

# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

# R-13

333 West Ocean Boulevard 6<sup>th</sup> Floor • Long Beach, CA 90802 • (562) 570-6845 • Fax (562) 570-5836

May 24, 2011

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Adopt the attached Resolution of the City Council of Long Beach, approving the issuance from time to time by the Board of Water Commissioners, on behalf of the City of Long Beach, Subordinate Sewer Revenue Obligations issued pursuant to the terms of a credit agreement and related documents which provide for a Revolving Line of Credit in an amount not to exceed \$20,000,000 outstanding at any time. (Citywide)

## DISCUSSION

The City of Long Beach Water Department (LBWD) proposes to establish a Revolving Line of Credit (Line of Credit) in an amount not to exceed \$20,000,000 for the purpose of replacing the 2009 Senior Sewer Revenue Commercial Paper Notes (CP Notes). The debt service for the Line of Credit will be secured by and payable from a subordinate lien on the revenues generated from charges to customers for sewer usage. The objective of replacing the CP Notes is to reduce debt service costs as a result of lower interest rates for the Line of Credit.

The CP Notes were approved by the City Council on June 2, 2009 in an amount not to exceed \$20,000,000. The CP Notes were issued for the rehabilitation, replacement and improvement of deficient and aging sewer facilities, which is a major priority of the LBWD, in order to maintain sewer system reliability and to be in compliance with new California Waste Discharge Requirements.

Proceeds from the Line of Credit will be used to pay off \$4,000,000 of outstanding principal on the CP Notes, to fund ongoing sewer capital improvement program costs and to pay costs of issuance associated with the Line of Credit. LBWD will suspend the issuance of commercial paper notes under the existing commercial paper program, but shall reserve the right to issue obligations in the future senior to its obligations created under the Line of Credit. Due to current market conditions, staff has been able to secure a three-year Line of Credit from Wells Fargo Bank, National Association. The cost of issuance for this new Line of Credit is approximately \$85,000. In the current market conditions, the annual cost for the new Line of Credit will range from

HONORABLE MAYOR AND CITY COUNCIL

May 24, 2011

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approximately \$70,000 to \$180,000 depending on the amount utilized with annual projected savings ranging from \$150,000 to \$210,000.

The Board of Water Commissioners approved Resolution WD-1282 on May 5, 2011, authorizing the establishment of the Line of Credit (Attachment A).

This item was reviewed by Principal Deputy City Attorney Charles Parkin on April 21, 2011 and Budget Management Officer Victoria Bell on April 25, 2011.

TIMING CONSIDERATIONS

City Council action is requested on May 24, 2011 in order to have the new Line of Credit in place as soon as possible in order to benefit from currently advantageous interest rates.

FISCAL IMPACT

There is no impact to the General Fund as this is an obligation of the Sewer Revenue Fund (EF 311) in the Water Department (WA) and will be repaid with revenues from charges to customers for sewer usage. There are no local jobs impacted by this action.

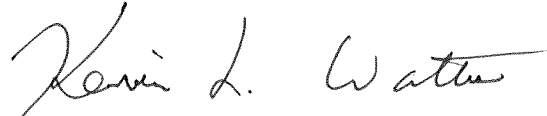
SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



DAVID S. NAKAMOTO  
ACTING DIRECTOR OF FINANCIAL MANAGEMENT



KEVIN L. WATTIER  
GENERAL MANAGER  
WATER DEPARTMENT

DSN:KLWEF  
T:\COUNCIL LETTERS\05-24-11 CCL - SEWER LINE OF CREDIT.DOC

ATTACHMENTS: RESOLUTION – CITY COUNCIL RESOLUTION  
ATTACHMENT A – BOARD OF WATER COMMISSION RESOLUTION

APPROVED:

  
PATRICK H. WEST  
CITY MANAGER

RESOLUTION NO. WD-1282

1  
2  
3 A RESOLUTION OF THE BOARD OF WATER  
4 COMMISSIONERS OF THE CITY OF LONG BEACH  
5 AUTHORIZING THE ISSUANCE FROM TIME TO TIME OF  
6 SUBORDINATE SEWER REVENUE OBLIGATIONS  
7 ISSUED PURSUANT TO THE TERMS OF A CREDIT  
8 AGREEMENT AND RELATED DOCUMENTS WHICH  
9 PROVIDE FOR A REVOLVING LINE OF CREDIT IN AN  
10 AMOUNT NOT TO EXCEED \$20,000,000 OUTSTANDING  
11 AT ANY TIME, AUTHORIZING AND DIRECTING  
12 EXECUTION THEREOF AND AUTHORIZING ACTIONS  
13 RELATED THERETO, AUTHORIZING A NOTE,  
14 AUTHORIZING THE CREATION OF A PROJECT  
15 ACCOUNT, AND AUTHORIZING A SECOND  
16 SUPPLEMENTAL SENIOR TRUST INDENTURE

17  
18 WHEREAS, the City of Long Beach (the "City") is a city organized and  
19 existing under a charter duly and regularly adopted (the "Charter") pursuant to the  
20 provisions of the Constitution of the State of California; and

21 WHEREAS, pursuant to Section 1725 of Article XVII of the Charter, the  
22 City, acting by and through its Board of Water Commissioners of the City of Long Beach  
23 (the "Board") with the prior approval of the City Council, is authorized to issue on behalf  
24 of the City, short-term revenue certificate obligations for purposes of the sanitary sewer  
25 system (the "Enterprise") of the Water Department of the City (the "Water Department")  
26 necessary and incidental to the collection of the City's sanitary sewage; and

27 WHEREAS, the Board has previously authorized, pursuant to Resolution  
28 No. WD-1255 of the Board, dated May 7, 2009, the issuance of short-term revenue

OFFICE OF THE CITY ATTORNEY  
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1 certificate obligations in the form of commercial paper notes (the "Commercial Paper  
2 Notes") through the implementation of a commercial paper program (the "Commercial  
3 Paper Program") in an aggregate principal amount of not to exceed \$20,000,000; and

4 WHEREAS, the Board has determined that it is in the best interest of the  
5 Board to suspend the issuance of Commercial Paper Notes under the existing  
6 Commercial Paper Program and that the existing Irrevocable Letter of Credit No.  
7 S309579M, dated as of June 10, 2009, issued by Union Bank, N.A. (formerly known as  
8 Union Bank of California, N.A.) (the "Letter of Credit") be terminated; and

9 WHEREAS, in connection with the suspension of the existing Commercial  
10 Paper Program, the Board intends to direct that all outstanding Commercial Paper Notes  
11 be paid off and retired; and

12 WHEREAS, the Board, acting on its own behalf and on behalf of the City,  
13 has determined that it continues to be in the best interest of the Board, the City and the  
14 Enterprise to have the capacity to issue short-term sewer revenue obligations, in order to  
15 refund and restructure existing indebtedness, to finance on either a reimbursement or  
16 forward funding basis the acquisition, construction and equipping of the improvements to  
17 the Enterprise, and to finance certain costs of issuance; and

18 WHEREAS, the Board has determined that it is in the best interest of the  
19 Board to obtain a revolving line of credit (the "Revolving Line of Credit") from Wells Fargo  
20 Bank, National Association (the "Bank"); and

21 WHEREAS, the Revolving Line of Credit will be made available to the  
22 Board by the Bank pursuant to a credit agreement (the "Credit Agreement") between the  
23 Board, acting on its own behalf and on behalf of the City, and the Bank, whereby the  
24 Board may obtain Advances (as defined in the Credit Agreement) in an amount of not to  
25 exceed \$20,000,000 at any one time outstanding in order to refund and restructure  
26 existing indebtedness, to finance on either a reimbursement or forward funding basis the  
27 acquisition, construction and equipping of improvements to the Enterprise, and to finance  
28 certain costs of issuance; and

1           WHEREAS, moneys advanced to and borrowed by the Board under the  
2 Revolving Line of Credit (in the form of Advances) will be issued so that the interest paid  
3 on the Advances will be excluded from the gross income of the recipients thereof under  
4 the varying provisions of the Internal Revenue Code of 1986, as amended, and the  
5 regulations promulgated thereunder or related thereto (collectively, the "Code"); and

6           WHEREAS, the obligations incurred pursuant to the terms of the Revolving  
7 Line of Credit are special limited obligations of the City payable by a pledge of a  
8 subordinate lien upon Net Revenues (as defined in the Master Senior Trust Indenture,  
9 dated as of June 1, 2009, as supplemented by the First Supplemental Senior Trust  
10 Indenture, dated as of June 1, 2009 (together, the "Indenture") by and between the Board  
11 and U.S. Bank National Association) of the Sewer Revenue Fund (as defined in the  
12 Indenture); and

13           WHEREAS, the Board has determined that it is in the best interest of the  
14 Board to establish a project account within the Sewer Revenue Fund to track the  
15 expenditures of amounts borrowed in the form of Advances from the Bank; and

16           WHEREAS, pursuant to the existing Commercial Paper Program and the  
17 Indenture, the Board will reserve the right to issue obligations in the future senior to its  
18 obligations created under the Credit Agreement; and

19           WHEREAS, the Bank's commitment to make Advances under the Credit  
20 Agreement, as herein authorized, shall have a term not exceeding three years, unless  
21 extended pursuant to the terms of the Credit Agreement; and

22           WHEREAS, the Revolving Line of Credit, as herein authorized, shall include  
23 the obligation to reimburse the Bank and to pay interest on the outstanding Advances,  
24 and to make other payments to the Bank (the "Payment Obligations," as further defined in  
25 the Credit Agreement); and

26           WHEREAS, the Board, will execute and deliver a promissory note (the  
27 "Note") in order to evidence the amounts owed on all Advances, revolving loans and term  
28 loans made by the Bank to the Board under the Credit Agreement; and

1 WHEREAS, there has been presented to the Board a form of the Credit  
2 Agreement and a form of the Note; and

3 WHEREAS, the Credit Agreement and the Note will be modified and  
4 amended to reflect the various details applicable to the Revolving Line of Credit; and

5 WHEREAS, in order to comply with one of the conditions to the issuance of  
6 the Revolving Line of Credit by the Bank, it will be necessary to amend the Indenture in  
7 certain respects; and

8 WHEREAS, there has been presented to the Board a Second  
9 Supplemental Senior Trust Indenture, by and among the Board and U.S. Bank National  
10 Association (the "Second Supplemental Senior Trust Indenture") supplementing the  
11 Indenture;

12 NOW, THEREFORE, BE IT RESOLVED that the Board of Water  
13 Commissioners of the City of Long Beach hereby:

14 Section 1. Recitals. That the above recitals are true and correct and are  
15 incorporated herein by reference.

16 Section 2. Suspension of Note Issuance Under Commercial Paper  
17 Program. The Board hereby directs staff to take the necessary actions to suspend the  
18 issuance of Commercial Paper Notes under the existing Commercial Paper Program and  
19 to cause the termination of the Letter of Credit.

20 Section 3. Issuance of Short-Term Revenue Certificate Obligations;  
21 Terms of the Credit Agreement. For the purposes set forth in the foregoing recitals, the  
22 Board hereby authorizes the issuance of the short-term revenue certificate obligations (in  
23 the form of Advances) through the implementation of a Revolving Line of Credit under the  
24 Credit Agreement and a Note, provided that the amount of the Advance under the  
25 Revolving Line of Credit outstanding at any time shall not exceed \$20,000,000. The  
26 Bank's commitment to make Advances under the Credit Agreement shall have a term not  
27 exceeding three years unless such date has been extended, reduced or rescinded by a  
28 subsequent resolution of the Board. The outstanding principal amount of each Advance

1 shall bear interest at the interest rates set forth in the Credit Agreement. Notwithstanding  
2 anything to the contrary in the previous sentence or the provisions of this Resolution, the  
3 Advances shall not bear interest in excess of the lesser of (a) twelve percent (12%) per  
4 annum and (b) the maximum rate of interest permitted by applicable law. The Revolving  
5 Line of Credit is being established to fund improvements to the Enterprise.

6 The terms of the Revolving Line of Credit shall, consistent with this  
7 Resolution, be set forth in the Credit Agreement.

8 The Board shall be obligated to reimburse the Bank for all amounts  
9 advanced under the Revolving Line of Credit and to pay interest on the amounts  
10 advanced under the Revolving Line of Credit until such amounts are paid off all in  
11 accordance with the terms of the Credit Agreement. The Board authorizes the Credit  
12 Agreement, the Note and the Payment Obligations owed to the Bank under the Credit  
13 Agreement.

14 Section 4. Pledge to Secure Revolving Line of Credit Obligations. The  
15 Board hereby pledges a subordinate lien on Net Revenues to secure the Payment  
16 Obligations, including the obligations incurred pursuant to the terms of the Revolving Line  
17 of Credit as set forth in the Credit Agreement and the Note.

18 Section 5. Special Obligations. The Payment Obligations secured  
19 pursuant to the terms of the Revolving Line of Credit shall be special limited obligations of  
20 the City, secured by, and payable by a pledge of and subordinate lien upon Net  
21 Revenues. The obligations secured pursuant to the terms of the Revolving Line of Credit  
22 and the Note shall also be secured by and be paid from such other sources as the Board  
23 may hereafter provide that are available in the Sewer Revenue Fund, including, but not  
24 limited to, proceeds of additional borrowings for such purpose and any applicable state or  
25 federal grants received by the Board. The obligations secured pursuant to the terms of  
26 the Revolving Line of Credit and the Note are not to be and shall not be secured by the  
27 taxing power of the City.

28 ///

1           Section 6.   Form and Execution of Request for Advance. [The Request  
2 for Advance shall be in substantially the form set forth as an Exhibit to the Credit  
3 Agreement with necessary or appropriate variations, omissions and insertions as  
4 permitted or required by the Credit Agreement.] Each Request for Advance shall be  
5 executed on behalf of the City by either the President of the Board, the General Manager  
6 of the Water Department, the Assistant General Manager or any other Authorized Board  
7 Representative (as defined in the Indenture) designated by the President or the General  
8 Manager (each a "Designated Officer") and attested by the Secretary of the Board. Any  
9 such signatures may be by manual or facsimile signature. Any facsimile signature of  
10 such Designated Officer of the Board and the Water Department shall be of the same  
11 force and effect as if such signature were manually placed on such Request for Advance.

12           Section 7.   Form and Execution of the Note. The Note shall be in  
13 substantially the form set forth as an Exhibit to the Credit Agreement with necessary or  
14 appropriate variations, omissions and insertions as permitted or required by the Credit  
15 Agreement. The Note shall be executed on behalf of the City by a Designated Officer  
16 and attested by the Secretary of the Board. Any such signatures may be by manual or  
17 facsimile signature. Any facsimile signature of such Designated Officer of the Board and  
18 the Water Department shall be of the same force and effect as if such signature were  
19 manually placed on the Note.

20           Section 8.   Approval of Credit Agreement and the Note. The Credit  
21 Agreement and the Note are hereby approved. The Designated Officers, each acting  
22 alone, are hereby authorized and directed to execute and deliver the Credit Agreement  
23 and the Note in such form together with such changes, insertions and omissions as may  
24 be approved by the officer executing such Credit Agreement and Note upon consultation  
25 with Kutak Rock LLP ("Bond Counsel"), such execution to be conclusive evidence of such  
26 approval; and the Secretary of the Board is hereby authorized and directed to attest  
27 thereto. The Board hereby authorizes the delivery and performances of the Credit  
28 Agreement and the Note.



1           Section 9. Designated Representatives. The Board hereby appoints the  
2 President of the Board, the General Manager, the Deputy General Managers and the  
3 Director of Finance of the Water Department, and any other persons the President may  
4 designate to serve as Designated Representatives of the Board under the terms of this  
5 Resolution. The Designated Representatives are, and each of them is, hereby  
6 authorized and are hereby directed to perform those duties set forth in the Credit  
7 Agreement. The Designated Representatives are, and each of them is, also authorized  
8 to make representations, certifications and warranties concerning the Credit Agreement,  
9 the Note and the certifications and agreements relating to the federal tax exemption with  
10 regards to the Advances.

11           Section 10. Additional Authorization. The General Manager of the Water  
12 Department, and all officers, agents and employees of the Water Department, for and on  
13 behalf of the Board, be and they hereby are authorized and directed to do any and all  
14 things necessary to effect the execution and delivery of the Credit Agreement and each  
15 Request for Advance, and to carry out the terms thereof. The General Manager of the  
16 Water Department and all other officers, agents and other employees of the Water  
17 Department are further authorized and directed, for and on behalf of the Board, to  
18 execute all papers, documents, certificates and other instruments, that may be required  
19 in order to carry out the authority conferred by this Resolution. The foregoing  
20 authorization includes, but is in no way limited to, authorizing the execution by the  
21 General Manager of the Water Department or the Assistant General Manager of the  
22 Water Department any one of them, of a tax compliance certificate as required by the  
23 Credit Agreement, including the creation of any other funds and accounts required in  
24 order to comply with the Code or that are in the best interest of the Board.

