



The City of San Diego

Staff Report

DATE ISSUED: April 10, 2018

TO: City Council

FROM: Debt Management

SUBJECT: Authorization for the Public Facilities Financing Authority of the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program")

Primary  
Contact: Kevin Werner Phone: (619) 533-6121

Secondary  
Contact: Lakshmi Kommi Phone: (619) 236-6928

Council District(s): Citywide

OVERVIEW:

This Action authorizes the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program") to City Council for consideration and approval in accordance with the timeline established for the program.

PROPOSED ACTIONS:

1. Approve resolution to authorize the CP Program; and
2. Authorize the issuance of General Fund Lease Revenue Commercial Paper Notes from time to time in an amount not to exceed \$80.5 million to provide financing for the General Fund CIP and fund costs of issuance to start the Commercial Paper Program; and
3. Authorize the execution of related financing documents which include the forms of the Issuing and Paying Agency Agreement, the Facilities Lease, Site Lease, and Indenture; and authorize all related actions; and

4. Authorize the City Attorney to retain and enter into an agreement with Bond and Disclosure Counsel, Hawkins Delafield and Wood LLP for the General Fund Lease Revenue Commercial Paper Notes Program; and
5. Authorize the Chief Financial Officer to establish one or more special interest bearing account(s) for the proceeds of the General Fund Lease Revenue Commercial Paper Notes.

DISCUSSION OF ITEM:

STAFF RECOMMENDATION: APPROVE THE RESOLUTION

This Staff Report should be read in conjunction with the Staff Report presented on March 14, 2018 to the Budget and Government Efficiency Committee, seeking 'Authorization for the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program"), attached and noted as 'Attachment 1'.

Relating to the projects to be financed with Commercial Paper Notes, Financial Management will seek approval of the projects at the Infrastructure Committee on April 25, 2018 and City Council on May 15, 2018.

The following are additional items to Attachment 1 regarding (I) the Financing and Legal Documents that City Council is requested to approve in connection with this Council item and (II) additional Fiscal Considerations.

I. Financing and Legal Documents

This section contains a general description of the documents and key terms that require the City Council's approval. The Financing Resolution authorizes the issuance of the Commercial Paper Notes, which includes the approval of the form of the operative legal documents and agreements described below and any other actions of the Mayor, the Chief Operating Officer or the Chief Financial Officer or their designees determine may be necessary to issue the Commercial Paper Notes (the docketed documents contain various blank placeholders or items in brackets, which will be filled in by Bond Counsel at the time of closing).

1. Form of the Indenture. The Indenture for the General Revenue Lease Revenue Commercial Paper Notes to be executed by and between the Public Facilities Financing Authority of the City of San Diego (the "Authority") and U.S. Bank, National Association, as trustee for the General Fund Lease Revenue Commercial Paper Notes. The Indenture provides for the conditions for the issuance of the Commercial paper Notes, and includes information regarding the amount of the Commercial Paper Notes, and repayment thereof,, the use of Commercial Paper Note proceeds, and the nature of the security for the Commercial Paper Notes (i.e., that the Notes are limited obligations of the Authority payable from lease payments). The Indenture also sets forth terms, including the specific rights, responsibilities, and obligations of each

party with respect to the issuance of the Commercial Paper Notes. Under the Indenture, the Authority assigns its rights to receive lease payments under the Facilities Lease to the Trustee to make debt service payments to bondholders.

2. Form of the Issuing and Paying Agency Agreement. The Issuing and Paying Agency Agreement is an agreement between the Authority and U.S. Bank, National Association, which sets forth the procedures for issuing the Commercial Paper Notes, payment of principal and interest and the application of the proceeds.
3. Form of the Site Lease ("Site Lease") - The Site Lease is the agreement between the City and the Authority under which the City leases the City owned Leased Properties to the Authority. The Site Lease will identify the assets added to the Leased Properties to support the General Fund Lease Revenue Commercial Paper Notes Program.
4. Form of the Facilities Lease ("Facilities Lease"). The Facilities Lease is the agreement between the City and the Authority under which the City leases the Leased Properties back from the Authority. The Facilities Lease will identify the assets added to the Leased Properties to support the General Fund Lease Revenue Commercial Paper Notes Program. The lease payments made by the City are equal to the principal and interest payments on the bonds issued by the Authority. The Facilities Lease contains certain covenants of the City, including that it will take the necessary action to include all lease payments due under the lease in the City's operating budget each year.

Properties are only encumbered in the Site Lease and the Facilities Lease to implement the Lease Revenue Commercial Paper Program. If rental or lease income is generated by the property, current and future income generated by such leased property is not impacted by the pledge of the property. City will continue to receive the income.

Future Actions:

Debt Management will return to City Council in September to seek authorization for the Offering Memorandum, and forms of the Reimbursement Agreement and Dealer Agreement. Debt Management will also return to City Council to seek authorization for long-term bonds to take out commercial paper when the amount of notes outstanding nears maximum capacity (currently anticipated to occur in October 2020). Additionally, as needed, Debt Management will return to City Council to seek approval or renewal of Letter of Credits and Dealer Agreements upon expiration or termination of each respective agreement.

City Strategic Plan Goal(s)/Objective(s):

Goal #1: Provide high quality public service.

Objective #1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services.

## II. Fiscal Considerations:

Market Rate Updates. Since the 'Attachment 1' Report was published, market rates for commercial paper notes have increased. As of April 5, 2018, short term interest rates for commercial paper offerings were approximately 1.60%-1.65% for three to six month note maturities which is approximately 0.40% higher than rates in February 2018. The municipal long term bond market rates have also increased slightly to 4.38% as of April 5, 2018, based on the 25-Bond Revenue Index, which is 0.03% higher than rates in February 2018.

Based on the \$80.5 million commercial paper authorization, a projected timeline of as needed commercial paper issuances to reimburse project expenditures as they occur, and an assumed 1.60% interest rate for note issuances, the interest costs for Fiscal Year 2019 are projected to be \$170,000 and the Fiscal Year 2020 interest costs are projected to be \$660,000. The Fiscal Year 2019 interest costs have been budgeted in the General Fund. The ongoing program costs (Letter of Credit Fees, dealer fees and other fees) are estimated to be \$370,000 in Fiscal Year 2019 and \$490,000 in Fiscal Year 2020. The Fiscal Year 2019 interest costs and ongoing program costs are budgeted in the General Fund. (These costs are projections, subject to change.) If the costs are higher than the projections, additional funds will need to be appropriated above the budgeted levels.

### Environmental Impact:

This activity is not a "project" pursuant to CEQA Guidelines Section 15378(b)(4), and is therefore not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

### Equal Opportunity Contracting Information (if applicable):

This action is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contract Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

### Previous Council and/or Committee Actions:

On March 14, 2018, this item was heard at Budget and Government Efficiency Committee.

On December 6, 2016 City Council authorized the Public Facilities Financing Authority Subordinated Water Revenue Commercial Paper Notes Program by Resolution R-310860. The program has been implemented.

On February 10, 2015 City Council received financial training from the Independent Budget

Analyst for an introduction to Commercial Paper Program and mechanics of implementation, presented by the City's Municipal Advisor Montague DeRose and Associates (Item 330).

Key Stakeholders and Community Outreach Efforts:

Business entities involved in the proposed financing at this time include PRAG (Municipal Advisor); U.S. Bank National Association (Trustee and Issuing and Paying Agent); Hawkins Delafield & Wood LLP (Bond and Disclosure Counsel), Chicago Title Insurance Company, Jones and Roach & Caringella, and D.F. Davis Real Estate (Appraisal services).

Lakshmi Kommi

Rolando Charvel

Debt Management Director

Chief Financial Officer

**Attachment:**

Attachment 1: 'Authorization for the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program")' Report (Report) presented March 16, 2018 to the Budget and Government Efficiency Committee.



The City of San Diego

Staff Report

DATE ISSUED: March 5, 2018

TO: City Council

FROM: Debt Management

SUBJECT: Authorization for the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program")

Primary Contact: Lakshmi Kommi Phone: (619) 236-6928

Secondary Contact: Kevin Werner Phone: (619) 533-6121

Council District(s): Citywide

OVERVIEW:

This Action proposes establishing the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program") to City Council for consideration and approval in accordance with the timeline established for the program.

PROPOSED ACTIONS:

Authorize, via a resolution, the authorization of the CP Program.

DISCUSSION OF ITEM:

STAFF RECOMMENDATION: APPROVE THE RESOLUTION

**I. Background**

Since 2009, the City has issued four series of Capital Improvement Program ("CIP") General Fund backed lease revenue bonds. The proceeds total approximately \$333 million and have provided funding for various capital needs. As of January 2018, there are \$4 million of bond proceeds that remain unencumbered. In order to continue funding the General Fund infrastructure needs through the lease revenue bond program, the Chief Financial Officer, in conjunction with the Finance Branch and Public Works, have undertaken a multi-part process to streamline cash management in the CIP as efficiently and effectively as possible and to promote a more efficient use of available cash to complete projects. Staff is seeking authorization for a CP Program for the General Fund, which will provide a "just in time" funding source for several General Fund CIP projects.

The authorization will allow the General Fund to issue short-term debt to fund General Fund CIP needs, which will ultimately be refinanced into long-term lease revenue bonds as the capacity nears the not to exceed levels that will be authorized by City Council. The CP Program will be used for the General Fund capital program only. The CP Program will allow General Fund capital projects to take advantage of the low short-term borrowing rates and gives the General Fund greater financial flexibility and savings, when compared to long-term debt. The CP Program will enable the General Fund to:

- Have quick access to the market and the flexibility to tailor borrowings to both market conditions and specific cash requirements,
- Only borrow amounts when funds are required (as capital project spending occurs),
- Immediately receive proceeds from the sale of Commercial Paper, and
- Avoid negative arbitrage and the risk of over-borrowing and incurring additional interest costs.

A. Commercial Paper Overview and Analysis

Commercial paper is a short-term security which can be used as a cash management tool. Key features of the proposed CP Program include:

<b>Key Features</b>	
<b>Authorized amount</b>	<ul style="list-style-type: none"> <li>• City Council specified amount that limits the total size of the CP Program specific to the General Fund</li> </ul>
<b>Short-term maturity</b>	<ul style="list-style-type: none"> <li>• Notes will have a maximum maturity of 270 days</li> <li>• Determined for each note at the time it is sold</li> <li>• Commercial Paper Notes are rolled until taken out with bonds</li> </ul>
<b>Liquidity support</b>	<ul style="list-style-type: none"> <li>• Provided by highly-rated commercial bank credit facilities (“credit banks”) with irrevocable direct-pay Letters of Credit (“LOC”)</li> </ul>
<b>Credit ratings</b>	<ul style="list-style-type: none"> <li>• Requires at least two short-term credit ratings</li> <li>• Based on the credit of the credit banks</li> </ul>
<b>Amount outstanding</b>	<ul style="list-style-type: none"> <li>• General Fund may have any amount from \$0 to the total authorized amount outstanding at any time</li> </ul>
<b>Commercial Paper Dealers</b>	<ul style="list-style-type: none"> <li>• Investment banks selected to periodically market the General Fund’s commercial paper notes to prospective investors</li> <li>• Use an Offering Memorandum to market the Commercial Paper Notes. This disclosure document is different from Official Statements in that it mostly describes the financial position of the credit bank, instead of the General Fund</li> </ul>

Commercial Paper Notes can be issued with maturities up to 270 days. The length of the notes are dependent on market conditions with current targets for note maturities ranging from 90-150 days. The interest rate is set for the term of each note and interest is paid only at maturity. The principal on each maturing note may be paid from a new commercial paper note (a “rollover”), from the proceeds of long-term bonds (“take out”), or from other funding sources, such as the General Fund operating budget.

These variable short term periods allow a commercial paper dealer to remarket the commercial paper notes to investors with specific needs, while securing short-term interest rates advantageous to the City. However, the continuous remarketing requires an available source of funds to repay the investor when the commercial paper notes mature. In order to provide this available source of funds, the commercial paper program requires a letter of credit ("LOC") from a commercial bank, which provides credit enhancement and liquidity for the program. The LOC guarantees liquidity to investors when their notes mature for payment of principal and interest. As a result of the credit bank's guaranty of payment, commercial paper programs hold the short-term credit ratings of the LOC credit bank.

With issuing Commercial Paper Notes, the City is subject to risks. Interest Rate risk is the change in the interest rate market that could make short term interest rates (for Commercial Paper) and long term interest rates (for long term bonds that will eventually replace the Commercial Paper) rise resulting in higher interest paid by the City. Rollover risk is the risk that the Commercial Paper note cannot be reissued timely to a buyer at a reasonable rate of interest. Letter of Credit Risk is the deterioration of the ratings of the Letter of Credit provider which would result in higher interest cost and a potential replacement of the Letter of Credit provider. The City works to mitigate each risk but these risks could result in higher than expected costs related to Commercial Paper.

### **Rationale for Use of Commercial Paper in Construction Financing**

The City has an active CIP and has been focused on spending bond proceeds to support the costs associated with building and replacing General Fund assets, such as roads, parks and city facilities, since 2009. Except for Fiscal Year 2013, the City has been spending an increasing amount of bond proceeds each year since 2009. In Fiscal Year 2017, the City spent \$53 million in bond proceeds on General Fund capital projects.

With an active CIP, using commercial paper as part of a larger financing strategy for a construction program is prudent. Like many public agencies, the City's General Fund lacks the cash resources to finance a program of the magnitude of the General Fund CIP on a "pay as you go" basis. As a result, the City is financing General Fund capital projects using bond and debt financing, where long-term debt is issued utilizing an asset transfer and lease structure whereby bondholders receive periodic payments of principal and interest paid by the City over the life of the debt, typically over the course of 30 years. Commercial Paper allows the City to use "just in time" borrowing which reduces the negative arbitrage (the difference in rate the City is paying on the bonds compared to the rate of return the City is receiving on the yet to be spent bond proceeds) that is present with long term bond issuances. The City typically spends a majority of its long term bond proceeds over the course of three years. The City will be able to eliminate those three years of negative arbitrage present with long term bonds with the CP Program.

As noted above, Commercial Paper is a short-term financing instrument and is an effective short-term financing tool for active capital programs that are dependent on recurring financing needs spread over multiple years. Because commercial paper has a very short maturity compared to a 30-year bond, the interest rates charged on commercial paper notes are usually significantly lower. Currently, commercial paper interest rates are approximately 1.20-1.25% for three to six month note maturities (as of February 27, 2018) while estimated interest rates for long-term bonds are 4.35%, based on the 25-Bond Revenue Index (as of February 27, 2018). While the benefit



of the short term Commercial Paper rates is temporary and is limited to the few years during the construction phase of the projects, it still offers significant debt service savings over this period due to the advantage of the lower rates combined with the issuance of smaller amounts instead of a large bond incurring higher debt service upfront.

## II. Plan of Finance

- **Issuer:** Public Facilities Financing Authority of the City of San Diego (“Authority”).
- **Authorized Amount:** Not to exceed \$80.5 million; \$80 million for project costs and \$500,000 for the initial costs of the program
- **Interest rate cap:** Following the Debt Policy guidelines, the Resolution to be approved by City Council will establish an interest rate cap of 10%
- **Available Proceeds** The authorization is sized to cover 24 months of General Fund CIP financing needs estimated at \$80 million.
- **Sizing and timing new note issuances:** New commercial paper notes will be issued on a 30-90 day cycle depending on the cashflow requirement to reimburse funds advanced to fund capital expenditures by the City. To minimize the amount of processing time and costs associated with a new note, the amount of each commercial paper note issuance is anticipated to be installments of \$5 million or more. Commercial paper dealers and authorized City staff will determine the maturity of each new note. Generally, commercial paper dealers provide maturity indications based on investor request, market conditions, and/or scheduled economic indicators.
- **Projects:** The City Staff expects to allocate the funds for the CP Program to various General Fund asset classes including, streets (\$48 million), storm drains (\$18 million), capital improvements for existing facilities (\$9 million) and other projects (\$5 million). Projects utilizing CP Program note proceeds are expected to be presented to the Infrastructure Committee on April 25, 2018.
- **Ratings:** The City will utilize two rating agencies to issue short-term ratings for the CP Program. These ratings are based on the credit quality and strength of each LOC credit bank supporting the program.
- **Tax Status:** The commercial paper notes will be issued tax-exempt. Interest on the commercial paper notes will not be included in gross income for federal income tax purpose and will be exempt from present State of California personal income taxes.
- **Interest Payments:** The CP Program is structured so that the General Fund will pay interest expenses on an ongoing basis as each note matures.
- **Principal Payments:** Principal on the commercial paper notes will be paid solely from funds drawn under the Letter of Credit. The City's intent is to take out outstanding commercial paper notes with long-term bonds.

- **Repayment Source:** Payable from General Fund.
- **Budgeting costs:** All interest costs and ongoing fees related to the administration of commercial paper are to be budgeted and paid out of a Commercial Paper Payments and Fees commitment item within the General Fund Budget. Staff will use interest rate assumptions that are higher than the then-current market rates, and document those assumptions so that they are easy to identify at a later date.
- **Administration of the CP Program:** A comprehensive Commercial Paper Notes Staff Administration Procedures was developed for the Water Commercial Paper Program and will be used for the CP Program as well.
- **Additional Council Authorizations for the CP Program Implementation:** Financial Management, in conjunction with Public Works, expects to seek approval in May from City Council of the budget increases to General Fund CIP related to the CP Program. Debt Management expects to return to City Council in September to seek authorization for the Offering Memorandum to issue notes to fund various CIP expenditures expected to occur in the Fall of 2018. Additionally, Debt Management will return to City Council to seek authorization for long-term bonds to take out commercial paper when the amount of notes outstanding nears maximum capacity. And as needed, Debt Management will return to City Council to seek approval or renewal of Letter of Credits and Dealer Agreements upon expiration or termination of each respective agreement.

### III. **Financing Timeline:**

The following are the critical milestones related to the execution of the CP Program:

March 14, 2018	Budget and Government Efficiency Committee approval
April 24, 2018	City Council authorization of documents and financing plan
April 25, 2018	Infrastructure Committee approval of Budget increases to the CIP
May 15, 2018	City Council approval of Budget increases to the CIP
September 2018	City Council authorization of Offering Memorandum, forms of the Reimbursement Agreement and Dealer Agreement
September 2018	CIP expenditures anticipated requiring Commercial Paper note proceeds
2 weeks prior to closing	Distribute Offering Memorandum to investors
1 week prior to closing	Document signing and closing
October 2018	Closing and first note issue anticipated to fund CIP expenditures

#### **IV. Financing Team**

The Financing Team consists of staff of the Department of Finance, including the Chief Financial Officer and staff of the Debt Management Department, the Office of the City Comptroller, Financial Management and the Treasurer's Office. The Financing Team also includes staff of the City Attorney's Office, Real Estate Assets Department ("READ"), and Public Works Department. The external Financing Team members maintain and provide access to the financial markets and enhance the marketability of the commercial paper notes. External members, selected based on a competitive procurement process, include: Public Resources Advisory Group, Inc ("PRAG") as the Municipal Advisor and Hawkins Delafield & Wood LLP as Bond and Disclosure Counsel. An Issuing and Paying Agent, Trustee, Commercial Paper Dealers and Letter of Credit Provider(s) are all in the process of being selected and will be identified when City Council authorizes the Offering Memorandum in September 2018.

