

**MASTER SUBORDINATE TRUST INDENTURE**

by and between

**CITY OF LONG BEACH**

and

**DEUTSCHE BANK NATIONAL TRUST COMPANY,**  
as Trustee

(Gas Utility Enterprise Fund)

Dated as of July 1, 2005

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## MASTER SUBORDINATE TRUST INDENTURE

**THIS MASTER SUBORDINATE TRUST INDENTURE** (this “Indenture”), dated as of July 1, 2005, is made by and between **CITY OF LONG BEACH**, a charter city and municipal corporation organized and existing under the Constitution of the State of California (the “City”), and **DEUTSCHE BANK NATIONAL TRUST COMPANY**, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

### RECITALS

WHEREAS, the City is a city organized and existing under a charter (the “Charter”) duly and regularly adopted pursuant to the provisions of the Constitution (the “Constitution”) of the State of California (the “State”); and

WHEREAS, the City, by and through the Long Beach Energy Department (the “Department”), owns and operates the Enterprise (as hereinafter defined); and

WHEREAS, the City is authorized under the Charter and Sections 3.52.110 et seq. of the Long Beach Municipal Code, to issue revenue bonds for the purpose of financing improvements to the Enterprise and to execute all documents in furtherance of the issuance of such revenue bonds; and

WHEREAS, pursuant to Section 1725(a) of Article XVII of the Charter, the City is authorized to issue short-term revenue certificates for purposes of financing capital improvements to the City’s Gas Utility (as hereinafter defined) system; and

WHEREAS, the City has previously entered into that certain Indenture of Trust, dated as of February 1, 2005, (the “Second Lien Trust Indenture”), by and between the City and The Bank of New York Trust Company, N.A. (the “Second Lien Trustee”), which Second Lien Trust Indenture provides for the issuance of, among other things, subordinate obligations, and pursuant and subject to such Second Lien Trust Indenture the City has granted to the Second Lien Trustee a lien on and pledge of the “Revenues” which are defined in the Second Lien Trust Indenture, plus any additional sources of revenue which may be pledged from time to time under the Second Lien Trust Indenture; and

WHEREAS, under the terms of the Second Lien Trust Indenture, the City may issue or incur obligations payable from Revenues, as that term is defined in the Second Lien Trust Indenture, on a basis subordinate to its obligations thereunder, in such amounts as the City Council may determine; and

WHEREAS, the City has determined that it is necessary and advisable to issue Subordinate Obligations (as hereinafter defined), to provide for a trust arrangement pledging the Subordinate Revenues, as defined herein, to secure all obligations issued or incurred in accordance with the terms of this Indenture and providing such Subordinate Revenues as a source of payment for all obligations issued or incurred in accordance with the terms of this Indenture; and

WHEREAS, the City hereby declares and provides that, with respect to Revenues, the pledge and lien provided in this Indenture are subordinate to the lien created by the Second Lien Trust Indenture and any First Lien Debt Instrument and obligations issued hereunder will be subordinate to obligations issued under the Second Lien Trust Indenture and any First Lien Debt Instrument with respect to payment from Revenues and shall be payable from Revenues only when and to the extent Revenues are released under the Second Lien Trust Indenture or any First Lien Debt Instrument in accordance with their terms; and

WHEREAS, all obligations issued or incurred in accordance with the terms of Article II of this Indenture and secured hereunder by a pledge of the Subordinate Revenues are herein referred to as "Subordinate Obligations;" and

WHEREAS, the City wishes to provide in this Indenture for the issuance and payment of its Subordinate Obligations and the pledge of Subordinate Revenues thereto, and the Trustee is willing to accept the trusts provided in this Indenture; and

WHEREAS, in order to provide for the authentication and delivery of the Subordinate Obligations, to establish and declare the terms and conditions upon which the Subordinate Obligations are to be issued and secured and to secure the payment of the principal, Accreted Value, and purchase price, if any, thereof and of the interest and premium, if any, thereon, the City Council of the City has authorized the execution of this Indenture; and

WHEREAS, all acts and proceedings required by law necessary to make the Subordinate Obligations, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the City, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized.

NOW, THEREFORE, the City and the Trustee agree as follows, each for the benefit of the other and/or the benefit of holders of the Subordinate Obligations by this Indenture:

#### **GRANTING CLAUSE**

To secure the payment of the principal, Accreted Value, interest, premium, if any, and purchase price, if any, on the Subordinate Obligations and the performance and observance by the City of all the covenants, agreements and conditions expressed or implied herein or contained in the Subordinate Obligations, the City hereby pledges and assigns to the Trustee and grants to the Trustee a lien on and security interest in all right, title and interest of the City in and to all of the following and provides that, such lien and security interest shall be prior in right to any other pledge, lien or security interest created by the City, in the following: (a) the Subordinate Revenues, (b) all moneys and securities (excluding moneys and securities on deposit in any Rebate Fund) held from time to time by the Trustee under this Indenture, and to the extent provided in any Supplemental Subordinate Indenture moneys and securities held in any Construction Fund whether or not held by the Trustee, (c) earnings on amounts included in provisions (a) and (b) of this Granting Clause, and (d) any and all other funds, assets, rights, property or interests therein, of every kind or description which may from time to time hereafter,

by delivery or by writing of any kind, be sold, transferred, conveyed, assigned, pledged, mortgaged, granted or delivered to or deposited with the Trustee as additional security hereunder, for the equal and proportionate benefit and security of all Subordinate Obligations, all of which, regardless of the time or times of their authentication and delivery or maturity, shall, with respect to the security provided by this Granting Clause, be of equal rank without preference, priority or distinction as to any Subordinate Obligation over any other Subordinate Obligation or Subordinate Obligations, except as to the timing of payment of the Subordinate Obligations. Any Debt Service Reserve Fund and any Debt Service Reserve Fund Surety Policy, as defined hereinafter, provided at any time in satisfaction of all or a portion of the Reserve Requirement and any other security, Liquidity Facility or Credit Facility provided for specific Subordinate Obligations, a specific Series or Subseries of Subordinate Obligations or one or more Series or Subseries of Subordinate Obligations may, as provided by a Supplemental Subordinate Indenture, secure only such specific Subordinate Obligations, Series or Subseries of Subordinate Obligations or one or more Series or Subseries of Subordinate Obligations and, therefore, shall not be included as security for all Subordinate Obligations under this Indenture unless otherwise provided by a Supplemental Subordinate Indenture and moneys and securities held in trust as provided in Section 4.05 exclusively for Subordinate Obligations which have become due and payable and moneys and securities which are held exclusively to pay Subordinate Obligations which are deemed to have been paid under Article VII hereof shall be held solely for the payment of such specific Subordinate Obligations. All amounts held in the funds and accounts created under the Second Lien Trust Indenture or any First Lien Debt Instrument shall not be included as security for any Subordinate Obligations under this Indenture.

## **ARTICLE I**

### **DEFINITIONS; INTERPRETATION**

The capitalized terms used in this Indenture and in any Supplemental Subordinate Indenture shall, for all purposes of this Indenture, have the meanings specified in this Article I, unless a different definition is given such term in said Supplemental Subordinate Indenture or unless the context clearly requires otherwise.

“*Accreted Value*” shall mean (a) with respect to any Capital Appreciation Subordinate Obligations, as of any date of calculation, the sum of the amount set forth in a Supplemental Subordinate Indenture as the amount representing the initial principal amount of such Capital Appreciation Subordinate Obligation plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (b) with respect to Original Issue Discount Subordinate Obligations, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Subordinate Obligations plus the amount of the discounted principal which has accreted since the date of issue; in each case the Accreted Value shall be determined by the City and/or such other party appointed by the City or as otherwise provided in accordance with the provisions of the Supplemental Subordinate Indenture authorizing the issuance of such Capital Appreciation Subordinate Obligation or Original Issue Discount Subordinate Obligation.

“*Act*” shall mean collectively the Bond Law and the Charter.



“*Aggregate Annual Debt Service*” shall mean for any Fiscal Year the aggregate amount of Annual Debt Service on all Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations. For purposes of calculating Aggregate Annual Debt Service, the following components of debt service shall be computed as follows:

(a) in determining the principal due in each year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made on Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations in accordance with any amortization schedule established by the governing documents setting forth the terms of such Subordinate Obligations, including, as a principal payment, the Accreted Value of any Capital Appreciation Subordinate Obligations or Original Issue Discount Subordinate Obligations maturing or scheduled for redemption in such year; in determining the interest due in each year, interest payable at a fixed rate shall (except to the extent subsection (b), (c) or (d) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates; provided, however, that interest payable on the Subordinate Obligations shall be excluded to the extent such payments are to be paid from Capitalized Interest for such Fiscal Year;

(b) if all or any portion or portions of an Outstanding Series or Subseries of Subordinate Obligations or Unissued Subordinate Program Obligations constitute Balloon Indebtedness, then, for purposes of determining Aggregate Annual Debt Service, each maturity which constitutes Balloon Indebtedness shall, unless otherwise provided in the Supplemental Subordinate Indenture pursuant to which such Balloon Indebtedness is issued or unless provision (c) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of not more than 30 years and with substantially level annual debt service payments commencing not later than the year following the year in which such Balloon Indebtedness was issued, and extending not later than 30 years from the date such Balloon Indebtedness was originally issued; the interest rate used for such computation shall be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under this Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes and which is or is not subject to any alternative minimum tax; with respect to any Series or Subseries of Subordinate Obligations, Unissued Subordinate Program Obligations or Subordinate Program Obligations, only a portion of which constitutes Balloon Indebtedness, the remaining portion shall be treated as described in (a) above or such other provision of this definition as shall be applicable and, with respect to any Series or Subseries, Unissued Subordinate Program Obligations or Subordinate Program Obligations, or that portion of a Series or Subseries thereof which constitutes Balloon Indebtedness, all payments of principal and interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness shall be treated as described in (a) above or such other provision of this definition as shall be applicable;

(c) any maturity of Subordinate Obligations which constitutes Balloon Indebtedness as described in provision (b) of this definition and for which the stated maturity date occurs within 12 months from the date such calculation of Aggregate Annual Debt Service is made, shall be assumed to become due and payable on the stated maturity date and provision (b) above shall not apply thereto unless there is delivered to the entity making the calculation of Aggregate Annual Debt Service a certificate of an Authorized City Representative stating that the City intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the City is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Balloon Indebtedness shall be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms shall be used for purposes of calculating Aggregate Annual Debt Service, provided that such assumption shall not result in an interest rate lower than that which would be assumed under provision (b) above and shall be amortized over a term of not more than 30 years from the date of refinancing;

(d) if any Outstanding Subordinate Obligations (including Subordinate Program Obligations) or any Subordinate Obligations which are then proposed to be issued constitute Tender Indebtedness (but excluding Subordinate Program Obligations or Subordinate Obligations as to which a Qualified Swap is in effect and to which subsection (g) or (h) applies), then, for purposes of determining Aggregate Annual Debt Service, Tender Indebtedness shall be treated as if the principal amount of such Subordinate Obligations were to be amortized over a term of not more than 30 years commencing in the year in which such Series or Subseries is first subject to tender and with substantially level Annual Debt Service payments and extending not later than 30 years from the date such Tender Indebtedness was originally issued; the interest rate used for such computation shall be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under this Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes and which is or is not subject to any alternative minimum tax; and with respect to all principal and interest payments becoming due prior to the year in which such Tender Indebtedness is first subject to tender, such payments shall be treated as described in (a) above unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date shall be determined as provided in (e) or (f) below, as appropriate;

(e) if any Outstanding Subordinate Obligations constitute Variable Rate Indebtedness, including obligations described in subsection (h)(ii) to the extent it applies (except to the extent subsection (b) or (c) relating to Balloon Indebtedness or (d) relating to Tender Indebtedness or subsection (h)(i) relating to Synthetic Fixed Rate Debt applies), the interest rate on such Subordinate Obligations shall be that rate quoted in The

Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for variable rate Subordinate Obligations of a corresponding term issued under this Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes and which is or is not subject to any alternative minimum tax;

(f) with respect to any Subordinate Program Obligations or Unissued Subordinate Program Obligations (other than a Commercial Paper Program) (i) debt service on such Subordinate Program Obligations then Outstanding shall be determined in accordance with such of the foregoing provisions of this definition as shall be applicable, and (ii) with respect to Unissued Subordinate Program Obligations, it shall be assumed that the full principal amount of such Unissued Subordinate Program Obligations will be amortized over a term certified by an Authorized City Representative at the time the initial Subordinate Program Obligations of such Program are issued to be the expected duration of such Program or, if such expectations have changed, over a term certified by an Authorized City Representative to the expected duration of such Program at the time of such calculation, but not to exceed 30 years from the date of the initial issuance of such Subordinate Program Obligations and it shall be assumed that debt service shall be paid in substantially level Annual Debt Service payments over such assumed term; the interest rate used for such computation shall be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under this Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes and which is or is not subject to any alternative minimum tax;

(g) debt service on Repayment Obligations, to the extent such obligations constitute Subordinate Obligations under Section 2.12, shall be calculated as provided in Section 2.12;

(h) (i) for purposes of computing the Aggregate Annual Debt Service of Subordinate Obligations which constitute Synthetic Fixed Rate Debt, the interest payable thereon shall, if the City elects, be that rate as provided for by the terms of the Swap or the net interest rate payable pursuant to offsetting indices, as applicable, or if the City fails to elect such rate, then it shall be deemed to be the fixed interest rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City;

(ii) for purposes of computing the Aggregate Annual Debt Service of Subordinate Obligations with respect to which a Swap has been entered into whereby the City has agreed to pay the floating variable rate thereunder, no fixed interest rate amounts payable on the Subordinate Obligations to which such Swap pertains shall be included in the calculation of Aggregate Annual Debt Service, and the interest rate with respect to such Subordinate Obligations shall, if the City elects, be the sum of that rate as determined in accordance with subsection (e) relating to Variable Rate Indebtedness plus the difference between the interest rate on the Designated Debt and the rate received from the Swap Provider;

(i) with respect to any Commercial Paper Program which has been Implemented and not then terminated or with respect to any Commercial Paper Program then proposed to be Implemented, the principal and interest thereon shall be calculated as if the entire Authorized Amount of such Commercial Paper Program were to be amortized over a term of 30 years commencing in the year in which such Commercial Paper Program is Implemented and with substantially level annual debt service payments; the interest rate used for such computation shall be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under this Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes and which is or is not subject to any alternative minimum tax;

(j) if moneys or Permitted Investments have been irrevocably deposited with and are held by the Trustee or another fiduciary or Capitalized Interest has been set aside exclusively to be used to pay principal, Accreted Value and/or interest on specified Subordinate Obligations, then the principal, Accreted Value and/or interest to be paid from such moneys, Permitted Investments, or Capitalized Interest or from the earnings thereon shall be disregarded and not included in calculating Annual Debt Service; and

(k) if state and/or federal grants or other moneys have been irrevocably committed or are held by the Trustee or another fiduciary and are to be set aside exclusively to be used to pay principal, Accreted Value and/or interest on specified Subordinate Obligations, then the principal, Accreted Value and/or interest to be paid from such state and/or federal grants or other moneys or from earnings thereon shall be disregarded (unless such state and/or federal grants or other moneys are included in the definition of Revenues) and not included in calculating Aggregate Annual Debt Service.

“*Aggregate Required Deposits*” shall mean, for any month, the sum of the Required Deposits under all Supplemental Subordinate Indentures becoming due in such month.

“*Annual Debt Service*” shall mean, with respect to any Subordinate Obligation, the aggregate amount of principal, Accreted Value and interest becoming due and payable during the

Fiscal Year, and if a Qualified Swap is in effect for such Subordinate Obligation, plus the amount payable by the City (or the Trustee) under the Qualified Swap in accordance with the terms thereof, less any amount to be received by the City from the Qualified Swap Provider pursuant to the Qualified Swap, calculated using the principles and assumptions set forth in the definition of Aggregate Annual Debt Service.

“*Auditor*” shall mean the City Auditor or an independent certified public accountant appointed by the City.

“*Authorized Amount*” shall mean, when used with respect to Subordinate Obligations, including Subordinate Program Obligations, the maximum Principal Amount of Subordinate Obligations which is then authorized by a Supplemental Subordinate Indenture and/or a resolution adopted by the City Council pursuant to Section 2.09 hereof to be Outstanding at any one time under the terms of such Program or Supplemental Subordinate Indenture. If the maximum Principal Amount of Subordinate Obligations or Subordinate Program Obligations authorized by a preliminary resolution adopted by the City Council or a form of Supplemental Subordinate Indenture approved by the City Council, pursuant to Section 2.09 of this Indenture exceeds the maximum Principal Amount of Subordinate Obligations set forth in the final resolution of sale adopted by the City Council or in the definitive Supplemental Subordinate Indenture executed and delivered by the City, pursuant to which such Subordinate Obligations are issued or such Program is established, the Principal Amount of such Subordinate Obligations or Subordinate Program Obligations as is set forth in said final resolution of sale adopted by the City Council or in the definitive Supplemental Subordinate Indenture as executed and delivered by the City, shall be deemed to be the “Authorized Amount.”