25           Section 11. Approval and Authorization of the Second Supplemental  
26 Senior Indenture. The Second Supplemental Senior Indenture, in the form on file with  
27 the Secretary of the Board, is hereby approved. The Designated Officers, each acting  
28 alone, are hereby authorized and directed to execute and deliver the Second

1 Supplemental Senior Indenture in such form together with such changes, insertions and  
2 omissions as may be approved by the officer executing such Second Supplemental  
3 Senior Indenture upon consultation with Bond Counsel, such execution to be conclusive  
4 evidence of such approval; and the Secretary of the Board is hereby authorized and  
5 directed to attest thereto. The Board hereby authorizes the delivery and performances of  
6 the Second Supplemental Senior Indenture.

7 Section 12. Authorization for Creation of Revolving Loan Project Account.

8 The Board hereby directs there to be created within the Sewer Revenue Fund a project  
9 account to be designated the "Revolving Loan Project Account." Proceeds of each  
10 Advance which are to be used to fund Project Costs (as defined in the Credit Agreement)  
11 shall be deposited into the Revolving Loan Project Account. All moneys in the Revolving  
12 Loan Project Account may be invested by the Board or the City from time to time in  
13 Authorized Investments (as defined in the Indenture). All interest, profits and other  
14 income received from the investment of moneys in the Revolving Loan Project Account  
15 shall remain in and be credited to such account. The Board shall keep or cause to be  
16 kept proper books of record and accounts containing complete and correct entries of all  
17 transactions made by the Board relating to the receipt, investment, disbursement,  
18 allocation and application of moneys relating to the Revolving Loan Project Account.  
19 Funds in the Revolving Loan Project Account shall only be used to fund Project Costs.

20 Section 13. Costs of Issuance. The Board authorizes funds of the Water  
21 Department, together with the proceeds from an Advance under the Revolving Line of  
22 Credit, to be used to pay costs of issuance, including but not limited to, costs and  
23 expenses of attorneys (including Bond Counsel), accountants, financial advisors and the  
24 Bank (including its counsel's fees).

25 Section 14. Approval of the City. The Secretary of the Board shall  
26 transmit to the City Council the form of the Credit Agreement (forms of which have been  
27 provided to this Board) which will authorize and set forth the terms of obligations incurred  
28 pursuant to the Revolving Line of Credit. The Board hereby requests the City Council to

1 approve issuance of obligations incurred from time to time pursuant to the Revolving Line  
2 of Credit under the Credit Agreement, with such changes, completions, insertions or  
3 omissions as shall be approved by the officer of the Board or the Water Department  
4 executing the Credit Agreement.

5 Section 15. Severability of Invalid Provisions. If any one or more of the  
6 provisions contained in this Resolution shall for any reason be held to be invalid, illegal or  
7 unenforceable in any respect, then such provision or provisions shall be deemed  
8 severable from the remaining provisions contained in this Resolution and such invalidity,  
9 illegality or unenforceability shall not affect any other provision of this Resolution, and this  
10 Resolution shall be construed as if such invalid or illegal or unenforceable provision had  
11 never been contained herein. The Board hereby declares that it would have adopted this  
12 Resolution and each and every Section, paragraph, sentence, clause or phrase hereof  
13 and authorized the Credit Agreement pursuant thereto irrespective of the fact that any  
14 one or more Sections, paragraphs, sentences, clauses or phrases of this Resolution may  
15 be held illegal, invalid or unenforceable.

16 Section 16. Section Headings and References; Interpretation. The  
17 headings or titles of the several Sections hereof, and any table of contents appended to  
18 copies hereof, shall be solely for convenience of reference and shall not affect the  
19 meaning, construction or effect of this Resolution.

20 All references herein to "Sections" and other subdivisions are to the  
21 corresponding Sections or subdivisions of this Resolution; the words "herein," "hereof,"  
22 "hereby," "hereunder" and other words of similar import refer to this Resolution as a  
23 whole and not to any particular Section or subdivision hereof; and words of the masculine  
24 gender shall mean and include words of the feminine and neuter genders.

25 Section 17. Governing Law. This Resolution shall be construed and  
26 governed in accordance with the laws of the State of California.

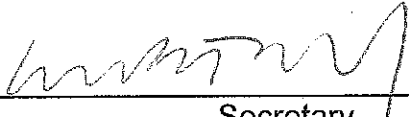
27 Section 18. This resolution shall take effect immediately upon its adoption  
28 by the Board, and the Secretary shall certify the vote adopting this resolution.

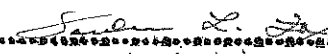
1 I hereby certify that the foregoing resolution was adopted by the Board of  
2 Water Commissioners of the City of Long Beach at its meeting of May 5, 2011, by the  
3 following vote:

4 Ayes: Commissioners: CLARKE; TOWNSEND; ALLEN;  
5 BLANCO; DALLMAN

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 Noes: Commissioners: NONE

9 \_\_\_\_\_  
10 Absent: Commissioners: NONE

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14   
15 \_\_\_\_\_  
16 Secretary  
17 Board of Water Commissioners

18 CERTIFIED AS A TRUE AND CORRECT COPY  
19 .....  
20 SECRETARY TO THE BOARD OF WATER COMMISSIONERS  
21 CITY OF LONG BEACH, CALIFORNIA  
22 BY:   
23 DATE: 5/5/2011

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 RESOLUTION NO.

2  
3 A RESOLUTION OF THE CITY COUNCIL OF THE  
4 CITY OF LONG BEACH APPROVING THE ISSUANCE  
5 FROM TIME TO TIME BY THE BOARD OF WATER  
6 COMMISSIONERS, ON BEHALF OF THE CITY OF LONG  
7 BEACH, SUBORDINATE SEWER OBLIGATIONS ISSUED  
8 PURSUANT TO THE TERMS OF A CREDIT AGREEMENT  
9 AND RELATED DOCUMENTS WHICH PROVIDE FOR A  
10 REVOLVING LINE OF CREDIT IN AN AMOUNT NOT TO  
11 EXCEED \$20,000,000 OUTSTANDING AT ANY TIME

12  
13 WHEREAS, the Charter of the City of Long Beach (the "Charter") and  
14 Sections 3.52.110 through 3.52.150, inclusive, of the Long Beach Municipal Code (the  
15 "Code") provide a procedure for the issuance of revenue bonds by the City of Long  
16 Beach, California (the "City") or by a Board of Commissioners, acting for and on behalf of  
17 the City; and

18 WHEREAS, Section 1725 of Article XVII of the Charter provides a  
19 procedure for the issuance of short-term revenue certificate obligations by the City or by  
20 a Board of Commissioners, acting for and on behalf of the City; and

21 WHEREAS, the Board of Water Commissioners of the City (the "Board"), on  
22 behalf of the City, pursuant to Section 1725 of Article XVII of the Charter, proposes to  
23 issue short-term revenue certificate obligations (in the form of advances) to be issued  
24 and incurred pursuant to the terms of a credit agreement (the "Credit Agreement"),  
25 providing for a revolving line of credit (the "Revolving Line of Credit"), by and between the  
26 Board and Wells Fargo Bank, National Association (the "Bank"), in an amount not to  
27 exceed \$20,000,000; and

28 WHEREAS, the Board has previously adopted a resolution pursuant to

1 which the Board approved the entering into of a Credit Agreement providing for the  
2 issuance and incurrence of short-term revenue certificate obligations (in the form of  
3 advances) pursuant to a Revolving Line of Credit in an amount not to exceed  
4 \$20,000,000 at any one time outstanding, to be entered into by the Board, acting on its  
5 own behalf and on behalf of the City, and the Bank, the form of which is attached hereto  
6 as "Exhibit A";

7 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
8 follows:

9 Section 1. That the City Council, acting pursuant to Section 1725 of  
10 Article XVII of the Charter and Sections 3.52.110 through 3.52.150, inclusive, of the  
11 Code, does hereby approve the issuance and incurrence of short-term revenue certificate  
12 obligations (in the form of advances) pursuant to the terms of the Credit Agreement, by  
13 and between the Board, acting on its own behalf and on behalf of the City, and the Bank,  
14 which shall provide for a Revolving Line of Credit in an amount not to exceed  
15 \$20,000,000 at any one time outstanding.

16 Section 2. That the City Clerk is hereby authorized and directed to  
17 forward to the Board, without a delay, a certified copy of this resolution.

18 Section 3. This resolution shall take effect immediately upon its adoption  
19 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of May 24, 2011, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_

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

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

---

CREDIT AGREEMENT

by and between

BOARD OF WATER COMMISSIONERS OF THE CITY OF LONG BEACH,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

Dated as of May 1, 2011

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## **CREDIT AGREEMENT**

This CREDIT AGREEMENT, dated as of May 1, 2011 (this "Agreement"), is entered into by and between the BOARD OF WATER COMMISSIONERS OF THE CITY OF LONG BEACH, a commission existing under the charter of the City of Long Beach (the "Board"), acting on its own behalf and on behalf of the City of Long Beach, a charter city and municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California (the "Issuer") and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Bank").

### **RECITALS**

A. The Issuer wishes to obtain a revolving line of credit (the "Line of Credit") from the Bank hereunder and the Bank is willing, upon the terms and subject to the conditions set forth below, to provide the Line of Credit to the Issuer to pay Costs of a Project (as defined herein), the principal of and interest on Commercial Paper Notes (as defined herein) maturing on the Effective Date (as defined herein) or costs of issuance in connection with this Agreement.

B. All obligations of the Issuer to reimburse the Bank for payments made by the Bank under the Line of Credit and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement or the promissory note to be issued to the Bank hereunder (all such obligations are hereinafter collectively referred to as the "Payment Obligations") are created under and will be evidenced by this Agreement and such promissory note and will be secured by a subordinate pledge of and lien on Net Revenues (as defined herein) all in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing Recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to extend to the Issuer the Line of Credit, the Issuer and the Bank hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

SECTION 1.1. Definitions. The following terms shall have the following meanings as used herein:

"Accreted Value" means (a) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in a Supplemental Indenture or a Subordinate Obligation Issuing Document as the amount representing the initial principal amount of such Capital Appreciation Bond plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (b) with respect to Original Issue Discount Bonds, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Bonds plus the amount of the discounted principal which has accreted since the date of issue; in each case the Accreted Value shall be determined in accordance with the provisions of the Supplemental Indenture or a Subordinate Obligation Issuing Document authorizing the issuance of such Capital Appreciation Bond or Original Issue Discount Bond.

“Additional Revenues” means, with respect to the issuance of any Senior Lien Bonds or Subordinate Obligations, an allowance for Net Revenues arising from any increase in the charges made for service from the Enterprise which has become effective prior to the issuance of such Senior Lien Bonds or Subordinate Obligations, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent 12-month period selected by the Board, all as shown by the certificate or opinion of a Consultant employed by the Board.

“Advance” means an advance requested by the Issuer under the terms hereof for the payment of Costs of a Project, the principal of and interest on Commercial Paper Notes maturing on the Effective Date or costs of issuance in connection with this Agreement.

“Advance Date” means the date on which the Bank honors a Request for Advance and make the funds requested available to the Issuer.

“Aggregate Annual Debt Service” means for any Fiscal Year the aggregate amount of Annual Debt Service on all Outstanding Senior Lien Bonds and Subordinate 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 Senior Lien Bonds and Subordinate Obligations in accordance with any applicable amortization schedule in the applicable Supplemental Indenture or Subordinate Obligation Issuing Document or in such other governing documents that set forth the terms of such Senior Lien Bonds or Subordinate Obligations, including, as a principal payment, the Accreted Value of any Capital Appreciation Bonds or Original Issue Discount Bonds 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 paragraph (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 Senior Lien Bonds and Subordinate Obligations shall be excluded to the extent such payments are to be paid from capitalized interest for such Fiscal Year; and in determining the other amounts due on the Senior Lien Bonds and Subordinate Obligations, if any, in each year, such amounts shall be assumed to be made on the Outstanding Senior Lien Bonds and Subordinate Obligations in accordance with the terms of the Supplemental Indenture or such other governing documents that set forth the terms of such Senior Lien Bonds or Subordinate Obligations;

(b) if all or any portion or portions of an Outstanding series of Senior Lien Bonds or Subordinate 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 Indenture or in such other governing documents pursuant to which such Balloon Indebtedness is issued or unless paragraph (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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Lien Bonds or Subordinate Obligations of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to any series of Senior Lien Bonds or Subordinate Obligations, only a portion of which constitutes Balloon Indebtedness, the remaining portion shall be treated as described in paragraph (a) above or such other provision of this definition as shall be applicable and, with respect to any series, or that portion of a series 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 paragraph (a) above or such other provision of this definition as shall be applicable;

(c) any maturity of Senior Lien Bonds or Subordinate Obligations which constitutes Balloon Indebtedness as described in paragraph (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 paragraph (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 Representative stating that the Board intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the Enterprise 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 paragraph (b) above and shall be amortized over a term of not more than 30 years from the date of refinancing;

(d) if any Outstanding Senior Lien Bonds or Subordinate Obligations or any Senior Lien Bonds or Subordinate Obligations which are then proposed to be issued constitute Tender Indebtedness, then, for purposes of determining Aggregate Annual Debt Service, Tender Indebtedness shall be treated as if (i) the principal amount of such Senior Lien Bonds or Subordinate Obligations were to be amortized over a term of not more than 30 years commencing in the year in which such series 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, provided, however, notwithstanding the previous provisions of this clause (i), any principal amortization schedule set forth in the applicable Supplemental Indenture or Subordinate Obligation Issuing Document or in such other governing documents pursuant to which such Tender Indebtedness is issued (including, but not limited to, any mandatory sinking fund redemption schedule) shall be applied to determine the principal amortization of such Senior Lien Bonds or Subordinate Obligations; (ii) 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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Lien Bonds or Subordinate Obligations of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; and (iii) 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 paragraph (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 paragraphs (e) or (f) below, as appropriate;

(e) if any Outstanding Senior Lien Bonds or Subordinate Obligations constitute Variable Rate Indebtedness, including obligations described in paragraph (h)(ii) below to the extent it applies (except to the extent paragraph (b) or (c) relating to Balloon Indebtedness or paragraph (d) relating to Tender Indebtedness or paragraph (h)(i) relating to Synthetic Fixed Rate Debt applies), 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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed rate Bonds of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(f) with respect to any Program Bonds or Unissued Program Bonds (other than a Commercial Paper Program) (i) debt service on Program Bonds 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 Program Bonds, it shall be assumed that the full principal amount of such Unissued Program Bonds will be amortized over a term certified by an Authorized Representative at the time the initial Program Bonds 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 Representative to be the expected duration of such Program at the time of such calculation, but not to exceed 30 years from the date the initial Program Bonds of such Program are issued 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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed rate Senior Lien Bonds or Subordinate Obligations of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and

taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(g) Annual Debt Service on Repayment Obligations, to the extent such obligations constitute Senior Lien Bonds or Subordinate Obligations, shall be calculated as provided in Section 2.12 of the Senior Lien Indenture or a Subordinate Obligation Issuing Document;

(h) (i) for purposes of computing the Aggregate Annual Debt Service of Senior Lien Bonds or Subordinate Obligations which constitute Synthetic Fixed Rate Debt, the interest payable thereon shall, if the Board 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 Board 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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Lien Bonds or Subordinate Obligations of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(ii) for purposes of computing the Aggregate Annual Debt Service of Senior Lien Bonds or Subordinate Obligations with respect to which a Swap has been entered into whereby the Board, acting on its own behalf and on behalf of the City, has agreed to pay the floating variable rate thereunder, no fixed interest rate amounts payable on the Senior Lien Bonds or 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 Senior Lien Bonds or Subordinate Obligations shall, if the Board elects, be the sum of that rate as determined in accordance with paragraph (e) above 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 of 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 Board, or if the Board fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed rate Senior Lien Bonds or Subordinate Obligations of a corresponding term issued under the Senior Lien Indenture or a Subordinate Obligation Issuing Document on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Lien Bonds or Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;



(j) if moneys or permitted investments have been irrevocably deposited with and are held by the applicable trustee or another fiduciary to pay or capitalized interest has been set aside exclusively to be used to pay principal and/or interest on specified Senior Lien Bonds or Subordinate Obligations, then the principal 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 Aggregate Annual Debt Service; and

(k) if state and/or federal grants or other moneys have been irrevocably committed or are held by the applicable trustee or another fiduciary and are to be set aside exclusively to be used to pay principal of and/or interest on specified Senior Lien Bonds or Subordinate Obligations, then the principal of 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 Gross Revenues) and not included in calculating Aggregate Annual Debt Service.

“Agreement” means this Credit Agreement, as the same may be amended from time to time.

“Annual Debt Service” means, with respect to any Senior Lien Bond or Subordinate Obligation, the aggregate amount of principal, interest and such other amounts becoming due and payable during any Fiscal Year, and if a Qualified Swap is in effect for such Senior Lien Bond or Subordinate Obligation, plus the amount payable by the Board (or the applicable trustee) under the Qualified Swap in accordance with the terms thereof, less any amount to be received by the Board 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.

“Applicable Margin” means 0.70% per annum, in each case to be added to the Applicable Rate under the circumstances described herein.