#### **V. Financing and Legal Documents**

Debt Management will docket to the full City Council the legal documentation to establish the program subsequent to Committee review. The documents that will be presented will include the Authority Resolution, Indenture, Site Lease, Facilities Lease, and Issuing and Paying Agent Agreement.

#### **VI. Legal Structure**

An important difference between the Water Commercial Paper Notes that was authorized in December 2016 and the proposed CP Program is the lease revenue structure of the General Fund supported notes.

Lease Revenue Bonds/Notes are lease obligations secured by an installment sale or by a lease-back arrangement between the City and the issuing Joint Powers Authority ("JPA"). Under the lease-back arrangement, the City leases certain properties to the JPA for a nominal rent and in turn leases the properties back from the JPA. The City would make rental payments to the JPA annually for leasing the properties; the annual payments made by the City would be equivalent to the annual debt service on the bonds/notes issued by the JPA. The JPA receives the annual rental payments from the City and assigns the payments to the trustee for the transaction to make principal and interest payments to the bondholders. Hence, identification of Leased Properties is a critical component of each lease revenue transaction.

Generally, the Lease Revenue Bonds are issued with the support of either two options: A. by pledging upfront the new facilities that will be built with the proceeds of the bonds being proposed to be issued; or, B. by pledging preexisting facilities already owned by the agency for a bond offering that provides funding for a different set of capital improvements. This second option is more commonly known as the asset transfer option. The City's CIP Lease Revenue Bonds issued in 2009, 2012, 2013 and 2015 that financed capital improvement projects utilized the asset transfer structure. The CP Program will utilize the asset transfer structure as well. This asset transfer structure will be utilized because the assets to be financed with the bond proceeds are not eligible to be used as leased properties (examples include streets, improvements to facilities and storm drains).

## Leased Properties

As with prior lease revenue bond issuances, Debt Management staff worked closely with READ to identify additional unencumbered assets to be included in the Leased Properties as part of an asset transfer structure to generate the full capacity of the CP Program. In consultation with READ and reviewing available General Fund properties, below is a diverse mix of proposed properties anticipated to be used for the program:

- Fire Station #45 (West Mission Valley)
- Skyline Hills Library (Skyline Hills/Paradise Hills)
- Central Police Vehicle Maintenance Facility (City Heights)
- Evan V. Jones Parkade and Concourse Storage Space (Downtown)
- Fire Station #24 (Carmel Valley)
- Eastern Police Substation and Garage (Kearny Mesa)
- Central Operations Station and Yard (Golden Hill)
- Azalea Recreation Center (City Heights)
- Lopez Ridge Recreation Center (Mira Mesa)

To establish the annual fair rental value, a legal requirement to issuing lease revenue bonds/notes, the properties are currently being appraised by independent appraisal companies Jones and Roach & Caringella, and D.F. Davis Real Estate retained by READ. As required under the lease financing structure, the maximum annual debt service payable by the City on the Commercial Paper Notes will not be in excess of the combined annual fair rental value of the Leased Properties. The City properties will be leased as long as the CP Program is outstanding.

A final list, with any additions to or removals from proposed properties will be determined and reported based on the final appraisals with the request for authorization of the CP Program at City Council in April 2018. Title reports are being obtained for all the properties in order to establish that the assets are not already encumbered and are free and clear of liens.

## City Strategic Plan Goal(s)/Objective(s):

Goal #1: Provide high quality public service.

Objective #1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services.

## Fiscal Considerations:

**Initial Costs of Issuance.** The financing costs (“costs of issuance”) associated with the CP Program is estimated to be approximately \$500,000, which includes costs for bond counsel fees, financial advisor fees, Letter of Credit bank and dealer’s counsel fees, property appraisal fees, title insurance, rating agency initial fees, Issuing and Paying Agent and Trustee fees for the first year, and CUSIP fees. These costs will be paid at closing, financed with the first issuance of commercial paper notes and are eligible to be funded from note proceeds.

**Ongoing Costs of Issuance.** The ongoing program costs are estimated to be \$370,000 in Fiscal Year 2019 and \$490,000 in Fiscal Year 2020, which include Letter of Credit fees, dealer fees, ongoing ratings

surveillance fees, annual Issuing and Paying Agent and Trustee fees, and as-needed bond counsel services for post issuance support and will be budgeted in the General Fund. These ongoing costs are not eligible to be funded from note proceeds.

**Interest Costs.** Based on the projected commercial paper issuances, the interest costs for Fiscal Year 2019 is projected to be \$170,000. The Fiscal Year 2020 interest costs are projected to be \$660,000 anticipating the full \$80 million commercial paper authorization to fund the capital program. **These are projections, subject to change.** The interest costs will be budgeted in the General Fund. Interest will be paid on an ongoing basis as commercial paper notes mature. The interest costs are not eligible to be funded from note proceeds.

There are anticipated Ongoing Costs of Issuance and Interest Costs in Fiscal Year 2021 prior to conversion of the Commercial Paper to Long-Term Bonds and will be budgeted appropriately.

Environmental Impact:

This activity is not a “project” pursuant to CEQA Guidelines Section 15378(b)(4), and is therefore not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

Equal Opportunity Contracting Information (if applicable):

This action is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contract Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

Previous Council and/or Committee Actions:

This item will be heard at the March 14, 2018 Budget and Government Efficiency Committee prior to Council. The City has issued Commercial Paper with the Water Utility in mid FY 2017. The City Council has received a training in 2015 on commercial paper process and benefits.

On December 6, 2016 City Council authorized the Public Facilities Financing Authority Subordinated Water Revenue Commercial Paper Notes Program by Resolution R-310860. The program has been implemented.

On February 10, 2015 City Council received financial training from the Independent Budget Analyst for an introduction to Commercial Paper Program and mechanics of implementation, presented by the City's Municipal Advisor Montague DeRose and Associates (Item 330).

Key Stakeholders and Community Outreach Efforts:

Business entities involved in the proposed financing at this time include PRAG (Municipal Advisor); Hawkins Delafield & Wood LLP (Bond and Disclosure Counsel), Standard and Poor's Rating Agency,

Fitch Ratings, Chicago Title Insurance Company, Jones and Roach & Caringella, and D.F. Davis Real Estate (Appraisal services).

Lakshmi Kommi \_\_\_\_\_

Debt Management Director

Rolando Charvel \_\_\_\_\_

Chief Financial Officer

# Committee Action Sheet

Committee: Budget & Government Efficiency Committee  
Item No: 5

Meeting of: 3/14/2018

**SUBJECT:**

Authorization for the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program")

**RECOMMENDATION TO:**

Motion by Councilmember Gomez to recommend Council AUTHORIZATION FOR THE CITY OF SAN DIEGO GENERAL FUND LEASE REVENUE COMMERCIAL PAPER NOTES PROGRAM without specific project allocation. Second by Councilmember Cate.

VOTED YEA: Barbara Bry, Christopher Ward, Chris Cate, Georgette Gómez  
NAY: None NOT PRESENT: None

VOTED

CITY CLERK: Please reference the following reports on the City Council Docket:

INDEPENDENT BUDGET ANALYST REPORT NO.

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

RESOLUTION NUMBER FA-2018-5

ADOPTED ON APRIL 24, 2018

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO (I) APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, FACILITIES LEASE, INDENTURE, ISSUING AND PAYING AGENCY AGREEMENT, AND ONE OR MORE DEALER AGREEMENTS; (II) APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF ONE OR MORE SERIES OF THE AUTHORITY'S LEASE REVENUE COMMERCIAL PAPER NOTES FROM TIME TO TIME ON A TAX-EXEMPT AND TAXABLE BASIS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$80,500,000 TO FINANCE CERTAIN CAPITAL IMPROVEMENT PROJECTS; AND (III) APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, The City of San Diego, California (City), the City solely in its capacity as the designated Successor Agency to the former Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego, are parties to a Joint Exercise of Powers Agreement establishing the Public Facilities Financing Authority of the City of San Diego (Authority), a California joint exercise of powers authority duly organized to finance, acquire, construct, maintain, repair, operate, and control certain capital facilities improvements for the City; and

WHEREAS, the City desires to provide for the issuance and sale of one or more series of the Authority's lease revenue commercial paper notes from time to time on a tax-exempt and taxable basis (Commercial Paper Notes) in an aggregate principal amount not to exceed \$80,500,000 that are payable from Base Rental Payments (Base Rental Payments) to be made by the City pursuant to the Facilities Lease by and between the City and the Authority (Lease) to (i)



provide short-term financing for the acquisition, design, construction, installation, improvement, replacement, and equipping of various capital improvements related to the City, (ii) reimburse the City for eligible expenditures in accordance with applicable law, (iii) to pay principal of Commercial Paper Notes at maturity or to reimburse the related Credit Facility Provider (as defined in the Indenture herein referred to) for draws under the related Credit Facility (as defined in the Indenture herein referred to), and (iv) pay costs of issuance incurred in connection with the issuance of Commercial Paper Notes; and

WHEREAS, to facilitate such short-term financing, the City proposes to provide for the issuance and sale from time to time of the Commercial Paper Notes for the purposes set forth above; and

WHEREAS, the City has determined pursuant to a Resolution (City Resolution) introduced at a meeting of The City Council of the City of San Diego on the date hereof that it is in the best interests of the City to request the Authority to issue its Commercial Paper Notes from time to time in one or more series or subseries payable from Base Rental Payments to be made by the City pursuant to the Lease to finance the certain capital improvement projects of the City; and

WHEREAS, the City Resolution includes a finding that the financing of various capital improvements as set forth therein will provide significant public benefits in accordance with the criteria specified in California Government Code Section 6586; and

WHEREAS, in order to finance the various capital improvements of the City, the Authority proposes to enter into an Indenture (Indenture), by and between the Authority and U.S. Bank National Association, as Trustee (Trustee), providing for the issuance from time to time of its Commercial Paper Notes; and

WHEREAS, to secure payment of the Commercial Paper Notes, the Authority proposes to enter into a Site Lease (Site Lease) with the City, pursuant to which the City will lease to the Authority certain real property of the City (Leased Property), and the Lease with the City, pursuant to which the Authority will lease back the Leased Property to the City and the City will agree to make Base Rental Payments in consideration of the use of the Leased Property; and

WHEREAS, the issuance of the Commercial Paper Notes from time to time is authorized under the City Resolution in one or more series if economical or otherwise on terms deemed beneficial by and to the City and its residents; and

WHEREAS, in furtherance of the issuance of the Commercial Paper Notes under the Indenture, the Authority has determined to enter into an Issuing and Paying Agency Agreement with U.S. Bank National Association, as Issuing and Paying Agent (Issuing and Paying Agent); and

WHEREAS, there has also been presented to this meeting the following other documents relating to the issuance of the Commercial Paper Notes:

- (a) the proposed form of the Site Lease;
- (b) the proposed form of the Lease;
- (c) the proposed form of the Indenture; and
- (d) the proposed form of Issuing and Paying Agency Agreement; and

WHEREAS, the Authority is authorized to undertake the actions described in this Resolution pursuant to its Joint Exercise of Powers Agreement and the Constitution and applicable laws of the State; NOW, THEREFORE,

BE IT RESOLVED by the Board of Commissioners of the Public Facilities Financing Authority of the City of San Diego (Board of Commissioners), as follows:

Section 1. The Board of Commissioners hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.

Section 2. The Board of Commissioners hereby authorizes and approves the issuance and sale by the Authority of one or more series of its Commercial Paper Notes in an aggregate principal amount not to exceed \$80,500,000 to provide funds for financing certain capital improvement projects, reimburse the City for eligible expenditures and pay costs of issuance incurred in connection with the issuance of the Commercial Paper Notes from time to time. The true interest cost of any Commercial Paper Note may not exceed the lesser of ten percent (10%) or the maximum rate per annum permitted by law. The Commercial Paper Notes are authorized to be executed for and in the name of and on behalf of the Authority by the manual or facsimile signature of the Chair or Vice Chair of the Board of Commissioners of the Authority or the Treasurer of the Authority (each, an Authorized Officer) and attested to by the manual or facsimile signature of the Secretary of the Authority (Secretary) or his or her specified designee. The Commercial Paper Notes, when so executed and attested, are authorized to be delivered to the Issuing and Paying Agent for authentication.

Section 3. The forms and content of the Site Lease, the Lease, Indenture and the Issuing and Paying Agency Agreement (collectively, the Financing Documents), each as submitted to this meeting and on file in the office of the Office of the Secretary, are hereby approved. The Authorized Officers, and each of them, acting alone, are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Financing Documents, in conjunction with the issuance of Commercial Paper Notes from time to time, in one or more series or subseries, in substantially the forms submitted to this meeting, with such additions and changes therein as any Authorized Officer shall determine are necessary or desirable and approve as being

in the best interests of the Authority, and as approved as to form by the City Attorney of the City of San Diego (City Attorney), as counsel to the Authority or his or her specified designee, and with such other changes that may be required or requested by Hawkins Delafield & Wood LLP, as Bond Counsel (Bond Counsel), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The Authorized Officers, and each of them, acting alone, are hereby authorized and directed to take all actions and execute any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this Resolution and the consummation of the transactions contemplated hereby. Any actions heretofore taken by such officers in furtherance of any of the transactions authorized herein are hereby ratified, confirmed, and approved.

Section 6. The Authorized Officers, and each of them, acting alone, are hereby authorized and directed, for and in the name of and on behalf of the Authority, to do any and all things and take any and all actions, from time to time, consistent with this Resolution and the documents approved herein and other documents authorized by this Resolution, including, without limitation, payment of necessary and appropriate fees and expenses of bond counsel, disclosure counsel, municipal advisor and other professionals retained by the Authority, and execute and deliver any and all certificates, agreements and other documents (including, but not limited to, the tax compliance certificate) which they, or any of them, may deem necessary or advisable to consummate the transactions evidenced by the documents referenced herein in accordance with this Resolution.

Section 7. This Resolution shall take effect immediately upon its adoption.

ADOPTED, SIGNED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2018, by

the following vote:

AYES:

NAYS:

ABSENT:

VACANT:

ABSTAIN:

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Chair, Board of Commissioners

Attest:

\_\_\_\_\_  
Secretary to Board of Commissioners

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**ISSUING AND PAYING AGENCY AGREEMENT**

**by and between**

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Issuing and Paying Agent**

**Dated as of [Dated Date]**

**relating to**

**[\$[PRINCIPAL AMOUNT]  
Public Facilities Financing Authority of the City of San Diego  
Lease Revenue Commercial Paper Notes**

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## ISSUING AND PAYING AGENCY AGREEMENT

THIS ISSUING AND PAYING AGENCY AGREEMENT (this “Agreement”) is entered into [Dated Date] by and between the Public Facilities Financing Authority of the City of San Diego (the “Authority”) and U.S. Bank National Association, acting solely in its capacity as Issuing and Paying Agent and as Trustee under the Indenture hereinafter referred to (the “Issuing and Paying Agent”);

WHEREAS, the Authority proposes to issue Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes (the “Commercial Paper Notes”) from time to time in an aggregate principal amount not exceeding the Maximum Principal Amount pursuant to an Indenture, dated as of [Dated Date], by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), as amended (the “Indenture”), each by and between the Authority and the Trustee; and

WHEREAS, in order to provide for the repayment of the Commercial Paper Notes, the City of San Diego, a municipal corporation duly organized and existing under its charter and the laws of the State of California (the “City”), will lease certain real property of the City (the “Leased Property”) to the Authority pursuant to the Site Lease, dated as of [Dated Date] (the “Site Lease”), and the Authority will lease back the Leased Property to the City pursuant to the Facilities Lease, dated as of [Dated Date] (the “Lease”), under which the City will be required to make Base Rental Payments to the Authority which will be calculated to be sufficient to enable the Authority to pay the principal of and interest on the Commercial Paper Notes when due and payable; and

WHEREAS, the Authority proposes to appoint the Issuing and Paying Agent as the Authority’s agent in connection with the issuance and payment of the Commercial Paper Notes, all pursuant to the terms of this Agreement and the Indenture; and

WHEREAS, the Issuing and Paying Agent hereby accepts the duties of the Issuing and Paying Agent hereunder and under the Indenture;

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Definitions.** Capitalized terms used in this Agreement and not otherwise defined have the meanings assigned to them in the Indenture. The following definitions apply whenever the specified terms are used in this Agreement:

“**Authorized Representatives**” shall have the meaning specified in Section 2 hereof.

“**Credit Facility**” shall mean each Credit Facility referred to in Section 3(b), and any Credit Facility which shall be issued, from time to time, in support of a Series of Commercial Paper Notes.

“**Electronic Means**” shall mean SPANS Online, S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords



and/or authentication keys issued by the Issuing and Paying Agent or another method or system specified by the Issuing and Paying Agent as available for use in connection with its services hereunder.

“**Final Drawing Notice**” shall have the meaning given to such term in the related Credit Facility or the agreement providing for the delivery of such Credit Facility.

“**Interest Component**” shall mean the maximum amount that may be drawn under a Credit Facility with respect to interest on the Commercial Paper Notes supported by such facility.

“**Missing Notes**” shall have the meaning specified in Section 2 hereof.

“**Notice of No Issuance**” shall have the meaning specified in the related Credit Facility.

“**Principal Component**” shall mean the maximum amount that may be drawn under a Credit Facility with respect to principal of the Commercial Paper Notes supported by such facility.

“**Series [X] Commercial Paper Notes**” means the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes, Series [X].

“**Series [XX] Commercial Paper Notes**” means the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes, Series [XX].

## **Section 2. Issuance of Commercial Paper Notes.**

(a) Initial Series of Commercial Paper Notes. The Authority hereby creates two Series of the Commercial Paper Notes, the Series [X] Commercial Paper Notes and the Series [XX] Commercial Paper Notes and may create additional Series from time to time. Payment of the Series [X] Commercial Paper Notes will be initially secured and payable by a Credit Facility issued by [Bank 1] and payment of the Series [XX] Commercial Paper Notes will be initially supported by a Credit Facility issued by [Bank 2], each as described in Section 3(b) hereof.

(b) Commercial Paper Notes Issued through The Depository Trust Company.

If the Authority issues Commercial Paper Notes through The Depository Trust Company (“DTC”), the Authority acknowledges that (i) the Issuing and Paying Agent has previously entered into a commercial paper certificate agreement (the “Certificate Agreement”), a copy of which is appended hereto as Appendix B, with DTC and (ii) the continuation in effect of the Certificate Agreement is a necessary prerequisite to the Issuing and Paying Agent’s providing services related to the issuance and payment of each of the Commercial Paper Notes. The Authority understands and agrees that the Certificate Agreement shall supplement the provisions of this Agreement, and that the Authority is bound by the provisions of the Certificate Agreement.

The Authority has delivered to the Issuing and Paying Agent executed Letters of Representations with respect to the Commercial Paper Notes (collectively, the “Representations”) copies of which are appended hereto as Appendix C. Further, the Authority understands and agrees

that such Representations supplement the provisions of this Agreement, and that the Authority and DTC shall be bound by the provisions of the Representations. The Issuing and Paying Agent and the Authority agree to comply with the relevant portions of DTC's Commercial Paper Issuing and Paying Agent Manual and the DTC Same Day Settlement System Rules (collectively, the "DTC Rules").