“*Authorized City Representative*” shall mean the City Manager, the Director of Financial Management, the City Treasurer, or such other officer or employee of the City or other person which other officer, employee or person has been designated by the City Manager as an Authorized City Representative by written notice delivered by the City Manager to the Trustee or other fiduciary.

“*Authorized Investments*” shall mean any securities in which the City may legally invest funds subject to its control.

“*Balloon Indebtedness*” shall mean, with respect to any Series or Subseries of Subordinate Obligations thirty percent (30%) or more of the principal amount of which matures on the same date or within a Fiscal Year, that portion of such Series or Subseries which matures on such date or within such Fiscal Year; provided, however, (i) that to constitute Balloon Indebtedness the amount of Subordinate Obligations of a Series or Subseries maturing on a single date or within a Fiscal Year must equal or exceed 150% of the amount of such Series or Subseries which matures during any Fiscal Year, and (ii) in no case shall such Balloon Indebtedness exceed twenty percent (20%) or more of all Outstanding Subordinate Obligations. For purposes of this definition, the principal amount maturing on any date shall be reduced by the amount of such Subordinate Obligations, scheduled to be amortized by prepayment or redemption prior to their stated maturity date. A Commercial Paper Program and the Commercial Paper constituting part of such Program shall not be Balloon Indebtedness.

“*Bond Counsel*” shall mean a firm or firms of attorneys which are nationally recognized as experts in the area of municipal finance and which are familiar with the transactions contemplated under this Indenture and which are reasonably acceptable to the City.

“*Bond Law*” shall mean Sections 3.52.110 through 3.52.150 of the Long Beach Municipal Code.

“*Business Day*” shall mean a day on which banks located in New York, New York, in Long Beach, California, in any office of a Credit Provider where draws under a Credit Facility are presented, and in the city in which the principal corporate trust office of the Trustee is located are open, provided that such term may have a different meaning for any specified Series or Subseries of Subordinate Obligations if so provided by Supplemental Subordinate Indenture.

“*Capital Appreciation Subordinate Obligations*” shall mean Subordinate Obligations all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in a Supplemental Subordinate Indenture and is payable only upon redemption or on the maturity date of such Subordinate Obligations. Subordinate Obligations which are issued as Capital Appreciation Subordinate Obligations, but later convert to Subordinate Obligations on which interest is paid periodically shall be Capital Appreciation Subordinate Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Subordinate Obligations, but shall be treated as having a principal amount equal to their Accreted Value on the conversion date.

“*Capitalized Interest*” shall mean the amount of interest on Subordinate Obligations, if any, funded from the proceeds of the Subordinate Obligations or other moneys that are deposited with the Trustee in the Debt Service Fund as shall be described in a Supplemental Subordinate Indenture upon issuance of Subordinate Obligations to be used to pay interest on the Subordinate Obligations.

“*Charter*” means the Charter of the City of Long Beach, California, as may be in effect from time to time.

“*City*” shall mean the City of Long Beach, California, a charter city and municipal corporation organized and existing under the Constitution and laws of the State, and any successor thereto.

“*City Clerk*” shall mean the City Clerk of the City of Long Beach.

“*City Council*” shall mean the City Council of the City of Long Beach. Any action required or authorized to be taken by the City Council in this Indenture may be taken by the Authorized City Representative with such formal approvals by the City Council as are required by the policies and practices of the City and applicable laws; provided, however, that any action taken by the Authorized City Representative in accordance with the provisions of this Indenture shall conclusively be deemed by the Trustee and the Owners to be the act of the City without further evidence of the authorization thereof by the City Council.

“*City Manager*” shall mean the person at a given time who is the City Manager of the City or such other title as the City may from time to time assign for such position and the officer or officers succeeding to such position.

“*City Treasurer*” shall mean the person at a given time who is the City Treasurer of the City or such other title as the City may from time to time assign for such position and the officer or officers succeeding to such position.

“*Code*” shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations applicable with respect thereto.

“*Commercial Paper*” shall mean notes of the City with a maturity of not more than 270 days from the date of issuance and which are issued and reissued from time to time pursuant to a Program adopted by the City.

“*Commercial Paper Program*” shall mean a Program authorized by the City Council pursuant to which Commercial Paper shall be issued and reissued from time to time, up to the Authorized Amount of such Program.

“*Construction Fund*” shall mean any of the Construction Funds authorized to be created as provided by Section 4.02 hereof.

“*Consultant*” shall mean any Independent consultant, consulting firm, engineer, architect, engineering firm, architectural firm, accountant or accounting firm, or other expert recognized to be well-qualified for work of the character required and retained by the City to perform acts and carry out the duties provided for such consultant in this Indenture.

“*Costs*” or “*Costs of a Project*” shall mean all costs of planning, developing, financing, constructing, installing, equipping, furnishing, improving, acquiring, enlarging and/or renovating a Project and placing the same in service and shall include, but not be limited to the following: (a) costs of real or personal property, rights, franchises, easements and other interests in property, real or personal, and the cost of demolishing or removing structures and site preparation, infrastructure development, and landscaping and acquisition of land to which structures may be removed; (b) the costs of materials and supplies, machinery, equipment, vehicles, rolling stock, furnishings, improvements and enhancements; (c) labor and related costs and the costs of services provided, including costs of consultants, advisors, architects, engineers, accountants, planners, attorneys, financial and feasibility consultants, in each case, whether an employee of the City or, Independent Consultant; (d) costs of the City properly allocated to a Project and with respect to costs of its employees or other labor costs, including the cost of medical, pension, retirement and other benefits as well as salary and wages and the allocable costs of administrative, supervisory and managerial personnel and the properly allocable cost of benefits provided for such personnel; (e) financing expenses, including costs related to issuance of and securing of Subordinate Obligations, costs of Credit Facilities, Liquidity Facilities, Capitalized Interest, a Debt Service Reserve Fund, if any, Trustee’s fees and expenses; (f) any Swap Termination Payments due in connection with a Series or Subseries of Subordinate Obligations or the failure to issue such Series or Subseries of Subordinate Obligations, and (g) such other costs and expenses that can be capitalized under generally accepted accounting principles in

effect at the time the cost is incurred by the City, including, but not limited to broker-dealer fees, auction agent fees and market agent fees.

“*Credit Facility*” shall mean a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee, standby purchase agreement, Debt Service Reserve Fund Surety Policy or other financial instrument which obligates a third party or the City to make payment of or provide funds to the Trustee for the payment of the principal of and/or interest on Subordinate Obligations whether such obligation is to pay in the first instance and seek reimbursement or to pay only if the City fails to do so.

“*Credit Provider*” shall mean the party obligated to make payment of principal of and interest on the Subordinate Obligations under a Credit Facility.

“*Debt Service Fund*” or “*Debt Service Funds*” shall mean a Debt Service Fund or any of the Debt Service Funds required to be created as provided by Section 4.03 hereof.

“*Debt Service Reserve Fund*” shall mean any Debt Service Reserve Fund created by the City pursuant to a Supplemental Subordinate Indenture in connection with the issuance of any Series or Subseries of Subordinate Obligations and that is required to be funded for the purpose of providing additional security for such Series or Subseries of Subordinate Obligations and under certain circumstances to provide additional security for such other designated Series or Subseries of Subordinate Obligations issued pursuant to the terms of this Indenture and as specified in any Supplemental Subordinate Indenture.

“*Debt Service Reserve Fund Surety Policy*” shall mean an insurance policy or surety bond, or a letter of credit, deposited with the Trustee or such other fiduciary for the credit of the Debt Service Reserve Fund created for one or more Series or Subseries of Outstanding Subordinate Obligations in lieu of or partial substitution for cash or securities on deposit therein. The entity providing such Debt Service Reserve Fund Surety Policy shall be rated in one of the two highest long-term Rating Categories by one or more of the Rating Agencies.

“*Department*” shall mean the Long Beach Energy Department, which regulates the use, sale and distribution of natural gas by the City, and also operates the City’s gas utility bureau, electrical generation bureau, engineering and construction bureau and the business operations bureau.

“*Designated Debt*” shall mean a specific indebtedness designated by the City in which such debt shall be offset with a Swap, such specific indebtedness to include all or any part of a Series or Subseries or multiple Series or Subseries of Subordinate Obligations.

“*Director of Financial Management*” shall mean the person at a given time who is the Director of Financial Management of the City or such other title as the City may from time to time assign for such position and the officer or officers succeeding to such position.

“*Enterprise*” shall mean the Gas Utility of the City, including all of its revenue-producing functions, facilities and properties, whether or not directly related to the provision of natural gas and services.



“*Enterprise Fund*” shall mean the fund into which the revenues of the Enterprise are deposited now existing in the treasury of the City established under the Charter and by applicable ordinance, and any successor to such fund.

“*Estimated Completion Date*” shall mean the estimated date upon which a specified Project will have been substantially completed in accordance with the plans and specifications applicable thereto or the estimated date upon which a specified Project is expected to have been acquired and payment therefor made, in each case, as that date shall be set forth in a certificate of an Authorized City Representative delivered to the Trustee at or prior to the time of issuance of the Subordinate Obligations which are issued to finance such specified Project.

“*Event of Default*” shall mean any occurrence or event specified in Section 8.01 hereof.

“*Fair Market Value*” shall mean the price at which a willing buyer would purchase an investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term “fair market value” means the acquisition price in a bona fide, arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) the investment is the Local Agency Investment Fund of the State of California but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

“*Federal Securities*” shall mean any direct general non-callable obligations of the United States of America, including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, and Refcorp strips.

“*First Lien Debt Instrument*” means the indenture, loan agreement or other document pursuant to which any First Lien Obligations are issued or incurred.

“*First Lien Obligations*” means any debt or obligations issued or incurred having a priority in payment of principal or interest and the funding of any debt service reserve amounts out of the Revenues senior to that of the Subordinate Obligations authorized hereunder, and senior to that of the Second Lien Obligations previously issued pursuant to the Second Lien Trust Indenture.

“*Fiscal Year*” shall mean the period commencing on October 1 of each year and terminating on the next succeeding September 30, or such other period as may be established by the City as its official fiscal year period (written notice of which shall be given by the City to the Trustee).

“*Fitch*” shall mean Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and its assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “*Fitch*” shall be deemed to refer to any nationally recognized rating agency designated by the City with notice to any Credit Provider.

“*Gas Utility*” shall mean the City’s municipally owned natural gas utility, operated by the Department: including the natural gas distribution system, pipelines, infrastructure, facilities, natural gas mains, service lines, corrosion control rectifiers, regulating and metering equipment, valves, Compressed Natural Gas and delivery stations under the jurisdiction and control of the City, including all facilities and property related thereto, real or personal, under the jurisdiction and control of the City in which the City has other rights or from which the City derives revenues; and including and excluding, as the case may be, such property as the City may either acquire or which shall be placed under its control, or divest or have removed from its control.

“*Holder,*” “*holder,*” “*Owner*” or “*Registered Owner*” shall mean the person in whose name any Subordinate Obligation or Subordinate Obligations are registered on the books maintained by the Registrar and shall include any Credit Provider or Liquidity Provider to which a Repayment Obligation is then owed, to the extent that such Repayment Obligation is deemed to be a Subordinate Obligation under the provisions of Section 2.12 of this Indenture.

“*Implemented*” shall mean, when used with respect to a Program, a Program which has been authorized and the terms thereof approved by a resolution adopted by the City Council and, with respect to which Program, the items described in Section 2.09(a) through (h) have been filed with the Trustee.

“*Indenture*” shall mean this Master Subordinate Trust Indenture dated as of July 1, 2005, by and between the City and the Trustee, together with all Supplemental Subordinate Indentures.

“*Independent*” shall mean, when used with respect to any specified firm or individual, such a firm or individual who (a) does not have any direct financial interest or any material indirect financial interest in the operations of the City, other than the payment to be received under a contract for services to be performed, and (b) is not connected with the City as an official, officer or employee.

“*Initial Subordinate Obligations*” shall mean those Subordinate Obligations issued pursuant to Section 2.14 of this Indenture.

“*Investment Agreement*” shall mean an investment agreement or guaranteed investment contract (a) with or guaranteed by a national or state chartered bank or savings and loan, an insurance company or other financial institution whose unsecured debt is rated in the highest short-term Rating Category (if the term of the Investment Agreement is less than three years) or in either of the two highest long-term Rating Categories (if the term of the Investment Agreement is three years or longer) by one or more of the Rating Agencies, or (b) which investment agreement or guaranteed investment contract is fully secured by obligations described in items (a) and (b) of the definition of Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 103% of the principal amount of the investment, together with the interest

accrued and unpaid thereon, (ii) held by the Trustee (who shall not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Trustee, (iii) subject to a perfected first lien on behalf of the Trustee, and (iv) free and clear from all third-party liens.

“*Liquidity Facility*” shall mean a letter of credit, line of credit, standby purchase agreement, guarantee or other financial instrument, including a Credit Facility, which is available to provide funds with which to purchase Subordinate Obligations.

“*Liquidity Provider*” shall mean the entity, including the Credit Provider, which is obligated to provide funds to purchase Subordinate Obligations under the terms of a Liquidity Facility.

“*Mail*” shall mean by first-class United States mail, postage prepaid.

“*Maintenance and Operation Expenses of the Enterprise*” shall mean, for any given period, the total operation and maintenance expenses of the Gas Utility as determined in accordance with generally accepted accounting principles as in effect from time to time, excluding depreciation expense and any operation and maintenance expenses of the Gas Utility payable from moneys other than Revenues.

“*Maximum Aggregate Annual Debt Service*” shall mean the maximum amount of Aggregate Annual Debt Service with respect to all Subordinate Obligations, Unissued Subordinate Program Obligations and the Authorized Amount of all Subordinate Obligations then proposed to be issued in the then current or any future Fiscal Year.

“*Moody’s*” shall mean Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and its assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized rating agency designated by the City with notice to any Credit Provider.

“*Net Income Available for Debt Service*” means, with respect to any period, the excess of Subordinate Revenues over Maintenance and Operation Expenses of the Enterprise for such period, to which shall be added interest and extraordinary non-cash items, each item determined in accordance with generally accepted accounting principles, and excluding (a) any profits or losses on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets or resulting from the early extinguishment of debt, and (b) the net proceeds of insurance (other than business interruption insurance) and condemnation awards.

“*Non-Qualified Swap*” shall mean any Swap which is not a Qualified Swap.

“*Notes*” shall mean Subordinate Obligations issued under the provisions of Article II of this Indenture which have a maturity of one year or less from their original date of issue and which are not part of a Commercial Paper Program.

“*Original Issue Discount Subordinate Obligations*” shall mean Subordinate Obligations which are sold at an initial public offering price of less than face value and which are specifically

designated as Original Issue Discount Subordinate Obligations by the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued.

“*Outstanding*” when used with respect to Subordinate Obligations shall mean all Subordinate Obligations which have been authenticated and delivered under this Indenture, except:

(a) Subordinate Obligations cancelled or purchased by the Trustee for cancellation or delivered to or acquired by the Trustee for cancellation and, in all cases, with the intent to extinguish the debt represented thereby;

(b) Subordinate Obligations deemed to be paid in accordance with Article VII;

(c) Subordinate Obligations in lieu of which other Subordinate Obligations have been authenticated under Section 2.05, 2.06 or 2.08;

(d) Subordinate Obligations that have become due (at maturity or on redemption, acceleration or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Trustee or a Paying Agent;

(e) Subordinate Obligations which, under the terms of the Supplemental Subordinate Indenture pursuant to which they were issued, are deemed to be no longer Outstanding;

(f) Repayment Obligations deemed to be Subordinate Obligations under Section 2.12 hereof to the extent such Repayment Obligation arose under the terms of a Liquidity Facility and are secured by a pledge of Outstanding Subordinate Obligations acquired by the Liquidity Provider; and

(g) for purposes of any consent or other action to be taken by the holders of a specified percentage of Subordinate Obligations under this Indenture, Subordinate Obligations held by or for the account of the City or by any person controlling, controlled by or under common control with the City, unless such Subordinate Obligations are pledged to secure a debt to an unrelated party.

“*Paying Agent*” or “*Paying Agents*” shall mean, with respect to the Subordinate Obligations or any Series or Subseries of Subordinate Obligations, the banks, trust companies or other financial institutions or other entities designated in a Supplemental Subordinate Indenture or a resolution of the City Council as the place where such Subordinate Obligations shall be payable.

“*Payment Date*” shall mean, with respect to any Subordinate Obligations, each date on which interest is due and payable thereon and each date on which principal or Accreted Value is due and payable thereon whether by maturity or redemption thereof.