“Applicable Rate” means the interest rate applicable to each Revolving Loan or the Term Loan, as applicable, which interest rate shall be either the LIBOR Fixed Rate or the Daily Variable Rate from time to time as determined pursuant to Section 2.4(a) hereof, plus, in the case of the Term Loan, 4.00% per annum.

“Authorized Representative” means the President of the Board, the General Manager, the Deputy General Managers and the Director of Finance of the Water Department and any other person the President of the Board may designate to serve as Designated Representatives of the Board under the terms of a resolution of the Board; provided, that a copy of such resolution shall have been provided to the Bank.

“Available Commitment” means, on any date, an initial amount equal to \$20,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Advance or any Revolving Loan in respect of such Advance; (b) upward in an amount equal to the principal amount of any Revolving Loan that is prepaid; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.6 or 10.2(b); and

(d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof.

“Balloon Indebtedness” means, with respect to any series of Senior Lien Bonds or Subordinate Obligations fifty percent (50%) or more of the principal of which matures on the same date or within a Fiscal Year, that portion of such series which matures on such date or within such Fiscal Year; provided, however, that to constitute Balloon Indebtedness the amount of Senior Lien Bonds or Subordinate Obligations of a series maturing on a single date or within a Fiscal Year must equal or exceed 150% of the amount of such series which matures during any Fiscal Year. For purposes of this definition, the principal amount maturing on any date shall be reduced by the amount of such Senior Lien Bonds or 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. The Payment Obligations shall be Balloon Indebtedness.

“Bank” has the meaning provided in introductory paragraph hereto.

“Base LIBOR” means the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on the Bloomberg Screen BTMM Page under the heading “LIBOR FIX BBAM<GO>” (or any successor page) as the London interbank offered rate for deposits in United States dollars at 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable LIBOR Interest Period for a term comparable to such LIBOR Interest Period and in an amount approximately equal to the principal amount of the unpaid principal balance of such Revolving Loan or the Term Loan, as applicable. If for any reason such rate is not available, then Base LIBOR shall mean the rate for United States dollar deposits quoted by the Bank as the Inter-Bank Market Offered Rate, with the understanding that such rate is quoted by the Bank for the purpose of calculating effective rates of interest for loans making reference thereto for delivery of funds on said date for a term comparable to such LIBOR Interest Period and in an amount approximately equal to the principal amount of the unpaid principal balance of such Revolving Loan or the Term Loan, as applicable. The Borrower understands and agrees that the Bank may base its quotation of the Inter-Bank Market Offered Rate upon such offers or other market indicators of the Inter-Bank Market as the Bank in its discretion deems appropriate including, but not limited to, the rate offered for U.S. dollar deposits on the London Inter-Bank Market.

“Board” has the meaning provided in introductory paragraph hereto.

“Business Day” means any day other than (i) a Saturday, Sunday or (ii) a day on which banks in Los Angeles, California are required or authorized by law to be closed, or (iii) a day on which the Bank is required or authorized by law to be closed.

“Capital Appreciation Bonds” means Senior Lien Bonds or 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 Indenture or a Subordinate Obligation Issuing Document and is payable only upon redemption or on the maturity date of such Senior Lien Bonds or Subordinate Obligations. Senior Lien Bonds or Subordinate Obligations which are issued as Capital Appreciation Bonds, but later convert to Senior Lien Bonds or Subordinate Obligations on which

interest is paid periodically shall be Capital Appreciation Bonds until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Bonds, but shall be treated as having a principal amount equal to their Accreted Value on the conversion date.

“Charter” means the Charter of the City of Long Beach as from time to time amended under which the City is organized and operates.

“City” means the City of Long Beach, California, a charter city and municipal corporation organized and existing under its Charter and the Constitution and laws of the State.

“City Attorney” means the Office of the City Attorney of the City, including the City Attorney, any Assistant City Attorney, or any Deputy City Attorney.

“City Auditor” means the Auditor of the City.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Paper Notes” shall mean the City of Long Beach, California Senior Sewer Revenue Commercial Paper Notes, Series A (Tax-Exempt) and Series B (Taxable) authorized to be outstanding in an aggregate principal amount of \$20,000,000 pursuant to the Senior Lien Indenture.

“Commercial Paper Program” shall mean a Program authorized by the Board and the City Council of the City pursuant to which commercial paper notes shall be issued and reissued from time to time, up to the authorized amount of such Program.

“Commitment” means the agreement of the Bank pursuant to Section 2.2 hereof to make Advances for the account of the Issuer for the purpose of providing funds to pay Costs of a Project, the principal of and interest on Commercial Paper Notes maturing on the Effective Date or costs of issuance in connection with this Agreement.

“Commitment Expiration Date” means May [ ], 2014 unless extended as provided herein.

“Commitment Fee” has the meaning set forth in Section 2.5(a) hereto.

“Consultant” has the meaning set forth in the Senior Lien Indenture.

“Conversion Date” means the date on which the Revolving Loans are converted to the Term Loan pursuant to Article IV.

“Costs of a Project” has the meaning set forth in the Senior Lien Indenture.

“Credit Facility” means 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 (not acting by and through the Board) to make payment of or provide funds to the applicable trustee or the applicable paying agent for the payment of the principal of and/or interest on Senior Lien Bonds

or Subordinate Obligations whether such obligation is to pay in the first instance and seek reimbursement or to pay only if the Board fails to do so.

“Credit Provider” means the party obligated to make payment of principal of and interest on Senior Lien Bonds or Subordinate Obligations under a Credit Facility.

“Daily One Month LIBOR” means, for any day, the rate of interest equal to LIBOR then in effect for delivery for a one (1) month period.

“Daily Variable Rate” means a variable rate per annum equal to 70% of Daily One Month LIBOR, as in effect from time to time, plus the Applicable Margin.

“Daily Variable Rate Loan” means any Revolving Loan or the Term Loan bearing interest at the Daily Variable Rate.

“Debt Service Reserve Fund Surety Policy” shall mean an insurance policy or surety bond, or a letter of credit, deposited with the applicable trustee or such other fiduciary for the credit of the applicable debt service reserve fund created for one or more series of Outstanding Senior Lien Bonds or Subordinate Obligations in lieu of or partial substitution for cash or securities on deposit therein. Except as otherwise provided in a Supplemental Indenture or a Subordinate Obligation Issuing Document, the entity providing such Debt Service Reserve Fund Surety Policy shall be rated, at the time of delivery thereof, in one of the two highest long-term rating categories by one or more of the rating agencies.

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

“Default Rate” means a fluctuating rate of interest per annum equal to the Applicable Rate plus 4.00% per annum.

“Designated Debt” means a specific indebtedness designated by the Board in which such debt shall be offset with a Swap, such specific indebtedness to include all or any part of a series or multiple series of Senior Lien Bonds or Subordinate Obligations.

“Effective Date” means May [ ], 2011.

“Enterprise” means the entire public sanitary sewer collection system in the City, including, but not limited to, all facilities, properties and improvements at any time owned, controlled or operated by the Board for the collection of sanitary sewage for the residents of the City and adjacent areas, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City. The term “Enterprise” does not include any facilities, properties or improvements constituting any portion of the water system in the City.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum

products, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean up or other remediation thereof.

“Event of Default” means any event or circumstance specified in Section 10.1 hereto.

“Financing Documents” means this Agreement, the Note, the Resolution, the Tax Certificate and any documents related thereto.

“Fiscal Year” means the period commencing on October 1 of each year and terminating on the next succeeding September 30.

“Gross Revenues” means all gross charges received for, and all other gross income and receipts derived by the Board from, the ownership and operation of the Enterprise or otherwise arising from the Enterprise, including, but not limited to, investment earnings thereon; but excluding (a) the proceeds of any ad valorem property taxes levied for the purpose of paying general obligation bonds of the Board or the City relating to the Enterprise, (b) the proceeds of any special assessments or special taxes levied upon real property within any improvement district for the purpose of paying special assessment bonds or special tax obligations of the Board or the City relating to the Enterprise, and (c) customer deposits.

“Indemnified Party” has the meaning set forth in Section 6.2 hereto.

“Issuer” has the meaning provided in introductory paragraph hereto.

“LIBOR” means the rate (rounded upward, if necessary, to the nearest 1/100 of 1%) and determined pursuant to the following formula: LIBOR equals Base LIBOR divided by (100% minus the LIBOR Reserve Percentage).

“LIBOR Fixed Rate” means, for any LIBOR Interest Period, a fixed rate per annum equal to 70% of LIBOR as of the LIBOR Reset Date for such LIBOR Interest Period, plus the Applicable Margin.

“LIBOR Fixed Rate Loan” means any Revolving Loan or the Term Loan bearing interest at the LIBOR Fixed Rate.

“LIBOR Interest Period” means, with respect to any Revolving Loan or the Term Loan bearing interest at the LIBOR Fixed Rate, a one (1), three (3) or six (6) month period, such period to be determined as provided in Section 2.4(a) hereof and to commence on a Business Day and continue for one (1) month, three (3) months or six (6) months, as applicable, during which the entire outstanding principal balance of such Revolving Loan or the Term Loan, as applicable, shall bear interest determined in relation to LIBOR as adjusted as provided herein, with the understanding that (i) the initial LIBOR Interest Period for any Revolving Loan or the Term Loan, as applicable, shall commence on the date the related Advance is made for such Revolving Loan or the Conversion Date for the Term Loan, respectively, and (ii) any other LIBOR Interest Period shall commence on the Business Day determined as provided in

Section 2.4(a) hereof, provided that the remaining term of any LIBOR Interest Period shall have no effect on the Revolving Loan Maturity Date or the Term Loan Maturity Date, as applicable. If any LIBOR Interest Period would end on a day which is not a Business Day, then such LIBOR Interest Period shall be extended, if necessary, to the next day that is followed by a Business Day, and further provided that, if on the first day of the last LIBOR Interest Period applicable to the remaining term of such Revolving Loan or the Term Loan, as applicable, is less than one (1) month, said LIBOR Interest Period shall be in effect only until the Revolving Loan Maturity Date or the Term Loan Maturity Date, as applicable.

“LIBOR Reserve Percentage” means, with respect to any Revolving Loan or the Term Loan, as applicable, any reserve percentage, as may be prescribed by the Board of Governors of the Federal Reserve System (or any successor) for “Eurocurrency Liabilities” (as defined in Regulation D of the Federal Reserve Board, as amended), adjusted by the Bank for expected changes in such reserve percentage during the term of such Revolving Loan or the Term Loan, as applicable.

“LIBOR Reset Date” means, with respect to the first LIBOR Interest Period of any Revolving Loan or the Term Loan bearing interest at the LIBOR Fixed Rate, the date the related Advance is made for such Revolving Loan or the Conversion Date for the Term Loan, respectively, and, with respect to subsequent LIBOR Interest Periods, the first day of that subsequent LIBOR Interest Period.

“Liquidity Facility” means a letter of credit, line of credit, standby purchase agreement or other financial instrument, including a Credit Facility, which is available to provide funds with which to purchase Senior Lien Bonds or Subordinate Obligations upon tender thereof.

“Liquidity Provider” means the entity, including a Credit Provider, which is obligated to provide funds to purchase Senior Lien Bonds or Subordinate Obligations under the terms of a Liquidity Facility upon tender thereof.

“Maximum Aggregate Annual Debt Service” means the maximum amount of Aggregate Annual Debt Service with respect to all Senior Lien Bonds and Subordinate Obligations and the Authorized Amount of all Senior Lien Bonds and Subordinate Obligations then proposed to be issued in the then current or any future Fiscal Year.

“Moody’s” means Moody’s Investors Service.

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period less the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Note” has the meaning set forth in Section 3.2.

“Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid by the Board for maintaining and operating the Enterprise, including, but not limited to, (a) the cost of operating the Enterprise, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Enterprise in good repair and working order, and (c) the reasonable administrative costs of the Board

attributable to the operation and maintenance of the Enterprise; but in all cases excluding (i) interest expense relating to obligations of the City or the Board with respect to the Enterprise, (ii) depreciation, replacement and obsolescence charges or reserves therefor, and (iii) amortization of intangibles or other bookkeeping entries of a similar nature.

“Original Issue Discount Bonds” means Senior Lien Bonds or 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 Bonds by the Supplemental Indenture or Subordinate Obligation Issuing Document under which such Senior Lien Bonds or Subordinate Obligations are issued.

“Outstanding” has the meaning set forth in the Senior Lien Indenture.

“Participant” means any entity to which the Bank has granted a participation in the obligations of the Bank hereunder and of the Issuer hereunder and under the Note.

“Payment Date” means the last calendar day of the month which is six months after the month in which a Conversion Date occurs and the last calendar day of every sixth month thereafter.

“Payment Obligations” has the meaning provided in the Recitals hereto.

“Person” shall mean any individual, partnership, firm, corporation, association, joint venture, trust or other entity, or any government (or political subdivision or agency, department or instrumentality thereof).

“Program” means a financing program identified in a Supplemental Indenture or a Subordinate Obligation Issuing Document, including but not limited to a Commercial Paper Program, (a) which is authorized and the terms thereof approved by a resolution adopted by the Board and the items of the type described in Section 2.09(a) through (h) of the Senior Lien Indenture have been filed with the applicable trustee, (b) wherein the Board 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 the Senior Lien Indenture or the additional bonds test set forth in a Subordinate Obligation Issuing Document and the outstanding amount of which may vary from time to time, but not exceed the authorized amount.

“Program Bonds” shall mean Senior Lien Bonds or Subordinate Obligations issued and outstanding pursuant to a Program, other than Unissued Program Bonds.

“Qualified Swap” means any Swap (a) whose Designated Debt is all or part of a particular series of Senior Lien Bonds or Subordinate Obligations; (b) whose Swap Provider is a Qualified Swap Provider; (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 applicable trustee by the Board as a Qualified Swap with respect to such Senior Lien Bonds or Subordinate Obligations.

“Qualified Swap Provider” shall mean a financial institution (a) whose senior long-term debt obligations, or whose obligations under any Qualified Swap are guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, are rated at least “Aa,” in the case of Moody’s, and “AA,” in the case of S&P, or the equivalent thereto in the case of any successor thereto, or (b) whose obligations under any Qualified Swap are fully secured by obligations described in paragraph (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 applicable trustee (who shall not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the applicable trustee, (iii) subject to a perfected first lien on behalf of the applicable trustee, and (iv) free and clear from all third-party liens.

“Repayment Obligation” means an (a) obligation arising under a written agreement of the Board, acting on its own behalf and on behalf of the City, and a Credit Provider pursuant to which the Board agrees to repay or reimburse the Credit Provider for amounts paid through a Credit Facility to be used to pay debt service on any Senior Lien Bonds or Subordinate Obligations and to pay all other amounts due and owing to a Credit Provider under a Credit Facility, or (b) an obligation arising under a written agreement of the Board, acting on its own behalf and on behalf of the City, and a Liquidity Provider pursuant to which the Board agrees to repay or reimburse the Liquidity Provider for amounts paid through a Liquidity Facility to be used to purchase Senior Lien Bonds or Subordinate Obligations and to pay all other amounts due and owing to a Liquidity Provider under a Liquidity Facility.

“Request for Advance” means any request for an Advance made by the Issuer to the Bank, in the form of Exhibit B hereto, executed and delivered on behalf of the Issuer by the manual or facsimile signatures of the President of the Board, the General Manager of the Water Department, the Assistant General Manager or any other Authorized Board Representative (as defined in the Senior Lien Indenture) designated by the President or the General Manager and attested to by the Secretary of the Board.

“Resolution” means the resolution of the Board adopted on [\_\_\_\_\_], 2011, together with any other resolutions or proceedings taken by the Board in connection with the execution and delivery of this Agreement, the Note and the other Financing Documents.

“Revolving Loan” has the meaning set forth in Section 3.1.

“Revolving Loan Maturity Date” means, with respect to any Revolving Loan, the Termination Date.

“S&P” means Standard and Poor’s Rating Services.

“Second Supplemental Senior Lien Indenture” means that certain Second Supplemental Senior Trust Indenture, dated as of May 1, 2011, by and between the Issuer and U.S. Bank National Association, as trustee.

“Senior Lien Bonds” means bonds, notes and all other obligations issued or incurred under the terms of the Senior Lien Indenture and secured, under the terms of the Senior Lien



Indenture, by a pledge of the Net Revenues prior to the pledge securing Subordinate Obligations under the terms of any Subordinate Obligation Issuing Document.

“Senior Lien Indenture” means that certain Master Senior Trust Indenture, dated as of June 1, 2009, by and between the Issuer and U.S. Bank National Association, as trustee, as amended by that certain First Supplemental Senior Trust Indenture, dated as of June 1, 2009, by and between the Issuer and U.S. Bank National Association, as trustee, and as further amended by the Second Supplemental Senior Lien Indenture, and as the same may be further amended or supplemented from time to time.