The Authority has delivered to the Issuing and Paying Agent one DTC Master Note relating to each Series of Notes (collectively, the "Master Notes") evidencing the Notes to be issued. The Authority's book-entry notes ("Book-Entry Commercial Paper Notes") shall not be issued in physical form, but their aggregate face amount shall be represented by each Master Note in the form of Appendix D executed by the Authority pursuant to the book-entry commercial paper program of DTC. Such Master Notes shall (i) bear the manual signatures of the requisite number of Authorized Signers (hereinafter defined), (ii) specify the date of issuance, full legal name of the Authority, and the name of the entity acting as paying agent for the Authority, and (iii) be registered in the name of Cede & Co., as nominee of DTC. The Issuing and Paying Agent shall maintain the Master Notes in safekeeping, in accordance with its customary practices. As long as Cede & Co. is the registered owner of the Master Notes, the beneficial ownership interest therein shall be shown on, and the transfer of ownership thereof shall be effected through, entries on the books maintained by DTC and the books of its direct and indirect participants. The Master Notes and the Book-Entry Commercial Paper Notes shall be subject to DTC's rules and procedures, as amended from time to time. The Issuing and Paying Agent shall not be liable or responsible for sending transaction statements of any kind to DTC's participants or the beneficial owners of the Book-Entry Commercial Paper Notes, or for maintaining, supervising or reviewing the records of DTC or its participants with respect to such Book-Entry Commercial Paper Notes. In accordance with DTC's program, the Issuing and Paying Agent shall obtain a written list of CUSIP numbers for Authority's Book-Entry Commercial Paper Notes, and the Issuing and Paying Agent shall deliver such list to DTC. The Dealer or Issuing Paying Agent Agreement shall bill the Authority directly for any fee for the list of CUSIP numbers for the Authority's Book-Entry Commercial Paper Notes.

Any Commercial Paper Notes (as evidenced by the Master Notes), upon being issued by the Issuing and Paying Agent on behalf of the Authority, shall bind the Authority notwithstanding that such Authorized Signer shall have died or shall have otherwise ceased to hold office on the date such Note is issued by the Issuing and Paying Agent. Furthermore, the Authority agrees that the Issuing and Paying Agent shall have no duty or responsibility to determine the genuineness of the facsimile and/or manual signatures appearing on the Master Notes.

(c) Commercial Paper Notes Issued through the Authority.

If the Authority itself issues certificated Commercial Paper Notes, each Commercial Paper Note shall be delivered by the Authority to the Issuing and Paying Agent, substantially in the form prescribed in the Indenture, with the amount, date of issue, maturity date, place of payment (if not printed thereon), and rate or amount of interest, left blank. The Commercial Paper Notes shall be numbered consecutively and may bear such other identification as the Authority may deem appropriate. Deliveries of Commercial Paper Note stock shall be made to the Issuing and Paying Agent from time to time. The Issuing and Paying Agent shall count and verify each such delivery under the Issuing and Paying Agent's normal control procedures. In the

event that the Issuing and Paying Agent determines that one or more Commercial Paper Notes are missing from a given delivery, the Issuing and Paying Agent shall promptly so advise the Authority and shall designate the same on the Issuing and Paying Agent's books as missing notes ("Missing Notes"). In no event shall the Issuing and Paying Agent make payment on any Missing Note; provided, however, that if the Authority advises the Issuing and Paying Agent that the Authority has recovered any Missing Note(s), the Issuing and Paying Agent shall delete such designation upon delivery of such Missing Note(s) to the Issuing and Paying Agent by the Authority or the Authority's designated representative and such Missing Note shall thereupon be a Commercial Paper Note.

(d) Instructions by Authorized Representative.

Instructions relating to the completion and issuance of Commercial Paper Notes and any other action on the Authority's behalf hereunder shall be given to the Issuing and Paying Agent from time to time by an "Authorized Representative." An Authorized Representative shall be the Chair, the Vice Chair, or the Secretary of the Authority, or any other officer of the Authority or any Authorized City Representative (as defined in the Indenture). The Authority shall furnish the Issuing and Paying Agent with specimen signatures for any Authorized Representative (as set forth in Appendix A attached hereto). Each Authorized Representative may appoint other officers, employees and agents of the Authority (an "Authorized Person"), including, without limitation, any Dealers, to give notices and/or issuance instructions to the Issuing and Paying Agent under this Agreement, provided that notice of the appointment of each Authorized Person is delivered to the Issuing and Paying Agent in writing.

**Section 3. Issuance Request; Credit Facility Terms.**

(a) Issuance Request. Prior to the issuance by the Issuing and Paying Agent of any Commercial Paper Note, an Authorized Representative shall instruct the Issuing and Paying Agent or, in the case of Book-Entry Commercial Paper Notes, instruct the Issuing and Paying Agent to deliver appropriate issuance instructions to the Securities Depository, and acknowledge or confirm the same (whether an instruction, acknowledgment or confirmation, herein referred to as an "Issuance Request"). Each Issuance Request shall be substantially in the form attached hereto as Appendix E and shall include the following information: the Series and aggregate principal amount of Commercial Paper Notes then to be issued, the rate or rates of interest (whether interest-bearing or at a discount) on such Commercial Paper Notes, the issue date or dates and maturity date or dates of such Commercial Paper Notes, whether such Commercial Paper Notes shall be issued as Tax-Exempt Commercial Paper Notes or as Taxable Commercial Paper Notes, in the case of Book-Entry Commercial Paper Notes, each Securities Depository direct participant to which such Book-Entry Commercial Paper Note is to be credited on the books of the Securities Depository and the principal amount (which shall be in authorized denomination) of Commercial Paper Notes to be credited to each such participant, unless such information is furnished to the Issuing and Paying Agent by the appropriate Dealer, and a direction to deposit the proceeds, if any, received upon the sale of such Commercial Paper Notes into the Acquisition Fund or the Cost of Issuance Fund, as applicable. No signature or additional confirmation on the Issuance Request will be required for any request submitted by Electronic Means by 1:00 P.M. New York time (10:00 A.M. Pacific time).

Upon the Issuing and Paying Agent's receipt of instructions from an Authorized Representative, the Issuing and Paying Agent shall

- (1) in the case of Book-Entry Commercial Paper Notes:
  - (A) hold the Master Notes in safekeeping;
  - (B) assign to each Commercial Paper Note issued upon the Authority's instructions a CUSIP number as specified in and in accordance with the CUSIP number assignment received by the Issuing and Paying Agent from the CUSIP Bureau;
  - (C) cause to be delivered a Commercial Paper Note on behalf of the Authority upon receipt of instructions from an Authorized Officer of the Authority, as to Series, and, in accordance with such instructions, principal amount, net dollar amount, payee, date of issue, maturity date (which shall be (i) not more than 270 days after the date of issuance and (ii) not after two Business Days prior to the Termination Date of the related Credit Facility then in effect and supporting the related Commercial Paper Notes), rate and amount of interest, by way of data entry or date transfer to the DTC Same Day Funds Settlement System ("SDFS"), and to receive from SDFS a confirmation receipt that such delivery was effected; and
  - (D) credit the net proceeds of all deliveries of Commercial Paper Notes to the appropriate account of the Authority established with the Issuing and Paying Agent as provided in Sections 4 and 5 hereof. The Authority understands that all instructions under this Agreement are to be directed to the Issuing and Paying Agent's Commercial Paper Operations Department. The Issuing and Paying Agent shall provide the Authority, or, if applicable, the Dealers, with access to SPANS Online in order that the Issuing and Paying Agent may receive electronic instructions for the issuance of Commercial Paper Notes. Electronic instructions must be transmitted in accordance with the procedures furnished by the Issuing and Paying Agent to the Authority or any Dealer in connection with SPANS Online. These transmissions shall be equivalent to the giving of a duly authorized written and signed instruction which the Issuing and Paying Agent may act upon without liability. In the event that SPANS Online is inoperable at any time, an Authorized Representative may deliver written or facsimile instructions to the Issuing and Paying Agent, which instructions shall be verified in accordance with any security procedures agreed upon by the parties. All issuance instructions regarding the Commercial Paper Notes must be received by 1:00 P.M. New York time (10:00 A.M. Pacific time) in order for the Commercial Paper Notes to be issued or delivered on the same day.

- (2) in the case of Commercial Paper Notes of any Series issued directly by the Authority:
- (A) complete a Commercial Paper Note of such Series as to amount, date of issue, maturity date (which shall be (i) Commercial Paper Notes not more than 270 days after the date of issue and (ii) not after two Business Days prior to the Termination Date of the related Credit Facility then in effect and supporting the related Commercial Paper Notes), place of payment (if not printed thereon), the name of the registered owner (in the case of a registered Commercial Paper Note), and rate or amount of interest, in accordance with such instructions;
  - (B) authenticate the Commercial Paper Note by having any officer or other person designated by the Issuing and Paying Agent for that purpose countersign it; and
  - (C) deliver the Commercial Paper Note in accordance herewith to or for the account of the person designated in such instructions to receive such Commercial Paper Note (hereinafter sometimes called the “purchaser”).

(b) Initial Credit Facilities. Prior to the initial issuance of the Commercial Paper Notes, the Authority shall cause to be delivered to the Issuing and Paying Agent the Credit Facilities to be issued by [Name of Bank 1] (“[Bank 1]”) to secure the Series [X] Commercial Paper Notes and [Name of Bank 2] (“[Bank 2]”) to secure the Series [XX] Commercial Paper Notes (each of [Bank 1] and [Bank 2] being a Credit Facility Provider as provided under the Agreement) pursuant to the Reimbursement Agreements, dated as of [Dated Date] between the City and each such Credit Facility Provider. The Stated Amount of the initial Credit Facility for the Series [X] Commercial Paper Notes (the “Series [X] Stated Amount”) shall initially be equal to \$\_\_\_\_\_, consisting of an Interest Component of \$\_\_\_\_\_ (the “Series [X] Interest Component”) plus a Principal Component of \$\_\_\_\_\_ (the “Series [X] Principal Component”). The Stated Amount of the initial Credit Facility for the Series [XX] Commercial Paper Notes (the “Series [XX] Stated Amount”) shall initially be equal to \$\_\_\_\_\_, consisting of an Interest Component of \$\_\_\_\_\_ (the “Series [XX] Interest Component”) plus a Principal Component of \$\_\_\_\_\_ (the “Series [XX] Principal Component”). The respective Stated Amounts and the Interest Components or the Commercial Paper Principal Component shall be reduced or reinstated, as the case may be, in accordance with the respective Credit Facility. Draws under a Credit Facility shall be used to pay interest and principal only on the related Series of Commercial Paper Notes.

The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes, to the extent that (i) such issuance would violate the terms of the Indenture and (ii) the sum of the aggregate principal amount (or face amount in the case of Commercial Paper Notes issued at a discount) of all outstanding Commercial Paper Notes (after giving effect to such issuance) supported by the related Credit Facility would exceed the amount that may be Drawn thereunder in respect of principal (or face amount in the case of Commercial Paper Notes issued at a discount) of Commercial Paper Notes or the sum of the aggregate amount of interest payable (including any

portion thereof not yet accrued) in respect of such Commercial Paper Notes would exceed the amount that may be Drawn thereunder in respect of interest on such Commercial Paper Notes. The Authority shall not cause more than one Credit Facility to be in effect at any particular time with respect to any Series of Notes.

If a Credit Facility Provider has delivered a Notice of No Issuance pursuant to the related Credit Facility to the Issuing and Paying Agent and the Authority, then the Issuing and Paying Agent shall cease authenticating and delivering any Commercial Paper Notes of the Series supported by such Credit Facility on the effective date of such Notice of No Issuance as provided in the related Credit Facility, unless and until it has received a written notice from such Credit Facility Provider that such Notice of No Issuance has been rescinded. If a Credit Facility expires or terminates and the Authority enters into a successor Credit Facility in connection with the issuance and sale of its Commercial Paper Notes, then the procedures set forth in the preceding sentence shall apply to such Credit Facility.

Notwithstanding anything herein to the contrary, upon receipt by the Issuing and Paying Agent of a Final Drawing Notice (as such term is defined in the related Credit Facility), the Issuing and Paying Agent shall follow the instructions set forth in such notice, including (i) ceasing to authenticate and deliver Commercial Paper Notes supported by the related Credit Facility on the effective date of such Final Drawing Notice as provided in the related Credit Facility and (ii) promptly (and in no event later than the Business Day immediately preceding the termination date of such Credit Facility ) making the Final Drawing (as such term is defined in the Credit Facility) under such Credit Facility to provide for the paying of the principal of and interest accrued and to accrue on the related Commercial Paper Notes that are outstanding and are maturing or are to mature after receipt of such Final Drawing Notice.

#### **Section 4. Establishment of Accounts; Payment of Notes and Draws.**

(a) The Issuing and Paying Agent shall establish in trust, on behalf of the Trustee, a special fund designated as the “Issuing and Paying Agent Fund,” within which shall be established accounts and subaccounts, including subaccounts for each Series of Commercial Paper Notes. Such accounts shall be designated in the form “Revenue Account,” “Notes Payment Account,” within which shall be established the “Credit Facility Proceeds Subaccount” within which shall be established subaccounts for each Series of Commercial Paper Notes with the applicable Series designation inserted in such subaccounts designation, the “Note Proceeds Subaccount” within which shall be established subaccounts for each Series of Commercial Paper Notes with the applicable Series designation inserted in such subaccounts designation, and the “Base Rental Payment Subaccount,” and “Reimbursement Account,” within which shall be established subaccounts for each Series of Commercial Paper Notes with the applicable Series designation inserted in such subaccounts designation.

(b) The proceeds of sale of any Commercial Paper Notes of a Series that are issued for the purpose of refinancing, renewing or refunding Commercial Paper Notes shall be deposited in the related subaccount of the Note Proceeds Subaccount to be applied in accordance with Section 4.02(c)(i)(A) of the Indenture or shall be deposited in the related subaccount of the Reimbursement Account to be applied in accordance with Section 4.02(c)(i)(B) and Section 4.02(c)(ii) of the Indenture. The proceeds of sale of any Commercial Paper Notes issued

to pay costs incurred in connection with the issuance of Commercial Paper Notes shall be deposited in the Cost of Issuance Fund to be applied in accordance with Section 3.03 of the Indenture, as directed by an Authorized Representative in the Issuance Request. The proceeds of the sale of any Commercial Paper Notes issued to pay or reimburse Construction Costs (net of all proceeds to be used to pay Costs of Issuance, if any, which shall be deposited in the Costs of Issuance Fund) shall be deposited in the Acquisition Fund to be applied in accordance with Section 3.04 of the Indenture, as directed by an Authorized Representative in the Issuance Request. Notwithstanding the foregoing, the proceeds of the sale of Commercial Paper Notes of a Series may be deposited in a subaccount with respect to another Series in accordance with the instructions of an Authorized Representative delivered to the Issuing and Paying Agent in the manner specified in Section 2(d) hereof and if such proceeds are the proceeds of Tax-Exempt Commercial Paper Notes and are to be deposited in a subaccount with respect to Taxable Commercial Paper Notes, with an opinion of Bond Counsel that such issuance and deposit will not, by itself, adversely affect the tax-exempt status of the Tax-Exempt Commercial Paper Notes.

(c) Not later than the time specified in a Credit Facility for the submission of demands for payments to be made thereunder on or prior to any day on which any principal of or interest on the related outstanding Commercial Paper Notes is due and payable, the Issuing and Paying Agent shall submit a demand for payment under such Credit Facility in the manner provided therein so as to receive proceeds of a Draw by wire transfer in immediately available funds in an amount equal to the principal of and interest on such outstanding Commercial Paper Notes by no later than 2:00 P.M. New York time (11:00 A.M. Pacific time) on the date such amounts are due and payable. The Issuing and Paying Agent shall deposit the proceeds of such Draw to the related subaccount of the Credit Facility Proceeds Subaccount in respect of which such Draw was made, and apply such proceeds to the payment of principal of and interest on such Series of Commercial Paper Notes.

(d) The Issuing and Paying Agent shall not be obligated to use its own funds to pay the principal of or interest on Commercial Paper Notes.

(e) The Issuing and Paying Agent shall accept, and shall be deemed to have knowledge of the contents of, all notices, advices and confirmations furnished by any Credit Facility Provider to the Issuing and Paying Agent pursuant to this Agreement and each Credit Facility, and shall be deemed to have knowledge of the contents of all other notices, advices and confirmations furnished by any Credit Facility Provider with respect to each Credit Facility and actually received by the Issuing and Paying Agent (including any Notice of No Issuance and any notice as to the principal amount of Draws outstanding and the related amounts of the Stated Amount and of the Principal Component and the Interest Component thereof).

(f) Notwithstanding anything to the contrary in the Indenture, moneys held in accounts held by the Issuing and Paying Agent hereunder other than amounts drawn under a Credit Facility shall be invested and reinvested by the Issuing and Paying Agent to the fullest extent practicable in Permitted Investments which mature not later than (i) 30 days after the date of purchase of such investments and (ii) at such times as shall be necessary to provide moneys when needed for payment to be made from such accounts. The Issuing and Paying Agent shall make all such investments of moneys held by it in accordance with written instructions from any Authorized Signer. Interest (net of which represents a return of accrued interest paid in connection with the

purchase of any investment) and other investment earnings on any moneys or investments in an account held by the Issuing and Paying Agent hereunder shall remain in such account. The proceeds of drawings under a Credit Facility shall be held uninvested. The Issuing and Paying Agent shall have no duty to determine whether any such written instructions received from the Authority complies with the requirements of these investment restrictions or requirements. The Issuing and Paying Agent may elect, but shall not be obligated, to credit the account established hereunder with funds representing income or principal payments due on, or sales proceeds due in respect of, assets in such account, or to credit to such account assets intended to be purchased with such funds, in each case before actually receiving the requisite funds from the payment source, or to otherwise advance funds for transactions hereunder. Notwithstanding anything else in this Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the Issuing and Paying Agent is authorized to reverse or offset any such transactions or advances of funds in the event that the Issuing and Paying Agent does not receive good funds with respect thereto, and (ii) nothing in this Agreement shall constitute a waiver of any of the Issuing and Paying Agent's rights as a securities intermediary under Uniform Commercial Code §9-206. The Issuing and Paying Agent may also set-off and deduct funds in any account hereunder with respect to deposits that have been credited to such account but are subsequently returned unpaid or reversed.

(g) Upon the resignation or removal of the Issuing and Paying Agent and the appointment of a successor Issuing and Paying Agent pursuant to the Indenture and this Agreement, the Issuing and Paying Agent shall prepare and present to each Credit Facility Provider the Instructions to Transfer in the form attached to the related Commercial Paper Credit Facility, or otherwise take all action necessary, to effect the transfer of the related Credit Facility to the successor Issuing and Paying Agent.

#### **Section 5. Reimbursement Account.**

(a) Except as otherwise provided in Section 5(b) hereof, the Issuing and Paying Agent shall apply the amounts on deposit in the related subaccount of the Reimbursement Account to the reimbursement of related Draws outstanding on such day. No reimbursement of related Draws shall be made prior to the honoring of such Draws by the related Credit Facility Provider. Each reimbursement of Draws shall be made in accordance with the related Credit Facility.