“*Permitted Investments*” shall mean any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein,

but only to the extent that the same are acquired at Fair Market Value (the Trustee is entitled to rely upon the investment direction of the City that such investment constitutes a Permitted Investment):

- (a) Federal Securities;
- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: Export-Import Bank, Farm Credit System Financial Assistance Corporation, Farmers Home Administration, General Services Administration, U.S. Maritime Administration, Small Business Administration, Government National Mortgage Association, U.S. Department of Housing & Urban Development, and Federal Housing Administration;
- (c) senior debt obligations rated “AAA” by S&P and “Aaa” by Moody’s issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (or any other U.S.-sponsored agency) with remaining maturities not exceeding three years;
- (d) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “P-1” by Moody’s, and maturing no more than 360 days after the date of purchase;
- (e) registered state warrants or treasury notes or bonds of the State, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the State or by a department, board, agency or authority of the State, in each case, rated at least “A” by Moody’s and S&P;
- (f) bonds, notes, warrants or other evidences of indebtedness of any local agency within the State, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the City, or by a department, board, agency or authority of the City, in each case, rated at least “A” by Moody’s and S&P;
- (g) obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or in obligations, participations or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise;
- (h) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which have a short term rating of “A-1” or “A-1+” by S&P and “P-1” by Moody’s. Purchases of bankers acceptances may not exceed 270 days’ maturity;

(i) commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody’s or S&P. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of \$500,000,000 and having an “A” or higher rating for the issuer’s debt, other than commercial paper, if any, as provided for by Moody’s or S&P. Purchases of eligible commercial paper may not exceed 180 days’ maturity nor represent more than 10% of the outstanding paper of an issuing corporation;

(j) negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code of the State) or by a state-licensed branch of a foreign bank and which are rated at least “A” by Moody’s and S&P.

(k) repurchase agreements which provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date, which satisfy the following criteria:

(i) Repurchase agreements must be between the Trustee and (A) a primary dealer on the Federal Reserve reporting dealer list which falls under the jurisdiction of the Securities Investors Protection Corporation and which are rated “A” or better by Moody’s and S&P, or (B) a bank rated “A” or better by Moody’s and S&P.

(ii) The written repurchase agreement contract must include the following: (A) securities acceptable for transfer, which may be direct U.S. government obligations, or federal agency obligations backed by the full faith and credit of the U.S. government; (B) the term of the repurchase agreement may be up to 30 days; (C) the collateral must be delivered to the Trustee or a third party acting as agent for the Trustee simultaneously with payment (perfection by possession of certificated securities); (D) the Trustee must have a perfected first priority security interest in the collateral; (E) the collateral must be free and clear of third-party liens and, in the case of a broker which falls under the jurisdiction of the Securities Investors Protection Corporation, are not subject to a repurchase agreement or a reverse repurchase agreement; (F) failure to maintain the requisite collateral percentage, after a two-day restoration period, will require the Trustee to liquidate the collateral; (G) the securities must be valued weekly, marked-to-market at current market price plus accrued interest and the value of collateral must be equal to at least 104% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest (unless the securities used as collateral are obligations of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, in which case the collateral must be equal to at least 105% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest). If the value of securities held as

collateral falls below 104% of the value of the cash transferred by the Trustee, then additional cash and/or acceptable securities must be transferred.

(iii) A legal opinion must be delivered to the Trustee to the effect that the repurchase agreement meets guidelines under state law for legal investment of public funds.

Investment in a reverse repurchase agreement shall be made only upon prior approval of the City Council and any Credit Provider. For purposes of this paragraph, the term “repurchase agreement” means a purchase of securities by the City pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the City by book-entry, physical delivery, or by third-party custodial agreement. The term “reverse repurchase agreement” means a sale of securities by the City pursuant to an agreement by which the City will repurchase such securities on or before a specified date and for a specified amount.

(l) medium-term notes of a maximum of five years’ maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this paragraph shall be rated in a rating category of “AA” or better by S&P and “Aa” or better by Moody’s;

(m) notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53601 of the Government Code of the State as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by said Section 53601 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book-entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted;

(n) the Local Agency Investment Fund maintained by the Treasurer of the State;

(o) the City’s investment pool maintained by the City Treasurer in accordance with the City’s adopted investment policy; and

(p) an Investment Agreement.

(q) units of a taxable money-market portfolio composed of a U.S. Government Obligations or repurchase agreements fully secured by such U.S. Government Obligations, including any money market fund for which the Trustee or any of its affiliates provides investment advisory, management or administrative services.

“*Principal Amount*” or “*principal amount*” shall mean, as of any date of calculation, (a) with respect to any Capital Appreciation Subordinate Obligations, the Accreted Value thereof (the difference between the stated amount to be paid at maturity and the Accreted Value being deemed unearned interest), (b) with respect to any Original Issue Discount Subordinate Obligations, the Accreted Value thereof, unless the Supplemental Subordinate Indenture under which such Subordinate Obligation was issued shall specify a different amount, in which case, the terms of the Supplemental Subordinate Indenture shall control, and (c) with respect to any other Subordinate Obligations, the principal amount of such Subordinate Obligation payable at maturity.

“*Program*” shall mean a financing program identified in a Supplemental Subordinate Indenture, including but not limited to a Commercial Paper Program, (a) which is authorized and the terms thereof approved by a resolution adopted by the City Council and the items described in Section 2.09(a) through (h) have been filed with the Trustee, (b) wherein the City has authorized the issuance, from time to time, of notes, commercial paper or other indebtedness in an Authorized Amount, and (c) the Authorized Amount of which has met the additional bonds test set forth in Section 2.11 of this Indenture and the Outstanding amount of which may vary from time to time, but not exceed the Authorized Amount.

“*Project*” shall mean any and all facilities, improvements and other expenditures related to the Enterprise financed in whole or in part with proceeds of a Series or Subseries of Subordinate Obligations.

“*Qualified Swap*” shall mean any Swap (a) whose Designated Debt is all or part of a particular Series or Subseries of Subordinate Obligations; (b) whose Swap Provider is a Qualified Swap Provider or has been a Qualified Swap Provider within the 60 day period preceding the date on which the calculation of Annual Debt Service or Aggregate Annual Debt Service is being made; (c) which has a term not greater than the term of the Designated Debt or to a specified mandatory tender or redemption of such Designated Debt; and (d) which has been designated in writing to the Trustee by the City as a Qualified Swap with respect to such Subordinate Obligations.

“*Qualified Swap Provider*” shall mean a financial institution whose senior long-term debt obligations, or whose obligations under any Qualified Swap are (a) guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, are rated at least “A1”, in the case of Moody’s and “A+”, in the case of S&P, or the equivalent thereto in the case of any successor thereto, or (b) fully secured by obligations described in item (a) or (b) of the definition of Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Trustee (who shall not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Trustee, (iii) subject to a perfected first lien on behalf of the Trustee, and (iv) free and clear from all third-party liens.

“*Rating Agency*” and “*Rating Agencies*” shall mean Fitch, Moody’s or S&P, or any other nationally recognized rating agency of municipal obligations, but only if such Rating Agencies



have been requested by the City to maintain a rating on the Subordinate Obligations and such Rating Agencies are then maintaining a rating on any of the Subordinate Obligations.

“*Rating Category*” and “*Rating Categories*” shall mean (a) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier, and (b) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

“*Rebate Fund*” shall mean any fund created by the City pursuant to a Supplemental Subordinate Indenture in connection with the issuance of the Subordinate Obligations or any Series or Subseries of Subordinate Obligations for the purpose of complying with the Code and providing for the collection and holding for and payment of amounts to the United States of America.

“*Record Date*” shall mean, with respect to any Series or Subseries of Subordinate Obligations, the record date as specified in the Supplemental Subordinate Indenture which provides for the issuance of such Series or Subseries.

“*Refunding Subordinate Obligations*” shall mean any Subordinate Obligations issued pursuant to Section 2.10 hereof to refund or defease all or a portion of any Series or Subseries of Outstanding Subordinate Obligations or any Second Lien Obligations.

“*Registrar*” shall mean, with respect to the Subordinate Obligations or any Series or Subseries of Subordinate Obligations, the bank, trust company or other entity designated in a Supplemental Subordinate Indenture or a resolution of the City Council to perform the function of Registrar under this Indenture or any Supplemental Subordinate Indenture, and which bank, trust company or other entity has accepted the position in accordance with Section 9.12.

“*Regularly Scheduled Swap Payments*” shall mean the regularly scheduled payments under the terms of a Swap which are due absent any termination, default or dispute in connection with such Swap.

“*Repayment Obligations*” shall mean an obligation arising under a written agreement of the City and a Credit Provider pursuant to which the City agrees to reimburse the Credit Provider for amounts paid by a Credit Provider pursuant to a Credit Facility to be used to pay debt service on any Subordinate Obligations and all other amounts due and owing to a Credit Provider under such agreement, pursuant to which a Credit Facility is issued, or an obligation arising under a written agreement of the City and a Liquidity Provider pursuant to which the City agrees to reimburse the Liquidity Provider for amounts paid by the Liquidity Provider pursuant to a Liquidity Facility to be used to pay the purchase price of Subordinate Obligations and all other amounts due and owing to a Liquidity Provider under such agreement, pursuant to which a Liquidity Facility is issued.

“*Required Deposits*” shall mean, with respect to any Series or Subseries of Subordinate Obligations, the amount determined in accordance with the terms of the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued and/or incurred,

required to be deposited into funds and accounts created under such Supplemental Subordinate Indenture for the purpose of paying principal, Accreted Value and interest on Subordinate Obligations or accumulating funds from which to make such payments and to pay other obligations specifically secured by the Subordinate Revenues under such Supplemental Subordinate Indenture. On or before the Payment Date, if any, in each month, the Trustee shall determine the Aggregate Required Deposits from the Required Deposits described under each Supplemental Subordinate Indenture.

“*Reserve Requirement*” shall mean such amount as is otherwise provided for in a Supplemental Subordinate Indenture.

“*Resolution*” shall mean Resolution No. C-[\_\_\_\_\_] adopted by the City Council on \_\_\_\_\_, 2005, as amended or supplemented.

“*Responsible Officer*” shall mean an officer or assistant officer of the Trustee assigned by the Trustee to administer this Indenture.

“*Revenues*” means all those certain revenues earned by the City from the operations or assets of the Enterprise, including, without limitation, fees and charges to the general public (including home, retail, commercial and industrial users), payments by or from public utilities under contract with the Enterprise and all other moneys paid to or received by the Enterprise from any source whatsoever, unless otherwise limited by law or by the terms of a grant or similar document.

“*Second Lien Obligations*” shall mean the Series 2005 Gas Utility Bonds, and obligations to fund any reserve fund related thereto.

“*Second Lien Parity Obligations*” shall mean “Parity Obligations” as such term is defined in the Second Lien Trust Indenture.

“*Second Lien Trust Indenture*” shall mean the Indenture of Trust, dated as of February 1, 2005, by and between the City and the Second Lien Trustee, as supplemented and amended, from time to time.

“*Serial Subordinate Obligations*” shall mean Subordinate Obligations for which no sinking installment payments are provided.

“*Series*” shall mean Subordinate Obligations designated as a separate Series by a Supplemental Subordinate Indenture and, with respect to Subordinate Program Obligations or a Commercial Paper Program, shall mean the full Authorized Amount of such program, regardless of when or whether issued, unless portions thereof are, by Supplemental Subordinate Indenture, designated as a separate Series.

“*Series 2005 Gas Utility Bonds*” shall have the meaning provided for in the definition of “Bonds” in the Second Lien Trust Indenture, as such definition exists on the date of execution of this Indenture.

“S&P” shall mean Standard & Poor’s Ratings Services, a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and if such corporation shall for any reason no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City with Notice to any Credit Provider.

“State” shall mean the State of California.

“*Subordinate Obligation*” or “*Subordinate Obligations*” shall mean any debt obligation of the City issued as a taxable or tax-exempt obligation under and in accordance with the provisions of Article II of this Indenture, including, but not limited to, bonds, notes, bond anticipation notes, commercial paper and other instruments creating an indebtedness of the City, and obligations incurred through lease or installment purchase agreements or other agreements or certificates of participation therein and Repayment Obligations to the extent provided in Section 2.12 of this Indenture. The terms “Subordinate Obligation” and “Subordinate Obligations” include Subordinate Program Obligations.

“*Subordinate Program Obligations*” shall mean Subordinate Obligations issued and Outstanding pursuant to a Program, other than Unissued Subordinate Program Obligations.

“*Subordinate Revenues*” shall mean, for any period, an amount equal to all of the Revenues received during such period less, for such period (i) all amounts which are required to be used to make the payments and deposits described in Section 5.02 of the Second Lien Trust Indenture as such Section 5.02 exists on the date of execution of this Indenture, provided that the deposits to be made under Section 5.02 shall include amounts to be deposited with respect to the Series 2005 Gas Utility Bonds, and (ii) all amounts which are required to be used to make payments and deposits for any First Lien Obligations.

“*Subseries*” shall mean Subordinate Obligations designated as a separate Subseries by a Supplemental Subordinate Indenture in connection with a particular Series of Subordinate Obligations.

“*Supplemental Subordinate Indenture*” shall mean any document supplementing or amending this Indenture or providing for the issuance of Subordinate Obligations and entered into as provided in Article X of this Indenture.

“*Swap*” shall mean any financial arrangement between the City and a Swap Provider which provides that (a) each of the parties shall pay to the other an amount or amounts calculated as if such amount were interest accruing during the term of the arrangement at a specified rate (whether fixed or a variable rate or measured against some other rate or index) on a Designated Debt, and payable from time to time or at a designated time or times (whether before, during or after the term of the arrangement); (b) if such amount is to be paid before it is deemed to have accrued, the amount paid shall reflect the present value of such future amount (i.e., an upfront premium), while an amount to be paid after it is deemed to have accrued shall reflect the time value of such funds; (c) payment dates and calculated accrual rates need not be the same for each payor, but to the extent payment dates coincide, the arrangement may (but need not) provide that one shall pay to the other any net amount due under such arrangement.

“*Swap Provider*” shall mean a party to a Swap with the City.

“*Swap Termination Payment*” shall mean an amount payable by the City or a Qualified Swap Provider, in accordance with a Qualified Swap, to compensate the other party to the Qualified Swap for any losses and costs that such other party may incur as a result of an event of default or the early termination of the obligations, in whole or in part, of the parties under such Qualified Swap.

“*Synthetic Fixed Rate Debt*” shall mean indebtedness issued by the City which: (a) is combined, as Designated Debt, with a Qualified Swap and creates, in the opinion of a Consultant, a substantially fixed-rate maturity or maturities for a term not exceeding such maturity or maturities, or (b) consisting of an arrangement in which two inversely related variable-rate securities are issued in equal principal amounts with interest based on off-setting indices resulting in a combined payment which is economically equivalent to a fixed rate.

“*Tax Compliance Certificate*” shall mean the certificate of the City prepared by Bond Counsel and delivered by the City at the time of issuance and delivery of any Series or Subseries of Subordinate Obligations, the interest on which is excluded from gross income for federal income tax purposes pursuant to a favorable opinion of such Bond Counsel, making certifications and representations of the City as to the status of such Subordinate Obligations under the Code.

“*Tender Indebtedness*” shall mean any Subordinate Obligations or portions of Subordinate Obligations a feature of which is an option or an obligation on the part of the holders, under the terms of such Subordinate Obligations, to tender all or a portion of such Subordinate Obligations to the City, the Trustee, the Paying Agent or other fiduciary or agent, Credit Provider or Liquidity Provider for payment or purchase and requiring that such Subordinate Obligations or portions of Subordinate Obligations be purchased if properly presented.

“*Term Subordinate Obligations*” shall mean Subordinate Obligations of a Series or Subseries which are payable on or before their specified maturity dates from sinking installment payments established pursuant to the Supplemental Subordinate Indenture for such Series or Subseries for that purpose and calculated to retire the Subordinate Obligations on or before their specified maturity dates.

“*Trustee*” shall mean the entity named as such in the heading of this Indenture until a successor replaces it and, thereafter, shall mean such successor.

“*Unissued Subordinate Program Obligations*” shall mean the bonds, notes or other indebtedness authorized to be issued pursuant to a Program and payable from Subordinate Revenues, issuable in an amount up to the Authorized Amount relating to such Program, which have been approved for issuance by the City pursuant to a resolution adopted by the City Council and with respect to which Program the items described in Section 2.09(a) through (h) have been filed with the Trustee but which have not yet been authenticated and delivered pursuant to the Program documents.

“*United States Bankruptcy Code*” shall mean Title 11 U.S.C., Section 101 et seq., as amended or supplemented from time to time, or any successor federal act.

“*Variable Rate Indebtedness*” shall mean any Subordinate Obligation or Subordinate Obligations the interest rate on which is not, at the time in question, fixed to maturity, excluding any commercial paper program.

Except as otherwise indicated, references to Articles and Sections are to the Articles and Sections of this Indenture.

## ARTICLE II

### FORM, EXECUTION, DELIVERY AND REGISTRATION OF SUBORDINATE OBLIGATIONS

**Section 2.01. Issuance of Subordinate Obligations; Form; Dating.** Either taxable or tax-exempt Subordinate Obligations may be issued by the City under the terms of this Indenture for any purpose for which the City at the time of such issuance, may incur debt which may include issuing Subordinate Obligations and loaning the proceeds to other entities (if it is determined to be legally permissible for the City to do so at such time), provided that if the proceeds of the Subordinate Obligations are loaned to other entities, the loan repayments and interest thereon shall be included as Revenues. Subordinate Obligations may be issued under this Indenture only if the provisions of Section 2.09 are satisfied. The total principal amount of Subordinate Obligations of each Series or Subseries Outstanding may not exceed the amount specified in the Supplemental Subordinate Indenture providing for the issuance of such Subordinate Obligations; except as provided in Section 2.05 with respect to replacement of mutilated, lost or stolen or destroyed Subordinate Obligations. The Subordinate Obligations may be in certificated or uncertificated form, and Subordinate Obligations which are issued in certificated form may be freely transferable or may be immobilized and held by a custodian for the beneficial owners, all as shall be set forth or permitted in the Supplemental Subordinate Indenture providing for the issuance of such Subordinate Obligations. In addition, Subordinate Obligations may be in the form of notes, contracts or other evidences of indebtedness issued to banks, other financial institutions or creditors providing money, goods or services to the City as provided in the applicable Supplemental Subordinate Indenture and in all cases subject to compliance with the provisions of Section 2.09 of this Indenture. The Subordinate Obligations may have notations, legends or endorsements required by law or usage.