“Subordinate Obligation” means any bond, note or other debt instrument issued or otherwise entered into by the Board, acting on its own behalf and on behalf of the City, which ranks junior and subordinate to the Senior Lien Bonds and which may be paid from moneys constituting Net Revenues only if all principal, interest and other amounts which have become due and payable on the Senior Bonds whether by maturity, redemption, acceleration or agreement of the Board have been paid in full and the Board is current on all payments, if any, required to be made to replenish any debt service reserve fund for any Senior Lien Bonds.

“Subordinate Obligation Issuing Document” means the governing document(s) that set forth the terms of a Subordinate Obligation, as the same may be amended or supplemented from time to time.

“Supplemental Indenture” has the meaning set forth in the Senior Lien Indenture.

“Swap” has the meaning set forth in the Senior Lien Indenture.

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

“Swap Provider” has the meaning set forth in the Senior Lien Indenture.

“Synthetic Fixed Rate Debt” means indebtedness issued by the Board, acting on its own behalf and on behalf of 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 Certificate” means [\_\_\_\_\_].

“Taxes” has the meaning provided in Section 6.5 hereto.

“Tender Indebtedness” shall mean any Senior Lien Bonds or Subordinate Obligations or portions of Senior Lien Bonds or Subordinate Obligations a feature of which is an option and/or an obligation on the part of the Holders, under the terms of such Senior Lien Bonds or Subordinate Obligations, to tender all or a portion of such Senior Lien Bonds or Subordinate Obligations to the Board, the applicable trustee, the applicable paying agent or other fiduciary or agent or Credit Provider or Liquidity Provider for payment or purchase and requiring that such Senior Lien Bonds or Subordinate Obligations or portions of Senior Lien Bonds or Subordinate Obligations be purchased if properly presented.

“Term Loan” has the meaning provided in Section 4.1 hereto.

“Term Loan Maturity Date” means the date that is no later than four years after the Conversion Date.

“Termination Date” means the earlier of (i) the Commitment Expiration Date, as such date may be extended pursuant to Section 2.7 hereof, and (ii) the date the Commitment terminates by its terms in accordance with Section 10.2 hereof.

“Unissued Program Bonds” means the bonds, notes or other indebtedness authorized to be issued pursuant to a Program and payable from Net Revenues, issuable in an amount up to the authorized amount relating to such Program, which have been approved for issuance by the Board pursuant to a resolution adopted by the Board and with respect to which Program the items of the type described in Section 2.09(a) through (h) of the Senior Lien Indenture have been filed with the applicable trustee but which have not yet been authenticated and delivered pursuant to the Program documents.

“United States” means the United States of America.

“Variable Rate Indebtedness” means any Senior Lien Bond or Subordinate Obligation, the interest rate on which is not, at the time in question, fixed to maturity, excluding any Commercial Paper Program.

SECTION 1.2. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

SECTION 1.3. Interpretation. The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (i) the singular includes the plural, and the

plural the singular; (ii) words importing any gender include the other gender; (iii) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible font; (v) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation;" (vi) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (vii) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (viii) section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; (ix) references to Persons include their respective permitted successors and assigns; and (x) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding." All references to "funds" herein shall include all accounts and subaccounts therein unless the context clearly requires otherwise.

## ARTICLE II

### APPLICATION AND ISSUANCE OF THE LINE OF CREDIT; PAYMENTS

SECTION 2.1. Application. The Issuer hereby applies to the Bank for, and authorizes and instructs the Bank to issue for its account, the Commitment in the initial Available Commitment.

SECTION 2.2. Making of Advances; Use of Proceeds.

(a) Subject to the terms and conditions of this Agreement, the Bank agrees to make Advances from time to time on any Business Day, commencing on the Effective Date and ending on the Termination Date, in amounts not to exceed at any time outstanding the Available Commitment; provided, that the Bank shall not be required to make more than one Advance on any Business Day. Each Advance requested shall be in an amount greater than \$100,000. Each Advance shall be made solely for the purpose of providing funds to pay Costs of a Project, the principal of and interest on Commercial Paper Notes maturing on the Effective Date or costs of issuance in connection with this Agreement. The aggregate amount of all Advances made on any Advance Date shall not exceed the applicable Available Commitment (calculated without giving effect to any Advances made on such date) at 9:00 am (New York City time) on such date.

(b) Reborrowing. Within the limits of this Section 2.2, the Issuer may borrow, repay pursuant to Section 3.4 hereof and reborrow under this Section 2.2. Upon any prepayment of the related Revolving Loan, the related Available Commitment shall be reinstated as set forth in the definition thereof.

(c) Method of Borrowing. Upon receipt of a Request for Advance by the Bank not later than 12:00 noon (New York City time) on the Business Day which is two Business Days'

immediately prior to the day of the proposed borrowing, the Bank subject to the terms and conditions of this Agreement, shall be required to make an Advance by 2:30 p.m. (New York City time) on such day for the account of the Issuer in an amount equal to the amount of the requested borrowing. With respect to any such Request for Advance received by the Bank after 12:00 noon (New York City time) on any Business Day, the Bank shall be required to make such Advances by 2:30 p.m. (New York City time) on the third Business Day following receipt. Any Request for Advance shall be signed by an Authorized Representative. Each Advance shall be made by the Bank by wire transfer of immediately available funds to the Issuer in accordance with written instructions provided by the Issuer. Each Advance shall be made from the Bank's own funds. If, after examination, the Bank shall have determined that a request for advance does not conform to the terms and conditions hereof, then the Bank shall use its best efforts to give notice to the Issuer to the effect that negotiation was not in accordance with the terms and conditions hereof and stating the reasons therefor. The Issuer may attempt to correct any such nonconforming request for advance, if, and to the extent that, the Issuer is entitled (without regard to the provisions of this sentence) and able to do so.

SECTION 2.3. Conditions Precedent.

(a) Conditions Precedent to Effective Date. The obligations of the Bank to make the Commitment available hereunder shall be subject to the fulfillment of each of the following conditions precedent on or before the Effective Date in a manner satisfactory to the Bank:

(i) The Bank shall have received a copy of the resolution of the Board authorizing the execution and delivery of this Agreement, the Note and the other Financing Documents, certified as of the Effective Date by the Secretary to the Board and a copy of the resolution of the City authorizing the issuance and incurrence of short-term revenue certificate obligations (in the form of advances) pursuant to the terms hereof, certified as of the Effective Date by the City Clerk of the City.

(ii) The Bank shall have received certified copies of all approvals, authorizations and consents of any trustee, or holder of any indebtedness or obligation of the Issuer or any governmental agency or public authority, necessary for the Issuer to enter into each of the Financing Documents and the transactions contemplated herein and therein.

(iii) The Bank shall have received an opinion addressed to the Bank and dated the Effective Date of the City Attorney as to the due authorization, execution and delivery, validity and enforceability with respect to the Issuer of this Agreement, and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank.

(iv) The following statements shall be true and correct on the Effective Date, and the Bank shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by an Authorized Representative, dated the Effective Date, stating that:

(1) the representations and warranties of the Issuer contained in each of the Financing Documents and each certificate, letter, other writing or instrument delivered by the Issuer to the Bank pursuant hereto or thereto are true and correct on and as of the Effective Date as though made on and as of such date; and

(2) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement or the making of the Commitment; and

(3) the Senior Lien Indenture has not been modified, amended or rescinded and is in full force and effect on and as of the Effective Date, except as amended by the Second Supplemental Senior Lien Indenture.

(v) The Bank shall have received an opinion addressed to the Bank and dated the Effective Date of bond counsel as to the due authorization, execution and delivery, validity and enforceability with respect to the Issuer of this Agreement and the Note, the execution and delivery of the Second Supplemental Senior Lien Indenture pursuant to the Senior Lien Indenture, as to the exclusion of interest on the Revolving Loans and the Term Loan from gross income for federal income tax purposes of the Bank or the exemption of such interest from State of California personal income taxes and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank.

(vi) The Bank shall have received a copy of the audited financial statements for the Enterprise for Fiscal Years ending September 30, 20[10], 2009 and 2008, a copy of the Issuer's investment policy in effect on the Effective Date and a copy of the most recent budget of the Enterprise.

(vii) All necessary action on the part of the Issuer shall have been taken as required for the assignment and pledge of a second lien on the Net Revenues for the benefit of the Bank as described in Section 5.1 hereof.

(viii) The Bank shall have received a certificate signed by an authorized representative of U.S. Bank National Association, as the trustee, and an opinion of counsel to such trustee addressed to the Bank and dated the Effective Date as to the due authorization, execution and delivery, validity and enforceability with respect to such trustee of the Second Supplemental Senior Lien Indenture, and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank.

(ix) All other legal matters pertaining to the execution and delivery of each of the Financing Documents and the adoption and implementation of the Resolution shall be reasonably satisfactory to the Bank and its counsel.

(x) The Bank shall have received such other documents, certificates, opinions, approvals and filings with respect to this Agreement, the Note and the other Financing Documents as the Bank may reasonably request.

(b) Conditions Precedent to Each Advance. The obligation of the Bank to make an Advance on any date is subject to the conditions precedent that on the date of such Advance (i) the Bank shall have received a Request for Advance, (ii) all representations and warranties of the Issuer as set forth in Article VII of the Agreement are true and correct as though made on the date of such Request for Advance and on the date of the proposed Advance and no Event of Default shall have occurred and be continuing, and (iii) the Commitment and the obligation of the Bank to make Advance hereunder shall not have terminated pursuant to Section 10.2 hereof. Unless the Issuer shall have otherwise previously advised the Bank in writing, delivery to the Bank of a Request for Advance shall be deemed to constitute a representation and warranty by the Issuer that on the date of such Request for Advance and on the date of the proposed Advance each such condition is satisfied.

SECTION 2.4. LIBOR Designations.

(a) Designation of LIBOR Fixed Rate (and LIBOR Interest Period) or Daily Variable Rate.

(i) *Initial Applicable Rate.* The Issuer shall designate the initial Applicable Rate for any Revolving Loan as the LIBOR Fixed Rate (and a one (1), three (3) or six (6) month period for the initial LIBOR Interest Period) or the Daily Variable Rate in the related Request for Advance.

(ii) *LIBOR Fixed Rate Loans.* For each LIBOR Fixed Rate Loan, the Issuer shall designate a new Applicable Rate as the LIBOR Fixed Rate (and a one (1), three (3) or six (6) month period for such subsequent LIBOR Interest Period) or the Daily Variable Rate in writing received by the Bank on or before 5:00 p.m. (New York City time) on the last Business Day of the then-current LIBOR Interest Period; provided, however, if the Issuer fails to affirmatively designate a new Applicable Rate in writing received by the Bank on or before 5:00 p.m. (New York City time) on the last Business Day of the then-current LIBOR Interest Period, the Applicable Rate shall automatically convert to the Daily Variable Rate upon the expiration of the then-current LIBOR Interest Period.

(iii) *Daily Variable Rate Loans.* For each Daily Variable Rate Loan, the Issuer may designate a new Applicable Rate as the LIBOR Fixed Rate (and a one (1), three (3) or six (6) month period for the LIBOR Interest Period) to become effective on any Business Day selected by the Issuer in writing received by the Bank on or before 5:00 p.m. (New York City time) on the Business Day immediately preceding the date such LIBOR Fixed Rate shall become effective. No designation by the Issuer shall be required for the Applicable Rate for any Daily Variable Rate Loan to remain the Daily Variable Rate.

(b) Make-Whole. If, at any time prior to the final Business Day of the then applicable LIBOR Interest Period whether as a result of the acceleration of the Payment Obligations due to an Event of Default, any voluntary prepayment by the Issuer or any other reason, the Bank receives any payment of principal in whole or in part, the Issuer shall pay to the Bank, as part of any such prepayment, all accrued interest through the date of such prepayment and any amounts required to compensate the Bank for any losses, costs or expenses which the

Bank sustains as a result of such payment (including, without limitation, the loss of the Bank's anticipated profits until the final Business Day of the applicable LIBOR Interest Period) as well as any cost or expense incurred by the Bank by reason of the liquidation of or reemployment of deposits or other funds acquired by the Bank to fund or maintain such Revolving Loan or the Term Loan, as applicable, until the final Business Day of the applicable LIBOR Interest Period; provided, however, that if at any time and for so long as the Applicable Rate shall have been automatically converted to the Daily Variable Rate pursuant to Section 2.4(a) above, the Issuer shall not be required to pay any such losses, costs or expenses. A certificate as to the amount owed by the Issuer under this paragraph, submitted to the Issuer, indicating in reasonable detail the method of computation for all such losses, costs and expenses shall be binding for all purposes absent manifest error.

#### SECTION 2.5. Fees.

(a) Commitment Fees. The Issuer agrees to pay to the Bank a nonrefundable annual fee (the "Commitment Fee") accruing at a rate of 0.35% per annum on the daily Available Commitment, payable quarterly in arrears on each March 31, June 30, September 30 and December 31 and on the Commitment Expiration Date, or such earlier date on which the Commitment may be terminated in accordance with the terms. The Commitment Fee shall be calculated on the basis of 360-day year and actual days elapsed.

(b) Amendment, Consent or Waiver Fee. Upon each amendment hereof, consent or waiver hereunder or under any Financing Document, the Issuer shall pay or cause to be paid attorneys' fees and expenses, if any, incurred by the Bank in processing such amendment, consent or waiver.

#### SECTION 2.6. Reduction and Termination.

(a) The Available Commitment shall be reduced from time to time as requested by the Issuer within three (3) days of the Issuer's written notice to the Bank requesting such reduction in the form of Exhibit E hereto; provided, that (i) each such reduction amount shall be in an amount equal to \$1,000,000 or an integral multiple thereof, and (ii) any reduction in the Available Commitment shall not be effective until the Bank delivers to the Issuer a notice in the form attached hereto as Exhibit F reflecting such reduction.

(b) The Issuer may at any time and at its sole option terminate the Commitment upon three (3) days' prior written notice to the Bank. As a condition to any such termination, the Issuer shall pay or cause to be paid all Payment Obligations owed to the Bank.

SECTION 2.7. Extension of Commitment Expiration Date. The Issuer may request an extension of the Commitment Expiration Date in writing in the form of Exhibit C hereto not more than one (1) year prior to the then current Commitment Expiration Date and not less than 120 days prior to the then current Commitment Expiration Date. The Bank will make reasonable efforts to respond to such request within 45 days after receipt of all information necessary, in the Bank's judgment, to permit the Bank to make an informed credit decision. If the Bank fails to definitively respond to such request within such 45-day period, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion,

decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing in the form of Exhibit G hereto or otherwise. The Bank's consent, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank.

### ARTICLE III

#### REVOLVING LOANS

SECTION 3.1. Making of Revolving Loans. Each Advance shall constitute a loan made by the Bank to the Issuer on the date of such Advance (individually, a "Revolving Loan" and collectively, the "Revolving Loans"). Each Revolving Loan shall constitute a Subordinate Obligation.

SECTION 3.2. Revolving Loans Evidenced By Note. The Revolving Loans shall be evidenced by a promissory note of the Issuer to the Bank in substantially the form set forth in Exhibit A hereto (the "Note") to be issued on the Effective Date, payable to the Bank in a principal amount up to the Available Commitment on the Effective Date and otherwise duly completed. All Revolving Loans made by the Bank and all payments and prepayments made on account of principal thereof shall be recorded by the Bank on the schedule (or a continuation thereof) attached to the Note, it being understood, however, that failure by the Bank to make any such endorsement shall not affect the obligations of the Issuer hereunder or under the Note in respect of unpaid principal and interest on any Revolving Loan.

SECTION 3.3. Interest On Revolving Loans. Each Revolving Loan shall bear interest from the related Advance Date to the date the Bank is reimbursed therefor at a rate per annum equal to the Applicable Rate. Interest on each Revolving Loan shall be paid to the Bank monthly in arrears on the first Business Day of each month and on the Revolving Loan Maturity Date.

SECTION 3.4. Repayment of Revolving Loans. The principal of each Revolving Loan shall be repaid in full on the Revolving Loan Maturity Date; provided, that if the conditions to the making of the Term Loan set forth in Section 4.2 are satisfied on the Revolving Loan Maturity Date, the principal of all Revolving Loans shall be paid from the proceeds of the Term Loan.

SECTION 3.5. Prepayment of Revolving Loans. The Issuer may prepay any Revolving Loan, in whole or in part, on any Business Day, without cost, penalty or premium, provided at least three (3) days' written notice is provided by the Issuer to the Bank and such prepayment occurs on the final Business Day of the then applicable LIBOR Interest Period to which such prepayment will be applied or if paid prior to such final Business Day, such prepayment amount contains sufficient interest to cover the period from the date such prepayment is made through the final Business Day of the then applicable LIBOR Interest Period and the Bank may hold such payment and apply it on such final Business Day of the then applicable LIBOR Interest Period. Any prepayment of any Revolving Loan on a day other than the final Business Day of the then applicable LIBOR Interest Period shall include any costs to the Bank arising under Section 2.4(b) hereof. Each such notice of optional prepayment shall be irrevocable and shall bind the Issuer to make such prepayment in accordance with such notice.



All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement.