(b) Upon the failure of a Credit Facility Provider to honor a properly presented and conforming drawing under a Credit Facility, any amounts on deposit in the related subaccount of the Reimbursement Account shall be applied to the payment of principal of and accrued interest on such Series of Commercial Paper Notes maturing on such day prior to the application of such proceeds to the reimbursement of Draws. In the event that the amounts on deposit in the applicable subaccount of the Credit Facility Proceeds Subaccount and the applicable subaccount of the Reimbursement Account are not sufficient to pay the principal and interest on a Series of Commercial Paper Notes pursuant to Section 4.02(c)(i)(A) of the Indenture and such payment is to be made from amounts on deposit in the Base Rental Payment Subaccount pursuant to Section 4.02(c)(i)(A) of the Indenture, the Issuing and Paying Agent shall promptly notify the Authority and the City of the amount of such insufficiency.

**Section 6. Payment of Notes.** Payment of the principal of and interest on Book-Entry Commercial Paper Notes evidenced by a Master Note may be made by the Issuing



and Paying Agent to DTC pursuant to and in accordance with the DTC Documents and the Master Note without the necessity of presentation and surrender of the Master Note. The Issuing and Paying Agent shall pay any other matured Commercial Paper Notes presented to the Issuing and Paying Agent for payment by the Owner thereof at the principal office of the Issuing and Paying Agent specified in Section 17 hereof, or at such other address as the Issuing and Paying Agent may designate in writing from time to time by notice to the Authority and the Dealer.

**Section 7. Overdrafts.** The Issuing and Paying Agent is authorized at any time to charge any account in the amount required for any payment by the Issuing and Paying Agent on the Authority's behalf in respect of any Commercial Paper Note or for any other amount due and payable by the Authority hereunder. The Issuing and Paying Agent shall have no obligation to pay any Commercial Paper Note that would result in an overdraft to an account unless such overdraft is due to the Issuing and Paying Agent's mismanagement of such account.

**Section 8. Liability and Indemnification.** The Issuing and Paying Agent shall have no fiduciary or discretionary duties of any kind and the establishment of the Issuing and Paying Agent Fund in trust in Section 4 hereof is solely on behalf of the Trustee and not in the capacity as Issuing and Paying Agent hereunder. The Issuing and Paying Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement. The Issuing and Paying Agent shall not be required to ascertain whether any issuance or sale of any Commercial Paper Note (or any amendment or termination of this Agreement) has been duly authorized or is in compliance with any other agreement to which the Authority is a party (whether or not the Issuing and Paying Agent is a party to such other agreement). The Issuing and Paying Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that negligence or willful misconduct was the sole cause of any loss to the Authority. The Authority shall indemnify, defend and hold harmless the Issuing and Paying Agent against any loss, liability or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with their actions or inactions in connection with this Agreement, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. This indemnity section shall survive termination of this Agreement.

**Section 9. Representations and Warranties of Authority.** The Authority hereby represents and warrants to the Issuing and Paying Agent that this Agreement and any Note which the Authority shall have instructed the Issuing and Paying Agent to issue (an "Approved Note") have been duly authorized by the Authority and this Agreement when executed and any Approved Note when issued in accordance with the Authority's instructions will be valid and binding obligations of the Authority, enforceable in accordance with their terms. The Authority hereby represents and warrants to the Issuing and Paying Agent that the Authority has obtained all authorizations and approvals of and all registrations and filings with governmental agencies and authorities necessary for the execution, delivery and performance by the Authority of this Agreement and any Approved Note and such authorizations, approvals, registrations and filings, as the case may be, are in full force and effect; provided that, no representation is made by the Authority as to any action required under state securities or blue sky laws in connection with the purchase or distribution of any Approved Note.

Each direction given or made by an Authorized Officer to authenticate and deliver the Notes pursuant to this Agreement shall constitute a certification by the Authority that (i) the Authority has performed all of the covenants and agreements that it is required to have performed as of the date of such direction under the terms of this Agreement, and (ii) the representations and warranties contained in this Agreement remain true and accurate as of the date of such direction and apply to the Notes to which such direction applies.

**Section 10. Duties of the Issuing and Paying Agent.** The Issuing and Paying Agent agree to provide the Credit Facility Providers with read-only access to SPANS Online with respect to the Commercial Paper Notes as required by a Credit Facility Provider to fulfill such Credit Facility Provider's regulatory reporting needs with respect to the Commercial Paper Notes.

Not later than the time specified therein for the submission of demands for payments thereunder on or prior to any day on which any principal of and interest on outstanding Commercial Paper Notes is due and payable, the Issuing and Paying Agent shall submit a demand for payment under the related Credit Facility in the manner provided therein. The Issuing and Paying Agent shall apply such proceeds to the payment of the principal of and interest on Commercial Paper Notes becoming due and payable.

The Issuing and Paying Agent's duties and obligations shall be determined by the express provisions of this Agreement, and the Representations (including the documents referred to therein), and the Issuing and Paying Agent shall be responsible for the performance of only such duties and obligations as are specifically set forth herein and therein, and no implied duties or covenants shall be read into any such document against the Issuing and Paying Agent.

The Issuing and Paying Agent shall timely prepare and present to the related Credit Facility Provider all certificates, notices and other documents required by the terms of the Issuing and Paying Agency Agreement and the related Credit Facility to effect Draws under each Credit Facility.

The Issuing and Paying Agent shall not Draw upon a Credit Facility with respect to any payment of principal of any Commercial Paper Note which is, to the knowledge of the Issuing and Paying Agent, registered in the name of the Authority or held for its account. The Authority shall promptly notify the Issuing and Paying Agent in writing of any Commercial Paper Notes so held.

**Section 11. Instruction Procedures.** Except as otherwise expressly provided herein, all instructions, notices, funds transfer requests and other communications hereunder shall be in writing, personally delivered or sent by regular mail, overnight courier, facsimile transmission or email, and shall be deemed given when received. The Issuing and Paying Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Issuing Paying Agent Agreement and delivered using Electronic Means. The Issuing and Paying Agent shall incur no liability to the Authority in acting hereunder upon telephonic, facsimile or other instructions contemplated hereby which the recipient thereof reasonably believed in good faith to have been given by an Authorized Representative. If a discrepancy exists with respect to the telephonic instructions as recorded and the written instructions, the telephonic instructions will be deemed the controlling and proper instructions. It is understood that all telephonic instructions may be recorded by the Issuing and Paying Agent.

Any such tape recordings may be submitted in evidence to any court or in any legal proceeding for the purpose of establishing any matters pertinent hereunder.

**Section 12. Non-Presented Notes.** Any monies held by the Issuing and Paying Agent for the Owners of matured Notes which shall remain unclaimed by such Owners for six months after the date on which such Notes shall have matured, shall be paid to the Authority upon the request of the Authority to the Issuing and Paying Agent.

**Section 13. Compensation.** The Authority shall pay such compensation for the Issuing and Paying Agent's services pursuant to this Agreement as shall be set forth in a letter agreement (the "Letter Agreement") between the Authority and the Issuing and Paying Agent, as such pricing and compensation arrangement may only be modified by the written consent of both the Authority and the Issuing and Paying Agent. The Letter Agreement is hereby incorporated and made a part of this Agreement. The Authority shall reimburse the Issuing and Paying Agent for any amounts the Issuing and Paying Agent is required to pay in connection with overdrafts in the Authority's accounts created pursuant to this Agreement. Amounts payable to the Issuing and Paying Agent hereunder shall be paid by the Authority from moneys available therefor in accordance with the Indenture and not from moneys held under this Agreement and the Issuing and Paying Agent shall have no lien on moneys held hereunder.

**Section 14. Force Majeure and Severability.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein and supersedes and cancels any and all prior agreements, representations or statements, written or oral, of either party with respect thereto. In no event shall the Issuing and Paying Agent and/or the Authority be liable for any failure or delay in the performance of the Issuing and Paying Agent's and/or Authority's obligations hereunder because of circumstances beyond the Issuing and Paying Agent's and/or Authority's control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, strikes or work stoppage for any reason, embargo, government action, including any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this Agreement, inability to obtain material, equipment or communications facilities, or the failure of equipment or interruption of communications facilities, and other causes whether or not of the same class or kind as specifically named above. This Agreement may not be amended except in a writing executed by the party to be bound. In the event that one or more provisions of this Agreement are held invalid, illegal or unenforceable in any respect or on the basis of any particular circumstances, the validity, legality and enforceability of such provision or provisions under other circumstances and of the remaining provisions shall not in any way be affected or impaired. No failure or delay on the part of either party in exercising any power or right under this Agreement shall operate as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right. No waiver by a party of any provision of this Agreement, or of any breach or default, shall be effective unless in writing and signed by the party against whom the waiver is to be enforced.

**Section 15. Effectiveness and Termination.** This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice or upon such other later date specified in such written notice; provided, however, that such termination shall not be effective prior to the earlier of (i) the appointment of a successor Issuing and Paying Agent and

the delivery of each Credit Facility to such successor Issuing and Paying Agent or (ii) the maturity of all Outstanding Notes. Upon termination the Issuing and Paying Agent shall return to the Authority each Credit Facility and any Notes then held in safekeeping by the Issuing and Paying Agent upon the Authority's instructions. No such termination shall, however, affect the Authority's or the Issuing and Paying Agent's respective responsibilities hereunder arising prior to such termination. The provisions of Sections 6 and 8 hereof shall survive the termination of this Agreement.

**Section 16. Notice: Addresses.**

All communications to the Issuing and Paying Agent by or on behalf of Authority or a Dealer, by writing or telephone, which relate to the completion, delivery or payment of any Commercial Paper Note, are to be delivered to the Issuing and Paying Agent via SPANS Online or directed to Commercial Paper Operations at the address or telephone number indicated below or to such other address or telephone number as the Issuing and Paying Agent specifies to the Authority in writing. The Authority will send all certificated Commercial Paper Notes to be completed and delivered by the Issuing and Paying Agent as directed by the Issuing and Paying Agent to the Authority. The Issuing and Paying Agent will advise the Authority from time to time of the individuals generally responsible for the administration of this Agreement, will from time to time certify incumbency and specimen signatures of officers or employees authorized to countersign Commercial Paper Notes and will supply a list of employees authorized to receive telephone instructions.

Notices and other communications hereunder shall (except to the extent otherwise expressly provided) be in writing and shall be addressed as follows, or to such other address as the party receiving such notice shall have previously specified to the party sending such notice:

if to the Authority, at the following address:

Public Facilities Financing Authority of the City of San Diego  
c/o City of San Diego  
Office of the City Clerk  
202 C Street, 2nd Floor  
San Diego, California 92101  
Phone: (619) 553-4000  
Fax: (619) 553-4045

with a copy to:

City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney – Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

if to the City, at the following address:

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management  
Phone: (619) 235-5840  
Fax: (619) 235-5835

if to the Issuing and Paying Agent, at the following addresses:

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations  
Phone: (212) 951-8508  
Fax: (212) 509-4529  
Email: mmi.processing@usbank.com

Notices shall be deemed delivered when received at the address specified above. For purposes of this paragraph, “when received” shall mean actual receipt (i) of an electronic communication by a facsimile machine, telecopier or time-sharing terminal specified in or pursuant to this Agreement; (ii) of an oral communication by any person answering the telephone at your office and otherwise at the office of the individual or department specified in or pursuant to this Agreement; or (iii) of a written communication hand-delivered or mailed to the office specified in or pursuant to this Agreement.

**Section 17. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 18. No Personal Liability.** No trustee, officer or employee of the Authority shall be held personally liable on the Notes or in connection with any claim based thereon or on the Indenture or on this Agreement.

**Section 19. Authority Requests for Information.** The Issuing and Paying Agent shall promptly provide the Authority with information with respect to the Commercial Paper Notes requested from time to time by the Authority.

**Section 20. Successor Issuing and Paying Agent.** Any resignation or removal of the Issuing and Paying Agent and the appointment of a successor Issuing and Paying Agent shall be in accordance with the provisions regarding the Trustee under the Indenture, and any successor Issuing and Paying Agent shall accept the duties of the Issuing and Paying Agent under the Indenture and this Issuing and Paying Agency Agreement in writing.

**Section 21. Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same

instrument. The delivery of copies of this Agreement as executed by PDF or facsimile transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

**Section 22. SPANS Online.**

(a) The Authority and each Authorized Representative may use the U.S. Bank Securities Processing Automated Notes System Online (“SPANS Online”) instruction and reporting communication service to transmit instructions to Issuing and Paying Agent or obtain reports with respect to the Commercial Paper Notes. The Authority may, by separate agreement between the Authority and one or more of its Authorized Persons, authorize the Authorized Person to directly access SPANS Online for the purposes of transmitting instructions to the Issuing and Paying Agent or obtaining reports with respect to the Commercial Paper Notes. The Authority acknowledges that (i) some or all of the services utilized in connection with SPANS Online are furnished by SS&C Technologies, Inc. (“SS&C”), (ii) SPANS Online is provided to the Authority “AS IS” without warranties or representations of any kind whatsoever, and (iii) SPANS Online is proprietary and confidential property disclosed to the Authority in confidence and may be utilized only on the SPANS Online Terms and Conditions as set forth in the SPANS Online website and for purposes set forth in this Agreement.

(b) To permit the use of SPANS Online to transmit instructions and/or obtain reports with respect to the Commercial Paper Notes, the Issuing and Paying Agent will supply the Authority with a customer identification number and initial passwords. The Authority may thereafter change its passwords directly through SPANS Online. The Authority will keep all information relating to its identification number and passwords strictly confidential and will be responsible for the maintenance of adequate security over its customer identification number and passwords. Instructions transmitted over SPANS Online and received by the Issuing and Paying Agent pursuant to this Agreement shall be deemed conclusive evidence that such instructions are correct and complete and that the issuance or redemption of the Commercial Paper Notes directed thereby has been duly authorized by the Authority.

[Remainder of Page Left Intentionally Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Issuing and Paying Agency Agreement to be executed as of the date and year first above written.

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

By: \_\_\_\_\_  
Myrtle Cole  
Chair

ATTEST:

By: \_\_\_\_\_  
Elizabeth S. Maland  
Secretary

APPROVED AS TO FORM:

GENERAL COUNSEL TO THE AUTHORITY

By: \_\_\_\_\_  
Brant C. Will  
Deputy General Counsel

ACCEPTED AND AGREED:

U.S. BANK NATIONAL ASSOCIATION,  
acting solely in its capacity as Issuing and Paying Agent

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

**APPENDIX A**

INITIAL AUTHORIZED REPRESENTATIVES

Name and Title

Signature

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**APPENDIX B**

DTC CERTIFICATE AGREEMENT

**APPENDIX C**

**DTC LETTER OF REPRESENTATIONS**

**APPENDIX D**

FORM OF MASTER NOTE

[See Exhibit B to Indenture]

**APPENDIX E**

**FORM OF ISSUANCE REQUEST**

To: U.S. Bank National Association, as Issuing and Paying Agent

Re: Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes

An Authorized City Representative of the City of San Diego (the “City”) on behalf of the Public Facilities Financing Authority of the City of San Diego (“Authority”) does hereby request U.S. Bank National Association, as Issuing and Paying Agent (the “Issuing and Paying Agent”) under the Issuing and Paying Agency Agreement, dated as of [Dated Date] (the “Agreement”) between the Authority and the Issuing and Paying Agent, to issue the Authority’s Commercial Paper Notes, as follows:

1. Purpose:

- pay or reimburse Construction Costs
- pay costs incurred in connection with the issuance of Commercial Paper Notes
- refinancing, renewing or refunding Commercial Paper Notes

2. Series:

3. Principal Amount:

4. Rate of Interest (Interest-bearing/Discount):

5. Issue Date:

6. Maturity Date:

7. Tax-Exempt/Taxable:

Upon receipt of proceeds of the Commercial Paper Notes from the [Dealer], you are hereby authorized and directed to transfer \$(aggregate principal amount of Commercial Paper Notes then to be issued) comprised of proceeds from the Commercial Paper Notes:

- \$(Acquisition Fund amount) to the City of San Diego for deposit in the Acquisition Fund; and/or
- \$(Cost of Issuance amount) to U.S. Bank National Association, as Trustee, for deposit in the Costs of Issuance Fund.
- \$(Note Proceeds Subaccount/Reimbursement Account amount) to U.S. Bank National Association, as Issuing and Paying Agent, for deposit in the Series \_\_\_ subaccount of the Note Proceeds Subaccount or Series \_\_\_ subaccount of the Reimbursement Account, as applicable

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Indenture.

This Issuance Request is delivered on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized City Representative

**FACILITIES LEASE**

**Dated as of [Dated Date]**

by and between

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

and

**THE CITY OF SAN DIEGO**

---

Relating to the

**[\$[PRINCIPAL AMOUNT]  
PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE COMMERCIAL PAPER NOTES**

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## FACILITIES LEASE

This Facilities Lease (the “Lease”), dated as of [Dated Date], is by and between the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”), as sublessor, and THE CITY OF SAN DIEGO, a municipal corporation duly organized and existing under its charter and laws of the State of California (the “City”), as sublessee. (Capitalized terms used in the Whereas clauses and not defined therein shall have the meanings provided in Section 1.01 hereof.)

### WITNESSETH:

**WHEREAS**, the City has determined it is in the public interest and will benefit the inhabitants of the City that the City finance the costs of the acquisition, design, construction, installation, improvement, replacement, and equipping of certain capital improvement projects of the City from time to time (the “Projects”) and costs of issuance of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes (the “Commercial Paper Notes”); and

**WHEREAS**, to finance the Projects, the City will enter into a Site Lease, dated as of even date herewith (the “Site Lease”), with the Authority, pursuant to which the City will lease to the Authority certain real property belonging to the City, together with the improvements located thereon that are owned by the City (collectively, the “Leased Property,” as more particularly described in Exhibit A hereto), and concurrent with execution and delivery of the Site Lease, the Authority will, pursuant to this Lease, sublease the Leased Property to the City and the City will sublease the Leased Property back from the Authority; and

**WHEREAS**, to provide funds to finance the Projects, the City has requested the Authority to issue its Commercial Paper Notes from time to time in an aggregate principal amount not exceeding the Maximum Principal Amount pursuant to an Indenture, dated as of [Dated Date] (the “Indenture”), by and between the Authority and U.S. Bank National Association, as Trustee (the “Trustee”); and

**WHEREAS**, the City is authorized by its Charter and other applicable law to lease the Leased Property to the Authority pursuant to the Site Lease, and to lease-back the Leased Property pursuant to this Lease and to consummate the Projects; and has determined that the Projects and the lease of the Leased Property is a necessary and proper public purpose; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease do exist, have happened and have been performed in a regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease.

**NOW, THEREFOR**, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any supplement and amendment hereof and of the Site Lease have the meanings herein specified. All other capitalized terms used herein without definition shall have the meanings as set forth in the Indenture.

“Addition” means the addition of Leased Property to the leasehold hereof, and the lease of additional real property and improvements hereunder from the Authority to the City, as provided in Section 3.06 hereof.

“Additional Rental” means all amounts payable by the City pursuant to Section 6.01(c) hereof.

“Agency” means the Redevelopment Agency of the City of San Diego, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California, and its successors and assigns.

“Assumed Interest Cost” means, with respect to Commercial Paper Notes or Bank Notes, as applicable, as of any date of calculation, for any Base Rental Period or portion thereof, as applicable, the aggregate amount of interest that is projected to be due and payable during such Base Rental Period or portion thereof, as applicable, based upon the weighted average principal amount of Commercial Paper Notes or Bank Notes, as applicable, expected to be Outstanding during such Base Rental Period or portion thereof, as applicable, an assumed weighted average interest rate reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Commercial Paper Notes Outstanding during such Base Rental Period or portion thereof, as applicable, and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during such Base Rental Period or portion thereof, as applicable.

“Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers entity created by the City and the Agency pursuant to California Government Code Sections 6500 et seq. and the Joint Exercise of Power Agreement, dated as of January 11, 1999, by and between the City and the Agency.

“Authorized Representative” means: (a) with respect to the Authority, its Chair, Vice Chair, Treasurer or Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair, and filed with the City and the Trustee; and (b) with respect to the City, its Chief Operating Officer or its Chief Financial Officer, or any other person duly designated by its Chief Operating Officer or its Chief Financial Officer as an Authorized Representative of the City by a written certificate of the Chief Operating Officer or the Chief Financial Officer filed with the City and the Trustee.

“Base Rental Payment Date” means (i) any date determined by the City to make a Base Rental Payment, (ii) the business day prior to each date on which the principal and interest on

Commercial Paper Notes is due and payable, and (iii) each date on which the principal and interest on any Bank Note is due and payable.

“Base Rental Payments” means all amounts payable by the City as Base Rental Payments pursuant to Section 6.01(a) hereof.

“Base Rental Period” means the period from [July 1] to and including the following [June 30]; provided that the initial Base Rental Period means the period from the Closing Date to and including [June 30], 2019.

“City” means The City of San Diego, a municipal corporation duly organized and existing under its charter and the laws of the State.

“Claim” shall have the meaning contained in Section 9.03 hereof.

“Closing Date” shall mean [\_\_\_\_\_], 2018.

“Commercial Paper Notes” means the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes.

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

“Credit Facility Provider” means (i) with respect to the Series [X] Commercial Paper Notes, [Bank 1] or upon delivery of an Alternate Credit Facility with respect to the Series [X] Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility; (ii) with respect to the Series [XX] Commercial Paper Notes, [Bank 2] or, upon delivery of an Alternate Credit Facility with respect to the Series [XX] Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility; and (iii) with respect to one or more other Series of Commercial Paper Notes, a provider or providers of a Credit Facility with respect to such Series of Commercial Paper Notes or, upon delivery of an Alternate Credit Facility with respect to such Series of Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility.

“Debt Service Certificate - Additional Commercial Paper Notes” means a certificate substantially in the form of Exhibit C-2 hereto.

“Debt Service Certificate - Additional Interest/Principal” means a certificate substantially in the form of Exhibit C-3 hereto.

“Debt Service Certificate - Annual” means a certificate substantially in the form of Exhibit C-1 hereto.

“Default” shall have the meaning contained in Section 10.01 hereof.

“Event of Default” shall have the meaning contained in Section 10.01 hereof.

“Expiry Date” means \_\_\_\_\_, 20\_\_\_, except as extended or sooner terminated or extended pursuant to Sections 4.01 or 6.04 of this Lease, or such other date or dates as set forth in an amendment to this Lease.

“Financing Documents” means this Lease, the Site Lease and the Indenture.

“Indenture” means that certain Indenture, dated as of even date herewith, by and between the Authority and the Trustee, dated as of [Dated Date], by and between the Authority and the Trustee, as amended or supplemented in accordance with the terms thereof.

“Insurance Consultant” means an individual or firm retained by the City as an independent insurance consultant, experienced in the field of risk management.

“Issuing and Paying Agency Agreement” means the Issuing and Paying Agency Agreement, dated as of [Dated Date] by and between the Authority and the Issuing and Paying Agent, as the same may be amended and supplemented from time to time, or any other issuing and paying agency agreement entered into by the Authority from time to time with respect to Commercial Paper Notes.

“Issuing and Paying Agent” means U.S. Bank National Association, or any other institution, appointed by the Authority to serve as Issuing and Paying Agent in accordance with the Issuing and Paying Agency Agreement, or any successor thereto pursuant to the Indenture and the Issuing and Paying Agency Agreement.

“Lease” means this Facilities Lease, dated as of [Dated Date], by and between the Authority and the City, as amended or supplemented in accordance with the terms hereof.

“Leased Property” means that certain real property together with improvements located thereon that are owned by the City, which is the subject of the Site Lease comprising those parcels described in Exhibit A, as the same may be changed from time to time by Removal, Addition or Substitution as provided in Section 3.06 hereof; subject, however, to Permitted Encumbrances.

“Maximum Base Rental” means the amounts specified as such in Section 6.01(a) hereof as such amounts may be adjusted from time to time in accordance with the terms hereof, excluding Additional Rental.

“Maximum Base Rental Payment Schedule” means the schedule of Maximum Base Rental Payments attached hereto as Exhibit B, as from time to time amended as permitted in the Lease.

“Minimum Required Rental Payment” has the meaning set forth in the Debt Service Certificate - Annual.

“Minimum Supplemental Rental Payment” means an amount determined pursuant to a Debt Service Certificate - Additional Commercial Paper Notes or a Debt Service Certificate - Additional Interest/Principal.

“Net Proceeds” means, collectively, the net proceeds of any insurance or condemnation award resulting from any damage or destruction of any portion of the Leased Property payable in accordance with Section 7.07 hereof.

“Opinion of Bond Counsel” means a written opinion of (a) Hawkins Delafield & Wood LLP, or (b) any other firm of attorneys, designated by the City, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America. Any Opinion of Bond Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City or the Trustee, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which their opinion may be based, is erroneous.

“Opinion of Counsel” means a written opinion of an attorney or a firm of attorneys (who may be counsel for the City or the Trustee) retained by the City or the Trustee. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City or the Trustee, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which his or her opinion may be based, is erroneous.

“Permitted Encumbrances” means, as of any particular time:

(a) (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to Section 7.02, permit to remain unpaid; (ii) the Lease, the Site Lease and the Indenture, as each may be amended from time to time pursuant to its terms; (iii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, which (A) exist as of the date of recordation of this Lease or (B) are established thereafter, including without limitation, in a supplement or amendment hereto which adds Added Property or Substituted Property to the Leased Property, which Added Property or Substituted Property is subject to such restriction, and no restriction in (A) and (B) substantially interferes with City’s right to use and occupy such real property; and (v) rights granted by the City pursuant to Section 3.04(b) hereof; and

(b) in all cases will not result in abatement of Base Rental Payments payable by the City under the Lease.

“Removal” means the release of all or a portion of the Leased Property from the leasehold hereof as provided in Section 3.06 hereof.

“Site Lease” means that certain Site Lease, dated as of even date herewith, by and between the City and the Authority, under which the City leases the Leased Property to the Authority, as

originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Substitution” means the release of all or a portion of the Leased Property from the leasehold hereof, and the lease of substituted real property and improvements hereunder as provided in Section 3.06 hereof.

“Tax Certificate” means the Tax Certificate, dated the Closing Date, executed and delivered by the Authority and the City in connection with the original execution and delivery of the Commercial Paper Notes.

“Tax-Exempt Commercial Paper Notes” means Commercial Paper Notes which bear interest that is excluded from gross income for federal income tax purposes pursuant to the Code.

“Trustee” means U.S. Bank National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, the trustee acting in its capacity as such under the Indenture, or any successor as therein provided.

Section 1.02 Construction. The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders. All references herein to “Sections” and other subdivisions hereof are to the corresponding Sections or subdivisions of this Lease; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Section or subdivision hereof.

Section 1.03 Actions by Authority and City. Except as otherwise expressly provided herein, for all purposes of this Lease and Site Lease, the Authorized Representative of the Authority shall be authorized to act upon behalf of the Authority, and the Authorized Representative of the City shall be authorized to act upon behalf of the City.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01 Representations, Covenants and Warranties of the City. The City makes the following representations, covenants and warranties to the Authority as of the date of the execution and delivery of this Lease:

(a) The City is a municipal corporation and chartered city duly organized and validly existing under the laws of the State of California.

(b) The City’s Charter and other applicable laws of the State of California authorize the City to enter into this Lease and the Site Lease and to enter into the transactions contemplated by and to carry out its obligations under each of the aforesaid agreements, and by proper action the City has duly authorized and executed each of the aforesaid agreements in accordance with the City’s Charter and other applicable laws of the State of California.

(c) The representatives of the City executing this Lease and the Site Lease have been fully authorized to execute the same pursuant to a resolution duly adopted by the City Council of the City.

(d) This Lease and the Site Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

(e) The execution and delivery of this Lease and the Site Lease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease and the Site Lease, or the financial condition, assets, properties or operations of the City.

(f) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease and the Site Lease, or the consummation of any transactions herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(g) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, or the Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, or the Indenture, or the financial conditions, assets, properties or operations of the City.

(h) The lease and use of the Leased Property by the City are essential to the purposes of the City.



Section 2.02 Representations, Covenants and Warranties of the Authority. The Authority makes the following representations, covenants and warranties to the City as the basis for its undertakings herein contained:

(a) The Authority is a joint exercise of powers authority duly organized, existing and in good standing under and by virtue of the laws of the State of California; has power to enter into this Lease, the Site Lease and the Indenture; is possessed of full power to own and hold real and personal property and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.

(b) The Authority will not pledge the Base Rental Payments or other amounts derived from the Leased Property and from its other rights under this Lease, and will not encumber the Leased Property, except as provided under the terms of this Lease and the Indenture.

(c) The representatives of the Authority executing this Lease, the Site Lease and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.

(d) This Lease, the Site Lease and the Indenture have been authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(e) The execution and delivery of this Lease, the Site Lease and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contractor other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease and the Indenture or the financial condition, assets, properties or operations of the Authority.

(f) No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease and the Indenture or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(g) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its

interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease and the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease and the Indenture or the financial conditions, assets, properties or operations of the Authority.

(h) Except as provided in this Lease and in the Indenture, the Authority will not assign the Site Lease or this Lease, its right to receive Base Rental Payments from the City, or its duties and obligations under the Site Lease or this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in herein and therein.

### ARTICLE III

#### THE LEASED PROPERTY

Section 3.01 Lease of the Leased Property; Title to Leased Property. (a) The Authority hereby subleases to the City, and the City hereby subleases back from the Authority, the Leased Property, all on the conditions and terms hereinafter set forth. The City hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Leased Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the Authority to carry out its agreements and covenants contained herein and in the Indenture, and the City hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Leased Property.

(b) During the term of this Lease, title to all moveable property (i) that is located on, in or about the Leased Property on the Closing Date, or (ii) that is placed on, in or about Leased Property by the City at any time thereafter during the term of this Lease, shall remain the property of the City (or property of the City's tenant, as provided in the lease between the City and such tenant).

(c) During the term of this Lease, the Authority shall hold leasehold title to the Leased Property and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, except for any items added to the Leased Property by the City pursuant to Section 3.05 hereof.

(d) If both the Trustee's and the City's estate under this or any other lease relating to the Leased Property or any portion thereof shall at any time for any reason become vested in one owner, this Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City and the Trustee so elect as evidenced by recording a written declaration so stating; and unless and until the City and the Trustee so elect, the Authority shall continue to have and hold a leasehold estate in the Leased Property pursuant to the Site Lease throughout the term thereof and the term of this Lease, and this Lease shall be deemed and constitute a sublease of the Leased Property. The City hereby covenants not to permit or consent to any such merger as long as any Commercial Paper Notes are Outstanding.

Section 3.02 Quiet Enjoyment. The parties hereto mutually covenant that the City, so long as it observes and performs the agreements, conditions, covenants and terms required to be observed or performed by it contained herein and is not in default hereunder, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Authority.

Section 3.03 Right of Entry and Inspection. The Authority shall have the right to enter the Leased Property and inspect the Leased Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the Authority's rights or obligations hereunder and for all other lawful purposes.

Section 3.04 Prohibition Against Encumbrance; Permitted Assignments. (a) The City and the Authority will not create, or suffer to be created, any mortgage, pledge, lien, charge or other encumbrance upon the Leased Property, except Permitted Encumbrances. The City and the Authority will not sell or otherwise dispose of the Leased Property or any property essential to the proper operation of the Leased Property, except as otherwise provided herein.

(b) Notwithstanding anything to the contrary herein contained, but subject to the rights of the City pursuant to Section 3.04(a), the City may assign, transfer or sublease any and all of the Leased Property or its other rights hereunder, provided that: (i) the rights of any assignee, transferee or sublessee shall be subordinate to all rights of the Authority and Trustee hereunder; (ii) no such assignment, transfer or sublease shall relieve the City of any of its obligations hereunder; (iii) the assignment, transfer or sublease shall not result in a breach of any covenant of the City contained in any other Section hereof; (iv) any such assignment, transfer or sublease shall by its terms expressly provide that the fair rental value of the Leased Property for all purposes shall be first allocated to this Lease, as the same may be amended from time to time before or after any such assignment, transfer or sublease; and (v) no such assignment, transfer or sublease shall confer upon the parties thereto (other than the City) any remedy which allows reentry upon the Leased Property and such right of reentry shall be subordinated to Article X hereof.

Section 3.05 Additions and Improvements to Leased Property; Mechanics Liens. (a) The City shall have the right during the term of this Lease to make any additions or improvements to the Leased Property, to attach fixtures, structures or signs, and to affix any personal property to the Leased Property, so long as the fair rental value of the Leased Property is not thereby reduced. Title to all fixtures, equipment or personal property, which is placed by the City in or on the Leased Property, shall remain in the City to the extent that such items may be removed from the Leased Property without damage thereto. Title to any personal property, improvements or fixtures placed in or on any portion of the Leased Property by any sublessee or licensee of the City shall be controlled by the sublease or license agreement between such sublessee or licensee and the City, which sublease or license agreement shall not be inconsistent with this Lease.

In the event the City shall at any time during the term hereof cause any improvements to the Leased Property to be constructed or materials to be supplied in or upon or attached to the Leased Property, the City shall pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon, about or relating to the

Leased Property and shall keep the Leased Property free of any and all liens against the Leased Property or the Authority's interest therein, except for Permitted Encumbrances. In the event any such lien attaches to or is filed against the Leased Property or the Authority's interest therein, and the enforcement thereof is not stayed or if so stayed such stay thereafter expires, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City shall forthwith pay and discharge or cause to be paid and discharged such judgment.

Section 3.06      Substitution, Removal or Addition of Leased Property.

(a)      The City and the Authority may amend this Lease and Site Lease to: (i) substitute real property and/or improvements (the "Substituted Property") for all or a portion of the existing Leased Property; (ii) remove all or a portion of real property (including undivided interests therein) or improvements ("Removal") from the definition of Leased Property; or (iii) to add real property and/or improvements (the "Added Property") to the Leased Property, upon compliance with all of the applicable conditions set forth in subsection (b). After a Substitution or Removal, the part of the Leased Property for which the Substitution or Removal has been effected shall be released from the leasehold hereunder and under the Site Lease.

(b)      No Substitution, Addition or Removal shall take place hereunder and under the Site Lease until the City delivers to the Authority and the Trustee each of the following:

(1)      executed counterparts (in proper recordable form) of amendments to the Site Lease and this Lease, containing: (A) in the event of a Removal, a legal description of all or part of the Leased Property to be released; (B) in the event of a Substitution, a legal description of the Substituted Property to be substituted in its place; and (C) in the case of an Addition, a legal description of the Added Property.

(2)      a certificate of the City evidencing that the annual fair rental value (which may be based on, but not limited to, the construction or acquisition cost or replacement cost of such Substitution or Addition to the City) of the property that will constitute the Leased Property after such Addition, Substitution or Removal will be at least equal to the Maximum Base Rental in the then current or any subsequent Base Rental Period during term of this Lease. At the sole discretion of the City, in the alternative, in the event of a Substitution only, the certificate of the City may evidence that the annual fair rental value of the new property is at least equal to that of the Substituted Property.

(3)      an Opinion of Counsel to the effect that (A) the amendments hereto and to the Site Lease in connection with such Substitution, Addition or Removal of property have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the Authority enforceable in accordance with their terms, and (B) the Substitution, Addition or Removal is authorized or permitted under this Lease.

(4)      with respect to an Addition or Substitution of property, a leasehold owner's title insurance policy or policies or a commitment for such policy or policies or an amendment or

endorsement to an existing title insurance policy or policies, resulting in title insurance with respect to the Leased Property after such Addition or Substitution in an amount at least equal to the maximum amount of Commercial Paper Notes authorized to be Outstanding; each such insurance instrument, when issued, shall name the Authority and Trustee as the insured, and shall insure the leasehold estate of the Authority and the Trustee, as assignee of the Authority, in such real property subject only to Permitted Encumbrances.

(5) in the event of a Substitution or Addition, an opinion of the City Attorney of the City to the effect that the exceptions, if any, contained in the title insurance policy referred to in (iv) above (A) constitute Permitted Encumbrances and (B) do not substantially interfere with the use and occupancy of the Substituted Property or Added Property described in such policy by the City for the purposes of leasing or using the Substituted Property or Added Property.

(6) an Opinion of Bond Counsel that the Substitution, Addition and/or Removal will not, in and of itself, cause the interest on any Tax-Exempt Commercial Paper Notes to be includable in gross income of the Owners thereof for federal income tax purposes.

(7) a Certificate of the City stating that the City has complied with the covenants contained in clauses (1) and (2) of Section 7.03(a) hereof with respect to the Substituted or Added Property.

(8) in the event the Added Property is under construction at the time such property is added to this Lease, the following additional conditions shall be satisfied: (A) interest on the Commercial Paper Notes issued to finance such property may be capitalized for a period of at least six months past the estimated completion date of the property; and (B) the City shall have entered into a construction contract for the Added Property.

(9) in the event of a Substitution or Addition, a certified copy of a resolution duly adopted by the City Council of the City authorizing the amendments hereto and to the Site Lease in connection with such Substitution or Addition.

## ARTICLE IV

### TERM OF THE LEASE

#### Section 4.01 Commencement of the Lease; Term of Lease.

(a) The term of this Lease shall commence on the Closing Date, and shall end on the Expiry Date, unless such term is extended or is sooner terminated as hereinafter provided. If on the Expiry Date, the stated rental payable hereunder shall not be fully paid and all Commercial Paper Notes shall not be fully paid at final maturity or defeased as provided under Article IX of the Indenture, or if the rental payable hereunder shall have been abated at any time or for any reason, then the term of this Lease shall be extended until the first Business Day following the day the rental payable hereunder shall be fully paid and all Commercial Paper Notes shall be fully paid at final maturity or defeased as provided under Article IX of the Indenture; provided, however, that the term of this Lease shall be extended until all Commercial Paper Notes have been fully paid at final maturity or defeased as provided under Article IX of the Indenture, except the term of this Lease shall in no event be extended beyond 10 years after the then existing Expiry Date.

If prior to the Expiry Date, the rental payable hereunder shall be fully paid and all Commercial Paper Notes shall have been fully paid at final maturity or defeased in accordance with Article IX of the Indenture, and the City shall have provided written notice thereof to the Trustee, the Issuing and Paying Agent, and the Authority, the term of this Lease shall end immediately. Notwithstanding anything to the contrary contained herein, if there shall remain outstanding any obligations payable to a Credit Facility Provider under a Credit Facility Agreement, the term of this Lease shall be extended until such date as all such obligations payable to such Credit Facility Provider have been satisfied, provided the term of this Lease shall in no event be extended later than 10 years after the then existing Expiry Date. During such extension of the term of this Lease, the City shall pay Base Rental Payments in amount sufficient to satisfy such obligations to such Credit Facility Provider in full; provided, however, that the Base Rental Payments during any Base Rental Period shall not exceed the fair rental value of the Leased Property during such Base Rental Period.