Subordinate Obligations will be numbered and dated as provided in the applicable Supplemental Subordinate Indenture.

All Subordinate Obligations shall contain a statement to the following effect:

The Subordinate Obligations are special limited obligations of the City, payable solely from and secured by a pledge of Subordinate Revenues derived by the City from the operations of the Enterprise and certain funds and accounts. None of the properties of the Enterprise are subject to any mortgage or other lien for the benefit of the owners of the Subordinate Obligations, and neither the full faith and credit nor the taxing power of the City, the State or any

political subdivision or agency of the State is pledged to the payment of the principal of, Accreted Value, if any, premium, if any, purchase price, if any, or interest on the Subordinate Obligations. Neither the Subordinate Obligations nor the obligation to pay principal of, Accreted Value or interest thereon constitutes a debt of the City, the State of California or any of its political subdivisions within the meaning of any Constitutional limitation on indebtedness.

In addition, each Subordinate Obligation shall contain an express statement that such obligation and the interest thereon are junior and subordinate in all respects to the Second Lien Obligations and any First Lien Obligations as to lien on and source and security for payment from the Revenues.

**Section 2.02. Terms, Medium and Place of Payment.** The Subordinate Obligations shall be issued in the principal amount, shall bear interest at a rate or rates, including a rate of 0% and including variable or adjustable rates or rates set by auction, or by such other methods as the City may from time to time determine, and such interest may be payable periodically, in whole or in part, or may be accumulated and paid at maturity or at such other time or times as the City shall determine. Subordinate Obligations shall mature and shall be subject to redemption prior to their respective maturities, all as shall be set forth in a Supplemental Subordinate Indenture. The Subordinate Obligations of each Series or Subseries shall state that they are issued under and are secured by this Indenture and the pledge of Subordinate Revenues and state that regardless of the form thereof, they are “Subordinate Obligations” issued hereunder and within the meaning of this Indenture.

The Subordinate Obligations of each Series or Subseries issued under the provisions of this Article shall be designated “City of Long Beach, California Subordinate Gas Utility Revenue [Bonds] [Notes] [Commercial Paper Notes] [Obligations], [Year], [Series/Subseries] \_\_\_\_\_,” inserting an appropriate identifying series/subseries letter, number or year, if desired, and including such other characteristics as may be provided by a Supplemental Subordinate Indenture, or if such obligation is in a contract form may, instead, make a specific reference in such document that it constitutes a Subordinate Obligation under this Indenture.

Payments with respect to the Subordinate Obligations shall be made as provided in the Supplemental Subordinate Indenture providing for the issuance of such Subordinate Obligations or as provided in the Subordinate Obligations, which provisions shall include the designation of the currency in which such payments shall be made.

**Section 2.03. Execution and Authentication.** The Subordinate Obligations, if in certificated form, will be signed by the City, as provided in the Supplemental Subordinate Indenture or in the resolution authorizing such Subordinate Obligations. In case any officer whose signature or whose facsimile signature shall appear on any Subordinate Obligations shall cease to be such officer before the authentication of such Subordinate Obligations, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until authentication. Also, if a person signing a Subordinate Obligation is the proper officer on the actual date of execution, the Subordinate Obligation will be valid even if that person is not the proper officer on the nominal date of action and even though, at the date of this Indenture, such person was not such officer.

A Subordinate Obligation in certificated form will not be valid until the Trustee or its agent or an authenticating agent designated by the City manually signs the certificate of authentication on the Subordinate Obligation. Such signature will be conclusive evidence that the Subordinate Obligation has been authenticated under this Indenture.

The City may appoint an authenticating agent or the Trustee may appoint an authenticating agent acceptable to the City to authenticate Subordinate Obligations or different authenticating agents may be appointed for different Series or Subseries of Subordinate Obligations. An authenticating agent may authenticate Subordinate Obligations whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent.

Subordinate Obligations issued under this Indenture may be issued in uncertificated form, in which case the procedures for issuance and delivery and evidence of validity, ownership, transfer and exchange shall be as provided in a Supplemental Subordinate Indenture, and neither the provisions of this Section nor any other provision of this Indenture shall be deemed to prohibit or restrict the issuance of uncertificated Subordinate Obligations.

**Section 2.04. Subordinate Obligation Register.** Subordinate Obligations of each Series or Subseries may be presented at the principal corporate trust office of the Trustee or such other Registrar, unless a different office has been designated for such purpose, for registration, transfer and exchange. The Trustee or a Registrar will keep a register of each Series or Subseries of Subordinate Obligations and of their transfer and exchange.

**Section 2.05. Mutilated, Lost, Stolen or Destroyed Subordinate Obligations.**

(a) In the event any Subordinate Obligation is mutilated or defaced but identifiable by number and description, the City shall execute and the Trustee shall authenticate and deliver a new Subordinate Obligation of like Series or Subseries, date, maturity and denomination as such Subordinate Obligation, upon surrender thereof to the Trustee; provided that there shall first be furnished to the Trustee clear and unequivocal proof satisfactory to the Trustee that the Subordinate Obligation is mutilated or defaced. The Holder shall accompany the above with a deposit of money required by the Trustee for the cost of preparing the substitute Subordinate Obligation and all other expenses connected with the issuance of such substitute. The Trustee shall then cause proper record to be made of the cancellation of the original, and thereafter the substitute shall have the validity of the original.

(b) In the event any Subordinate Obligation is lost, stolen or destroyed, the City may execute and the Trustee may authenticate and deliver a new Subordinate Obligation of like Series or Subseries, date, maturity and denomination as that Subordinate Obligation lost, stolen or destroyed, provided that there shall first be furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

(c) Except as limited by any Supplemental Subordinate Indenture, the Trustee may charge the Holder of any such Subordinate Obligation all governmental charges and

transfer taxes, if any, and its reasonable fees and expenses in this connection. All substitute Subordinate Obligations issued and authenticated pursuant to this Section shall be issued as a substitute and numbered, if numbering is provided for by the Supplemental Subordinate Indenture or the Trustee, as determined by the Trustee. In the event any such Subordinate Obligation has matured or been called for redemption, instead of issuing a substitute Subordinate Obligation, the Trustee may pay the same at its maturity or redemption without surrender thereof upon receipt of indemnity satisfactory to the Trustee.

**Section 2.06. Registration and Transfer or Exchange of Subordinate Obligations; Persons Treated as Owners.** Unless otherwise provided by a Supplemental Subordinate Indenture, all Subordinate Obligations shall be issued in fully registered form.

Upon surrender for transfer of any Subordinate Obligation at the principal corporate trust office of the Trustee or Registrar, the Trustee or Registrar shall deliver in the name of the transferee or transferees a new fully authenticated and registered Subordinate Obligation or Subordinate Obligations of authorized denominations of the same Series or Subseries and same maturity for the same aggregate principal amount.

Holders may present Subordinate Obligations at the principal corporate trust office of the Registrar for exchange for Subordinate Obligations of different authorized denominations and, upon such presentation, the Trustee or Registrar shall deliver to the Holder a new fully authenticated and registered Subordinate Obligation or Subordinate Obligations of the same Series or Subseries and same maturity for the same aggregate principal amount.

All Subordinate Obligations presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee or Registrar, duly executed by the Holder or by his duly authorized attorney.

Except as limited by any Supplemental Subordinate Indenture, the Trustee or Registrar also may require payment from the Holder of a sum sufficient to cover any tax, or other governmental fee or charge that may be imposed in relation thereto. Such taxes, fees and charges shall be paid before any such new Subordinate Obligation shall be delivered.

Supplemental Subordinate Indentures may designate certain limited periods during which Subordinate Obligations will not be exchanged or transferred.

Subordinate Obligations delivered upon any exchange or transfer as provided herein, or as provided in Section 2.05, shall be valid limited obligations of the City, evidencing the same debt as the Subordinate Obligation or Subordinate Obligations surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Subordinate Obligation or Subordinate Obligations surrendered.

The City, the Trustee, the Registrar and the Paying Agent shall treat the Holder of a Subordinate Obligation, as shown on the registration books kept by the Registrar, as the person exclusively entitled to payment of principal, Accreted Value, premium, if any, purchase price, if any, and interest on such Subordinate Obligation and as the party entitled to the exercise of all



other rights and powers of the Holder, except that all interest payments will be made to the party who, as of the Record Date, is the Holder.

**Section 2.07. Destruction of Subordinate Obligations.** Whenever any Subordinate Obligations shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.05 or exchange or transfer pursuant to Section 2.06, such Subordinate Obligation shall be cancelled and destroyed by the Trustee or the Registrar.

**Section 2.08. Temporary Subordinate Obligations.** Pending preparation of definitive Subordinate Obligations of any Series or Subseries, the City may execute and the Trustee shall authenticate and deliver, in lieu of definitive Subordinate Obligations and subject to the same limitations and conditions, temporary bonds or certificates which shall be exchanged for the Subordinate Obligations.

If temporary Subordinate Obligations shall be issued, the City shall cause the definitive Subordinate Obligations to be prepared and to be executed, authenticated and delivered to the Trustee, and the Trustee, upon presentation to it of any temporary bond, shall cancel the same and deliver in exchange therefor at the place designated by the Holder, without charge to the Holder thereof, definitive Subordinate Obligations of an equal aggregate principal amount of authorized denominations, of the same Series or Subseries, date, maturity and bearing interest the same as the temporary Subordinate Obligations surrendered. Until so exchanged, the temporary Subordinate Obligations shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Subordinate Obligations to be issued and authenticated hereunder.

**Section 2.09. Issuance of Series or Subseries of Subordinate Obligations; Supplemental Subordinate Indenture; Application of Subordinate Obligation Proceeds.** Subordinate Obligations may be issued, at one time or in a Series or Subseries from time to time, subject to the conditions of this Section.

Each Series or Subseries of Subordinate Obligations shall be dated, shall mature, shall bear interest, shall be subject to redemption and shall be amortized, and within a Program, shall be issued and reissued from time to time, all as provided in the Supplemental Subordinate Indenture relating to such Series or Subseries of Subordinate Obligations. In addition, each such Supplemental Subordinate Indenture may provide for the appointment of a Registrar or Registrars and a Paying Agent or Paying Agents and such other agents as the City shall determine to be necessary in addition to or in place of the Trustee.

Such Supplemental Subordinate Indenture may provide that the interest rate on the Subordinate Obligations and the duration of the periods during which such interest accrues may from time to time be adjusted and that the Subordinate Obligations may be purchased upon the demand of the owners thereof or may be subject to mandatory purchase upon the occurrence of certain events or certain times, and such provisions may include, without limitation, the creation of objective standards for such adjustments, the appointment of agents to apply such standards to the Subordinate Obligations, the criteria for such purchases upon demand and the procurement of Liquidity Facilities and Credit Facilities with respect to the Subordinate Obligations.

Each Series or Subseries of the Subordinate Obligations, upon execution by the City shall be deposited with the Trustee or an agent for authentication and delivery, but prior to or simultaneously with the original delivery of such Series or Subseries of Subordinate Obligations or delivery of the first Subordinate Obligations of a Program, there shall be filed with the Trustee the following:

(a) an original executed counterpart or a copy, certified by the City Clerk, of the Second Lien Trust Indenture, this Indenture, together with all Supplemental Subordinate Indentures and any First Lien Debt Instruments;

(b) an original executed counterpart or a copy, certified by the City Clerk, of the Supplemental Subordinate Indenture or Supplemental Subordinate Indentures providing for the issuance of such Series or Subseries of Subordinate Obligations and setting forth the terms of such Series or Subseries of Subordinate Obligations;

(c) except with respect to the issuance of any Refunding Subordinate Obligations, a certificate of an Authorized City Representative listing those facilities or undertakings which the City expects to finance with proceeds of the sale of such Series or Subseries of Subordinate Obligations or from which the City expects to select those Projects which will be financed with proceeds of the sale of such Series or Subseries of Subordinate Obligations and such certificate shall, with respect to each item on the list include an estimated cost of such facility or undertaking;

(d) the certificate of the Authorized City Representative or the Consultant or Consultants, as the case may be, required by Section 2.11;

(e) a certificate of the Authorized City Representative stating that none of the Events of Default set forth in Section 8.01(a), (b), (c), (d), (e), (f) and (g) of this Indenture have occurred and remain uncured, that none of the events of default set forth in the Second Lien Trust Indenture have occurred and remain uncured, and that the City is in full compliance with the terms of Sections 5.04 and 5.05 and 5.14 herein and with its rate covenants set forth in Section 6.07 and 6.08 of the Second Lien Trust Indenture;

(f) an opinion of Bond Counsel to the effect that the issuance of such Subordinate Obligations has been duly authorized, that all legal conditions precedent to the delivery of such Subordinate Obligations have been fulfilled, that the Subordinate Obligations are valid and binding obligations of the City in accordance with their terms;

(g) written instructions from the City to authenticate the Subordinate Obligations and, upon receipt of the purchase price, to deliver the Subordinate Obligations to or upon the order of the purchasers named in such instructions; and

(h) a copy of the resolution of the City Council approving the issuance of Subordinate Obligations of such Series or Subseries, certified by the City Clerk.

When the documents mentioned in clauses (a) to (h), inclusive, of the immediately preceding paragraph shall have been filed with the Trustee and when such Subordinate Obligations shall have been executed and authenticated, the Trustee or authenticating agent shall

deliver such Subordinate Obligations to or upon the order of the purchasers thereof, but only upon payment by the purchasers of the purchase price of such Subordinate Obligations.

**Section 2.10. Refunding Subordinate Obligations.** Refunding Subordinate Obligations may be issued under and secured by this Indenture. Such Refunding Subordinate Obligations shall be issued in accordance with the provisions of Sections 2.09 and 2.11 of this Indenture.

**Section 2.11. Test for Issuance of Subordinate Obligations.** The City may, by Supplemental Subordinate Indenture, issue or incur bonds, notes, loans, advances or indebtedness payable from Subordinate Revenues to provide financing for the Enterprise in such principal amount as shall be determined by the City. The City may issue or incur any such Subordinate Obligations subject to the provisions under subsections (1), (2) or (3) of the last paragraph of this Section 2.11 and excepting the Initial Subordinate Obligations, as a condition to the issuance of any Series or Subseries of Subordinate Obligations, there shall first be delivered to the Trustee either:

(a) a certificate prepared by an Authorized City Representative showing that the Net Income Available for Debt Service for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Series or Subseries of Subordinate Obligations or preceding the first issuance of the proposed Series or Subseries of Subordinate Program Obligations was at least equal to 110% of Maximum Aggregate Annual Debt Service with respect to all Outstanding Subordinate Obligations, Unissued Subordinate Program Obligations and the proposed Series or Subseries of Subordinate Obligations calculated as if the proposed Series or Subseries of Subordinate Obligations and the full Authorized Amount of such proposed Subordinate Program Obligations (as applicable) were then Outstanding; or

(b) a certificate, dated as of a date between the date of pricing of the Subordinate Obligations being issued and the date of delivery of such Subordinate Obligations (both dates inclusive), prepared by a Consultant showing that:

(i) the Net Income Available for Debt Service (as calculated by said Consultant) for any 12 consecutive months out of the most recent 24 consecutive months immediately preceding the date of issuance of the proposed Series or Subseries of Subordinate Obligations or the establishment of a Program was at least equal to 110% of Maximum Aggregate Annual Debt Service with respect to all Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations;

(ii) for each Fiscal Year during the period from the date of delivery of such certificate until the last Estimated Completion Date, as certified to the Consultant by an Authorized City Representative, the Consultant estimates that the City will be in compliance with Section 5.04(a) and (b) of this Indenture; and

(iii) the estimated Net Income Available for Debt Service for each of the first three complete Fiscal Years immediately following the last Estimated

Completion Date, as certified to the Consultant by an Authorized City Representative, will be at least equal to 110% of Maximum Aggregate Annual Debt Service with respect to all Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations and calculated as if the proposed Series or Subseries of Subordinate Obligations and the full Authorized Amount of such proposed Subordinate Program Obligations (as applicable) were then Outstanding.

For purposes of subsections (b)(ii) and (iii) above, in estimating Net Income Available for Debt Service, the Consultant may take into account (1) Revenues from Projects or the Enterprise reasonably expected to become available during the period for which the estimates are provided, (2) any increase in fees, rates, charges, rentals or other sources of Revenues which have been approved by the City Council and will be in effect during the period for which the estimates are provided, (3) any other increases in Revenues which the Consultant believes to be a reasonable assumption for such period. With respect to Maintenance and Operation Expenses of the Enterprise, the Consultant shall use such assumptions as the Consultant believes to be reasonable, taking into account: (i) historical Maintenance and Operation Expenses of the Enterprise, (ii) Maintenance and Operation Expenses of the Enterprise associated with the Projects and any other new components of the Enterprise, and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consultant believes to be appropriate. The Consultant shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Net Income Available for Debt Service and shall also set forth the calculations of Maximum Aggregate Annual Debt Service, which calculations may be based upon information provided by another Consultant.