## ARTICLE IV

### THE TERM LOAN

SECTION 4.1. Term Loan. The Issuer shall have the option to convert to a term loan (the "Term Loan") any principal amount owing for all Revolving Loans under this Agreement on the Revolving Loan Maturity Date if the conditions set forth in Section 4.2 are satisfied on the Conversion Date. The Term Loan shall constitute a Subordinate Obligation.

SECTION 4.2. Conditions Precedent to Term Loan. The obligation of the Bank to convert the principal amount owed for all Revolving Loans to the Term Loan shall be subject to the fulfillment of each of the following conditions precedent on or before the Revolving Loan Maturity Date (the "Conversion Date"), in a manner satisfactory to the Bank:

(a) The following statements shall be true and correct on the Conversion Date, and the Bank shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by an Authorized Representative and dated the Conversion Date, stating that --

(i) the representations and warranties of the Issuer contained herein and in each of the other Financing Documents and each certificate, letter, other writing or instrument delivered by the Issuer to the Bank pursuant hereto or thereto are true and correct on and as of the Conversion Date as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing or would result from converting the Revolving Loans to the Term Loan as requested.

SECTION 4.3. Term Loan Evidenced By Note. The principal amount of the Term Loan shall also be evidenced by the Note. The Term Loan made by the Bank and all payments and prepayments on the account of the principal and interest of the Term Loan shall be recorded by the Bank on the schedule attached to the Note; provided, however, that the failure of the Bank to make any such endorsement or any error therein shall not affect the obligations of the Issuer hereunder or under the Note in respect of unpaid principal and interest on the Term Loan.

SECTION 4.4. Interest on Term Loan. The Term Loan shall bear interest from the Conversion Date to the date the Bank is reimbursed therefor at a rate per annum equal to the Applicable Rate. Interest on the Term Loan shall be paid to the Bank monthly in arrears on the first Business Day of each month and on the Term Loan Maturity Date.

SECTION 4.5. Repayment of Term Loan. The principal of the Term Loan shall be paid in sixteen equal quarterly installments following the Conversion Date; provided, that any unpaid principal shall be paid on the Term Loan Maturity Date. The Issuer acknowledges that the foregoing payment schedule may result in a final payment substantially higher than the preceding payments.

SECTION 4.6. Prepayment of Term Loan. The Issuer may prepay the Term Loan, in whole or in part, on any Business Day, without cost, penalty or premium, provided at least three (3) days' written notice is provided by the Issuer to the Bank and such prepayment occurs on the final Business Day of the then applicable LIBOR Interest Period to which such prepayment will be applied or if paid prior to such final Business Day, such prepayment amount contains sufficient interest to cover the period from the date such prepayment is made through the final Business Day of the then applicable LIBOR Interest Period and the Bank may hold such payment and apply it on such final Business Day of the then applicable LIBOR Interest Period. Any prepayment of the Term Loan on a day other than the final Business Day of the then applicable LIBOR Interest Period shall include any costs to the Bank arising under Section 2.4(b) below. Each such notice of optional prepayment shall be irrevocable and shall bind the Issuer to make such prepayment in accordance with such notice. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement.

## ARTICLE V

### SECURITY AND PLEDGE

SECTION 5.1. Security and Pledge. To secure the payment of all Payment Obligations, the Issuer hereby pledges, places a second lien upon and assigns to the Bank (i) the proceeds of Advances; and (ii) the Net Revenues. The Issuer has also pledged and assigned the Net Revenues and granted a second lien upon the Net Revenues to secure the payment of all Payment Obligations pursuant to the Resolution. The Issuer has previously pledged and assigned the Net Revenues and granted a lien upon the Net Revenues to secure all Senior Lien Bonds, whenever issued, including Senior Lien Bonds issued subsequent to the execution and delivery of this Agreement. The pledge, assignment and lien on the Net Revenues granted to secure the Senior Lien Bonds shall, in all respects, be prior to the pledge, assignment and lien granted hereby. The Net Revenues, including the earnings on such Net Revenues, shall be used first to pay the Senior Lien Bonds as the same become due and make current deposits into the funds held pursuant to the Senior Lien Indenture before such Net Revenues will be available to pay the Payment Obligations and other Subordinate Obligations. This pledge of and lien upon the Net Revenues shall be for the equal and proportionate benefit and security of the Payment Obligations and other Subordinate Obligations issued under the terms of any Subordinate Obligation Issuing Document, all of which, regardless of the time or times of their authentication and delivery or maturity, shall be of equal rank without preference, priority or distinction as to lien or otherwise. The pledge and lien hereby granted and granted in the Resolution shall remain effective for so long as any Payment Obligations remain unpaid.

## ARTICLE VI

### LIABILITY, INDEMNITY AND PAYMENT

SECTION 6.1. Liability of the Issuer. The Issuer and the Bank agree that the obligation of the Issuer to pay the Payment Obligations are contractual obligations of the Issuer payable solely from the Net Revenues, shall not constitute a full faith and credit general obligation of the Issuer and shall not be affected by, and the Bank shall not be responsible for,

among other things, (i) the validity, genuineness or enforceability of this Agreement, the Note or documents, notices or endorsements relating thereto (even if this Agreement or any documents, notices endorsements relating thereto should in fact prove to be in any and all respects invalid, fraudulent or forged), (ii) the use to which the amounts disbursed by the Bank may be put, or (iii) any other circumstances or happenings whatsoever, whether or not similar to any of the foregoing.

SECTION 6.2. Indemnification by the Issuer.

(a) To the fullest extent permitted by law, the Issuer agrees to indemnify and hold harmless the Bank, the Participants and their respective officers, directors, employees, representatives and agents (collectively, the "Indemnified Parties" and, individually, an "Indemnified Party"), from and against any and all claims, damages, penalties, actions, judgments, suits, disbursements, losses, liabilities, costs or expenses whatsoever (including reasonable attorneys' fees) which any of them may incur (or which may be claimed against any of them by any Person) as a result of, or arising out of, or in any way related to, or by reason of or in connection with (i) the execution and delivery or transfer of, or payment or failure to pay under this Agreement or the Note, (ii) the application of the proceeds of Advances to pay Costs of a Project, the principal of and interest on Commercial Paper Notes maturing on the Effective Date or costs of issuance in connection with this Agreement, (iii) any breach by the Issuer of any warranty, covenant, term or condition in, or the occurrence of any default under any of the Financing Documents, together with all reasonable expenses resulting from the compromise or defense of any claims or liabilities arising as a result of any such breach or default, (iv) any action or proceeding relating to a court order, injunction or other process or decree restraining or seeking to restrain the Bank from paying any amount under this Agreement (other than actions or proceedings instituted by or on behalf of the Bank), or (v) any investigation, litigation or other proceeding (whether or not the Bank or any Participant is a party thereto) related to the entering into and/or each performance of any of the Financing Document or the use of the proceeds of any Advance under this Agreement;

provided, that the Issuer shall not be required to indemnify the Bank for any claims, damages, penalties, actions, judgments, suits, disbursements, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the Bank in determining whether a Request for Advance presented hereunder complied with the terms hereof, or (ii) the Bank's failure to pay under any requested Advance after the presentation to it by the Issuer of a Request for Advance strictly complying with the terms and conditions hereof.

(b) The obligations of the Issuer hereunder shall include, but not be limited to (i) the burden and expense of defending all claims, suits and administrative proceedings (with counsel chosen by the Issuer and reasonably approved by the Indemnified Parties), even if such claims, suits or proceedings are groundless, false or fraudulent, (ii) conducting all negotiations of any description, and (iii) paying and discharging, when and as the same become due, any and all claims, damages, penalties, actions, judgments, suits, disbursements, losses, liabilities, costs or expenses due from or rendered against the Indemnified Parties.

SECTION 6.3. Increased Costs. If, after the Effective Date, any change in applicable law, treaty, regulation, guideline or directive or the adoption of any law, treaty, regulation, guideline or directive, including, without limitation those, if any adopted to implement the Basel Accords developed by the Basel Committee on Banking Supervision, or any interpretation of any of the foregoing by any authority charged with the administration or interpretation thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or any Participant or the transactions contemplated by this Agreement (whether or not having the force of law) shall: (i) subject the Bank or any Participant to any tax, charge, fee, deduction or withholding of any kind with respect to this Agreement, the Commitment, the Note or any amount paid or to be paid by the Bank with respect to this Agreement or the Commitment or any Participant (other than any tax measured by or based upon the overall net income of the Bank or any Participant); (ii) impose, modify or deem applicable any reserve, premium, special deposit or similar requirements against any assets held by, deposits with or for the account of, or loans, lines of credit or commitments by, an office of the Bank or any Participant; (iii) change the basis of taxation of payments due the Bank or any Participant under this Agreement or the Note (other than a change in taxation of the overall net income of the Bank or a Participant); or (iv) impose upon the Bank or any Participant any other condition with respect to such amount paid or payable to or by the Bank or any Participant or with respect to this Agreement, the Commitment or the Note, and the result of any of the foregoing is to increase the cost to the Bank or any Participant of agreeing to issue, issuing, making any payment under or maintaining this Agreement, the Revolving Loans or the Term Loan, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank or any Participant or to require the Bank or any Participant to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank or such Participant in its reasonable judgment deems material, then: (x) the Bank or such Participant shall, after making a determination to impose increased costs as a result of the occurrence of any of the foregoing, notify the Issuer of such determination in writing; (y) after giving notice of such determination, the Bank or such Participant shall also deliver to the Issuer a certificate stating the change which has occurred or the reserve requirements or other costs or conditions which have been imposed on the Bank or such Participant or the request, direction or requirement with which they have complied together with the date thereof, the amount of such increased cost, reduction or payment and the way in which such amount has been calculated, including a reasonably detailed calculation and the Bank's or such Participant's determination of such amounts, absent fraud or manifest error, shall be conclusive; and (z) the Issuer shall pay to the account of the Bank or such participant, from time to time as specified by the Bank or such Participant but not later than 30 days after notice and demand to the Issuer, such an amount or amounts as will compensate the Bank or such Participant for such additional cost, reduction or payment, together with interest on such amount from, but including, the day specified by the Bank or such Participant for payment at the Applicable Rate.

In addition to the foregoing, if after the Effective Date the Bank or any Participant shall have determined that the adoption of any applicable law, rule or regulation, including, without limitation those, if any adopted to implement the Basel Accords developed by the Basel Committee on Banking Supervision, regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank or any Participant with any request or directive regarding capital

adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of the Bank or any Participant to a level below that which the Bank or such Participant could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank or such Participant with respect to capital adequacy) by an amount deemed by the Bank or such Participant to be material, or affects or would affect the amount of capital required or expected to be maintained by the Bank or any Participant or any corporation controlling the Bank or any Participant by an amount deemed by the Bank or such Participant to be material, as a consequence of its obligations hereunder or with respect to the Note, then the Issuer shall be obligated to pay or cause to be paid to the account of the Bank or such Participant from time to time as specified by the Bank or such Participant, but not later than 30 days after notice and demand to the Issuer, such additional amount or amounts as will compensate the Bank or such Participant for such reduction or capital increase with respect to any period for which such reduction or capital increase was incurred, together with interest on such amounts from, but including, the day specified by the Bank or such Participant for such payment at the Applicable Rate. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such capital increase, of the Bank or a Participant as a result of any event mentioned in this paragraph shall be submitted by the Bank or such Participant to the Issuer and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof.

The protections of this Section shall be available to the Bank and the Participants regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed.

Notwithstanding anything in this Section to the contrary, if such costs are to be incurred on a continuing basis and the Bank or a Participant shall so notify the Issuer in writing as to the amount thereof, such costs shall be paid by the Issuer monthly in arrears.

**SECTION 6.4. Calculation of Interest and Fees; Maximum Interest Rate; Default Rate.**

(a) Interest and fees payable hereunder shall be calculated on the basis of a year of 360 days based on the actual number of days elapsed. Any change in the Applicable Rate resulting from a change in LIBOR shall become effective as of the opening of business on the day on which such change in the LIBOR shall become effective.

(b) Any and all amounts remaining unpaid when due under this Agreement shall bear interest at the Default Rate until repaid and shall be payable upon demand. Any such amounts which constitute interest remaining unpaid when due shall be added to principal, and such interest shall, in turn, bear interest at the Default Rate until repaid and shall be payable upon demand. Any sum payable by the Issuer to the Bank hereunder upon the occurrence or during the continuance of any Event of Default hereunder shall bear interest at the Default Rate.

(c) To the extent permitted by law, in the event that a rate of interest required to be paid by the Issuer under this Agreement, the Note or any other Financing Document shall exceed a maximum rate established by law or by the Resolution, any subsequent reduction in the rate of interest required to be paid by the Issuer hereunder or under the Note or any other Financing

Document will not reduce the rate of interest below the maximum rate established by law until the total amount of interest accrued equals the amount of interest which would have accrued if the rate of interest required hereunder or under the Note or any other Financing Document (without giving effect to this paragraph) had at all time been in effect. Upon the date on which all amounts payable on the Revolving Loans and the Term Loan or other Payment Obligations are due and payable, and otherwise immediately upon the later of the Revolving Loan Maturity Date or the Term Loan Maturity Date, in consideration for the limitation of the rate of interest otherwise payable under this Agreement, the Note or any other Financing Document, the Issuer shall pay to the Bank a fee equal to the amount of all such unpaid interest which would have accrued if the rate of interest required hereunder or under the Note or any other Financing Document (without giving effect to this paragraph) had at all times been in effect.

(d) All amounts paid pursuant to this Agreement shall be non-refundable and shall be paid in immediately available funds.

SECTION 6.5. Form and Method of Payments; Net Payments. All payments made to the Bank under this Agreement shall be made not later than 4:00 p.m. (New York City time) without setoff, counterclaim or other defense by wire transfer in lawful currency of the United States and in immediately available funds to the Bank by the wire instructions set forth in Section 11.3 (or at such other bank, address or account as the Bank may designate in writing from time to time to the Issuer). Any payment received by the Bank later than 4:00 p.m. (New York City time) shall be deemed to be made on the next succeeding Business Day. Whenever any payment due under the terms of this Agreement is due on a day which is not a Business Day, such payment shall be due and payable on the next succeeding Business Day. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding any tax imposed on the overall net income of the Bank or a Participant pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant is located) and all interest, penalties or similar liabilities with respect thereto (collectively, "Taxes"); provided, however, that the Issuer shall have no liability with respect to any Taxes which are imposed on the Bank or any Participant that is a foreign banking institution pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant, as the case may be, is located, unless (i) the Bank or such Participant, as the case may be, is entitled to benefits of an income tax treaty with the United States that provides for an exemption from United States withholding tax on interest and other amounts payable to the Bank or such Participant, as the case may be, pursuant to the terms of any of the Financing Documents, or (ii) all interest and other amounts payable to the Bank or such Participant, as the case may be, pursuant to the terms of any of the Financing Documents will be effectively connected with the conduct by the Bank or such Participant, as the case may be, of a trade or business within the United States. If any Taxes are so levied or imposed, the Issuer agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder, after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for in the Financing Documents. The Issuer will deliver to the Bank within 45 days after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the Issuer.

To the extent permitted by law, the Issuer will indemnify and hold harmless the Bank and each Participant, and reimburse the Bank and each Participant upon written request, for the amount of any Taxes so levied or imposed and paid by the Bank or such Participant.

SECTION 6.6. Liability of the Bank. Neither the Bank nor any of its officers, directors, employees, representatives or agents shall be liable or responsible for (i) the use which may be made of any Advances or this Agreement or for any acts, omissions, errors, interruptions, delays in transmission, dispatch or delivery of any message or advice, however transmitted, of the Bank in connection with this Agreement or the Note, (ii) any action, inaction or omission which may be taken by the Bank in connection with this Agreement or the Note, (iii) the validity, sufficiency or genuineness of documents, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iv) payment by the Bank against presentation of documents which do not comply with the terms of this Agreement or a Request for Advance, including failure of any documents to bear any reference or adequate reference to this Agreement, or (v) any other circumstances whatsoever in making or failing to make payment under this Agreement or pursuant to a Request for Advance, except for acts or events described in the immediately preceding clauses (i) through (v), to the extent, but only to the extent, of any direct, as opposed to special, indirect, consequential or punitive, damages (the right to receive special, indirect, consequential or punitive damages being hereby waived) suffered by it which the Issuer proves were caused by (y) the Bank's willful misconduct or gross negligence in determining whether documents presented under this Agreement comply with the terms of this Agreement or (z) the Bank's failure to pay hereunder after the presentation to it of a Request for Advance strictly complying with the terms and conditions of this Agreement. The Issuer further agrees that any action taken or omitted by the Bank under or in connection with this Agreement or the related draft or documents, if done without gross negligence, shall be effective against the Issuer as to the rights, duties and obligations of the Bank and shall not place the Bank under any liability to the Issuer. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 6.7. Obligations Unconditional. The Issuer's obligation to repay the Revolving Loans and the Term Loan and all of its other obligations under this Agreement shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Issuer may have against the Bank, any Participant, or any other Person, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of Advances hereunder, and irrespective of the legality, validity, regularity or enforceability of this Agreement, the Note or any or all other Financing Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the Bank explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, this Agreement, the Note or any or all other Financing Documents or any exchange, release, or nonperfection of any collateral securing the obligations of the Issuer hereunder and any other circumstances or happening whatsoever, whether or not similar to any of the foregoing; provided, however, that nothing contained in this Section 6.7 shall abrogate or otherwise affect the rights of the Issuer pursuant to Section 6.6 hereof.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

SECTION 7.1. Representations and Warranties of the Issuer. To induce the Bank to enter into and perform this Agreement, the Issuer represents and warrants as of the Effective Date and as of the date of each Request for Advance and as of the date of each Advance, with respect to itself, this Agreement and certain matters as follows:

(a) Organization Existence. The City is duly organized and validly existing as a charter city and municipal corporation under its Charter and the Constitution and laws of the State of California.