(b) The City shall take possession of the Leased Property on the Closing Date, and the obligation of the City to pay Base Rental Payments and Additional Rental shall commence on the Closing Date, subject to the limitations set forth in Section 6.01 hereof.

## ARTICLE V

### USE OF PROCEEDS; TAX COVENANTS

Section 5.01 Use of Proceeds of the Commercial Paper Notes. The parties hereto agree that the proceeds of the Commercial Paper Notes will be used to pay for the Projects and costs of issuance of the Commercial Paper Notes.

Section 5.02 Tax Covenants for the Tax-Exempt Commercial Paper Notes. (a) The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Commercial Paper Notes in such manner and to such extent as may be necessary so that

(1) the Tax-Exempt Commercial Paper Notes will not (A) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Code, or (B) be treated other than as obligations to which Section 103 of the Code applies, and (ii) the interest thereon will not be treated as a preference item for purposes of the federal alternative minimum tax.

(b) The City further covenants (i) that it will take or cause to be taken such actions that may be required of it for the interest on the Tax-Exempt Commercial Paper Notes to be and remain excluded from gross income for federal income tax purposes, (ii) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (iii) that it, or persons acting for it, will, among other acts of compliance, (A) apply the proceeds of the Tax-Exempt Commercial Paper Notes to governmental purposes, (B) restrict the yield on investment property, (C) make timely and adequate payments to the federal government as required under the Tax Certificate, (D) maintain books and records and make calculations and reports, and (E) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

(c) The Authorized Representative of the City is hereby authorized: (i) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Tax-Exempt Commercial Paper Notes as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(B) and (C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Tax-Exempt Commercial Paper Notes or interest thereon or assisting compliance with requirements for the purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties or making payments of special amounts in lieu of making computations determined by that officer, which action shall be in writing and signed by the Authorized Representative, (ii) to take any and all other actions, make or obtain calculations, make payments and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Tax-Exempt Commercial Paper Notes, and (iii) to set forth in the Tax Certificate and/or in one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Tax-Exempt Commercial Paper Notes, the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-Exempt Commercial Paper Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest represented by the Tax-Exempt Commercial Paper Notes.

(d) The City may create, or may direct the Trustee to create, such accounts or sub-accounts in any fund or account held under the Indenture as it shall deem necessary or advisable in order to comply with the foregoing covenants and Tax Certificate.

## ARTICLE VI

### RENTAL PAYMENTS

Section 6.01 Rental Payments. The City agrees, subject to the terms hereof, to pay to the Trustee, as assignee of the Authority pursuant to the Indenture, without deduction or offset

of any kind, as rental for the use and occupancy of the Leased Property, the following amounts at the following times:

(a) The City shall pay, from any and all legally available funds, to the Trustee, as assignee of the Authority, Base Rental Payments in an amount up to the Maximum Base Rental and Additional Rental with respect to the use and occupancy of the Leased Property, on the terms, in the amounts, at the times and in the manner hereinafter set forth. The obligation of the City to pay Base Rental Payments and Additional Rental shall commence on the Closing Date. The City shall be obligated to set-aside the Minimum Required Rental Payment and any Minimum Supplemental Rental Payment in advance of payment of Base Rental Payments and to pay Additional Rental, each on the terms, in the amounts, at the times, and in the manner hereinafter set forth. The Maximum Base Rental with respect to the Leased Property for each Base Rental Period shall be the amount set forth in Exhibit B.

(b) (i) On or prior to the commencement of each Base Rental Period, the Authority shall provide to the City, the Trustee and the Issuing and Paying Agent a Debt Service Certificate – Annual substantially in the form of Exhibit C-1 hereto. The City shall encumber funds in its General Fund in the amount set forth on the Debt Service Certificate - Annual for the next succeeding Base Rental Period as the Minimum Required Rental Payment.

(ii) Prior to the issuance of a series of Commercial Paper Notes for a purpose other than refinancing, renewing, or refunding Commercial Paper Notes and if the issuance of such Commercial Paper Notes was not taken into account in completing the Debt Service Certificate - Annual for the current Base Rental Period, the Authority shall provide to the City, the Trustee and the Issuing and Paying Agent a Debt Service Certificate – Additional Commercial Paper Notes substantially in the form of Exhibit C-2 hereto. The City shall encumber funds in its General Fund in the amount set forth in the Debt Service Certificate – Additional Commercial Paper Notes as a Minimum Supplemental Rental Payment for the balance of the current Base Rental Period.

(iii) At any time during a Base Rental Period in which the aggregate amount on deposit in the Revenue Account, Notes Payment Account or the Reimbursement Account shall not be sufficient to pay all principal and interest projected to be due and payable on the Commercial Paper Notes and Bank Notes during such Base Rental Period, the Authority shall provide to the City, the Trustee and the Issuing and Paying Agent a Debt Service Certificate – Additional Interest/Principal substantially in the form of Exhibit C-3 hereto. The City shall encumber funds in its General Fund in the amount set forth on the Debt Service Certificate – Additional Interest/Principal as a Minimum Supplemental Rental Payment for the balance of the current Base Rental Period.

(iv) The City shall pay, from any and all legally available funds, subject to the abatement of Base Rental Payments pursuant to Section 6.04 hereof, to the Issuing and Paying Agent on behalf of the Trustee, as assignee of the Authority, on or before each Base Rental Payment Date, for deposit in the Revenue Account, a Base Rental Payment with respect to the Leased Property equal to the sum of the following to the extent due on such Base Rental Payment Date: (A) for each maturity date of any Commercial Paper Notes, except to the extent that payment is made of principal and/or interest of Commercial Paper Notes from proceeds of the sale of Commercial Paper Notes or the proceeds of a Draw under the related Credit Facility, the aggregate amount of principal and interest of such Commercial Paper Notes due and payable on such



maturity date, subject to Section 6.01(f) hereof; (B) for each maturity date of any Commercial Paper Notes, the aggregate amount of principal and/or interest of such Commercial Paper Notes due and payable on such maturity date to the extent that payment of such principal and/or interest is not made from proceeds of the sale of Commercial Paper Notes but from the proceeds of a Draw under the related Credit Facility, subject to Section 6.01(f) hereof; (C) for each date any payment is due under a Bank Note, the amount that, together with the amounts described in clause (B) above, equals the amount of the interest and principal then due and payable with respect to such Bank Note, subject to Section 6.01(f) hereof; and (D) for each maturity date of any Commercial Paper Notes, upon the failure of the related Credit Facility Provider to honor a properly presented and conforming drawing under the related Credit Facility, if the amounts on deposit in the applicable subaccount of the Credit Facility Proceeds Subaccount and the applicable subaccount of the Reimbursement Account are not sufficient to pay the principal and interest on the Commercial Paper Notes supported by such Credit Facility, the amount of such insufficiency. Under no circumstances shall the City be required to pay during any Base Rental Period amounts exclusive of Additional Rental in excess of aggregate Maximum Base Rental for such Base Rental Period.

(c) The City shall also pay Additional Rental, as rental hereunder in addition to the Base Rental Payments, to the Authority, the Trustee, or the Issuing and Paying Agent, as hereinafter provided, such amounts, if any, in each year as shall be required for the payment of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement of the Site Lease or this Lease or the assignment hereof pursuant to the Indenture or the respective interests in the Leased Property and the lease of the Leased Property by the Authority to the City hereunder, including but not limited to all fees, costs and expenses and all administrative costs of the Authority relating to the Leased Property including, without limiting the generality of the foregoing, salaries and wages of employees, overhead, insurance premiums, taxes and assessments (if any), expenses, compensation and indemnification of the Trustee and Issuing and Paying Agent (to the extent not paid or otherwise provided for out of the proceeds of the sale of the Commercial Paper Notes), fees of auditors, accountants, attorneys or engineers, insurance premiums, rebate amounts payable to the United States pursuant to the Tax Certificate, fees, costs and expenses payable to the Credit Facility Providers under the Credit Facility Agreements, any other fees, costs or expenses incurred by Authority, the Trustee and the Issuing and Paying Agent in connection with the execution, performance or enforcement of this Lease or any assignment hereof or of the Indenture or any of the transactions contemplated hereby or thereby or related to the Property; and all other reasonable and necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of the Commercial Paper Notes or the Indenture, or otherwise incurred in connection with the administration hereof or thereof.

(1) The foregoing Additional Rental, if any, shall be billed to the City by the Authority, the Trustee, the Issuing and Paying Agent, or any Credit Facility Provider from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Authority, the Trustee or the Trustee on behalf of the Authority, for one or more of the items above described, or that such amount is then so payable for such items. Amounts so billed shall be paid by the City not later than the latest time as such amounts may be paid without penalty or, if no penalty is associated with a late payment of such amounts, within 30 days after receipt of a bill by the City for such amounts.

(2) The Authority may issue bonds and notes and may enter into leases to finance facilities other than the Leased Property. The administrative costs of the Authority shall be allocated among said facilities and the Leased Property, as hereinafter in this paragraph provided. Any taxes levied against the Authority with respect to the Leased Property, the fees of the Trustee, and any other expenses directly attributable to the Leased Property shall be included in the Additional Rental payable hereunder. Any taxes levied against the Authority with respect to real property other than the Leased Property, the fees of any trustee or paying agent under any resolution securing other bonds or notes of the Authority or any trust agreement or indenture other than the Indenture, and any other expenses directly attributable to any facilities other than the Leased Property, shall not be included in the administrative costs of the Leased Property and shall not be paid from the Additional Rental payable hereunder. Any expenses of the Authority not directly attributable to any particular project of the Authority shall be equitably allocated among all such projects, including the Leased Property, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the Authority to consider the question and render an opinion thereon, shall be final and conclusive determination as to such allocation. The Trustee may conclusively rely upon a certificate of the Authority in making any determination that costs are payable as Additional Rental hereunder, and shall not be required to make any investigation as to whether or not the items so requested to be paid are expenses of operation of the Leased Property.

(d) Payments of Base Rental Payments and Additional Rental for each Base Rental Period or portion thereof during the term of this Lease shall constitute the total rental for such Base Rental Period or portion thereof and shall be paid or payable by the City from funds of the City lawfully available therefor for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of, the Leased Property by the City for and during such Base Rental Period or portion thereof. The City has determined and certified to the Trustee and the Authority on the Closing Date that the total rental in any Base Rental Period is not in excess of the total fair rental value of the Leased Property for such Base Rental Period. In making such determination, the City has considered, among other factors: (i) the uses and purposes served by the Leased Property and the benefits therefrom that will accrue to the City by reason of this Lease and to the general public by reason of the City's use and occupancy of the Leased Property, including the general public's use of portions of the Leased Property; (ii) the replacement costs of the existing improvements on the Leased Property; (iii) appraisals; and (iv) upon payment of all rental due hereunder and the termination of this Lease and the Site Lease, the transfer by the Authority to the City, pursuant to of the Site Lease and without any additional payment or consideration by the City, of all of the Authority's right, title and interest with respect to the Leased Property.

(e) Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Trustee at the designated corporate trust office of the Trustee, or such other place as the Trustee shall designate in writing to the City. Any such installment of rental accruing hereunder which shall not be paid when due shall remain due and payable until received by the Trustee.

(f) Notwithstanding any dispute between the City and the Authority, the City shall make all rental payments when due, without deduction or offset of any kind, and shall not withhold

any rental payments pending the final resolution of any such dispute. The obligation of the City to pay Base Rental Payments is an absolute and unconditional obligation, subject to the abatement of Base Rental Payments pursuant to Section 6.04 hereof. In the event of a determination that the City was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall, at the option of the City, be credited against subsequent rental payments due hereunder or be refunded at the time of such determination.

(g) Base Rental Payments shall be reduced to the extent of amounts on deposit in the Revenue Account held under the Indenture and the Issuing and Paying Agency Agreement, including the proceeds of any obligations issued to pay the principal and interest on any Commercial Paper Notes at final maturity deposited in the Revenue Account; provided, however, that Authority may direct the Issuing and Paying Agent to maintain amounts in the Revenue Account following all required transfers under the Indenture to be used for payment of principal and interest on Commercial Paper Notes on future maturity dates, and in such instance, such additional amount shall not be included as amounts on deposit in the Revenue Fund.

(h) Nothing contained in this Lease shall prevent the City from making, from time to time, contributions or advances to the Authority for any purpose now or hereafter authorized by law, including the making of repairs to, or the restoration of, the Leased Property in the event of damage to or the destruction of the Leased Property.

(i) This Lease may not be amended in a manner such that the sum of Base Rental Payments and Additional Rental (including Base Rental Payments and Additional Rental payable pursuant to such amendment), in any Base Rental Period is in excess of the annual fair rental value of the Leased Property for such Base Rental Period. Notwithstanding the City may cease to use any portion of the Leased Property, the City shall remain obligated to pay Base Rental Payments and Additional Rental in consideration of the availability of the Leased Property for the use and occupancy of the City, as provided in this Section 6.01.

Section 6.02 Annual Budgets. The City covenants to take such action as may be necessary to include all Minimum Required Rental Payments, Minimum Supplemental Rental Payments and Additional Rental due under this Lease in its operating budget for each fiscal year (an "Operating Budget") and to make all necessary appropriations for such Minimum Required Rental Payments, Minimum Supplemental Rental Payments and Additional Rental. In addition, to the extent permitted by law, the City covenants to take such action as may be necessary to amend or supplement the budget appropriations for payments under this Lease at any time and from time to time during any fiscal year in the event that the actual Minimum Required Rental Payments, Minimum Supplemental Rental Payments, and Additional Rental paid in any fiscal year exceeds the pro rata portion of the appropriations then contained in the City's budget.

These covenants on the part of the City to include all Minimum Required Rental Payments, Minimum Supplemental Rental Payments and Additional Rental due under this Lease in the Operating Budget and to make the necessary appropriations therefor are deemed to be, and shall be construed to be, ministerial duties imposed by law and by the City's Charter, and it shall be the duty of applicable officials of the City to take such action and do such things as are required by law and by the City's Charter in the performance of the official duty of such officials to enable the

City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

Section 6.03      Application of Rental Payments. All rental payments received shall be applied first, to the Base Rental Payments due hereunder; and thereafter to all Additional Rental due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

Section 6.04      Rental Abatement.

(a) Except to the extent of (i) available amounts held by the Issuing and Paying Agent in the Revenue Account, Notes Payment Account or Reimbursement Account, (ii) amounts received in respect of use and occupancy insurance, and (iii) amounts, if any, otherwise legally available to the Trustee and Issuing and Paying Agent for payments in respect of the Commercial Paper Notes, during any period in which, by reason of material damage, destruction, title defect or condemnation, there is substantial interference with the use and occupancy by the City of any portion of the Leased Property, Base Rental Payments due hereunder with respect to the Leased Property shall be abated to the extent that the annual fair rental value of the portion of the Leased Property in respect of which there is no substantial interference is less than the annual Base Rental Payments and Additional Rental, in which case Base Rental Payments and Additional Rental shall be abated only by an amount equal to the difference. In the case of abatement relating to the Leased Property, the amount of annual rental abatement shall be such that the resulting Base Rental Payments and Additional Rental in any Base Rental Period during which such interference continues, excluding any amounts described in clauses (i), (ii), (iii) above, do not exceed the annual fair rental value for each Base Rental Period of the portions of the Leased Property with respect to which there has not been substantial interference, as evidenced by a certificate of an Authorized Representative of the City. Such abatement shall continue for the period commencing with the date of such damage, destruction, title defect or condemnation and ending with the restoration of the Leased Property or portion thereof to tenantable condition or correction of title defect or substantial completion of the work of repair or replacement of the portions of the Leased Property so damaged, destroyed, defective or condemned.

In the event the City shall assign, transfer or sublease any or all of the Leased Property or other rights hereunder, as permitted by Section 3.04(b) hereof, for purposes of determining the annual fair rental value available to pay Base Rental Payments and Additional Rental, annual fair rental value of the Leased Property shall first be allocated to this Lease as provided in clause (iv) of Section 3.04(b) hereof.

(b) Any abatement of rental payments pursuant to this Section shall not be considered an Event of Default as defined in Article X hereof, but shall result in the extension of the Expiry Date by a period equal to the period of abatement for which Base Rental Payments have not been paid in full (but in no event later than 10 years after the then existing Expiry Date), and Base Rental Payments for such extension period shall be equal to the unpaid Base Rental Payments during the period of abatement but without interest thereon. The City waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Lease by virtue of any such interference and this Lease shall continue in full force and effect.

(c) The City may, but is not obligated, to substitute Leased Property for all or a portion of the Leased Property pursuant to Section 3.06 hereof during any period of abatement.

Section 6.05 Obligation to Make Rental Payments. The agreements and covenants on the part of the City contained herein shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the agreements and covenants contained herein agreed to be carried out and performed by the City.

THE OBLIGATION OF THE CITY OF SAN DIEGO TO MAKE BASE RENTAL PAYMENTS DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE COMMERCIAL PAPER NOTES NOR THE OBLIGATION TO MAKE BASE RENTAL PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

## ARTICLE VII

### MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 7.01 Maintenance of the Leased Property by the City. The City agrees that, at all times during the term hereof, it will maintain, preserve and keep, at its own cost and expense, or cause to be maintained, preserved and kept, the Leased Property and every portion thereof, which is owned by the City, in good repair, working order and condition and that it will from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals. The Authority shall have no responsibility in any of these matters or for the making of additions or improvements to the Leased Property.

Section 7.02 Taxes, Other Governmental Charges and Utility Charges. The parties hereto contemplate that the Leased Property will be used for public purposes by the City and, therefore, that every portion of the Leased Property, which is owned by the City, will be exempt from all taxes presently assessed and levied with respect to real and personal property, respectively. In the event that the use, possession or acquisition by the City or the Authority of the Leased Property is found to be subject to taxation in any form, the City will pay, or cause to be paid, during the term hereof, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property and any other property acquired by the City in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Leased Property, as well as all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Property; provided, however, that with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are accrued during such time as this Lease is in effect.

Section 7.03      Insurance.

(a) The City shall procure (or cause to be procured) and maintain (or cause to be maintained) throughout the term hereof for every portion of the Leased Property (but excluding all portions of the Leased Property where the City owns only the underlying land and not the improvements thereon), which is owned by the City, insurance against the following risks in the following respective amounts:

(1) Insurance against loss or damage to the Leased Property (but excluding all portions of the Leased Property where the City owns only the underlying land and not the improvements thereon) caused by fire and lightning but exclusive of earthquake, with an extended coverage endorsement covering the risk of vandalism and malicious mischief, sprinkler system leakage and boiler loss. The insurance described in this paragraph (1) shall be in an amount equal to the lesser of (A) replacement cost (without deduction for depreciation) of improvements located or to be located on the Leased Property; or (B) the Maximum Principal Amount, plus the amount of use and occupancy coverage described in paragraph (2) below, except that such insurance may be subject to deductible clauses of not to exceed the first one hundred thousand dollars (\$100,000) of the amount of any one loss. Insurance described in this paragraph (1) and in paragraph (2) below may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property insured by the City; provided that the amount of coverage available thereunder shall be at least equal to the cumulative replacement values of the Leased Property and any other such property which is the subject of a lease, installment purchase or other financing arrangement (“Financed Property”) for which bonds or notes, certificates of participation or other obligations shall have been issued (“Obligations”) plus the amount of use and occupancy coverage required by paragraph (2) below; in the event the City elects to obtain insurance for the Leased Property and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Property or to retire Commercial Paper Notes.