For purposes of preparing the certificate or certificates described above, the Consultant or Consultants may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Auditor shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

Neither of the certificates described above under Section 2.11(a) or (b) shall be required:

(1) if Subordinate Obligations being issued are for the purpose of refunding then Outstanding Subordinate Obligations and there is delivered to the Trustee, instead, a certificate of the Authorized City Representative showing that Aggregate Annual Debt Service after the issuance of such Refunding Subordinate Obligations will not exceed Aggregate Annual Debt Service prior to the issuance of such Refunding Subordinate Obligations, for each Fiscal Year;

(2) if the Subordinate Obligations being issued constitute Notes and there is delivered to the Trustee, instead, a certificate prepared by an Authorized City Representative showing that the principal amount of the proposed Notes being issued, together with the principal amount of any Notes then Outstanding, does not exceed 10% of the Net Income Available for Debt Service for any 12 consecutive months out of the

most recent 24 months immediately preceding the issuance of the proposed Notes and there is delivered to the Trustee a certificate of an Authorized City Representative setting forth calculations showing that for each of the Fiscal Years during which the Notes will be Outstanding, and taking into account the debt service becoming due on such Notes, the City will be in compliance with Section 5.04(a) and (b) of this Indenture; or

(3) if the Subordinate Obligations being issued are to pay costs of completing a Project for which Subordinate Obligations have previously been issued and the principal amount of such Subordinate Obligations being issued for completion purposes does not exceed an amount equal to 15% of the principal amount of the Subordinate Obligations originally issued for such Project and reasonably allocable to the Project to be completed as shown in a written certificate of an Authorized City Representative and there is delivered to the Trustee (i) a Consultant's certificate stating that the nature and purpose of such Project has not materially changed and (ii) a certificate of an Authorized City Representative to the effect that (A) all of the proceeds (including investment earnings on amounts in the Construction Fund allocable to such Project) of the original Subordinate Obligations issued to finance such Project have been or will be used to pay Costs of the Project and (B) the then estimated Costs of the Project exceed the sum of the Costs of the Project already paid plus moneys available in the Construction Fund established for the Project (including unspent proceeds of Subordinate Obligations previously issued for such purpose).

#### **Section 2.12. Repayment Obligations Afforded Status of Subordinate Obligations.**

If a Credit Provider makes payment of principal, Accreted Value or interest on a Subordinate Obligation or if a Credit Provider or Liquidity Provider advances funds to purchase or provide for the purchase of Subordinate Obligations and is entitled to reimbursement thereof, pursuant to a separate written agreement with the City, but is not reimbursed, the City's Repayment Obligation under such written agreement may, if so provided in the written agreement, be afforded the status of a Subordinate Obligation issued under this Article II, and, if afforded such status, the Credit Provider or Liquidity Provider shall be the Holder of such Subordinate Obligation, and such Subordinate Obligation shall be deemed to have been issued at the time of the original Subordinate Obligation for which the Credit Facility or Liquidity Facility was provided and will not be subject to the provisions of Sections 2.09 of this Article II; provided, however, (unless otherwise provided in the Supplemental Subordinate Indenture pursuant to which the Subordinate Obligations are issued or in the agreement with the Credit Provider or Liquidity Provider): (a) interest shall be due and payable semiannually and (b) principal shall be due and payable not less frequently than annually and in such annual amounts as to amortize the principal amount thereof in (i) 30 years or, if shorter, (ii)(A) a term extending to the maturity date of the enhanced Subordinate Obligations or (B) if later, the final maturity of the Repayment Obligation under the written agreement, and providing substantially level annual debt service payments, using the rate of interest set forth in the written repayment agreement which would apply to the Repayment Obligation as of the date such amortization schedule is fixed. The principal amortized as described in the prior sentence shall bear interest in accordance with the terms of the Repayment Obligation. Any amount which comes due on the Repayment Obligation by its terms and which is in excess of the amount treated as principal of and interest on a Subordinate Obligation shall be a subordinated obligation of the City payable after its obligations to fund the Second Lien Obligations, any First Lien Obligations and the Subordinate

Obligations unless otherwise provided under the Credit Facility or the Liquidity Facility. This provision shall not defeat or alter the rights of subrogation which any Credit Provider or Liquidity Provider may have under law or under the terms of any Supplemental Subordinate Indenture. The Trustee may conclusively rely on a written certification by the Credit Provider or Liquidity Provider of the amount of such Repayment Obligation and that such Repayment Obligation is to be afforded the status of a Subordinate Obligation under this Indenture.

**Section 2.13. Obligations Under Qualified Swap; Nonqualified Swap.**

(a) The obligation of the City to make Regularly Scheduled Swap Payments under a Qualified Swap with respect to a Series or Subseries of Subordinate Obligations may be on a parity with the obligation of the City to make payments with respect to such Series or Subseries of Subordinate Obligations and other Subordinate Obligations under this Indenture, except as otherwise provided by Supplemental Subordinate Indenture and elsewhere herein with respect to any Swap Termination Payments. The City may provide in any Supplemental Subordinate Indenture that Regularly Scheduled Swap Payments under a Qualified Swap shall be secured by a pledge of or lien on the Subordinate Revenues on a parity with the Subordinate Obligations of such Series or Subseries and all other Subordinate Obligations, regardless of the principal amount, if any, of the Subordinate Obligations of such Series or Subseries remaining Outstanding. The Trustee shall take all action consistent with the other provisions hereof as shall be requested in writing by the Qualified Swap Provider necessary to preserve and protect such pledge, lien and assignment and to enforce the obligations of the City with respect thereto. In the event the action requested to be taken pursuant to the preceding sentence shall require the Trustee either to exercise the remedies granted in the Indenture or to institute any action, suit or proceeding in its own name, the Qualified Swap Provider shall provide to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred in connection therewith.

(b) In the event that a Swap Termination Payment or any other amounts other than as described in clause (a) above are due and payable by the City under a Qualified Swap, such Swap Termination Payment and any such other amounts shall, unless otherwise provided in a Supplemental Subordinate Indenture, constitute a subordinated obligation of the City payable after its obligations to fund the Second Lien Obligations, any First Lien Obligations and the Subordinate Obligations.

(c) Obligations of the City to make payments, including termination payments, under a non-Qualified Swap shall, unless otherwise provided in a Supplemental Subordinate Indenture, constitute obligations which are payable on a basis subordinate to the Subordinate Obligations.

**Section 2.14. Issuance of Initial Subordinate Obligations.** The Initial Subordinate Obligations shall be issued as a part of a Commercial Paper Program and in several Series, all pursuant to a Supplemental Subordinate Indenture. The Initial Subordinate Obligations shall be denominated “City of Long Beach, California Subordinate Gas Utility Revenue Commercial Paper Notes, Series \_\_\_\_.” Each Series of the Initial Subordinate Obligations shall be given a separate consecutive letter designation, beginning with the letter “A.” The Initial Subordinate

Obligations shall be issued, from time to time, in an aggregate Principal Amount for all Series not exceeding \$35,000,000.

### ARTICLE III

#### REDEMPTION OF SUBORDINATE OBLIGATIONS

Subordinate Obligations may be made subject to redemption either in whole or in part and at such times, prices and in such order and under such terms as may be provided by the Supplemental Subordinate Indenture providing for the issuance of such Subordinate Obligations. The City may provide for the redemption of Subordinate Obligations from any funds available to the City and not obligated for other purposes.

In connection with the partial early redemption of any Term Subordinate Obligations of a Series or Subseries, the City may, in any Supplemental Subordinate Indenture, provide that the principal amount of Subordinate Obligations of such Series or Subseries being redeemed shall be allocated against its scheduled sinking fund redemption and modify its scheduled sinking fund installments payable thereafter as to the Outstanding Term Subordinate Obligations of such Series or Subseries in any manner the City may determine. The City may provide in any Supplemental Subordinate Indenture that, prior to notice of redemption for any Subordinate Obligations of a Series or Subseries, moneys in the Debt Service Fund and any Debt Service Reserve Fund relating to such Series or Subseries of Subordinate Obligations may be applied at the direction of the City to the purchase of Subordinate Obligations of such Series or Subseries and, if any such purchased Subordinate Obligations are Term Subordinate Obligations, the City may allocate the principal amount of Subordinate Obligations of such Series or Subseries being redeemed against its scheduled sinking fund redemption for such Subordinate Obligations and may modify its scheduled sinking fund installments thereafter payable with respect to Subordinate Obligations of such Series or Subseries in any manner the City may determine.

### ARTICLE IV

#### REVENUES AND FUNDS

**Section 4.01. Subordinate Obligations Secured by a Pledge and Lien on Subordinate Revenues.** The Subordinate Obligations authorized and issued under the provisions of this Indenture shall be secured as provided in the Granting Clause of this Indenture. The City hereby represents and states that it has not previously created any charge or lien on or any security interest in the Subordinate Revenues and the City covenants that, until all the Subordinate Obligations authorized and issued under the provisions of this Indenture and the interest thereon shall have been paid or are deemed to have been paid, it will not, except as otherwise specifically provided in this Indenture, the Second Lien Trust Indenture or any First Lien Debt Instrument, grant any prior or parity pledge of or any security interest in the Subordinate Revenues or any of the other security which is pledged pursuant to the Granting Clause of this Indenture, or create or permit to be created any charge or lien thereon or any security interest therein ranking prior to or on a parity with the charge or lien of the Subordinate Obligations from time to time Outstanding under this Indenture. The City may, as provided in and as limited by Section 5.06, grant a lien on or security interest in the Subordinate Revenues

ranking junior and subordinate to the charge or lien of the Subordinated Obligations issued or incurred in accordance with the terms of this Indenture.

**Section 4.02. Authorization for Creation of Construction Fund.** Proceeds of each Series or Subseries of Subordinate Obligations which are to be used to pay Costs of the Projects shall be deposited into a fund created for such Series or Subseries of Subordinate Obligations which shall be designated “City of Long Beach, California Subordinate Gas Utility Revenue [Obligations/Bonds/Commercial Paper Notes] Construction Fund [Series/Subseries] \_\_\_\_\_” (each, respectively, a “Construction Fund”) which may be held either by the City or the Trustee or part by the City and part by the Trustee, all as provided by this Indenture, a Supplemental Subordinate Indenture or Supplemental Subordinate Indentures. All moneys in each Construction Fund shall be held and disbursed as provided in the Supplemental Subordinate Indenture or Supplemental Subordinate Indentures under which such fund or funds were created. Notwithstanding this provision, no Construction Fund shall be required for a given Series or Subseries of Subordinate Obligations if all of the proceeds thereof (except those deposited into any Debt Service Reserve Fund or a Debt Service Fund) are spent at the time of issuance of such Series or Subseries or are used to refund Second Lien Obligations, any First Lien Obligations or Subordinate Obligations or otherwise the City determines that there is no need to create a Construction Fund for such Series or Subseries.

**Section 4.03. Creation and Funding of Debt Service Funds.** The City shall, at the time of issuance of each Series or Subseries of Subordinate Obligations create a Debt Service Fund for such Series or Subseries, which Debt Service Fund shall be designated “City of Long Beach, California Subordinate Gas Utility Revenue [Obligations/Bonds/Commercial Paper Notes] Debt Service Fund [Series/Subseries] \_\_\_\_\_” (each, respectively, a “Debt Service Fund”), which Debt Service Fund and all subaccounts shall be held by the Trustee or any agent of the Trustee, and amounts to be used to pay principal, Accreted Value and interest on such Series or Subseries, as received by the Trustee or its agent, shall be deposited therein and used for such purpose. Accounts and subaccounts shall be created in the various Debt Service Funds and shall be held by the Trustee or such agents as shall be provided by Supplemental Subordinate Indenture.

The moneys in the Debt Service Fund shall be held in trust and applied as provided in the Supplemental Subordinate Indenture with regard to each such fund, and pending such application on the arrival of the Payment Date for such amounts shall be subject to a lien on and security interest in favor of the Holders of the Subordinate Obligations issued and Outstanding under this Indenture.

The Trustee shall, at least fifteen (15) Business Days prior to each Payment Date on any Subordinate Obligation, give the City notice by telephone, promptly confirmed in writing, of the Aggregate Required Deposits, after taking into account Capitalized Interest, if any, on deposit in the Debt Service Fund, required to be deposited with the Trustee in order to make each payment of debt service coming due on such Payment Date. With respect to any Series or Subseries of Subordinate Obligations, the Supplemental Indenture under which such Subordinate Obligations are issued may provide for different times and methods of notifying the City of payment dates and amounts to accommodate the specific provisions of such Series or Subseries and, in such event, the terms of such Supplemental Indenture shall control.



At least five Business Days prior to each Payment Date, the City Treasurer shall withdraw, or cause to be withdrawn, from the Enterprise Fund and pay to the Trustee the full Aggregate Required Deposits needed to make the principal, Accreted Value and/or interest payments due on such Payment Date.

On any day on which the Trustee receives funds from the City Treasurer to be used to pay principal of, Accreted Value or interest on Subordinate Obligations, the Trustee shall, if the amount received is fully sufficient to pay all amounts of principal, Accreted Value and interest then due or becoming due on the next Payment Date, deposit such amounts into the respective Debt Service Funds for the Series or Subseries of Subordinate Obligations for which such payments were made and any excess shall be applied to pay all amounts of principal, Accreted Value and interest becoming due on any subsequent Payment Dates. If, on any Payment Date, the Trustee does not have sufficient amounts in the Debt Service Funds (without regard to any amounts which may be available from Debt Service Reserve Funds) to pay in full all amounts of principal, Accreted Value and/or interest due on such date, the Trustee shall allocate the total amount which is available to make payment on such day (without regard to any amounts in the various Debt Service Reserve Funds) as follows: first to the payment of interest then due on the Subordinate Obligations and, if the amount available shall not be sufficient to pay in full all interest on the Subordinate Obligations then due, then pro rata among the Series or Subseries according to the amount of interest then due, and second to the payment of principal and/or Accreted Value then due on the Subordinate Obligations and, if the amount available shall not be sufficient to pay in full all principal and/or Accreted Value on the Subordinate Obligations then due, then pro rata among the Series or Subseries according to the Principal Amount then due on the Subordinate Obligations.

If a Debt Service Reserve Fund or Debt Service Reserve Funds (or a Credit Facility provided in lieu thereof) have been used to make payments on Subordinate Obligations secured thereby, then the City may be required by a Subordinate Supplemental Indenture to replenish such Debt Service Reserve Fund or Debt Service Reserve Funds or reimburse the Credit Provider of the Credit Facility for the Debt Service Reserve Fund from Subordinate Revenues provided that (a) no amount from Subordinate Revenues may be used for such purpose until all payments of principal of, Accreted Value and interest on all Subordinate Obligations which have become due and payable shall have been paid in full, (b) the required payments to replenish any such Debt Service Reserve Fund or Debt Service Reserve Funds or reimburse the Credit Provider of the Credit Facility and to fund the Debt Service Reserve Fund shall be due in no more than twelve (12) substantially equal monthly installments commencing in the month following any such withdrawal and (c) if the aggregate amount of payments due on any date to replenish the Debt Service Reserve Fund or Debt Service Reserve Funds exceeds the amount available for such purpose, the payments made to the Trustee for such purpose shall be allocated among the various Debt Service Reserve Funds pro rata on the basis of the Outstanding Principal Amount of Subordinate Obligations secured thereby.

Notwithstanding the foregoing, the City may, in the Subordinate Supplemental Indenture authorizing such Series or Subseries of Subordinate Obligations, provide for different provisions and timing of deposits with the Trustee and different methods of paying principal of, Accreted Value or interest on such Subordinate Obligations depending upon the terms of such Subordinate Obligations and may provide for payment through a Credit Facility with reimbursement to the

Credit Provider from the respective Debt Service Fund created for the Series or Subseries of Subordinate Obligations for which such Credit Facility is provided.

If the Subordinate Revenues are at any time insufficient to make the deposits required to make payments on the Subordinate Obligations, the City may, at its election, pay to the Trustee funds from any available sources with the direction that such funds be deposited into the Debt Service Funds or into a specified account or accounts or subaccount or subaccounts therein.

**Section 4.04. Creation of Debt Service Reserve Funds; Additional Funds and Accounts.** The City may, at the time of issuance of any Series or Subseries of Subordinate Obligations or at any time thereafter, provide by Supplemental Subordinate Indenture for the creation of a Debt Service Reserve Fund as security for such Series or Subseries, and in its discretion reserving the right to allow a future Series or Subseries of Subordinate Obligations to participate in such Debt Service Reserve Fund. The City shall, by such Supplemental Subordinate Indenture, provide for the size and manner of funding and replenishing of such Debt Service Reserve Fund and shall establish such other terms with respect to such Debt Service Reserve Fund as the City may deem to be appropriate, including providing a Credit Facility in lieu thereof. In addition, the City may, by Supplemental Subordinate Indenture, create additional funds and accounts for such purposes as the City deems appropriate, including separate funds available only for specified Subordinate Obligations or Series or Subseries of Subordinate Obligations.