(b) Power and Authority. The Issuer has and had at the time of adoption, execution, delivery, issuance, sale or performance full power, right and authority to (i) execute, deliver and perform its obligations hereunder and under the Note and each of the other Financing Documents, and any and all instruments and documents required to be executed, adopted or delivered pursuant to or in connection herewith or therewith, (ii) pay the Payment Obligations at the times and in the manner set forth herein, (iii) own and operate the Enterprise, and (iv) perform each and all of the matters and things herein and therein provided for and the Issuer has complied with the laws of the State of California in, all matters relating to such execution, delivery and performance.

(c) Due Authorization. This Agreement, the Note and each of the other Financing Documents have been duly authorized, executed, issued and delivered and constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their terms.

(d) Necessary Actions Taken. The Issuer has taken all actions necessary to be taken by it (i) for the adoption, execution, adoption and delivery by the Issuer of any and all such other instruments and the taking of all such other actions on the part of the Issuer as may be necessary or appropriate for the effectuation and consummation of the transactions on the part of the Issuer contemplated by the Financing Documents or in connection herewith or therewith and (ii) to authorize or approve, as appropriate, the execution or adoption, issuance and delivery of, and the performance of its obligations under and the transactions contemplated by, each of the Financing Documents and the payment of the Payment Obligations at the times and in the manner set forth herein.

(e) Binding Effect. The Senior Lien Indenture was duly executed and delivered by the Issuer and is in full force and effect. The Resolution has been duly adopted and is in full force and effect. This Agreement, the Note and each of the other Financing Documents has been duly authorized, executed and delivered by the Issuer and each constitutes a legal, valid and legally binding obligation of the Issuer, which obligation is enforceable in accordance with its terms, and the payment of the Payment Obligations is and shall continue to be a contractual obligation of the Issuer for which the Net Revenues are and shall continue to be pledged as provided in the Financing Documents, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, debt adjustment, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or as to the availability of



any particular remedy. There is no consent, approval, authorization or other order of, filing with, registration with, or certification by, any regulatory authority having jurisdiction over the Issuer and no election or referendum of or by any Person, organization or public body whatsoever required in connection with any of the foregoing actions or each of the performance by the Issuer of its obligations under the Financing Documents. There are no provisions of State of California law which would allow, as of the date hereof or any date subsequent hereto, any public vote or referendum, the results of which could invalidate this Agreement, the Note or any other Financing Document or invalidate, limit or condition the obligation of the Issuer to pay the Payment Obligations to the Bank or any other obligation or pledge undertaken hereunder or in connection with the transactions contemplated by the Financing Documents.

(f) No Contravention. The adoption of the Resolution and the execution and delivery of this Agreement, the Note and each of the other Financing Documents, and compliance with the provisions hereof and thereof, do not and will not conflict with or result in a violation of the Constitution of the State of California or the laws of the State of California, including any debt limitations or other restrictions or conditions on the debt-issuing power of the Issuer, and do not and will not conflict with or result in a violation of, or breach of, or constitute a default under, any law, judgment, order, decree or administrative regulation or any of the terms, conditions or provisions of the Charter or any ordinance, judgment, decree, contract, loan agreement, note, bond, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is a party or by which it or any property of the Issuer is bound and do not and will not result in the imposition or creation of any lien, charge, or encumbrance upon or invalidate or adversely affect in any way the Net Revenues. The Issuer has not received any notice, not subsequently withdrawn, given in accordance with the remedy provisions of any bond resolution or ordinance, trust indenture, guarantee or agreement or state law pertaining to bonds or notes, of any default or event of default of the Issuer which has not been cured.

(g) Compliance with Law; Employee Benefit Plan Compliance. The current collection of the Net Revenues and the management of the Enterprise and the accounting and recordkeeping therefor are in material compliance with all applicable state and federal laws and all applicable resolutions, ordinances and rules of the Issuer. The Issuer is in material compliance with the terms of the employee benefit plans in which the Issuer or any of its employees participate in. Neither the Issuer nor any employee benefit plan maintained by the Issuer is subject to the Employee Retirement Income Security Act of 1974, as amended.

(h) Compliance; No Breach. The Issuer is in compliance with the terms and conditions of each of the Financing Documents, and no breach of the terms hereof or thereof has occurred and is continuing, and no Default or Event of Default has occurred and is continuing.

(i) No Default. No default by the Issuer has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any bond, note or other evidence of indebtedness issued by the Issuer with a lien on Net Revenues. No bankruptcy, insolvency or other similar proceedings pertaining to the Issuer or any agency or instrumentality of the Issuer are pending or contemplated. The Issuer is not in default under any other contract, loan agreement, note, bond, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is a party or by which it or any property of the Issuer is bound, which default could have a material adverse effect on the ability of the Issuer to receive any Net

Revenues or to comply with its obligations under or in respect of any of this Agreement, the Note or the other Financing Documents or in connection with the transactions contemplated hereby or thereby.

(j) No Public Vote or Referendum; Pending Legislation and Decisions. To the best knowledge of the Issuer, there is no public vote or referendum pending, proposed or concluded, the results of which could in any way adversely affect the transactions contemplated by the Financing Documents, or the validity or enforceability of the Financing Documents. To the knowledge of the Issuer, there is no amendment, or proposed amendment to the Constitution of the State of California or any State of California law or any administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the legislature of the State of California, or any judicial decision interpreting any of the foregoing, the effect of which could in any way adversely affect the transactions contemplated by the Financing Documents, or the validity or enforceability of the Financing Documents.

(k) No Immunity. The Issuer is not entitled to raise the defense of sovereign or governmental immunity in connection with any legal proceedings to enforce or collect upon this Agreement or the transactions contemplated thereby, including the payment of the Payment Obligations.

(l) Litigation. There is no action, suit, inquiry, investigation or proceeding at law or in equity pending, or to the best knowledge of the Issuer, threatened, against or affecting the Issuer or the Enterprise before any court, governmental agency, authority, arbitrator or administrative or governmental body which (i) could result in any material adverse change in the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise, (ii) which in any manner draws into question the validity or enforceability of this Agreement, the Note or any other Financing Document, the pledge of the Net Revenues or the priority of any lien in favor of the Bank, (iii) which in any way affects the existence, organization or powers of the Issuer or any elected official thereof to execute and deliver any of this Agreement, the Note or the other Financing Documents or perform the obligations thereunder or contemplated thereby, (iv) affects the title of any official of the Issuer to such Person's office, (v) seeks to restrain or enjoin the collection or the pledge of the Net Revenues to pay the Payment Obligations at the times and in the manner set forth in the Financing Documents, (vi) in any way contests or affects the validity or enforceability of any of this Agreement, the Note or the other Financing Documents, (vii) contests in any way the powers or authority of the Issuer with respect to any of this Agreement, the Note or the other Financing Documents, or (viii) which could materially adversely affect the ability of the Issuer to comply with its obligations under or in respect of any of this Agreement, the Note or the other Financing Documents or in connection with the transactions contemplated hereby or thereby.

(m) Tax Status. The Issuer has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Revolving Loans and the Term Loan from gross income for federal income tax purposes of the Bank or the exemption of such interest from State of California personal income taxes.

(n) Disclosure. Neither the Financing Documents nor any other document, certificate or statements (including the unaudited financial statements, budgets, projections and cash flows) of the Issuer and the Enterprise furnished to the Bank by or on behalf of the Issuer in connection with the transactions contemplated hereby, or thereby contains any untrue statement of any material fact or omits to state any material fact necessary so as to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

(o) Financial Information. The Issuer has delivered to the Bank a copy of the audited financial statements for the Issuer and the Enterprise for the most recently completed Fiscal Year. These together with related notes, fairly present the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise as of the date and for the periods therein set forth. All such financial statements have been prepared in accordance with generally accepted accounting principles for government entities consistently applied. There has been no material adverse change in the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise since the last day of the Fiscal Year set forth in such financial statements. The Issuer has no material contingent liabilities or other material contracts or commitments which are not reflected in such financial statements or in the notes thereto. The annual operating budget of the Issuer and any supplements thereto for the current Fiscal Year, a true and complete copy of which has been delivered to the Bank, fairly presents the anticipated income and expenses of the Issuer and the Net Revenues for such Fiscal Year.

(p) Official Signatures. The Authorized Representative, on behalf of the Issuer, has full power and authority to execute, deliver and perform under each of the Financing Documents. Any agreement, certificate or request signed by or on behalf of any Authorized Representative and delivered to the Bank shall be deemed a representation and warranty by the Issuer to the Bank as to the truth, accuracy and completeness of the statements made by the Issuer therein.

(q) Incorporation of Representations and Warranties by Reference. The Issuer hereby makes to the Bank the same representations and warranties made by the Issuer in each Financing Document, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any Financing Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

(r) Swap Contracts. The Issuer has not entered into any Swap Contract under which a termination payment would be required to be paid from the Net Revenues on basis senior to or on a parity with the Subordinate Obligations or the Note.

(s) Insurance. The Issuer currently maintains insurance with respect to the Enterprise of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, public agencies with similar public sanitary sewer collection systems. The Issuer maintains with responsible insurers all such insurance on the Enterprise required by Section 8.13 hereof.

(t) Usury. The terms of this Agreement, the Note and the other Financing Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

(u) Security. The Payment Obligations are payable from and secured by a second lien on the Net Revenues as set forth herein and in the Resolution. No filing, registering, recording or publication of this Agreement or the Resolution is required to establish the pledge hereunder or under the Resolution or to perfect, protect or maintain the liens created hereby or thereby on the Net Revenues. The only obligations of the Issuer that are entitled to the benefit of prior lien and charge on the Net Revenues are the Senior Lien Bonds, whenever issued, including Senior Lien Bonds issued subsequent to the execution and delivery of this Agreement.

(v) Investment Policy. The Issuer has delivered to the Bank a true and complete copy of its investment policy. All investments of the Issuer have been and are made substantially in accordance with such investment policy. Only the [Board] may amend, rescind or otherwise modify the Issuer's investment policy.

(w) Enterprise. The Issuer has maintained the Enterprise in good working order and repair, and there have been no changes to and no event has occurred which has had, or may result in, any material adverse change in the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise.

(x) Environmental Matters. In the ordinary course of its business, the Issuer conducts an ongoing review of Environmental Laws on the business, operations and properties of the Issuer, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for cleanup or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review the Issuer has reasonably concluded that Environmental Laws are unlikely to have a material adverse effect on the ability of the Issuer to receive any Net Revenues, or on its ability to make any payments in respect of the Payment Obligations or any of its obligations hereunder, under the Note or under any other Financing Document.

## ARTICLE VIII

### AFFIRMATIVE COVENANTS OF THE ISSUER

So long as the Commitment is outstanding and until all Payment Obligations shall have been paid in full, the Issuer shall do the following:

SECTION 8.1. Maintenance of Existence. The Issuer shall maintain the City's existence as a charter city and municipal corporation under its Charter and the Constitution and

laws of the State of California and its rights, franchises and privileges material to the operation of the Enterprise.

SECTION 8.2. Reports, Certificates and Other Information. The Issuer shall furnish or cause to be furnished to the Bank copies of:

(a) As soon as available, and in no event later than 270 days following the end of the applicable Fiscal Year, the annual audited financial statements for the Issuer and the Enterprise, together with the opinion of the Issuer's accountants and a certificate of an Authorized Representative to the effect that no Default or Event of Default has occurred and is continuing;

(b) As soon as available for each Fiscal Year, and in any event no later than 30 days following the beginning of each such Fiscal Year, a copy of all resolutions or proceedings taken by the Board adopting, and the City Council of the City approving, a balanced operating budget for the Enterprise for such Fiscal Year and a certificate of an Authorized Representative to the effect that such operating budget includes all amounts reasonably anticipated to be necessary to make all payments in respect of the Payment Obligations due in such Fiscal Year, and as soon as available for each such Fiscal Year, and in any event no later than 180 days following the beginning of each such Fiscal Year, a copy of such operating budget;

(c) As soon as available, any disclosure documents distributed in connection with any issue of future Senior Lien Bonds or Subordinate Obligations or any other obligations payable from and secured by the Net Revenues;

(d) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and within five days thereafter, a certificate signed by an Authorized Representative specifying in reasonable detail the nature and period of existence thereof and what action the Issuer has taken or proposes to take with respect thereto;

(e) As soon as practicable, written notice to the Bank of all litigation served against the Issuer and all proceedings before any court or governmental authority which, in each case, directly or indirectly relates to the enforceability of this Agreement, the Note or any of the other Financing Documents or could have a material adverse affect on the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise or the Net Revenues and promptly upon obtaining knowledge thereof, written notice to the Bank of the occurrence of any other event which could have a material adverse affect on the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise or the Net Revenues or the enforceability of any of the Financing Documents;

(f) As soon as available, written notice to the Bank of all changes to the Issuer's investment policy or any governing document that sets forth the terms of any Senior Lien Bonds (including any Supplemental Indenture) or Subordinate Obligations; and

(g) Such other information regarding the affairs and condition of the Issuer or the Enterprise as the Bank may from time to time reasonably request.

SECTION 8.3. Maintenance of Books and Records. The Issuer shall keep proper books of record and account in which full, true and correct entries in accordance with the

Issuer's budget basis accounting principles and reporting practices shall be made of all dealings or transactions in relation to its activities.

SECTION 8.4. Access to Books and Records. To the extent permitted by law, the Issuer shall permit any Person designated by the Bank to visit any of the offices of the Issuer to examine the books and financial records, including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Issuer with its principal officials, all at such reasonable times and as often as the Bank may reasonably request.

SECTION 8.5. Compliance with Documents. The Issuer shall perform and comply with each and every covenant and agreement required to be performed or observed by it herein and in the Note and in each of the other Financing Documents, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against the Issuer. To the extent that any such incorporated provision permits the Issuer or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Issuer or any other party, for purposes of this Agreement, such provision shall be complied with only if it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the Bank's written approval of the same. No termination or amendment to such covenants and agreements or defined terms or release of the Issuer with respect thereto made pursuant to the Financing Documents shall be effective to terminate or amend such covenants and agreements and defined terms or release of the Issuer with respect thereto as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of any such Financing Document, the Issuer shall continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

SECTION 8.6. Environmental Compliance. The Issuer shall comply with all Environmental Laws applicable to the construction, ownership or use of the Enterprise and shall cause, to the extent possible, its tenants and other Persons occupying or using its facilities to comply with such Environmental Laws, shall timely pay or cause to be paid all costs and expenses incurred in such compliance, and shall keep or cause to be kept all of its facilities free and clear of any liens imposed pursuant to such Environmental Laws, unless the same are being contested in good faith and by appropriate legal proceedings and such contest shall operate to stay the material adverse effect of any such non-compliance.

SECTION 8.7. Further Assurances. From time to time hereafter, the Issuer shall execute and deliver such additional instruments, certificates or documents, and shall take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Financing Documents or for the purpose of more fully perfecting or renewing

the Bank's rights with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets here after acquired by the Issuer which may be deemed to be a part thereof). Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to the Financing Documents which requires any consent, approval, registration, qualification or authorization of any governmental authority or instrumentality, the Issuer shall, to the extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization.

SECTION 8.8. Application of Proceeds of Advances. The Issuer shall cause the proceeds from Advances made hereunder to be applied only to pay Costs of a Project, the principal of and interest on Commercial Paper Notes maturing on the Effective Date or costs of issuance in connection with this Agreement, and in any event, in compliance in all respects with the Tax Certificate.

SECTION 8.9. Payment of Obligations; Removal of Liens. The Issuer shall pay (a) all indebtedness and obligations of the Issuer in accordance with the terms thereof and (b) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Net Revenues or any interest thereon and promptly discharge or cause to be discharged all liens, encumbrances and charges on such property and assets. The Issuer shall include in each of the annual budgets for the Enterprise all amounts reasonably anticipated to be necessary to make payments due to the Bank hereunder or under the Note or the other Financing Documents.

SECTION 8.10. Compliance with Law; Employee Benefit Plan Compliance. The Issuer shall comply with and observe the obligations and requirements set forth in the Constitution of the State of California and in all statutes and regulations binding upon it relating to the Enterprise and the Financing Documents. The Issuer shall in a timely fashion, comply, in all material respects with all requirements under any employee benefit plan in which the Issuer or any of its employees participate.