(2) Use and occupancy insurance against loss, total or partial, of the use and occupancy of the Leased Property (but excluding all portions of the Leased Property where the City owns only the underlying land and not the improvements thereon) as a result of any of the hazards covered by the insurance required by paragraph (1) hereof, in an amount equal to Maximum Base Rental attributable to the Leased Property for a twenty-four month period; provided, that such insurance may be part of a policy permitted under paragraph (1) above, except that such use and occupancy insurance shall not be provided through a self-insurance method or plan of protection; provided further, the City may obtain use and occupancy insurance covering the Leased Property as well as other parcels of property owned by the City, provided that the cumulative amount thereof is at least equal to the cumulative amount of use and occupancy insurance required by this paragraph (2) with respect to the Leased Property and any agreements relating to Financed Property in respect of which Obligations are outstanding; in the event the City elects to obtain insurance for the Leased Property and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Property or to retire Commercial Paper Notes. Any proceeds of such insurance shall be payable to and used by the Trustee as provided in the Indenture

to pay principal of and interest on maturing Commercial Paper Notes for a period of time during which the payment of rental under this Lease is abated. Such insurance may be subject to a deductible clause of not to exceed fifty thousand dollars (\$50,000) required by this Paragraph (2).

Any insurance under (a) may be part of a joint-purchase insurance program and the provider of such insurance shall be rated at least "A-" by A.M. Best & Company.

(b) The City shall adjust all moneys which may become due and payable under any policies contemplated by paragraphs (a)(1) and (2) above, may compromise any and all claims thereunder and shall cause the deposit of the Net Proceeds with the Trustee for application as provided herein or in the Indenture. The Trustee shall not be responsible for the sufficiency of any insurance herein required. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City.

(c) Any insurance policy issued pursuant to paragraph (a)(1) above shall be so written or endorsed as to make losses, if any, payable to the City, the Authority and the Trustee as their respective interests may appear and the Net Proceeds of the insurance required by paragraph (a)(1) above shall be applied as provided in Section 7.07 hereof. The Net Proceeds, if any, of the insurance policy described in paragraph (a)(1) above shall, to the extent that such proceeds are paid on account of loss or damage to the Leased Property, be payable to the Trustee and deposited and applied as described in the Indenture. The Net Proceeds, if any, of the insurance policy described in paragraph (a)(2) above shall, to the extent that such proceeds relate to the use and occupancy of the Leased Property, be payable to the Issuing and Paying Agent and deposited in the Revenue Account. Each insurance policy provided for in this Lease shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Authority and the Trustee without first giving written notice thereof to the Authority and the Trustee at least 60 days in advance of such intended cancellation or modification. If the insurance carrier cannot include this notice provision, the policy shall require the insurance company to so notify the Authority and the Trustee.

(d) By the date each year that is 30 days after the effective date of the insurance policies, the City's Insurance Consultant shall certify to the City that the type of insurance required by this Section 7.03 is in place, subject to subsequent confirmation of the certificates and endorsements. The City shall file a certificate with the Trustee not later than nine months following the effective date of the insurance policies each year, commencing on December 31, 2019 for the insurance policies with an effective date of March 31, 2019, certifying that the insurance required by this Section is in full force and effect and that the Trustee and the Authority are named as loss payees on each insurance policy which this Lease requires to be so endorsed.

(e) As an alternative to providing the insurance required by (a)(1) of this Section, or any portion thereof, through a commercial insurance policy, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the City. Before such self-insurance method or plan may be provided by the City, and annually thereafter on or before April 1 of each year so long

as such method or plan is being provided to satisfy the requirements of this Section 7.03(a)(1), the City shall file with the Trustee:

(1) a Written Certificate of the City describing such self-insurance method or plan;

(2) a Written Certificate of an Insurance Consultant stating that, in the opinion of the signer, such self-insurance method or plan is in accordance with the requirements of this Section and, when effective, will afford reasonable coverage for the risks required to be insured against in (a)(1) of this Section; and

(3) a Written Certificate of City stating that, during the time such method or plan is in effect and all of the risks described in (a)(1) of this Section are not covered by policies of insurance, the policies of use and occupancy insurance required by (a)(2) of this Section will remain in effect.

In the event of loss covered by any such self-insurance method or plan, the liability of the City with respect to the damaged portion of the Leased Property shall be limited to the amounts in the self-insurance reserve fund or funds created under such method or plan.

Section 7.04 Advances. In the event the City shall fail to maintain the full insurance coverage required by Section 7.03 hereof or shall fail to keep the Leased Property in good repair and operating condition, the Authority may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Authority shall become Additional Rental, which amounts the City agrees to pay within 30 days of a written request therefor, together with interest thereon at the maximum rate allowed by law.

Section 7.05 Title Insurance. The City covenants and agrees to deliver or cause to be delivered to the Trustee on the Closing Date a CLTA leasehold policy or policies, or a commitment for such policy or policies, with respect to the Leased Property with liability in the aggregate amount equal to the Maximum Principal Amount. Such policy or policies, when issued, shall name the Trustee as the insured and shall insure the leasehold estate of the Authority under the Site Lease in the Leased Property, subject only to Permitted Encumbrances.

Section 7.06 Leases of City. In the event all or any portion of the Leased Property is leased or subleased by the City after the initial recordation of the Lease, the City may require the lessee or sublessee to satisfy the requirements of Sections 7.01, 7.02 and 7.03 (exclusive of Subsections (a)(2) and (e)).

Section 7.07 Damage, Destruction, Title Defect and Condemnation of the Leased Property.

(a) If prior to the termination of the Term hereof, (i) the Leased Property or any improvements in or on the Leased Property are damaged (each of which is hereinafter called "Damaged Improvements") by a peril covered by a policy of insurance described in Section 7.03(a)(1) hereof (an "Insured Peril"); or (ii) title to, or the temporary use of, the Leased



Property or any portion thereof or the estate of the City or the Authority in the Leased Property or any portion thereof is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, then the City and the Authority will cause the Net Proceeds of any insurance claim (other than use and occupancy insurance pursuant to Section 7.03(a)(2) hereof which shall be directly transferred to the Issuing and Paying Agent for deposit in the Revenue Account pursuant to Section 7.03(c) hereof) or condemnation award to be transferred to the Trustee for deposit in the Insurance and Condemnation Fund to be applied as provided in Section 4.03 of the Indenture.

(1) Net Proceeds Exceeding Costs. Within 120 days of the date of said Insured Peril, the City shall obtain a written estimate(s) of the (i) cost of the repair, replacement and reconstruction of the Damaged Improvements (collectively referred to herein as the “Reconstruction”); and (ii) Net Proceeds available to pay such costs. Copies of such estimate(s) shall be made available to the Trustee at the Trustee’s request. If the 120 day period is insufficient to obtain said estimates, the period shall be reasonably extended by the Authorized Representative of the City. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property) exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced and reconstructed to the same or better quality as existed before the damage occurred. The City shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage.

(2) Costs Exceeding Net Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property), the City, in its sole discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, whether the same is greater or less than the estimated excess, and to manage the Reconstruction as set forth in Section 7.07(a)(5) hereof. The City shall exercise this election by written notice thereof delivered to the Trustee within 30 days after the City obtains said written estimate(s).

(3) No Reconstruction - Outstanding Commercial Paper Notes and Bank Notes Do Not Exceed Maximum Principal Amount. If the City does not elect to reconstruct pursuant to Section 7.07(a)(2) hereof and the aggregate principal amount of all Commercial Paper Notes and Bank Notes Outstanding collectively do not exceed the then current Maximum Principal Amount (as modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease for the Leased Property resulting from the damaged or destroyed portions of the Leased Property), such Net Proceeds shall be transferred by the Trustee to the Issuing and Paying Agent for deposit in the Revenue Account pursuant to, and applied as provided in, Section 4.03(b) of the Indenture.

(4) No Reconstruction - Outstanding Commercial Paper Notes and Bank Notes Exceed Maximum Principal Amount. If the City does not elect to reconstruct pursuant to Section 7.07(a)(2) hereof and the aggregate principal amount of all Commercial Paper Notes and Bank Notes Outstanding collectively exceed the then current Maximum Principal Amount (as modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease for the Leased Property resulting from the damaged or destroyed portions of the Leased Property), the City, in its sole discretion, may elect

to budget and appropriate an amount sufficient to pay at maturity and not reissue Commercial Paper Notes and repay or prepay Bank Notes such that immediately after such payment the aggregate principal amount of Commercial Paper Notes and Bank Notes Outstanding collectively will not exceed the modified Maximum Principal Amount (the "Excess Principal Amount") and the City shall transfer such funds to the Issuing and Paying Agent for deposit in the Revenue Account with directions to apply such funds, together with Net Proceeds transferred by the Trustee to the Issuing and Paying Agent for deposit in the Revenue Account pursuant to, and applied in accordance with, Section 4.03(b) of the Indenture, to the payment at maturity of Commercial Paper Notes and repayment or prepayment of Bank Notes; provided, that if the City elects not to appropriate the Excess Principal Amount, the City shall apply Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property) to the Reconstruction.

(5) Management of Reconstruction. If the Leased Property or any part thereof becomes Damaged Improvements, the City shall promptly cause, manage and supervise the Reconstruction. Nothing in this Section 7.07 shall be construed to preclude the City from agreeing to issue a joint contract for, or otherwise cooperating in, the Reconstruction of any of the Damaged Improvements.

(b) The proceeds of any condemnation award received by the Trustee shall be applied as provided in Section 4.03(c) of the Indenture. The proceeds of any policy of title insurance received by the Trustee in respect of the Leased Property shall be applied as provided in Section 4.03(d) of the Indenture.

## ARTICLE VIII

### DISCLAIMER OF WARRANTIES; USE OF THE LEASED PROPERTY

Section 8.01 Disclaimer of Warranties. THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Authority or its assigns be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or the City's use of the Leased Property as provided hereby.

Section 8.02 Use of the Leased Property. The City will not use, operate or maintain the Leased Property in violation of any applicable law or in a manner contrary to that contemplated hereby. The City shall provide all permits and licenses, if any, necessary for the use of the Leased Property. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each portion of the Leased Property) with all laws

of the jurisdictions in which its operations involving any portion of the Leased Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Property; provided, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the City adversely affect the leasehold estate of the Authority in and to the Leased Property or its interest or rights hereunder.

## ARTICLE IX

### ASSIGNMENT AND INDEMNIFICATION

Section 9.01 Assignment by Authority. The parties understand that certain of the rights of the Authority hereunder will be assigned to the Trustee pursuant to the Indenture and accordingly the City agrees to make all payments due hereunder to the Trustee, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the City may from time to time have against the Authority. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Authority or the Trustee to protect their interests in the Leased Property during the term hereof.

Section 9.02 Assignment by City. This Lease and the interest of the City in the Leased Property may not be assigned or encumbered by the City except as permitted by Section 3.04 hereof.

Section 9.03 Indemnification. The City shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of or as the result of entering into the Financing Documents, and the acquisition, construction, reconstruction, operation, use, condition, or possession of the Leased Property and any portion thereof, including:

(a) any accident in connection with the operation, use, condition or possession of the Leased Property and any portion thereof, resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the Authority;

(b) patent, trademark or copyright infringement as a consequence of the operation of the Leased Property and any portion thereof;

(c) strict liability in tort as a consequence of the operation of the Leased Property and any portion thereof;

(d) any environmental law or regulation as a consequence of the operation of the Leased Property;

(e) delivery, storage or release of hazardous materials at the Leased Property or any part thereof, or the contamination of property arising therefrom; and

(f) the Trustee's acceptance or administration of the trusts imposed by the Indenture, including performance of the Trustee's duties, to the extent provided herein.

## ARTICLE X

### DEFAULT

Section 10.01 Default. (a) The following events shall be "Events of Default" under this Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) the City shall fail to deposit with the Issuing and Paying Agent any Base Rental Payment required to be so deposited by the close of business on the day such deposit is required pursuant to Section 6.01(a) hereof, provided, that the failure to deposit any Base Rental Payments abated pursuant to Section 6.04 hereof shall not constitute an Event of Default;

(2) subject to the provisions of subsection (c) of this Section, the City shall fail to pay any item of Additional Rental when the same shall become due and payable pursuant to Section 6.01(c) hereof; or

(3) the City shall breach any other terms, covenants or conditions contained herein or in the Indenture, and shall (i) fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the Trustee to the City; or (ii) if the failure stated in the notice cannot be corrected within such period, the City shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion; or

(4) the City's interest herein or any part thereof be assigned, sublet or transferred without the written consent of the Trustee (except as otherwise permitted by Section 3.04(b) hereof), either voluntarily or by operation of law; or

(5) the City or any assignee shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the City shall make a general or any assignment for the benefit of its creditors; or

(6) the City shall abandon or vacate the Leased Property or any portion thereof (except as permitted by Section 3.04 hereof).

(b) Upon the happening of any Event of Default, the Trustee, as assignee of the rights of the Authority pursuant to the Indenture, in addition to all other rights and remedies it may have

at law, shall have the right, without terminating this Lease or the City's right to possession of the Leased Property, to collect each installment of rent as it becomes due and enforce any other term or provision hereof to be kept or performed by the City. The City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and to pay the rent to the end of the term of this Lease; and further agrees to pay said rent punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Trustee may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified.

(c) The Authority expressly waives the right to receive any amount from the City pursuant to Section 1951.2(a)(3) of the California Civil Code.

(d) The City and Authority and its successors and assigns shall honor the exclusive rights of the City hereunder to use the Leased Property, subject to the exercise of any and all rights to retake possession of the Leased Property upon the happening of any Event of Default pursuant to Section 10.01(b) hereof.

(e) Each and all of the remedies given to the Trustee hereunder or by any law now or hereafter enacted are cumulative, and the single or partial exercise of any right, power, or privilege hereunder shall not impair the right of the Trustee to other or further exercise thereof or the exercise of any or all other rights, powers, or privileges. If the City Charter, any statute or rule of law shall limit the remedies given to the Trustee hereunder, the Trustee nevertheless shall be entitled to whatever remedies are allowable under the City Charter, any statute or rule of law, except those specifically waived herein. All rights, remedies and powers provided by Section 10.01 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the City Charter or law, and all of the provisions of this Section 10.01 are intended to be subject to all applicable mandatory provisions of the City Charter and law which may be controlling and to be limited to the extent necessary so that they will not render this Lease or the provisions hereof invalid or unenforceable under the provisions of the City Charter and any applicable law.

(f) Notwithstanding any other provision of this Lease or the Indenture, in no event shall the Trustee have the right to accelerate the payment of any Base Rental Payment hereunder and, without limiting the generality of the foregoing, the Trustee specifically waives its rights under Section 1951.2 of the California Civil Code to accelerate payment of any Base Rental Payment in the event of default by the City.

(g) In the event the Trustee shall prevail in any action brought to enforce any of the terms and provisions of this Lease, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Trustee in attempting to enforce any of the remedies available to the Trustee hereunder.

(h) All damages and other payments received by the Trustee pursuant to this Section 10.01 shall be applied in the manner set forth in Section 6.03 of the Indenture.

Section 10.02 Waiver. Failure of the Trustee to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice that may grow up between the parties in the course of administering this instrument be construed

to waive or to lessen the right of the Trustee to insist upon performance by the City of any term, covenant, or condition hereof, or to exercise any rights given the Trustee on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rental payments hereunder shall not be, or be construed to be, a waiver of any term, covenant, or condition of this Lease.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 Notices. All notices, requests, demands and other communications under this Lease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or if mailed by first class registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to the Authority:

Public Facilities Financing Authority of the City of San Diego  
c/o City of San Diego  
City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney – Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

If to the City:

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management  
Phone: (619) 235-5840  
Fax: (619) 235-5835

If to the Trustee:

U.S. Bank National Association  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Global Corporate Trust Services  
Phone: (213) 615-6051  
Fax: (213) 615-6199

If to the Issuing and Paying Agent:

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations  
Phone: (212) 951-8508  
Fax: (212) 509-4529

If to a Credit Facility Provider:

See its address as indicated in the applicable Credit Facility Agreement.

If to the Dealers:

See their addresses as indicated in their respective Dealer Agreements.

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 11.01.

Section 11.02 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

Section 11.03 Third Party Beneficiaries. The Trustee is hereby designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to the Trustee under the Indenture and for the purpose of the Trustee enforcing its own rights.

Section 11.04 Net Lease. This Lease is a triple net lease. It is the purpose and intent of the Authority and the City that lease payments hereunder shall be absolutely net to the Authority so that this Lease shall yield to the Authority the lease payments, free of any charges, assessments or impositions of any kind charged, assessed or imposed on or against the Leased Property, and without counterclaim, deduction, defense, deferment or set-off by the City except as herein specifically otherwise provided. The Authority shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability hereunder except as herein expressly set forth, and all costs, expenses and obligations of any kind relating to the maintenance and operation of the Leased Property which may arise or become due during the term of this Lease shall be paid by the City.

Section 11.05 Amendments to the Lease.

(a) This Lease may be amended in writing as may be mutually agreed by the Authority and the City, subject to the written approval of the Trustee; provided, however, that no such amendment which materially adversely affects the rights of the Owners shall be effective unless it shall have been consented to by the Owners of more than 50% in principal amount of the affected Commercial Paper Notes Outstanding; and provided further that no such amendment shall (i) extend the payment date of any Base Rental Payment, or reduce the interest or principal component of any Base Rental Payment, without the prior written consent of the Owner of the Commercial Paper Notes so affected; or (ii) reduce the percentage of the value of the Commercial

Paper Notes Outstanding, the consent of the Owners of which is required for the execution of any amendment hereof.

(b) This Lease and the rights and obligations of the Authority and the City hereunder may also be amended or supplemented at any time by an amendment hereof or supplement hereto which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the agreements, conditions, covenants and terms required by the Authority or the City to be observed or performed herein and other agreements, conditions, covenants and terms thereafter to be observed or performed by the Authority or the City, or to surrender any right or power reserved herein to or conferred herein on the Authority or the City, and which in either case shall not, in the judgment of the Trustee, materially adversely affect the interests of the Owners;

(2) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the Authority or the City may deem desirable or necessary and not inconsistent herewith, and which shall not materially adversely affect the interests of the Owners;

(3) to effect a Substitution, Addition or Removal in accordance with Section 3.06 hereof; and

(4) to make any other addition, amendment or deletion which does not materially adversely affect the interests of the Owners.

Section 11.06 Discharge of City. Upon the payment to the Owners of all Outstanding Commercial Paper Notes in accordance with Article IX of the Indenture, all of the obligations of the City hereunder shall thereupon cease, terminate and become void and shall be discharged and satisfied.

