Administrative Code Provisions. To the extent that the City repeals any provision of the Administrative Code incorporated, set forth or referenced in this Section 15, other than pursuant to a restatement or amendment of any such provision, such provision, as incorporated, set forth or referenced herein, shall no longer apply to this Agreement or the CP Dealer.

**Section 17. Miscellaneous.** Except as otherwise specifically provided in this Agreement, all notices, demands and formal actions under this Agreement will be in writing and either (i) hand-delivered, (ii) sent by electronic means, or (iii) mailed by registered or certified mail, return receipt requested, postage prepaid, to:

The CP Dealer:

The City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller

The Delivery and Paying Agent:

The Bank:

Each party hereto may, by notice given under this Agreement to the other parties described above, designate other addresses to which subsequent notices, requests, reports or other communications will be directed.

(b) This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The terms "successors" and "assigns" will not include any purchaser of any of the Certificates merely because of such purchase. Except as provided in (c) below, neither the Bank nor any owner of the Certificates or other third party will have any rights or privileges hereunder.

(c) The Bank is a third party beneficiary of this Agreement only for the purpose of enforcing the rights and obligations of the CP Dealer and the City pursuant to Sections 3, 4, 5 and 7 of this Agreement.

(d) All of the representations and warranties of the City and the CP Dealer in this Agreement will remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the CP Dealer or the City, (ii) the offering and sale of and any payment for any Certificates hereunder, or (iii) suspension, termination or cancellation of this Agreement.

(e) This Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto. If such an amendment, change, waiver discharging or termination affects the Bank, the prior written consent of the Bank will be required.

(f) Nothing herein will be construed to make any party an employee of the other or to establish any fiduciary relationship between the parties except as expressly provided herein.

(g) If any provision of this Agreement will be held or deemed to be or will, in fact, be invalid, inoperative or unenforceable for any reason, such circumstances will not have the effect of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

(h) This Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which will constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

City and County of San Francisco

By: \_\_\_\_\_  
Director of Public Finance

[DEALER]

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**APPENDIX A**

**CERTIFICATE OF DESIGNATED REPRESENTATIVE**

I am the Director of Public Finance of the City and County of San Francisco (the "City") duly authorized pursuant to the Trust Agreement, dated as of \_\_\_\_ 1, 2009, by and between the City and County of San Francisco and [Trustee] (the "Authorizing Document") to appoint Designated Representatives of the City in connection with the delivery, from time to time, by the City of lease revenue tax-exempt commercial paper (the "Certificates") in accordance with the Authorizing Document. I hereby designate the following persons to act on my behalf in accordance with the Authorizing Document and specimen signatures of such persons are set forth beside their names.

Designated Persons

Specimen Signature

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

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

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Director of Public Finance  
of the City and County of San Francisco