SECTION 8.11. Compliance with Obligations. The Issuer shall comply with and observe the obligations and requirements arising in connection with any obligation with a lien on the Net Revenues (including the Senior Lien Bonds and Subordinate Obligations).

SECTION 8.12. Transfer of Surplus Funds. To the extent allowed by law, the Issuer shall classify any transfer of Gross Revenues, surpluses or other funds (other than any transfer in lieu of a franchise fee) of the Issuer to the City or any other governmental entity as a transfer of surplus funds and not as an Operation and Maintenance Cost.

SECTION 8.13. Insurance; Eminent Domain. The Issuer shall at all times maintain with responsible insurers all such insurance on the Enterprise as required by Section 5.09 of the Senior Lien Indenture and as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. If any material useful part of the Enterprise is damaged or destroyed, such material part will be restored for use

or will be replaced. The money collected from insurance against accident to or destruction of the Enterprise will be used for repairing or rebuilding or replacing the damaged or destroyed Enterprise, and to the extent not so applied, will be applied as set forth in Section 5.09 of the Senior Lien Indenture. The provisions of Sections 5.09 and 5.11 of the Senior Lien Indenture, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each such provision and defined term were set forth herein in its entirety. No amendment to such provisions or defined terms made pursuant to any amendment or supplement to the Senior Lien Indenture shall be effective to amend such provisions and defined terms as incorporated by reference herein without the prior written consent of the Bank.

SECTION 8.14. Investment Policy. The Issuer shall comply with its investment policy in effect from time to time.

SECTION 8.15. Rate Covenant.

(a) The Issuer shall (but subject to all existing contracts and legal obligations of the Issuer as of the Effective Date setting forth restrictions relating thereto), establish, fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise, so that Net Revenues in each Fiscal Year will be at least equal to the following amounts: (i) the Aggregate Annual Debt Service on any Outstanding Senior Lien Bonds or Subordinate Obligations require to be funded by the Board in such Fiscal Year as required by the Senior Lien Indenture or any Subordinate Obligation Issuing Document with respect to the Outstanding Senior Lien Bonds or Subordinate Obligations; (ii) the required deposits to any debt service reserve fund which may be established with respect to the Senior Lien Bonds and Subordinate Obligations; (iii) the reimbursement or repayment of other amounts owed to any Credit Provider or Liquidity Provider as required by the Senior Lien Indenture or any Subordinate Obligation Issuing Document; (iv) the interest on and principal of any indebtedness required to be funded during such Fiscal Year other than for Outstanding Senior Lien Bonds or Subordinate Obligations; and (v) payments of any reserve requirement for debt service for any indebtedness other than Outstanding Senior Lien Bonds or Subordinate Obligations.

(b) In addition, the Issuer covenants, with the approval of the City Council with respect to rates, to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to 110% of the amount described in paragraph (a)(i)-(iii) above for such Fiscal Year.

(c) The Issuer covenants that if Net Revenues in any Fiscal Year are less than the amounts specified in paragraphs (a) or (b) of this Section, the Issuer will retain and direct a Consultant to make recommendations as to the revision of the operations of the Enterprise and its schedule of rates, fees and charges for the services and facilities furnished by the Enterprise, and after receiving such recommendations or giving reasonable opportunity for such recommendations to be made, the Board shall take all lawful measures to revise the schedule of rates, fees and charges as may be necessary to produce Net Revenues in the amounts specified in paragraph (a) and (b) of this Section in the next succeeding Fiscal Year.



SECTION 8.16. Other Agreements. While this Agreement remains in effect, if the Issuer executes and delivers a final agreement (“Additional Agreement”) relating to the Enterprise with pricing terms (including, without limitation, interest rates, default rates, utilized facility fees, unutilized facility fees and termination fees) that are more favorable than are provided to the Bank in this Agreement, more restrictive covenants than are provided to the Bank in this Agreement, and/or events of default and/or remedies that are more favorable than are provided to the Bank in this Agreement (collectively, the “Additional Rights”), then the Issuer shall provide the Bank with a copy of such Additional Agreement and the Additional Rights shall be automatically deemed incorporated into this Agreement and the Bank shall have the benefit of the Additional Rights. The Issuer shall promptly cooperate with the Bank to enter into an amendment of this Agreement to include such Additional Rights.

SECTION 8.17. Preservation of Lien. The Issuer shall take all necessary action to maintain and preserve the lien on and security interest in the Net Revenues securing the Payment Obligations and the payment and performance of the Issuer’s obligations hereunder and under the Note and the other Financing Documents.

SECTION 8.18. Sovereign Immunity. The Issuer agrees not to assert any defense of sovereign immunity, if available, in any proceeding initiated by the Bank to enforce any of the obligations of the Issuer hereunder. To the extent that the Issuer has or hereafter may acquire under any applicable law any right to immunity from set off or legal proceedings, including but not limited to a writ of mandamus ordering a levy of taxes by the Issuer, on the grounds of sovereignty or otherwise, the Issuer, to the extent permitted by law, hereby irrevocably waives such rights to immunity for itself and agrees not to invoke any defense of immunity in respect of its obligations arising under or related to this Agreement, the Note or the other Financing Documents.

SECTION 8.19. Maintenance of Enterprise. The Issuer shall at all times operate or cause to be operated the Enterprise properly and in an efficient and economical manner, and shall maintain, preserve, reconstruct and keep the same or cause the same to be so maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Water System may be properly and advantageously conducted. The Issuer shall pay (a) all indebtedness and obligations of the Issuer in accordance with the terms thereof and (b) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Enterprise or Net Revenues or any interest thereon and promptly discharge or cause to be discharged all liens, encumbrances and charges on such property and assets.

## ARTICLE IX

### NEGATIVE COVENANTS OF THE ISSUER

While the Line of Credit is outstanding and until all of the Payment Obligations shall have been paid in full, the Issuer shall not do any of the following, without the prior written consent of the Bank:

SECTION 9.1. Changes in Obligations. The Issuer shall not repeal, modify, amend or supplement any Financing Document, except that the Issuer may supplement the Senior Lien Indenture to provide for the issuance of Senior Lien Bonds in accordance with the terms thereof and hereof.

SECTION 9.2. Additional Debt. The Issuer shall not issue or incur any obligation with a lien on the Net Revenues other than: (i) Senior Lien Bonds (other than Commercial Paper Notes) issued in compliance with the requirements of Section 2.09 and 2.11 of the Senior Lien Indenture; (ii) Subordinate Obligations so long as the Issuer delivers to the Bank a certificate, dated as of a date between the date of pricing of the Subordinate Obligations being issued or incurred and the date of issuance and delivery of such Subordinate Obligations (both dates inclusive), prepared by an Authorized Representative showing that the Net Revenues, calculated in accordance with accounting principles consistently applied, for the most recent completed Fiscal Year or for a more recent 12-month period selected by the Issuer, in either case verified by a certificate or opinion of the City Auditor, plus (at the option of the Issuer) any Additional Revenues, were at least equal to 110% of Maximum Aggregate Annual Debt Service with respect to all Outstanding Senior Lien Bonds, Subordinate Obligations, Unissued Program Bonds and the proposed Subordinate Obligations, calculated as if the proposed Subordinate Obligations and the full authorized amount of such proposed Program Bonds (as applicable) were then Outstanding; (iii) any obligation with a lien on the Net Revenues subordinate to the lien contemplated in Section 5.1 hereof so long as (x) any resolution or indenture of the Issuer authorizing the issuance of any such obligation shall specifically state that such lien on or security interest granted in the Net Revenues is subordinate to the lien contemplated in Section 5.1 hereof; (y) payment of principal of and interest and other amounts due on such obligation shall be permitted; provided that all deposits and payments required to be made with respect to the Payment Obligations have been made or satisfied; and (z) such obligation, if a default in payment, may not be accelerated so long as the Line of Credit is outstanding and until all of the Payment Obligations shall have been paid in full. The Issuer shall not issue, nor cause or permit the issuance of, any Commercial Paper Notes.

SECTION 9.3. Swap Termination Payments. The Issuer shall not enter into any Swap Contract under which a termination payment would be required to be paid from the Net Revenues on basis senior to or on a parity with the Subordinate Obligations or the Note.

SECTION 9.4. No Impairment. The Issuer will neither take any action, nor cause or permit any other Person to take any action, under the Financing Documents inconsistent with the rights of the Bank under this Agreement including, without limitation, the Payment Obligations and pledge of the Net Revenues. The Issuer will neither agree to any amendment, modification or supplement to any Financing Document to which it is a party without the prior written consent

of the Bank, nor shall the Issuer waive or consent to any waiver of any condition under any Financing Document.

SECTION 9.5. Tax Status. The Issuer shall take no action which could reasonably be expected to result in interest on the Revolving Loans and the Term Loan becoming included in gross income of the Bank for purposes of federal income taxation or no longer exempt from State of California personal income taxes.

SECTION 9.6. References to the Bank. The Issuer shall not refer to the Bank in any official statement, offering memorandum, or private placement memorandum (other than a factual description of this Agreement without a specific reference to the Bank) without the Bank's prior written consent thereto.

SECTION 9.7. Only Authorized Uses of Net Revenues by the Issuer. The Issuer shall not transfer, or allow the transfer, of any Net Revenues, to pay general operating expenses of the City or expenses unrelated to the Enterprise without the Bank's prior written consent.

SECTION 9.8. No Sale, Assignment, Transfer or Pledge. The Issuer shall not sell, mortgage or otherwise dispose of the Enterprise or any portion thereof essential to the proper operation of the Enterprise or to the maintenance of Net Revenues. The Issuer shall not enter into any lease or agreement which materially impairs the operation of the Enterprise or any part thereof necessary to secure adequate Net Revenues for the payment of Payment Obligations or payment and performance of the City's obligations under this Agreement, the Note or the other Financing Documents.

SECTION 9.9. Consolidation or Merger. The Issuer shall not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it or acquire all or substantially all of the property and assets of any other Person.

SECTION 9.10. Accounting Methods and Fiscal Year. The Issuer shall not adopt, permit or consent to any change in accounting practices other than as required by generally accepted accounting principles and will not adopt, permit or consent to any change in its Fiscal Year.

SECTION 9.11. No Priority Claim. The Issuer shall not incur, assume or permit any pledge, lien, charge or encumbrance on the Net Revenues with a claim to payment of higher priority than the claim of the Payment Obligations or any of the City's obligations under this Agreement, the Note or the other Financing Documents, other than the Senior Lien Bonds, whenever issued, including Senior Lien Bonds issued subsequent to the execution and delivery of this Agreement.

## ARTICLE X

### DEFAULTS AND REMEDIES

SECTION 10.1. Events of Default. The occurrence and continuation of one or more of the following events shall constitute an Event of Default (“Event of Default”):

(a) The Issuer fails to pay, or cause to be paid, when due (i) any principal and interest due hereunder or under the Note, or (ii) any other amounts due hereunder or under the Note or any other amounts due to the Bank under any other Financing Document; or

(b) (i) The Issuer fails to perform or observe any term, covenant or agreement contained in Section 8.12, 8.13, 8.15, 8.18, 8.19 or Article IX hereof or (ii) the Issuer fails to perform or observe any term, covenant or agreement contained in this Agreement (other than those referred to in Section 10.1(a) and (b)(i)) and any such failure is irremediable or, if remediable, remains unremedied for 45 days after notice thereof to the Issuer;

(c) The Issuer shall fail to make any payment in respect of any of its Senior Lien Bonds or Subordinate Obligations when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the Senior Lien Indenture or any Subordinate Obligation Issuing Document or, if applicable, in any other resolution, agreement, contract, lease or other instrument relating to such Senior Lien Bond or Subordinate Obligation or other debt senior to or on a parity with the Subordinate Obligations, evidenced by bonds, notes or other similar instrument; or an “Event of Default” as defined in the Senior Lien Indenture or any Subordinate Obligation Issuing Document or any other “event of default” under any other Financing Document shall have occurred and be continuing; or

(d) The Issuer has taken or permitted to be taken any action which would materially adversely affect the enforceability of this Agreement, the Note, the Resolution, the Senior Lien Indenture or any Subordinate Obligation Issuing Document against the Issuer or the legal ability of the Issuer to pay Payment Obligations or any Senior Lien Bonds or Subordinate Obligations when due; or

(e) A court of competent jurisdiction shall enter a final, nonappealable order or judgment to the effect that any Senior Lien Bonds or Subordinate Obligations are illegal or unenforceable; or

(f) The issuance of any Senior Lien Bonds or Subordinate Obligations shall result in a violation by the Issuer of any material law, rule or regulation, or any order of any court, governmental agency or regulatory body, or any indenture or loan or credit agreement (including this Agreement), or any other agreement or instrument, applicable to the Issuer or to such issuance; or

(g) Any representation or warranty on the part of the Issuer contained in any Financing Document or in any certificate, letter or other writing or instrument furnished or delivered by the Issuer to the Bank pursuant hereto or thereto or in connection herewith or therewith, shall at any time prove to have been incorrect in any material respect when made or

deemed made or when effective or when reaffirmed, as the case may be, whether by misstatement or omission; or

(h) Any material provision of this Agreement, the Note or the other Financing Documents shall at any time for any reason cease to be valid and binding on the Issuer or shall be declared to be null and void by any court or governmental authority or agency having jurisdiction over the Issuer, or the validity or the enforceability of any material provision of this Agreement, the Note or the other Financing Documents shall at any time be contested by the Issuer in a judicial or administrative proceeding or the Issuer shall deny that it has any or further liability or obligation under any material provision of this Agreement, the Note or the other Financing Documents, or the validity or enforceability of any material provision of this Agreement, the Note or the other Financing Documents shall be contested by any governmental agency or authority having jurisdiction over the Issuer; or

(i) The Issuer fails to pay when due a final, nonappealable judgment or order for the payment of money in excess of \$10,000,000 and for which insurance proceeds shall not be available shall be rendered against the Issuer or the Enterprise that is payable from the Net Revenues and such judgment or order shall continue unstayed, undischarged, unbonded or unsatisfied for a period of sixty (60) days; or

(j) (i) The Issuer imposes a debt moratorium, debt restructuring, debt adjustment or comparable restriction on repayment when due and payable of the principal of or interest on any Senior Lien Bond or Subordinate Obligation, or (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the Issuer seeks to have an order for relief entered with respect to it or the Enterprise or seeking to adjudicate it or the Enterprise insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or the Enterprise or its debts or those of the Enterprise, or (iii) the Issuer seeks appointment of a receiver, trustee, custodian or other similar official for itself or the Enterprise or for any substantial part of the Issuer's property, or the Issuer shall make a general assignment for the benefit of its creditors, or (iv) there shall be commenced against the Issuer or the Enterprise any case, proceeding or other action of a nature referred to in clause (ii) and the same shall remain undismissed, or (v) there shall be commenced against the Issuer or the Enterprise any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within sixty (60) days from the entry thereof, or (vi) the Issuer takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv), (v) above, or (vii) the Issuer or the Enterprise shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(k) The Bank fails to have an enforceable lien on and security interest in the Net Revenues with the priority as contemplated by Section 5.1 hereof.

(l) Any funds or investments on deposit in, or otherwise to the credit of, any of the funds or accounts established hereunder or under the Senior Lien Indenture shall become subject to any writ, judgment, warrant or attachment, execution or similar process; or

(m) Any change in the Code or any allegation by the Internal Revenue Service is made which results, or would result, in interest on the Revolving Loans and the Term Loan being included in gross income for federal income tax purposes of the Bank or not being exempt from State of California personal income taxes; or

(n) The occurrence and continuation of an Event of Default under any of the Financing Documents (other than as specified in another Event of Default under this Section 10.1); or

(o) (i) A default occurs with respect to the payment of (x) any Senior Lien Bonds or Subordinate Obligations or any interest or premium thereon as and when the same shall become due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or (y) any amount due in respect of any other obligation owed to the Bank as and when the same shall become due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or (ii) a default occurs under any mortgage, agreement or other instrument relating to any Senior Lien Bonds, Subordinate Obligations or any other obligation payable from or secured by a lien on any portion of the Net Revenues, and continuance of such default beyond the period of grace, if any, allowed with respect thereto, or the occurrence of any act or omission by the Issuer under any such mortgage, agreement or other instrument which results in such Senior Lien Bonds, Subordinate Obligations or obligation becoming, or being capable of becoming, immediately due and payable or any such Senior Lien Bonds, Subordinate Obligations or other obligation is otherwise required to be prepaid (other than by a regularly scheduled required prepayment or an optional prepayment) prior to the stated maturity thereof.

(p) The Issuer's accountant delivers a qualified opinion with respect to the Enterprise's status as an on-going concern; or

(q) The occurrence of any event which has had, or may result in, any material adverse change in the condition (financial or otherwise), results of operations or projections of revenues of the Enterprise or the ability of the Issuer to receive any Net Revenues or to comply with its obligations under or in respect of any of this Agreement, the Note or the other Financing Documents or in connection with the transactions contemplated hereby or thereby.