**Section 4.05. Moneys Held in Trust for Matured Subordinate Obligations; Unclaimed Moneys.** All moneys which shall have been withdrawn from a Debt Service Fund and set aside or deposited with a Paying Agent for the purpose of paying any of the Subordinate Obligations, either at the maturity thereof or upon call for redemption, or which are set aside by the Trustee for such purposes and for which Subordinate Obligations the maturity date or redemption date shall have occurred, shall be held in trust for the respective holders of such Subordinate Obligations. But any moneys which shall be so set aside or deposited and which shall remain unclaimed by the Holders of such Subordinate Obligations for a period of one (1) year after the date on which such Subordinate Obligations shall have become due and payable (or such longer period as shall be required by state law) shall be paid to the City, and thereafter the Holders of such Subordinate Obligations shall look only to the City for payment and the City shall be obligated to make such payment, but only to the extent of the amounts so received without any interest thereon, and neither the Trustee nor any Paying Agent shall have any responsibility with respect to any of such moneys. The City hereby recognizes that while any Subordinate Obligations are Outstanding in book-entry-only form there should be no unclaimed moneys.

**Section 4.06. Additional Security.** The pledge of Subordinate Revenues and the other security provided in the Granting Clause hereof, secure all Subordinate Obligations issued under the terms of this Indenture on an equal and ratable basis, except as to the timing of such payments. The City may, however, in its discretion, provide additional security or credit enhancement for specified Subordinate Obligations or Series or Subseries of Subordinate Obligations with no obligation to provide such additional security or credit enhancement to other Subordinate Obligations.

## ARTICLE V

### COVENANTS OF THE CITY

**Section 5.01. Payment of Subordinate Obligations.** The City covenants and agrees that it will duly and punctually pay or cause to be paid from the Subordinate Revenues and to the extent thereof the principal of, Accreted Value, premium, if any, purchase price, if any, and interest on every Subordinate Obligation at the place and on the dates and in the manner set forth herein, in the Supplemental Subordinate Indentures, in the Subordinate Obligations specified and in a Credit Facility and/or a Liquidity Facility, if any, according to the true intent and meaning thereof, and that it will faithfully do and perform all covenants and agreements herein, in the Subordinate Obligations and in the Credit Facility and/or Liquidity Facility, if any, contained, provided that the City's obligation to make payments of the principal of, Accreted Value, premium, if any, purchase price, if any, and interest on the Subordinate Obligations shall be limited to payment from the Subordinate Revenues, the funds and accounts pledged therefor in the Granting Clause of this Indenture and any other source which the City may specifically provide for such purpose and no Holder shall have any right to enforce payment from any other funds of the City.

**Section 5.02. Performance of Covenants by City; Authority; Due Execution.** The City covenants that it will faithfully perform at all times any and all covenants and agreements contained in this Indenture, in any and every Subordinate Obligation executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The City covenants that it is duly authorized under the Constitution and laws of the State and the Act to issue the Subordinate Obligations and pledge and grant a security interest in the Subordinate Revenues and other security pledged thereto or in which a security interest is granted and that the City has not previously pledged such Subordinate Revenues or other assets to secure other obligations.

**Section 5.03. Second Lien Trust Indenture Covenants.** The City hereby covenants to comply with the covenants in Sections 6.04, 6.05, 6.07, 7.01, 7.02 and 7.03 of the Second Lien Trust Indenture as long as Subordinate Obligations are Outstanding and this Indenture is in full force and effect. Sections 6.04, 6.05, 6.07, 7.01, 7.02 and 7.03 of the Second Lien Trust Indenture are incorporated by reference herein as such Sections exist on the date hereof. Such covenants shall be in full force and effect notwithstanding the defeasance of any Second Lien Obligations issued under the Second Lien Trust Indenture.

**Section 5.04. Rate Covenant.** The City covenants to fulfill the following requirements:

(a) The City shall, while any of the Subordinate Obligations remain Outstanding (but subject to all existing contracts and legal obligations of the City, including, but not limited to, Section 1502 of the Charter, as of the date of execution of this Indenture setting forth restrictions relating thereto), establish, fix, prescribe and collect rates, fees, rentals and charges in connection with the Enterprise and for services rendered in connection therewith, during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Revenues sufficient to pay the following amounts:

(i) all Maintenance and Operation Expenses of the Enterprise estimated by the City to become due and payable in such Fiscal Year;

(ii) all payments of principal of and interest on any First Lien Obligations as they become due and payable during such Fiscal Year, without preference or priority, except to the extent interest on the First Lien Obligations are payable from proceeds of the First Lien Obligations deposited for such purpose;

(iii) all amounts, if any, required to restore the balance in any reserve fund established pursuant to any First Lien Debt Instrument to the full amount of the reserve requirement set forth in such First Lien Debt Instrument;

(iv) all payments of principal of and interest on any Second Lien Obligations as they become due and payable during such Fiscal Year, without preference or priority, except to the extent interest on the Second Lien Obligations are payable from proceeds of the Second Lien Obligations deposited for such purpose;

(v) all amounts, if any, required to restore the balance in any reserve fund established pursuant to the Second Lien Trust Indenture to the full amount of the reserve requirement set forth in the Second Lien Trust Indenture;

(vi) all payments of principal, Accreted Value and interest on any Subordinate Obligations as they become due and payable during such Fiscal Year, without preference or priority, except to the extent interest on the Subordinate Obligations are payable from proceeds of the Subordinate Obligations;

(vii) all amounts, if any, required to restore the balance in a Debt Service Reserve Fund to the full amount of the reserve requirement set forth in such Supplemental Subordinate Indenture; and

(viii) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Revenues during such Fiscal Year.

(b) In addition, the City hereby covenants to establish, fix, prescribe and collect rates, fees, rentals and charges in connection with the Enterprise and for services rendered in connection therewith, so that during each Fiscal Year, Net Income Available for Debt Service will be equal to at least 110% of the Aggregate Annual Debt Service on the Outstanding Subordinate Obligations in such Fiscal Year. Notwithstanding anything to the contrary in this Indenture, for purposes of this subsection (b) only, the calculation of Aggregate Annual Debt Service with respect to Commercial Paper Notes shall include only the principal and interest on such Commercial Paper Notes paid from Subordinate Revenues during such Fiscal Year.

(c) The City hereby covenants that if Revenues in any Fiscal Year are less than the amounts specified in paragraph (a) or (b) of this Section 5.04, the City will retain

and direct a Consultant to make recommendations as to the revision of the Enterprise's business operations and its schedule of rentals, rates, fees and charges for the use of the Enterprise and for services rendered by the City in connection with the Enterprise, and after receiving such recommendations or giving reasonable opportunity for such recommendations to be made, the City shall take all lawful measures to revise the schedule of rentals, rates, fees and charges as may be necessary to produce Revenues in the amounts specified in paragraph (a) or (b) of this Section 5.04 in the next succeeding Fiscal Year.

(d) In the event that Revenues for any Fiscal Year are less than the amount specified in paragraph (a) or (b) of this Section 5.04, but the City promptly has taken prior to or during the next succeeding Fiscal Year all lawful measures to revise the schedule of rentals, rates, fees and charges as required by paragraph (c) of this Section 5.04, such deficiency in Revenues shall not constitute an Event of Default under the provisions of Section 8.01(d). Nevertheless, if after taking the measures required by paragraph (c) of this Section 5.04 to revise the schedule of rentals, rates, fees and charges, Revenues in the next succeeding Fiscal Year (as evidenced by the audited financial statements of Enterprise Fund for such Fiscal Year) are less than the amount specified in paragraph (a) or (b) of this Section 5.04, such deficiency in Revenues shall constitute an Event of Default under the provisions of Section 8.01(d).

**Section 5.05. No Inconsistent Contract Provisions.** The City covenants that no contract or contracts will be entered into or any action taken by the City which shall be inconsistent with the provisions of this Indenture. The City covenants that it will not take any action which, in the City's judgment at the time of such action, will substantially impair or materially adversely affect the pledge of Subordinate Revenues, or will substantially impair or materially adversely affect in any manner the pledge of, lien on or security interest granted in the Subordinate Revenues herein or the rights of the Holders of the Subordinate Obligations. The City shall be unconditionally and irrevocably obligated, so long as any of the Subordinate Obligations are Outstanding and unpaid, to take all lawful action necessary or required to pay from the Subordinate Revenues the principal of, Accreted Value and interest on the Subordinate Obligations and to make the other payments provided for herein.

**Section 5.06. Junior and Subordinated Obligations.** The City may, from time to time, incur indebtedness with a lien on Subordinate Revenues ranking junior and subordinate to the lien of the Subordinate Obligations. Such indebtedness shall be incurred at such times and upon such terms as the City shall determine; provided that:

(a) any resolution of the City Council or indenture of the City authorizing the issuance of any subordinate obligations shall specifically state that such lien on or security interest granted in the Subordinate Revenues is junior and subordinate to the lien on and security interest in such Subordinate Revenues and other assets granted to secure the Subordinate Obligations;

(b) payment of principal of, accreted value and interest on such subordinated obligations shall be permitted; provided that all deposits required to be made to the Trustee to be used to pay debt service on the Subordinate Obligations or to replenish the

Debt Service Reserve Fund, if any, are then current in accordance with Section 4.03 of this Indenture; and

(c) such obligations, if a default in payment, may not be accelerated if any Subordinate Obligations are outstanding.

**Section 5.07. Maintenance of Powers.** The City covenants that it will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to the Act and all other laws and that it will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to delay either the payment of the indebtedness evidenced by any of the Subordinate Obligations or the performance or observance of any of the covenants herein contained.

**Section 5.08. Maintenance and Operation of Enterprise.** The City hereby covenants that the Enterprise shall at all times be operated and maintained in good working order and condition and that all lawful orders of any governmental agency or authority having jurisdiction in the premises shall be complied with (provided the City shall not be required to comply with any such orders so long as the validity or application thereof shall be contested in good faith), and that all licenses and permits necessary to construct or operate any part of the Enterprise shall be obtained and maintained and that all necessary repairs, improvements and replacements of the Enterprise shall be made, subject to sound business judgment. The City will, from time to time, duly pay and discharge, or cause to be paid and discharged, except to the extent the imposition or payment thereof is being contested in good faith by the City, all taxes, if any, assessments or other governmental charges lawfully imposed upon the Enterprise or upon any part thereof, or upon the Revenues, or the Subordinate Revenues, when the same shall become due, as well as any lawful claim for labor, materials or supplies or other charges which, if unpaid, might by law become a lien or charge upon the Revenues or the Subordinate Revenues or the Enterprise or any part thereof constituting part of the Enterprise.

**Section 5.09. Accounts.** The City hereby covenants that it will keep and provide accurate books and records of account showing all Revenues received and all expenditures of the City and that it will keep or cause to be kept accurate books and records of account showing all moneys, Revenues, accounts and funds (including the Enterprise Fund and all funds and accounts provided for in this Indenture) which are or shall be in the control or custody of the City or the City Treasurer pertaining to the Enterprise, and that all such books and records pertaining to the Enterprise shall be open upon reasonable notice during business hours to the Trustee, the Credit Provider and to the Owners of not less than ten percent (10%) of the Principal Amount of Subordinate Obligations then Outstanding, or their representatives duly authorized in writing. Within 180 days after the close of each Fiscal Year, so long as any of the Subordinate Obligations remain Outstanding, the City will prepare and deliver or cause to be delivered to the Trustee audited financial statements including a statement of the income and expenses for such Fiscal Year and a balance sheet prepared as of the close of such Fiscal Year for the Enterprise Fund all accompanied by a certificate or opinion in writing of an independent certified public accountant of recognized standing, selected by the City, which opinion shall include a statement that said financial statements present fairly in all material respects the financial position of the Enterprise Fund and are prepared in accordance with generally accepted accounting principles; provided, however, the Trustee shall hold such financial statements solely as an accommodation

to the holders of the Subordinate Obligations and shall have not duty or obligation to review such financial statements.

**Section 5.10. Covenants of City Binding on City and Successors.** All covenants, stipulations, obligations and agreements of the City contained in this Indenture shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law. If the powers or duties of the City shall hereafter be transferred by amendment of the Act or a new Act or any provision of the Constitution or any other law of the State or in any other manner there shall be a successor to the City, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the City, then the entity that shall succeed to such powers or duties of the City shall act and be obligated in the place and stead of the City as in this Indenture provided, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law.

Except as otherwise provided in this Indenture, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provision of this Indenture shall be exercised or performed by the City or by such officers, board, body or commission as may be permitted by law to exercise such powers or to perform such duties.

**Section 5.11. Instruments of Further Assurance.** The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Subordinate Indentures, and such further acts, instruments and transfers as the Trustee may reasonably request for the better assuring and confirming to the Trustee all and singular the rights and obligations of the City under and pursuant to this Indenture and the security intended to be conferred hereby to secure the Subordinate Obligations.

**Section 5.12. Obligations Secured by Other Revenues.** The City may, from time to time, incur indebtedness payable solely from certain revenues of the Enterprise which do not constitute Revenues or Subordinate Revenues at such times and upon such terms and conditions as the City shall determine, provided that such indebtedness shall specifically include a provision that payment of such indebtedness is neither secured by nor payable from Revenues or Subordinate Revenues. The City may also, from time to time, incur indebtedness payable from and secured by both Subordinate Revenues and certain revenues of the Enterprise which do not constitute Revenues or Subordinate Revenues at such times and upon such terms and conditions as the City shall determine, provided that the conditions set forth in the Indenture for the issuance of indebtedness payable from and secured by Subordinate Revenues, including, without limitation, Section 2.09, Section 2.11 and Section 5.06, as applicable, are met.

**Section 5.13. Indenture To Constitute a Contract.** This Indenture, including all Supplemental Subordinate Indentures, is executed by the City for the benefit of the Holders and constitutes a contract with the Trustee for the benefit of the Holders.

**Section 5.14. Limitations on Additional Senior Debt Obligations.** Notwithstanding Section 6.08(b) of the Second Lien Trust Indenture, and provided this Indenture has not been

cancelled, discharged or released pursuant to Article VII hereof and all prepayment obligations have been satisfied and no Liquidity Facility is Outstanding, the City hereby covenants and agrees that it shall not issue any additional Second Lien Parity Obligations pursuant to the terms of the Second Lien Trust Indenture. Nothing in this Section, however, shall prevent the City from issuing or incurring First Lien Obligations as provided for in Section 6.08 of the Second Lien Trust Indenture, or indebtedness with a lien on Subordinate Revenues ranking junior and subordinate to the lien of the Subordinate Obligations as provided for in this Indenture. Notwithstanding any other provision of this Indenture to the contrary, the City may, by a First Lien Debt Instrument, issue or incur First Lien Obligations payable from Revenues to provide financing for the Enterprise in such principal amount as shall be determined by the City. The City may issue or incur any such First Lien Obligations subject to the provisions of Section 6.08(a) of the Second Lien Trust Indenture and this Section and, as a condition to the issuance of any First Lien Obligations, the City must be in compliance with the provision of Section 5.04 herein.

## **ARTICLE VI**

### **INVESTMENTS**

All moneys in the Enterprise Fund may be invested by the City from time to time in any Authorized Investments. All moneys held by the Trustee in any of the funds or accounts established pursuant to this Indenture or any Supplemental Subordinate Indenture shall be invested and reinvested as directed in writing by the City, in Permitted Investments. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. Except as otherwise provided in a Supplemental Subordinate Indenture, all interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made; except that all interest or gain derived from the investment of amounts in any Debt Service Reserve Fund shall be deposited in the corresponding Debt Service Fund to the extent not required to maintain the reserve requirement on deposit in such Debt Service Reserve Fund. The City shall direct such investments by written certificate (upon which the Trustee may conclusively rely) of an Authorized City Representative or by telephone instruction followed by prompt written confirmation by an Authorized City Representative; in the absence of any such instructions, the Trustee shall, to the extent practicable, invest in Permitted Investments specified in (q) of the definition thereof.

The Trustee may sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Trustee may buy or sell any Permitted Investment through its own (or any of its affiliates) investment department.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations



of security transactions as they occur, the City will not receive such confirmations to the extent permitted by law. The Trustee will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

## **ARTICLE VII**

### **DEFEASANCE**

Subordinate Obligations or portions thereof (such portions to be in integral multiples of the authorized denomination) which have been paid in full or which are deemed to have been paid in full shall no longer be secured by or entitled to the benefits of this Indenture except for the purposes of payment from moneys or Federal Securities held by the Trustee or a Paying Agent for such purpose. When all Subordinate Obligations which have been issued under this Indenture have been paid in full or are deemed to have been paid in full, and all other sums payable hereunder by the City, including all necessary and proper fees, compensation and expenses of the Trustee, the Registrar and the Paying Agent, have been paid or are duly provided for, then the right, title and interest of the Trustee in and to the pledge of Subordinate Revenues and the other assets pledged to secure the Subordinate Obligations hereunder shall thereupon cease, terminate and become void, and thereupon the Trustee shall cancel, discharge and release this Indenture, shall execute, acknowledge and deliver to the City such instruments as shall be requisite to evidence such cancellation, discharge and release and shall assign and deliver to the City any property and revenues at the time subject to this Indenture which may then be in the Trustee's possession, except funds or securities in which such funds are invested and are held by the Trustee or the Paying Agent for the payment of the principal of, Accreted Value, premium, if any, purchase price, if any, and interest on the Subordinate Obligations.