## SECTION 10.2. Rights and Remedies Upon Default.

(a) Automatic Termination. In the case of any Event of Default specified in Section 10.1(j) that has occurred, (i) the Commitment shall immediately terminate automatically and the Available Commitment shall be reduced to zero automatically and thereafter, the Bank will have no further obligation to make Advances hereunder and (ii) all amounts due hereunder and under the Note shall immediately become due and payable. Upon such termination, the Bank shall send a notice thereof in the form of Exhibit D hereto to the Issuer; provided, further, however, that failure to send or receive such notice shall not affect the termination of the Commitment as provided hereunder.

(b) All Events of Default. In the case of any Event of Default, including any Event of Default specified in Section 10.1(j), that has occurred and is continuing, the Bank, in its discretion, may do any or all of the following:

(i) By notice to the Issuer, declare all Advances, Revolving Loans, the Term Loan, the Note and interest thereon, immediately due and payable; and/or

(ii) By notice to the Issuer in the form of Exhibit D hereto, reduce the Available Commitment to zero and thereafter the Bank will have no further obligation to make Advances hereunder and/or terminate the Commitment; and/or

(iii) Petition a court of competent jurisdiction to issue a mandamus order to the Issuer to compel specific performance of the covenants of the Issuer contained in any of the Financing Documents; and/or

(iv) Provide written notice of the occurrence of an Event of Default to the Issuer and exercise any rights and remedies available to the Bank at law, equity hereunder or under any Financing Document;

Except as expressly provided in this Section 10.2, procurement, demand, protest and all other notices of every kind are hereby expressly waived.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1. Evidence of Debt. The Bank shall maintain in accordance with their usual practices an account or accounts evidencing the indebtedness resulting from each Advance, each Revolving Loan and the Term Loan made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded.

SECTION 11.2. Amendments, Etc. No amendment or waiver of any provision of this Agreement nor consent to any departure by the parties hereto shall in any event be effective unless the same shall be in writing and signed by such parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 11.3. Addresses for Notices. Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be mailed by first-class mail, registered or certified, return receipt requested, or express mail, postage prepaid, or sent by telex, telegram, telecopy or other similar form of rapid transmission confirmed by mailing (by first-class mail, registered or certified, return receipt requested, or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered to the address or numbers set forth below, or as to each party at such other address or numbers as shall be designated by such party in a written notice to the other parties.

(i) If to the Issuer:

The Water Department of the City of Long Beach  
1800 East Wardlow Road  
Long Beach, California 90807  
Attention: Director of Finance  
Telephone: (562) 570-2367  
Facsimile: (562) 570-2374

(ii) If to the Bank:

Payment Instructions -

Wells Fargo Bank, N.A.  
ABA#: 121000248  
Address: San Francisco Loan Center  
Account: 0271250720  
Reference: City of Long Beach Sewer

Notices -

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90017  
Attention: Relationship Manager  
Telephone: (213) 614-4911  
Facsimile: (213) 614-3555

SECTION 11.4. Survival of this Agreement. All covenants, agreements, representations and warranties made in this Agreement shall survive the extension by the Bank of the Commitment and shall continue in full force and effect so long as the Commitment shall be unexpired or any sums drawn or due thereunder or any other obligations shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable hereunder remains unpaid. The agreement of the Issuer to indemnify the Bank under Section 6.2 hereof shall continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Payment Obligations. The obligations of the Issuer under Sections 6.3 and 11.5 shall also continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Payment Obligations. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the Issuer which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank. The rights and duties of the Issuer may not be assigned or transferred without the prior written consent of the Bank, and all obligations of the Issuer hereunder shall continue in full force and effect notwithstanding any assignment by the Issuer of any of its rights or obligations under any of the Financing Documents or any entering into, or consent by the Issuer to, any supplement or amendment to, or termination of, any of the Financing Documents. In addition, the Bank may collaterally assign and pledge, without the consent of the Issuer, all or any portion of the



obligations owing to it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Issuer to the Bank in accordance with the terms of this Agreement shall satisfy the Issuer's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such collateral assignment shall release the Bank from its obligations hereunder.

SECTION 11.5. Costs, Expenses and Taxes. The Issuer agrees (i) to pay on demand all reasonable costs and expenses (including fees and disbursements of the Bank's counsel) in connection with the preparation, execution, delivery, filing, enforcement and administration of any of the Financing Documents and any other instruments or agreements which may be delivered pursuant to or in connection with any waiver or amendment of, or the giving of any consent under, any of the Financing Documents and such other instruments or agreements provided that the fees of Bank's counsel in connection with the preparation, execution and delivery of this Agreement shall not exceed the amount set forth in the term sheet agreed to between the Issuer and the Bank and (ii) to pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of any of the Financing Documents and such other instruments and agrees to indemnify and hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

SECTION 11.6. Right of Setoff; Other Collateral.

(a) Upon the occurrence and during the continuation of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the Issuer (any such notice being expressly waived by the Issuer), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies relating to the Enterprise at any time held and other indebtedness at any time owing by the Bank to or for the account of the Issuer relating to the Enterprise (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and the Bank is authorized to convert such accounts, monies and indebtedness into dollars) against any and all of the obligations and liabilities of the Issuer arising under or connected with this Agreement, the Note and the other Financing Documents, whether or not the Bank shall have made any demand hereunder or thereunder.

(b) The rights of the Bank under this Section are in addition to, in augmentation of, and do not derogate from or impair, other rights and remedies (including, without limitation, other rights of set-off) which the Bank may have. The Bank agrees to promptly notify the Issuer after any such set-off and application referred to in subsection (a) above, provided that failure to give such notice shall not affect the validity of such set-off and application.

(c) For such purpose, the Bank shall have, and the Issuer hereby grants to the Bank, a first lien on and security interest in such deposits, property, funds and accounts held or maintained by the Bank relating to the Enterprise and the proceeds thereof.

SECTION 11.7. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 11.8. Governing Law; Waiver of Jury Trial; Jurisdiction and Venue.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of California.

(b) Each party to this Agreement, to the fullest extent permitted by law, hereby waives its respective right to a trial by jury in any legal proceeding arising out of or relating to this Agreement and the Note or the transactions contemplated hereby or thereby. The Issuer warrants and represents that such waiver has been intentionally, knowingly and voluntarily made, following consultation with its legal counsel. If the waiver of jury trial as set forth in this Section shall be declared void or unenforceable, each of the Issuer and the Bank agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure.

(c) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement and the Note and hereby waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 11.3 hereof.

SECTION 11.9. Participations by the Bank. The Bank may grant participations herein or in any of its rights and security hereunder. Any such participant is referred to in this Agreement as a "Participant" In connection with any proposed participation, the Bank may disclose to the proposed Participant any information that the Issuer is required to deliver to the Bank pursuant to this Agreement. The Issuer agrees that the provisions of this Agreement shall run to the benefit of each Participant and its participations or interests herein and the Bank may enforce such provisions on behalf of any such Participant. The foregoing notwithstanding, no participation shall in any way affect any of the obligations of the Bank hereunder, and the Issuer shall have no obligation to deal in any manner with any such Participant.

SECTION 11.10. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 11.11. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, taken together, shall constitute but one and the same Agreement.

SECTION 11.12. Patriot Act. The Bank hereby notifies the Issuer that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26,

2001)) (the "Patriot Act"), it is required to obtain, verify and record information that includes the name and address of the Issuer and other information that will allow the Bank to identify the Issuer in accordance with the Patriot Act.

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

Attest:

BOARD OF WATER COMMISSIONERS OF  
THE CITY OF LONG BEACH, acting on its  
own behalf and on behalf of the City of Long  
Beach

By \_\_\_\_\_  
Sandra L. Fox, Secretary to the  
Board of Water Commissioners of the  
City of Long Beach

By \_\_\_\_\_  
Kevin L. Wattier, General Manager of the  
City of Long Beach Water Department

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

**EXHIBIT A**

**[FORM OF NOTE]**

Dated May [ ], 2011

Long Beach, California

For value received, the BOARD OF WATER COMMISSIONERS OF THE CITY OF LONG BEACH, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") promises to pay to the order of Wells Fargo Bank, National Association, and its successors and assigns (the "Bank") at 707 Wilshire Boulevard, 11th Floor, Los Angeles, California 90017, the aggregate unpaid principal amount of all Advances, Revolving Loans and the Term Loan made by the Bank from time to time pursuant to the Credit Agreement, dated as of May 1, 2011 (together with any amendments or supplements thereto, the "Agreement"), by and between the Issuer and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, on the dates and in the amounts provided for in the Agreement.

The Issuer promises to pay interest on the unpaid principal amount of all Advances, Revolving Loans and the Term Loan on the dates and at the rates provided for in the Agreement. All payments of principal and interest shall be made to the Bank in lawful money of the United States of America in immediately available funds. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Note is the Note referred to in the Agreement and is entitled to the benefits thereof and of the Financing Documents referred to therein. As provided in the Agreement, this Note is subject to prepayment, in whole or in part. In case an Event of Default (as defined in the Agreement) shall occur and be continuing the principal of and accrued interest on this Note may be declared due and payable in the manner and with the effect provided in the Agreement.

The Bank agrees, by acceptance of this Note, that before disposing of this Note it will make a notation on the schedule attached hereto of all Advances, Revolving Loans and the Term Loan evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid; provided, however, that the failure to make any such notation shall not limit or otherwise affect the obligation of the Issuer hereunder with respect to payments of principal of and interest on this Note.

The general fund of the City is not liable for the payment of principal of and interest on this Note, nor is the credit or taxing power of the City pledged for the payment of principal of and interest on this Note. The holder of this Note shall not compel the exercise of the taxing power by the City or the forfeiture of any of its property except the Net Revenues. This Note is payable solely from the Net Revenues in accordance with the Agreement, and this Note does not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the Issuer. The holder hereof shall not have the right to demand payment of this obligation from any sources or properties of the Issuer except the Net Revenues.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.

Attest:

BOARD OF WATER COMMISSIONERS OF  
THE CITY OF LONG BEACH, acting on its  
own behalf and on behalf of the City of Long  
Beach

By \_\_\_\_\_  
Sandra L. Fox, Secretary to the  
Board of Water Commissioners of the  
City of Long Beach

By \_\_\_\_\_  
Kevin L. Wattier, General Manager of the  
City of Long Beach Water Department

**TRANSACTIONS**

**ON**

**NOTE**

<u>Date</u>	Amount and Type of <u>Loan Made</u>	Amount of <u>Principal Paid</u>	Date to Which <u>Interest Paid</u>	Notation <u>Made By</u>
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**EXHIBIT B**

**[FORM OF REQUEST FOR ADVANCE]**

**REQUEST FOR ADVANCE AND REVOLVING LOAN**

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90017  
Attention: Relationship Manager

Ladies and Gentlemen:

The undersigned, an Authorized Representative, refers to the Credit Agreement, dated as of May 1, 2011 (together with any amendments or supplements thereto, the "Agreement"), by and between the Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") and Wells Fargo Bank, National Association (the "Bank") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.2 of the Agreement, that the Bank make an Advance under the Agreement in a principal amount equal to the Available Commitment, and in that connection sets forth below the following information relating to such Advance (the "Proposed Advance"):

1. The aggregate amount of the Proposed Advance is \$ \_\_\_\_\_, including \$ \_\_\_\_\_ representing principal and \$ \_\_\_\_\_ representing interest; and
2. The aggregate amount of the Proposed Advance shall be used solely for the payment of [Costs of a Project] or [the principal of and interest on Commercial Paper Notes maturing on the Effective Date] or [costs of issuance in connection with this Agreement].
3. The Applicable Rate with respect to the Proposed Advance shall be [the LIBOR Fixed Rate with an initial LIBOR Interest Period of [1]/[3]/[6] months)] or [the Daily Variable Rate].



The proposed Advance shall be made by the Bank by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

[Insert wire instructions]

Very truly yours,

BOARD OF WATER COMMISSIONERS OF  
THE CITY OF LONG BEACH, acting on its own  
behalf and on behalf of the City of Long Beach

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

Attest:

By \_\_\_\_\_  
Secretary to the  
Board of Water Commissioners of the  
City of Long Beach

**EXHIBIT C**

**[FORM OF REQUEST FOR EXTENSION]**

**REQUEST FOR EXTENSION**

[Date]

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90017  
Attention: Relationship Manager

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of May 1, 2011 (together with any amendments or supplements thereto, the "Agreement") by and between the undersigned, the Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") and Wells Fargo Bank, National Association (the "Bank"). All terms defined in the Agreement are used herein as defined therein.

The Issuer hereby requests, pursuant to Section 2.7 of the Agreement, that the Commitment Expiration Date with respect to the Available Commitment as of the date hereof be extended by one year to \_\_\_\_\_, \_\_\_\_\_. Pursuant to such Section 2.7, we have enclosed with this request the following information:

1. A reasonably detailed description of any and all Defaults that have occurred and are continuing;
2. Confirmation that all representations and warranties of the Issuer as set forth in Article VII of the Agreement are true and correct as though made on the date hereof and that no Default or Event of Default has occurred and is continuing on the date hereof; and
3. Any other pertinent information previously requested by the Bank.

The Bank is required to notify the Issuer of its decision with respect to this request within 45 days of the date of receipt hereof. If the Bank fails to notify the Issuer of the Bank's decision within such 45-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

BOARD OF WATER COMMISSIONERS OF  
THE CITY OF LONG BEACH, acting on its own  
behalf and on behalf of the City of Long Beach

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

**EXHIBIT D**

**[FORM OF NOTICE OF TERMINATION]**

**NOTICE OF TERMINATION**

The Water Department of the City of Long Beach  
1800 East Wardlow Road  
Long Beach, California 90807  
Attention: Director of Finance

Ladies and Gentlemen:

We refer to the Credit Agreement dated as of May 1, 2011 (together with any amendments or supplements thereto, the "Agreement") by and between the undersigned, the Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") and Wells Fargo Bank, National Association (the "Bank"). Any term below which is defined in the Agreement shall have the same meaning when used herein.

We hereby notify you that an Event of Default has occurred under Section \_\_\_\_ of the Agreement, As a result, unless and until you have been advised otherwise by us:

1. The Available Commitment [has been automatically]/[is hereby] reduced to \$0.00 and the Bank has no further obligation to make Advances under the Agreement; and
2. The Commitment [has been automatically]/[is] terminated and will no longer be reinstated.
- [3. All amounts due under the Agreement and the Note are immediately due and payable.]

IN WITNESS WHEREOF, we have executed and delivered this Notice as of the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

Very truly yours,

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

**EXHIBIT E**

**[FORM OF NOTICE OF TERMINATION OR REDUCTION]**

**NOTICE OF TERMINATION OR REDUCTION**

[Date]

Wells Fargo Bank, National Association  
707 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90017  
Attention: Relationship Manager

Ladies and Gentlemen:

Re: Credit Agreement dated as of May 1, 2011

The Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer"), through its undersigned, an Authorized Representative, hereby certifies to Wells Fargo Bank, National Association (the "Bank"), with reference to the Credit Agreement dated as of May 1, 2011 (together with any amendments or supplements thereto, the "Agreement") by and between the Issuer and the Bank (the terms defined therein and not otherwise defined herein being used herein as therein defined):

[(1) The Issuer hereby informs you that the Commitment is terminated in accordance with the Agreement.]

OR

[(1) The Issuer hereby informs you that the Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.]

IN WITNESS WHEREOF, the Issuer has executed and delivered this Notice this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BOARD OF WATER COMMISSIONERS OF  
THE CITY OF LONG BEACH, acting on its own  
behalf and on behalf of the City of Long Beach

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

**EXHIBIT F**

**[FORM OF NOTICE OF REDUCTION]**

**NOTICE OF REDUCTION**

[Date]

The Water Department of the City of Long Beach  
1800 East Wardlow Road  
Long Beach, California 90807  
Attention: Director of Finance

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.6(a) of the Credit Agreement, dated as of May 1, 2011, by and between the undersigned, the Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") and Wells Fargo Bank, National Association (the "Bank"), the Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.

Very truly yours,

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

**EXHIBIT G**

**[FORM OF NOTICE OF EXTENSION]**

**NOTICE OF EXTENSION**

[Date]

The Water Department of the City of Long Beach  
1800 East Wardlow Road  
Long Beach, California 90807  
Attention: Director of Finance

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.7 of the Credit Agreement, dated as of May 1, 2011, by and between the undersigned, the Board of Water Commissioners of the City of Long Beach, acting on its own behalf and on behalf of the City of Long Beach (the "Issuer") and Wells Fargo Bank, National Association (the "Bank"), the Commitment Expiration Date with respect to the Commitment as of the date hereof shall be extended one year to \_\_\_\_\_, \_\_\_\_\_. Your acknowledgment hereof shall be deemed to be your representation and warranty that all your representations and warranties contained in Article VII of the Agreement are true and correct and will be true and correct as of the date hereof and that no Default or Event of Default has occurred and is continuing.

Very truly yours,

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

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

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



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

BOARD OF WATER COMMISSIONERS  
OF THE CITY OF LONG BEACH,  
acting on its own behalf and  
on behalf of the City of Long Beach

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

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

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