A Subordinate Obligation shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when payment of the principal, Accreted Value, interest, purchase price, if any, and premium, if any, either (a) shall have been made or caused to be made in accordance with the terms of the Subordinate Obligations and this Indenture or (b) shall have been provided for by depositing with the Trustee in trust and setting aside exclusively for such payment, (i) moneys sufficient to make such payment and/or (ii) noncallable Federal Securities, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment. At such times as Subordinate Obligations shall be deemed to be paid hereunder, such Subordinate Obligations shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of payment from such moneys or Federal Securities.

Any deposit under clause (b) of the foregoing paragraph shall be deemed a payment of such Subordinate Obligations. Once such deposit shall have been made, the Trustee shall notify all Holders of the affected Subordinate Obligations that the deposit required by (b) above has been made with the Trustee and that such Subordinate Obligations are deemed to have been paid in accordance with this Article. No notice of redemption shall be required at the time of such defeasance or prior to such date as may be required by the Supplemental Subordinate Indenture under which such Subordinate Obligations were issued. The City may at any time, prior to issuing such notice of redemption as may be required by the Supplemental Subordinate Indenture under which such Subordinate Obligations were issued, modify or otherwise change the

scheduled date for the redemption or payment of any Subordinate Obligation deemed to be paid under the terms of the foregoing paragraph in accordance with the terms of the Subordinate Obligations or this Indenture subject to (i) receipt of an approving opinion of Bond Counsel that such action will not adversely affect the tax-exemption of any Subordinate Obligation or Subordinate Obligations then Outstanding and (ii) receipt of an approving opinion of a nationally recognized accounting firm that there are sufficient moneys and/or Federal Securities to provide for the payment of such Subordinate Obligations. Notwithstanding anything in this Article to the contrary, moneys from the trust or escrow established for the defeasance of Subordinate Obligations may be withdrawn and delivered to the City so long as the requirements of subparagraphs (i) and (ii) above are met prior to or concurrently with any such withdrawal.

In connection with the redemption or defeasance, or partial redemption or defeasance of Subordinate Obligations, the City may permit, or cause to be assigned to Subordinate Obligations of a single maturity, multiple CUSIP numbers.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

**Section 8.01. Events of Default.** Each of the following events shall constitute and is referred to in this Indenture as an “Event of Default”:

(a) a failure by the City to pay or cause to be paid the principal of, Accreted Value or premium, if any, on any of the Subordinate Obligations when the same shall become due and payable at maturity or upon redemption;

(b) a failure by the City to pay or cause to be paid any installment of interest on any of the Subordinate Obligations when such interest shall become due and payable;

(c) a failure by the City to pay or cause to be paid the purchase price of any Subordinate Obligation when such purchase price shall be due and payable upon an optional or mandatory tender date as provided in a Supplemental Subordinate Indenture;

(d) a failure by the City to observe and perform any covenant, condition, agreement or provision (other than as specified in paragraphs (a), (b) and (c) of this Section 8.01) that are to be observed or performed by the City and which are contained in this Indenture or a Supplemental Subordinate Indenture, which failure, except for a violation under Section 5.04 which shall be controlled by the provisions set forth therein, shall continue for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the City by the Trustee, which notice may be given at the discretion of the Trustee and shall be given at the written request of Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding, unless the Trustee, or the Trustee and the Holders of Subordinate Obligations in a Principal Amount not less than the Principal Amount of Subordinate Obligations the Holders of which requested such notice, shall agree in writing to an extension of such period prior to its expiration; provided, however, that the Trustee or the Trustee and the Holders of such principal amount of Subordinate

Obligations shall be deemed to have agreed to an extension of such period if corrective action is initiated by the City within such period and is being diligently pursued until such failure is corrected;

(e) the filing by the City of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

(f) the occurrence of any other Event of Default as is provided in a Supplemental Subordinate Indenture; or

(g) a default by the City to pay or cause to be paid the principal of or interest on any Second Lien Obligations or First Lien Obligations.

If, on any date on which payment of principal of, Accreted Value or interest on the Subordinate Obligations is due and sufficient moneys are not on deposit with the Trustee or Paying Agent to make such payment, the Trustee shall give telephone notice of such insufficiency to the City.

## **Section 8.02. Remedies.**

(a) Upon the occurrence and continuance of any Event of Default, the Trustee in its discretion may, and upon the written direction of the Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding and receipt of indemnity to its satisfaction, shall, in its own name and as the Trustee of an express trust:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Holders, and require the City to carry out any agreements with or for the benefit of the Holders and to perform its or their duties under the Act or any other law to which it is subject and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of this Indenture;

(ii) bring suit upon the Subordinate Obligations;

(iii) commence an action or suit in equity to require the City to account as if it were the trustee of an express trust for the Holders; or

(iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Holders.

(b) The Trustee shall be under no obligation to take any action with respect to any Event of Default unless (i) the Trustee has actual knowledge of the occurrence of an

Event of Default caused by the default in the payment or purchase of any Subordinate Obligations, First Lien Obligations or Second Lien Obligations or (ii) the Trustee has received written notice of the occurrence of any Event of Default not described in (i).

(c) In no event, upon the occurrence and continuation of an Event of Default described in Section 8.01, shall the Trustee, the Holders, a Credit Provider, a Liquidity Provider or any other party have the right to accelerate the payment of principal of, Accreted Value and interest on the Subordinate Obligations Outstanding.

**Section 8.03. Restoration to Former Position.** In the event that any proceeding taken by the Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then the City, the Trustee, the Holders and any Credit Provider and/or Liquidity Provider shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**Section 8.04. Holders' Right To Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, Holders of a majority in Principal Amount of the Subordinate Obligations then Outstanding shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture to be taken in connection with the enforcement of the terms of this Indenture or exercising any trust or power conferred on the Trustee by this Indenture; provided that such direction shall not be otherwise than in accordance with the provisions of the law and this Indenture and that there shall have been provided to the Trustee security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred as a result thereof by the Trustee. If a Credit Facility is securing Subordinate Obligations, such Credit Provider shall act on behalf of the Holders under this Section 8.04.

**Section 8.05. Limitation on Right To Institute Proceedings.** No Holder shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on such Subordinate Obligations, unless such Holder or Holders previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding shall have made written request of the Trustee to do so, after the right to institute such suit, action or proceeding under Section 8.02 hereof shall have accrued, and shall have afforded the Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and unless there also shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the institution of such suit, action or proceeding; it being understood and intended that no one or more of the Holders shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Subordinate Obligations, except in the manner herein provided, and that all suits, actions and

proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders.

**Section 8.06. No Impairment of Right To Enforce Payment.** Notwithstanding any other provision in this Indenture, the right of any Holder to receive payment of the principal of, Accreted Value and interest on such Subordinate Obligation or the purchase price thereof, on or after the respective due dates expressed therein and to the extent of the pledge of Subordinate Revenues and other security provided for the Subordinate Obligations, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Holder.

**Section 8.07. Proceedings by Trustee Without Possession of Subordinate Obligations.** All rights of action under this Indenture or under any of the Subordinate Obligations secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Subordinate Obligations, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders, subject to the provisions of this Indenture.

**Section 8.08. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to Holders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; provided, however, that any conditions set forth herein to the taking of any remedy to enforce the provisions of this Indenture or the Subordinate Obligations shall also be conditions to seeking any remedies under any of the foregoing pursuant to this Section 8.08.

**Section 8.09. No Waiver of Remedies.** No delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee and to the Holders, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Section 8.10. Application of Moneys.** If an Event of Default shall occur and be continuing, all amounts then held or any moneys received by the Trustee, by any receiver or by any Holder pursuant to any right given or action taken under the provisions of this Article (which shall not include moneys provided through a Credit Facility, which moneys shall be restricted to the specific use for which such moneys were provided), after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee (including attorneys' fees and disbursements), shall be applied as follows: (a) first, to the payment to the persons entitled thereto of all installments of interest then due on the Subordinate Obligations, with interest on overdue installments, if lawful, at the rate per annum as provided in any Supplemental Subordinate Indenture, as the case may be, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, and (b) second, to the payment to the persons entitled thereto of the unpaid principal amount of any of the Subordinate Obligations which shall

have become due with interest on such Subordinate Obligations at such rate as provided in a Supplemental Subordinate Indenture from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Subordinate Obligations on any particular date determined to be the payment date, together with such interest, then to the payment ratably, according to the amount of principal, Accreted Value and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal, Accreted Value and interest to be paid on such date shall cease to accrue. The Trustee shall give notice of the deposit with it of any such moneys and of the fixing of any such date by Mail to all Holders and shall not be required to make payment to any Holder until such Subordinate Obligations shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 8.11. Severability of Remedies.** It is the purpose and intention of this Article to provide rights and remedies to the Trustee and the Holders, which may be lawfully granted under the provisions of the Act and other applicable law, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Holders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture or by applicable law.

**Section 8.12. Additional Events of Default and Remedies.** So long as any particular Series or Subseries of Subordinate Obligations is Outstanding, the remedies as set forth in this Article may be supplemented with additional remedies as set forth in a Supplemental Subordinate Indenture under which such Series or Subseries of Subordinate Obligations is issued.

## ARTICLE IX

### TRUSTEE, PAYING AGENT AND CO-PAYING AGENTS; REGISTRAR

**Section 9.01. Acceptance of Trusts.** The Trustee hereby accepts and agrees to execute the trusts specifically imposed upon it by this Indenture, but only upon the additional terms set forth in this Article, to all of which the City agrees and the respective Holders agree by their acceptance of delivery of any of the Subordinate Obligations.

#### **Section 9.02. Duties of Trustee.**

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee shall perform the duties set forth in this Indenture and no implied duties or obligations shall be read into this Indenture against the Trustee.

(c) Except during the continuance of an Event of Default, in the absence of any negligence on its part or any knowledge to the contrary, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether they conform to the requirements of this Indenture.

(d) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless the Trustee was negligent in ascertaining the pertinent facts; and

(ii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from Holders or the City in the manner provided in this Indenture.

(e) The Trustee shall not, by any provision of this Indenture, be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of the Subordinate Obligations, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(f) Every provision of this Indenture that in any way relates to the Trustee is subject to all the paragraphs of this Section.

**Section 9.03. Rights of Trustee.** Subject to Section 9.02, the Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificate, direction, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper commission or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, and the Trustee shall be under no duty to make investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements.

The Trustee may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in good faith in accordance therewith.

Whenever in the administration of the trusts or duties imposed upon it by this Indenture the Trustee shall deem it necessary that a matter be proved or established prior to taking or not taking any action hereunder, such matter may be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warrant to the Trustee for any action taken or not taken by it in good faith under the provisions of this Indenture in reliance on such certificate.

The Trustee makes no representation as to the sufficiency or validity of this Indenture or of any Subordinate Obligations, or in respect of the security afforded by this Indenture.

The Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it under this Indenture.

In the performance of its duties hereunder, the Trustee may employ attorneys, agents and receivers and shall not be liable for any actions of such attorneys, agents and receivers to the extent selected by it with reasonable care.

The Trustee shall have no responsibility with respect to any information, statement or recital whatsoever in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Subordinate Obligations.

**Section 9.04. Individual Rights of Trustee.** The Trustee in its individual or any other capacity may become the owner or pledgee of Subordinate Obligations and may otherwise deal with the City with the same rights it would have if it were not Trustee. Any Paying Agent or other agent may do the same with like rights.

**Section 9.05. Trustee's Disclaimer.** The Trustee shall not be accountable for the City's use of the proceeds from the Subordinate Obligations paid to the City and it shall not be responsible for any statement in the Subordinate Obligations other than its certificate of authentication.

**Section 9.06. Notice of Defaults.** If (a) an Event of Default has occurred or (b) an event has occurred which with the giving of notice and/or the lapse of time would be an Event of Default and, with respect to such events for which notice to the City is required before such events will become Events of Default, such notice has been given, then the Trustee shall promptly, after obtaining actual notice of such Event of Default as provided for in Section 8.02(b)(i) hereof or written notice as provided for in Section 8.02(b)(ii) hereof or event described in (b) of the first sentence of this Section, give notice thereof to each Holder and each Credit Provider. Except in the case of a default in payment or purchase on any Subordinate Obligations, the Trustee may withhold the notice to the Holders if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders.

**Section 9.07. Compensation of Trustee.** For acting under this Indenture, the Trustee shall be entitled to payment of fees for its services and reimbursement of advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with its services under this Indenture, in accordance with a separate fee schedule setting forth



such terms and conditions which has been approved by the City. The City agrees to pay such amounts to the Trustee. The City agrees to indemnify and hold the Trustee and its officers, agents and directors harmless against any liabilities, costs, claims or expenses not arising from the Trustee's own gross negligence, willful misconduct or breach of duty, which the Trustee may incur in the exercise and performance of its rights and obligations hereunder including the enforcement of any remedies and the defense of any suit. Such obligation shall survive the discharge of this Indenture or the resignation or removal of the Trustee.

**Section 9.08. Eligibility of Trustee.** This Indenture shall always have a Trustee that is a trust company, banking association or a bank having the powers of a trust company and is organized and doing business under the laws of the United States or any state or the District of Columbia, is authorized to conduct trust business under the laws of the State, is subject to supervision or examination by United States, state or District of Columbia authority and has (together with its corporate parent) a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition.

**Section 9.09. Replacement of Trustee.** The Trustee may resign by notifying the City in writing prior to the proposed effective date of the resignation. The Holders of a majority in Principal Amount of the Subordinate Obligations may remove the Trustee by notifying the removed Trustee and may appoint a successor Trustee with the City's consent. The City may remove the Trustee, by notice in writing delivered to the Trustee and each Credit Provider at least 60 days prior to the proposed removal date; provided, however, that the City shall have no right to remove the Trustee during any time when an Event of Default has occurred and is continuing or when an event has occurred and is continuing or condition exists which with the giving of notice or the passage of time or both would be an Event of Default.

No resignation or removal of the Trustee under this Section shall be effective until a new Trustee has taken office and delivered a written acceptance of its appointment to the retiring Trustee and to the City and each Credit Provider and/or Liquidity Provider. Immediately thereafter, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee, the resignation or removal of the retiring Trustee shall then (but only then) become effective and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture.

If the Trustee resigns or is removed or for any reason is unable or unwilling to perform its duties under this Indenture, the City shall promptly appoint a successor Trustee acceptable to each Credit Provider.

If a Trustee is not performing its duties hereunder and a successor Trustee does not take office within 60 days after the retiring Trustee delivers notice of resignation or the City delivers notice of removal, the retiring Trustee, the City or the Holders of a majority in Principal Amount of the Subordinate Obligations may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 9.10. Successor Trustee or Agent by Merger.** If the Trustee, any Paying Agent or Registrar consolidates with, merges or converts into, or transfers all or substantially all its assets (or, in the case of a bank or trust company, its corporate trust assets) to, another

corporation and meets the qualifications set forth in this Indenture, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee, Paying Agent or Registrar.

**Section 9.11. Paying Agent.** The City may upon notice to the Trustee at any time or from time to time appoint a Paying Agent or Paying Agents for the Subordinate Obligations or for any Series or Subseries of Subordinate Obligations, and each Paying Agent, if other than the Trustee, shall designate to the City and the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder or under a Supplemental Subordinate Indenture by a written instrument of acceptance delivered to the City and the Trustee under which each such Paying Agent will agree, particularly:

(a) to hold all sums held by it for the payment of the principal of, Accreted Value, premium, if any, purchase price, if any, or interest on Subordinate Obligations in trust for the benefit of the Holders until such sums shall be paid to such Holders or otherwise disposed of as herein provided;

(b) to keep such books and records as shall be consistent with prudent industry practice, to make such books and records available for inspection by the City and the Trustee on each Business Day during reasonable business hours; and

(c) upon the request of the Trustee, to forthwith deliver to the Trustee all sums so held in trust by such Paying Agent.

**Section 9.12. Registrar.** The City shall appoint the Registrar for the Subordinate Obligations or a Registrar or Registrars for any Series or Subseries of Subordinate Obligations and may from time to time remove a Registrar and name a replacement. Each Registrar, if other than the Trustee, shall designate to the Trustee, the Paying Agent, and the City its principal office and signify its acceptance of the duties imposed upon it hereunder or under a Supplemental Subordinate Indenture by a written instrument of acceptance delivered to the City and the Trustee under which such Registrar will agree, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the City, the Trustee, and the Paying Agent on each Business Day during reasonable business hours.

**Section 9.13. Other Agents.** The City, or the Trustee with the consent of the City, may from time to time appoint other agents as may be appropriate at the time to perform duties and obligations under this Indenture or under a Supplemental Subordinate Indenture all as provided by Supplemental Subordinate Indenture or resolution of the City.

**Section 9.14. Several Capacities.** Anything in this Indenture to the contrary notwithstanding, with the consent of the City, the same entity may serve hereunder as the Trustee, Paying Agent, Registrar and any other agent as appointed to perform duties or obligations under this Indenture, under a Supplemental Subordinate Indenture or an escrow agreement, or in any combination of such capacities, to the extent permitted by law. The Paying Agent and the Registrar shall be entitled to the same protections, limitations from liability and indemnities afforded to the Trustee under this Indenture.

### **Section 9.15. Accounting Records and Reports of the Trustee.**

(a) The Trustee shall at all times keep, or cause to be kept, proper records in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of the Subordinate Obligations and all funds and accounts established by it pursuant to this Indenture. Such records shall be available for inspection with reasonable prior notice by the City on each Business Day during reasonable business hours and by any Holder or Credit Provider, or his agent or representative duly authorized in writing, at reasonable hours and under reasonable circumstances.

(b) The Trustee shall provide to the City each month a report of any Subordinate Obligation proceeds received during that month, if any, and the amounts deposited into each fund and account held by it under this Indenture and the amount disbursed from such funds and accounts, the earnings thereon, the ending balance in each of such funds and accounts and the investments of each such fund and account.

(c) The Trustee shall annually, within a reasonable period after the end of the Fiscal Year, furnish to the City a statement (which need not be audited) covering receipts, disbursements, allocation and application of Subordinate Obligation proceeds, Subordinate Revenues and any other moneys in any of the funds and accounts established by it pursuant to this Indenture or any Supplemental Subordinate Indenture for the preceding year. If requested, the Trustee shall provide a copy of such statement to any Credit Provider.

## **ARTICLE X**

### **MODIFICATION OF THIS INDENTURE**

**Section 10.01. Limitations.** This Indenture shall not be modified or amended in any respect subsequent to the first delivery of fully executed and authenticated Subordinate Obligations except as provided in and in accordance with and subject to the provisions of this Article.

**Section 10.02. Supplemental Subordinate Indentures Not Requiring Consent of Holders.** The City may, from time to time and at any time, without the consent of or notice to the Holders, execute and deliver Supplemental Subordinate Indentures supplementing and/or amending this Indenture or any Supplemental Subordinate Indenture as follows:

(a) to provide for the issuance of a Series or Subseries or multiple Series or Subseries of Subordinate Obligations under the provisions of Section 2.09 of this Indenture and to set forth the terms of such Subordinate Obligations and the special provisions which shall apply to such Subordinate Obligations;

(b) to cure any formal defect, omission, inconsistency or ambiguity in, or answer any questions arising under, this Indenture or any Supplemental Subordinate Indenture, provided such supplement or amendment is not materially adverse to the Holders;

(c) to add to the covenants and agreements of the City in this Indenture or any Supplemental Subordinate Indenture other covenants and agreements, or to surrender any right or power reserved or conferred upon the City, provided such supplement or amendment shall not adversely affect the interests of the Holders;

(d) to confirm, as further assurance, any interest of the Trustee in and to the pledge of Subordinate Revenues or in and to the funds and accounts held by the Trustee or in and to any other moneys, securities or funds of the City provided pursuant to this Indenture or to otherwise add additional security for the Holders;

(e) to evidence any change made in the terms of any Series or Subseries of Subordinate Obligations if such changes are authorized by a Supplemental Subordinate Indenture at the time the Series or Subseries of Subordinate Obligations is issued and such change is made in accordance with the terms of such Supplemental Subordinate Indenture;

(f) to comply with the requirements of the Trust Indenture Act of 1939, as amended from time to time;

(g) to modify, alter, amend or supplement this Indenture or any Supplemental Subordinate Indenture in any other respect which is not materially adverse to the Holders;

(h) to provide for uncertificated Subordinate Obligations or for the issuance of coupons and bearer Subordinate Obligations or Subordinate Obligations registered only as to principal;

(i) to qualify the Subordinate Obligations or a Series or Subseries of Subordinate Obligations for a rating or ratings from a Rating Agency;

(j) to accommodate the technical, operational and structural features of Subordinate Obligations which are issued or are proposed to be issued or of a Program which has been authorized or is proposed to be authorized, including, but not limited to, changes needed to accommodate commercial paper, auction bonds, variable rate or adjustable rate bonds, discounted or compound interest bonds or other forms of indebtedness which the City from time to time deems appropriate to incur;

(k) to accommodate the use of a Credit Facility or Liquidity Facility for specific Subordinate Obligations or a specific Series or Subseries of Subordinate Obligations; and

(l) to comply with the requirements of the Code as are necessary, in the opinion of Bond Counsel, to prevent the federal income taxation of the interest on the Subordinate Obligations, including, without limitation, the segregation of Revenues into different funds.

Before the City shall, pursuant to this Section, execute any Supplemental Subordinate Indenture, there shall have been delivered to the City and Trustee an opinion of Bond Counsel to the effect that such Supplemental Subordinate Indenture is authorized or permitted by this

Indenture, the Act and other applicable law, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms and will not cause interest on any of the Subordinate Obligations which is then excluded from gross income of the recipient thereof for federal income tax purposes to be included in gross income for federal income tax purposes.

**Section 10.03. Supplemental Subordinate Indenture Requiring Consent of Subordinate Obligation Holders.**

(a) Except for any Supplemental Subordinate Indenture entered into pursuant to Section 10.02 and any Supplemental Subordinate Indenture entered into pursuant to Section 10.03(b) below, subject to the terms and provisions contained in this Section 10.03 and not otherwise, the Holders of not less than a majority in aggregate Principal Amount of the Subordinate Obligations then Outstanding shall have the right from time to time to consent to and approve the execution by the City of any Supplemental Subordinate Indenture deemed necessary or desirable by the City for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in a Supplemental Subordinate Indenture; provided, however, that, unless approved in writing by the Holders of all the Subordinate Obligations then Outstanding or unless such change affects less than all Series or Subseries of Subordinate Obligations and the following subsection (b) is applicable, nothing herein contained shall permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, purchase price, if any, interest on or Accreted Value of any Outstanding Subordinate Obligations or (ii) a reduction in the principal amount or redemption price of any Outstanding Subordinate Obligations or the rate of interest thereon; and provided that nothing herein contained, including the provisions of Section 10.03(b) below, shall, unless approved in writing by the holders of all the Subordinate Obligations then Outstanding, permit or be construed as permitting (iii) the creation of a lien (except as expressly permitted by this Indenture) upon or pledge of the Subordinate Revenues created by this Indenture, ranking prior to or on a parity with the claim created by this Indenture, (iv) except with respect to additional security which may be provided for a particular Series or Subseries of Subordinate Obligations, a preference or priority of any Subordinate Obligation or Subordinate Obligations over any other Subordinate Obligation or Subordinate Obligations with respect to the security granted therefor under the Granting Clauses hereof, or (v) a reduction in the aggregate Principal Amount of Subordinate Obligations the consent of the Holders of which is required for any such Supplemental Subordinate Indenture. Nothing herein contained, however, shall be construed as making necessary the approval by Holders of the execution of any Supplemental Subordinate Indenture as authorized in Section 10.02, including the granting, for the benefit of particular Series or Subseries of Subordinate Obligations, security in addition to the pledge of the Subordinate Revenues.

(b) The City may, from time to time and at any time, execute a Supplemental Subordinate Indenture which amends the provisions of an earlier Supplemental Subordinate Indenture under which a Series or Subseries or multiple Series or Subseries of Subordinate Obligations were issued. If such Supplemental Subordinate Indenture is

executed for one of the purposes set forth in Section 10.02, no notice to or consent of the Holders shall be required. If such Supplemental Subordinate Indenture contains provisions which affect the rights and interests of less than all Series or Subseries of Subordinate Obligations Outstanding and Section 10.02 is not applicable, then this subsection (b) rather than subsection (a) above shall control and, subject to the terms and provisions contained in this Section 10.03(b) and not otherwise, the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations of all Series or Subseries of Subordinate Obligations Outstanding which are affected by such changes shall have the right from time to time to consent to any Supplemental Subordinate Indenture deemed necessary or desirable by the City for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in such Supplemental Subordinate Indenture and affecting only the Subordinate Obligations of such Series or Subseries; provided, however, that, unless approved in writing by the Holders of all the Subordinate Obligations of all the affected Series or Subseries then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, interest on or Accreted Value of any Outstanding Subordinate Obligations of such Series or Subseries or (ii) a reduction in the principal amount or redemption price of any Outstanding Subordinate Obligations of such Series or Subseries or the rate of interest thereon. Nothing herein contained, however, shall be construed as making necessary the approval by Holders of the adoption of any Supplemental Subordinate Indenture as authorized in Section 10.02, including the granting, for the benefit of particular Series or Subseries of Subordinate Obligations, security in addition to the pledge of the Subordinate Revenues.

(c) If at any time the City shall desire to enter into any Supplemental Subordinate Indenture for any of the purposes of this Section 10.03, the City shall cause notice of the proposed execution of the Supplemental Subordinate Indenture to be given by Mail to all Holders or, under Section 10.03(b), all Holders of the affected Series or Subseries and a copy of such notice to any Credit Provider. Such notice shall briefly set forth the nature of the proposed Supplemental Subordinate Indenture and shall state that a copy thereof is on file at the office of the City for inspection by all Holders and it shall not be required that the Holders approve the final form of such Supplemental Subordinate Indenture but it shall be sufficient if such Holders approve the substance thereof.

(d) The City may execute and deliver such Supplemental Subordinate Indenture in substantially the form described in such notice, but only if there shall have first been delivered to the City (i) the required consents, in writing, of Holders and (ii) the opinion of Bond Counsel required by the last paragraph of Section 10.02.

(e) If Holders of not less than the percentage of Subordinate Obligations required by this Section 10.03 shall have consented to and approved the execution and delivery thereof as herein provided, no Holders shall have any right to object to the adoption of such Supplemental Subordinate Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the City from executing the same or from taking any action pursuant to the provisions thereof.

(f) Notwithstanding Subsections (c) through (e) above, the City may, at its discretion, execute and deliver such Supplemental Subordinate Indenture which contains such modifications, alterations, amendments or supplements prior to receipt of the required consents in writing, of the Holders; provided, that such Supplemental Subordinate Indenture or the provisions of such Supplemental Subordinate Indenture subject to the consents of the Holders shall not become effective until such time as there has been delivered to the City (i) the required consents, in writing, of Holders and (ii) the opinion of Bond Counsel required by the last paragraph of Section 10.02. In the event the City decides to execute and deliver a Supplemental Subordinate Indenture in accordance with this subsection (f), the notice required in subsection (c) shall make reference to a final and executed Supplemental Subordinate Indenture as opposed to a proposed Supplemental Subordinate Indenture.

**Section 10.04. Effect of Supplemental Subordinate Indenture.** Upon execution and delivery of any Supplemental Subordinate Indenture pursuant to the provisions of this Article, this Indenture or a Supplemental Subordinate Indenture shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture and a Supplemental Subordinate Indenture of the City, the Trustee, the Paying Agent, the Registrar and all Holders shall thereafter be determined, exercised and enforced under this Indenture and a Supplemental Subordinate Indenture, if applicable, subject in all respects to such modifications and amendments.

No Supplemental Subordinate Indenture shall modify the duties, rights or obligations of the Trustee, Paying Agent or Registrar without the consent of such party thereto.

**Section 10.05. Supplemental Subordinate Indentures To Be Part of This Indenture.** Any Supplemental Subordinate Indenture adopted in accordance with the provisions of this Article shall thereafter form a part of this Indenture or the Supplemental Subordinate Indenture which they supplement or amend, and all of the terms and conditions contained in any such Supplemental Subordinate Indenture as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Indenture or the Supplemental Subordinate Indenture which they supplement or amend for any and all purposes.

**Section 10.06. Amendments to the Second Lien Trust Indenture.** The Holders shall have no right to consent or reject any amendments to the Second Lien Trust Indenture that require the consent of the holders of the Second Lien Obligations, except for amendments to Sections 5.01, 5.02 and 6.08 of the Second Lien Trust Indenture that require the consent of the holders of the Second Lien Obligations.

## ARTICLE XI

### CREDIT PROVIDERS

If a Credit Facility is provided for a Series or Subseries of Subordinate Obligations or for specific Subordinate Obligations, the City may in the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued, provide any or all of the following rights to the Credit Provider as the City shall deem to be appropriate:

(a) the right to make requests of, direct or consent to the actions of the Trustee or to otherwise direct proceedings all as provided in Article VIII of this Indenture to the same extent and in place of the Owners of the Subordinate Obligations which are secured by the Credit Facility and for such purposes the Credit Provider shall be deemed to be the Holder of such Subordinate Obligations;

(b) the right to act in place of the Owners of the Subordinate Obligations which are secured by the Credit Facility for purposes of removing a Trustee or appointing a Trustee under Article IX hereof; and

(c) the right to consent to Supplemental Subordinate Indentures, which would otherwise require the consent of the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations, entered into pursuant to Section 10.03, except with respect to any amendments described in Sections 10.03(a)(i) through (v) and 10.03(b)(i) or (ii) which consent of the actual Holders shall still be required, of this Indenture to the same extent and in place of the owners of the Subordinate Obligations which are secured by the Credit Facility and for such purposes the Credit Provider shall be deemed to be the Holder of such Subordinate Obligations.

The rights granted to any such Credit Provider, with respect to the provisions of Articles VIII and IX hereof shall be disregarded and be of no effect if the Credit Provider has wrongfully failed to honor a properly presented and conforming drawing under its Credit Facility.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**Section 12.01. Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City, the Trustee, the Paying Agent, other agents from time to time hereunder, the Holders and, to the limited extent provided by a Supplemental Subordinate Indenture, the Credit Providers, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the City, the Trustee, the Paying Agent, such other agents, the Holders and, to the limited extent provided in the applicable Supplemental Subordinate Indenture, the Credit Providers.

**Section 12.02. Severability.** In case any one or more of the provisions of this Indenture, or of any Subordinate Obligations issued hereunder shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or of Subordinate Obligations, and this Indenture and any Subordinate Obligations issued hereunder shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**Section 12.03. No Personal Liability of City Members and Officials; Limited Liability of City to Holders.** No covenant or agreement contained in the Subordinate Obligations or in this Indenture shall be deemed to be the covenant or agreement of any present



or future City member, official, officer, agent or employee of the City or the Enterprise, in their individual capacity, and neither the members of the City Council, the officers and employees of the City, nor any person executing the Subordinate Obligations shall be liable personally on the Subordinate Obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 12.04. Execution of Instruments; Proof of Ownership.** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Holders or on their behalf by an attorney-in-fact may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Holders in person or by an agent or attorney-in-fact appointed by an instrument in writing or as provided in the Subordinate Obligations. Proof of the execution of any such instrument and of the ownership of Subordinate Obligations shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Subordinate Obligations shall be proved by the registration books kept under the provisions of Section 2.04 hereof.

Nothing contained in this Section shall be construed as limiting the Trustee to such proof. The Trustee may accept any other evidence of matters herein stated which it may deem sufficient. Any request, consent of, or assignment by any Holder shall bind every future Holder of the same Subordinate Obligations or any Subordinate Obligations issued in lieu thereof in respect of anything done by the Trustee or the City in pursuance of such request or consent.

**Section 12.05. Governing Law.** The laws of the State shall govern the construction and enforcement of this Indenture and of all Subordinate Obligations issued hereunder; provided, however, that the administration of the trusts imposed upon the Trustee by this Indenture and the rights and duties of the Trustee hereunder shall be governed by, and construed in accordance with, the laws of the jurisdiction in which the Trustee has its principal corporate trust office.

**Section 12.06. Notices.** Except as otherwise provided in this Indenture, all notices, certificates, requests, requisitions or other communications by the City, the Trustee, the Paying Agent, the Registrar, other agents or a Credit Provider, pursuant to this Indenture shall be in writing and shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the City: City of Long Beach, 333 West Ocean Boulevard, 6<sup>th</sup> Floor, Long Beach, California, 90802, Attention: City Treasurer, by delivery or by mail; if to the Trustee, to Deutsche Bank National Trust Company, 60 Wall Street, MS 2715, New York, NY 10005; Attention: Christina Van-Ryzin; if to a Paying Agent, or another agent, to such address as is designated in writing by it to the Trustee and the City. Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses

to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**Section 12.07. Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may, unless otherwise provided in this Indenture or, with respect to any Series or Subseries of Subordinate Obligations or portion of Series or Subseries of Subordinate Obligations, provided in a Supplemental Subordinate Indenture under which such Subordinate Obligations are issued, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture.

**Section 12.08. Counterparts.** This Indenture may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

**Section 12.09. Repeal of Inconsistent Resolutions.** All resolutions of the City Council, or parts of resolutions, inconsistent with any Supplemental Subordinate Indenture or this Indenture are hereby repealed to the extent of such inconsistency.

[End of Master Subordinate Trust Indenture]

IN WITNESS WHEREOF, the parties hereto have caused this Master Subordinate Trust Indenture to be duly executed, all as of the date first above written.

CITY OF LONG BEACH

By \_\_\_\_\_  
Gerald R. Miller, City Manager

Attest:

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

Approved as to form:

Robert E. Shannon, City Attorney

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

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as  
Trustee

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

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

[Signature page to Master Subordinate Trust Indenture]