Section 11.07 Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Lease shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Trustee or by the City, or if for any reason it is held by such a court that any of the covenants and agreements of the City hereunder, including the covenant to pay Base Rental Payments hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the City to possess, occupy and use the Leased Property, which right in such event is hereby granted, this Lease shall thereupon become and shall be deemed to be a lease under which the Base Rental Payments due in any fiscal year of the City are subject to annual appropriation and are to be paid by the City annually in consideration of the right of the City to possess, occupy, and use the Leased Property, and all of the rental and other



terms, provisions, and conditions of this Lease, except to the extent that such terms, provisions, and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 11.08 California Law. This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California.

Section 11.09 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

Section 11.10 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. It is also agreed that the Authority and City may each execute separate counterparts of this Lease, all with the same force and effect as though both had executed the same counterpart.

Section 11.11 Excess Payments. Notwithstanding anything contained herein or in the Indenture to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the City, the Issuing and Paying Agent, or the Trustee receives payments, proceeds or awards with respect to the Leased Property in excess of the amount necessary to pay or provide in accordance with the Indenture, for the payment of all of the Outstanding Commercial Paper Notes and all other amounts due hereunder and under the Indenture, such excess shall all be paid to the City.

Section 11.12 Further Assurances and Corrective Instruments. The City and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property leased hereby or intended to be so leased or for carrying out the express intention of this Lease.

Section 11.13 Concerning the Trustee. Pursuant to the Indenture, the Authority will assign its rights under this Lease and the Site Lease to the Trustee, solely in its capacity as Trustee under the Indenture. As assignee of the rights of the Authority, the Trustee shall have the protections, indemnities and limitations from liability afforded to the Trustee under the Indenture. Nothing contained herein shall be construed as creating any liability on the Trustee to perform any covenant, duty or obligation of any kind contained in this Lease or in the Site Lease and under no circumstances shall the Trustee be liable for the payment of any fees, costs, indebtedness or expenses related to or arising from this Lease or from the Site Lease or any documents related hereto except from amounts held under the Indenture and available for such use.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Facilities Lease by their officers thereunto duly authorized as of the day and year first written above.

PUBLIC FACILITIES FINANCING  
AUTHORITY OF THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Myrtle Cole, Chair

ATTEST:

By \_\_\_\_\_  
Elizabeth S. Maland, Secretary

APPROVED AS TO FORM AND LEGALITY:

MARA W. ELLIOTT, General Counsel

By: \_\_\_\_\_  
Brant C. Will, Deputy General Counsel

THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Rolando Charvel, Chief Financial Officer

ATTEST:

By \_\_\_\_\_  
Elizabeth S. Maland, City Clerk

APPROVED AS TO FORM AND LEGALITY:

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Brant C. Will, Deputy City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
                                                          ) §  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
                                                          ) §  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

**EXHIBIT A**

**DESCRIPTION OF LEASED PROPERTY**

**EXHIBIT B**

**MAXIMUM BASE RENTAL PAYMENT SCHEDULE**

[See attached pages]

**EXHIBIT C-1**

**FORM OF DEBT SERVICE CERTIFICATE - ANNUAL**

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management

U.S. Bank National Association  
[Trustee address]  
[Trustee address]

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations

This certificate is delivered pursuant to Section 6.01(b)(i) of the Facilities Lease (the "Lease"), dated as of [Dated Date], by and between the Public Facilities Financing Authority (the "Authority") and the City of San Diego (the "City"). Defined terms used herein shall have the meanings set forth in the Lease.

The undersigned hereby certifies that for the Base Rental Period commencing on [July 1], \_\_\_\_ that:

(a) the weighted average principal amount of Commercial Paper Notes Outstanding during such Base Rental Period is expected to be \$\_\_\_\_\_;

(b) the assumed weighted average interest rate reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Commercial Paper Notes Outstanding during such Base Rental Period is \_\_\_\_% per annum;

(c) based upon (a) and (b) above and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during such Base Rental Period, the Assumed Interest Cost of Commercial Paper Notes Outstanding projected to be due and payable during such Base Rental Period is expected to be \$\_\_\_\_\_;

(d) based upon the expected weighted average principal amount of Bank Notes Outstanding of \$\_\_\_\_\_ and an assumed weighted average interest rate of \_\_\_\_% per annum reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Bank Notes Outstanding during such Base Rental Period and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during

such Base Rental Period, the Assumed Interest Cost of Bank Notes Outstanding projected to be due and payable during such Base Rental Period is expected to be \$\_\_\_\_\_;

(e) the Required Principal Reduction Amount is \$\_\_\_\_\_;

(f) the amount of principal coming due on the Bank Notes is \$\_\_\_\_\_;

(g) in addition to the amounts set forth in (e) and (f) above, the City expects to repay \$\_\_\_\_\_ in principal amount of Outstanding Commercial Paper Notes and \$\_\_\_\_\_ in principal amount of Outstanding Bank Notes other than from the proceeds of any obligations issued to pay the principal and interest on any Commercial Paper Notes at final maturity;

(h) The Minimum Required Rental Payment is \$\_\_\_\_\_, which is the sum of the amounts set forth in paragraphs (c) through (g) above.

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

**PUBLIC FACILITIES FINANCING  
AUTHORITY**

By: \_\_\_\_\_  
Authorized Representative



**EXHIBIT C-2**

**FORM OF DEBT SERVICE CERTIFICATE - ADDITIONAL COMMERCIAL PAPER  
NOTES**

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management

U.S. Bank National Association  
[Trustee address]  
[Trustee address]

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations

This certificate is delivered pursuant to Section 6.01(b)(ii) of the Facilities Lease (the "Lease"), dated as of [Dated Date], by and between the Public Facilities Financing Authority (the "Authority") and the City of San Diego (the "City"). Defined terms used herein shall have the meanings set forth in the Lease.

The undersigned hereby certifies in connection with the issuance of Commercial Paper Notes under the Indenture, dated as of [Dated Date], by and between the Authority and the Trustee for the current Base Rental Period commencing on [July 1], \_\_\_\_ that:

(a) the weighted average principal amount of Commercial Paper Notes Outstanding after such issuance for the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(b) the assumed weighted average interest rate reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Commercial Paper Notes Outstanding during the balance of the current Base Rental Period is \_\_\_\_% per annum;

(c) based upon (a) and (b) above and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during the balance of the current Base Rental Period, the Assumed Interest Cost of Commercial Paper Notes Outstanding after such issuance projected to be due and payable during the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(d) \$\_\_\_\_\_, which is the sum of \$\_\_\_\_\_, the principal of and accrued interest on Commercial Paper Notes, \$\_\_\_\_\_, the principal of and accrued interest on Bank Notes, and \$\_\_\_\_\_, the portion of the Required Principal Reduction Amount, in

each case already paid from the Minimum Required Rental Payment or any Minimum Supplemental Rental Payment(s) during the current Base Rental Period;

(e) the portion of the new Required Principal Reduction Amount after such issuance (\$\_\_\_\_\_) not already paid from the Minimum Required Rental Payment or any Minimum Supplemental Rental Payment(s) during the current Base Rental Period is \$\_\_\_\_\_;

(f) based upon the expected weighted average principal amount of Bank Notes Outstanding after such issuance for the balance of the current Base Rental Period of \$\_\_\_\_\_ and an assumed weighted average interest rate of \_\_\_% per annum reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Bank Notes Outstanding after such issuance during the balance of the current Base Rental Period and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during the balance of the current Base Rental Period, the Assumed Interest Cost of Bank Notes Outstanding after such issuance projected to be due and payable during the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(g) the amount of principal coming due on the Bank Notes Outstanding after such issuance for the balance of the current Base Rental Period is \$\_\_\_\_\_;

(h) in addition to the amounts set forth in (d), (e) and (g) above, the City expects to repay \$\_\_\_\_\_ in principal amount of Commercial Paper Notes Outstanding after such issuance for the balance of the current Base Rental Period and \$\_\_\_\_\_ in principal amount of Bank Notes Outstanding after such issuance for the balance of the current Base Rental Period other than from the proceeds of any obligations issued to pay the principal and interest on any Commercial Paper Notes at final maturity;

(i) the Minimum Supplemental Rental Payment due upon such issuance is \$\_\_\_\_\_, which is the remainder of the sum of the amounts set forth in paragraphs (c) through (h) above (\$\_\_\_\_\_), less the Minimum Required Rental Payment already paid by the City during the current Base Rental Period (\$\_\_\_\_\_), and less the total of any Minimum Supplemental Rental Payment(s) already paid by the City during the current Base Rental Period (\$\_\_\_\_\_).

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

**PUBLIC FACILITIES FINANCING  
AUTHORITY**

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT C-3**

**FORM OF DEBT SERVICE CERTIFICATE - ADDITIONAL INTEREST/PRINCIPAL**

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management

U.S. Bank National Association  
[Trustee address]  
[Trustee address]

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations

This certificate is delivered pursuant to Section 6.01(b)(iii) of the Facilities Lease (the "Lease"), dated as of [Dated Date], by and between the Public Facilities Financing Authority (the "Authority") and the City of San Diego (the "City"). Defined terms used herein shall have the meanings set forth in the Lease.

The undersigned hereby certifies that for the current Base Rental Period commencing on [July 1], \_\_\_\_ that:

(a) the weighted average principal amount of Outstanding Commercial Paper Notes for the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(b) the new assumed weighted average interest rate reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Commercial Paper Notes Outstanding during the balance of the current Base Rental Period is \_\_\_% per annum;

(c) based upon (a) and (b) above and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during the balance of the current Base Rental Period, the Assumed Interest Cost of Outstanding Commercial Paper Notes projected to be due and payable during the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(d) \$\_\_\_\_\_, which is the sum of \$\_\_\_\_\_, the principal of and accrued interest on Commercial Paper Notes, \$\_\_\_\_\_, the principal of and accrued interest on Bank Notes, and \$\_\_\_\_\_, the portion of the Required Principal Reduction Amount, in each case already paid from the Minimum Required Rental Payment or any Minimum Supplemental Rental Payment(s) during the current Base Rental Period;

(e) the portion of the Required Principal Reduction Amount not already paid from the Minimum Required Rental Payment or any Minimum Supplemental Rental Payment(s) during the current Base Rental Period is \$\_\_\_\_\_;

(f) based upon the expected weighted average principal amount of Outstanding Bank Notes for the balance of the current Base Rental Period of \$\_\_\_\_\_ and the new assumed interest rate of \_\_\_% per annum reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Outstanding Bank Notes during the balance of the current Base Rental Period and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during the balance of the current Base Rental Period, the Assumed Interest Cost of Outstanding Bank Notes projected to be due and payable during the balance of the current Base Rental Period is expected to be \$\_\_\_\_\_;

(g) the amount of principal coming due on the Bank Notes during the balance of the current Base Rental Period is \$\_\_\_\_\_;

(h) in addition to the amounts set forth in (d), (e) and (g) above, the City expects to repay \$\_\_\_\_\_ in principal amount of Outstanding Commercial Paper Notes during the balance of the current Base Rental Period and \$\_\_\_\_\_ in principal amount of Outstanding Bank Notes during the balance of the current Base Rental Period other than from the proceeds of any obligations issued to pay the principal and interest on any Commercial Paper Notes at final maturity;

(i) the Minimum Supplemental Rental Payment due is \$\_\_\_\_\_, which is the remainder of the sum of the amounts set forth in paragraphs (c) through (h) above (\$\_\_\_\_\_), less the Minimum Required Rental Payment already paid by the City during the current Base Rental Period (\$\_\_\_\_\_), and less the total of any Minimum Supplemental Rental Payment(s) already paid by the City during the current Base Rental Period (\$\_\_\_\_\_).

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

**PUBLIC FACILITIES FINANCING  
AUTHORITY**

By: \_\_\_\_\_  
Authorized Representative

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**SITE LEASE**

**Dated as of [Dated Date]**

by and between

**THE CITY OF SAN DIEGO**

and the

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

---

Relating to the

**[\$[PRINCIPAL AMOUNT]**

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE COMMERCIAL PAPER NOTES**

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## SITE LEASE

This Site Lease (the “Site Lease”) is dated as of [Dated Date], and is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation duly organized and existing under its charter and the laws of the State of California (the “City”), and the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”). (Capitalized terms used in the Whereas clauses which are not defined therein shall have the meaning provided in Section 1 hereof).

### WITNESSETH:

**WHEREAS**, the City has determined it is in the public interest and will benefit the inhabitants of the City that the City finance the costs of the acquisition, design, construction, installation, improvement, replacement, and equipping of certain capital improvement projects of the City from time to time (the “Projects”) and costs of issuance of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes (the “Commercial Paper Notes”); and

**WHEREAS**, to finance the Projects, the City will enter into this Site Lease with the Authority pursuant to which the City will lease to the Authority certain real property belonging to the City, together with the improvements located thereon that are owned by the City (collectively the “Leased Property,” as more particularly described in Exhibit A hereto); and

**WHEREAS**, concurrently with the execution of this Site Lease, the City and the Authority are entering into a Facilities Lease, dated as of [Dated Date] (the “Lease”), pursuant to which the Authority will lease the Leased Property back to the City; and

**WHEREAS**, to provide funds to finance the Projects, the City has requested the Authority to issue its Commercial Paper Notes from time to time in an aggregate principal amount not exceeding the Maximum Principal Amount pursuant to an Indenture, dated as of [Date Date] (the “Indenture”), by and between the Authority and U.S. Bank National Association, as Trustee (the “Trustee”); and

**WHEREAS**, the City is authorized by its Charter and other applicable law to lease the Leased Property to the Authority pursuant to this Site Lease, and to lease-back the Leased Property pursuant to the Lease and to consummate financing of the Projects; and has determined that the Projects and the lease of the Leased Property is a necessary and proper public purpose; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER

VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

**Section 1. Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms pursuant to the Lease, as it may be amended pursuant to its terms, and, if such terms are not defined in the Lease, then such terms shall have the meanings given such terms pursuant to the Indenture, as it may be amended pursuant to its terms.

**Section 2. Lease of the Leased Property.** The City hereby leases to the Authority and the Authority hereby rents from the City, on the terms and conditions hereinafter set forth, the Leased Property.

**Section 3. Term.** The term of this Site Lease shall commence on the Closing Date and shall end on the date on which the Lease is terminated pursuant to Section 4.01(a) of the Lease (the "Expiry Date").

**Section 4. Rent.** The Authority shall pay to the City an advance rent of \$1.00 as full consideration for this Site Lease over its term. The Authority hereby waives any right that it may have under the laws of the State of California to receive a rebate of such rent in full or in part in the event there is a substantial interference with the use and right of possession by the Authority of the Leased Property or portion thereof as a result of material damage, destruction or condemnation.

**Section 5. Purpose.** The Authority shall use the Leased Property solely for the purpose of subleasing the same to the City pursuant to the Lease and the City hereby leases the Leased Property to the Authority expressly on said condition; provided, however, that in the event of default by the City under the Lease, the Authority may exercise the remedies provided in the Lease.

**Section 6. Owner in Fee.** The City covenants that it has the right to lease the Leased Property hereunder free and clear of all liens, claims or encumbrances, except Permitted Encumbrances.

**Section 7. Assignments and Subleases.** The Authority shall not assign its rights hereunder or sublet the Leased Property, except as provided in the Lease and the Indenture and as security for the Commercial Paper Notes.

**Section 8. Right of Entry.** The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time: to inspect the same; to make any repairs, improvements or changes necessary for the preservation thereof; to perform any of its other duties; or exercise any of its other rights, as contemplated under the Lease.

**Section 9. Termination.** The Authority agrees, upon the termination hereof, to quit and surrender the Leased Property in the same good order and condition as the same was in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any additions, improvements or alterations to the Leased Property at the time of the termination hereof shall remain thereon and title thereto shall vest in the City.

**Section 10. Default.** In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms hereof, which default continues for thirty (30) days following notice and demand by the City for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and the Lease shall be deemed to occur as a result thereof; provided, however, prior to the Expiry Date, the City shall have no power to terminate this Site Lease by reason of any default on the part of the Authority if such termination would affect or impair any assignment of the Lease then in effect between the Authority and the Trustee.

**Section 11. Quiet Enjoyment.** The Authority at all times during the term hereof shall peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the City.

**Section 12. Waiver of Personal Liability.** All liabilities hereunder on the part of the Authority shall be solely corporate liabilities of the Authority, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability hereunder. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable hereunder for anything done or omitted to be done by the Authority hereunder.

**Section 13. Eminent Domain.** In the event the whole or any portion of the Leased Property is taken by eminent domain proceedings, any interests of the Authority shall be recognized in accordance with Section 4.03(b) of the Indenture.

**Section 14. Observance and Performance under the Indenture.** The City hereby agrees and covenants that during the term hereof and so long as the Indenture remains in effect, it will observe and perform the agreements, conditions, covenants and terms required to be observed or performed by it contained in the Indenture.

**Section 15. Amendments.** This Site Lease may be amended: (a) for the purpose of effecting an Addition, Substitution or Removal, as provided in the Lease, and (b) for any other purpose subject to the same requirements provided in the Lease for amendments to the Lease.

The Authority shall execute such documents as requested by the City to evidenced that any Permitted Encumbrance is superior to the Site Lease, whether such Permitted Encumbrance existed as of the date of original execution and delivery hereof or is created thereafter.

**Section 16. Partial Invalidity.** If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 17. Notices.** All written notices to be given shall be given by first class mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:



If to the City:

City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California, 92101  
Attention: Director of Debt Management  
Phone: (619) 235-5840  
Fax: (619) 235-5835

If to the Authority:

Public Facilities Financing Authority of the City of San Diego  
c/o City of San Diego  
City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney – Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

If to the Issuing and Paying Agent:

U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations  
Phone: (212) 951-8508  
Fax: (212) 509-4529

If to the Trustee:

U.S. Bank National Association  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Global Corporate Trust Services  
Phone: (213) 615-6051  
Fax: (213) 615-6199

If to a Bank:

See its address as indicated in the applicable Credit Facility Agreement.

If to the Dealers:

See their addresses as indicated in their respective Dealer Agreements.

**Section 18. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

**Section 19. Execution in Counterparts.** This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 20. Governing Law.** This Site Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Site Lease by their officers thereunder duly authorized as of the day and year first above written.

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Rolando Charvel, Chief Financial Officer

ATTEST

By: \_\_\_\_\_  
Elizabeth S. Maland, City Clerk

APPROVED AS TO FORM AND LEGALITY:

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Brant C. Will, Deputy City Attorney

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Myrtle Cole, Chair

ATTEST

By: \_\_\_\_\_  
Elizabeth S. Maland, Secretary

APPROVED AS TO FORM AND LEGALITY:

MARA W. ELLIOTT, General Counsel

By: \_\_\_\_\_  
Brant C. Will, Deputy General Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

**EXHIBIT A**  
**DESCRIPTION OF LEASED PROPERTY**

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**INDENTURE**

by and between

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

and

**U.S. BANK NATIONAL ASSOCIATION**

as Trustee

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Dated as of [Dated Date]

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Relating to

**[\$[PRINCIPAL AMOUNT]  
PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE COMMERCIAL PAPER NOTES**

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## INDENTURE

This INDENTURE, dated as of [Dated Date] (the “Indenture”), is entered into by and between the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association existing under and by virtue of the laws of the United States of America, as trustee (the “Trustee”). (Capitalized terms used in the Whereas clauses that are not defined therein have the meanings provided in Section 1.01 hereof.)

### W I T N E S S E T H:

WHEREAS, the Authority is a joint powers authority duly organized and existing under and pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement, dated as of January 11, 1999 (the “JPA Agreement”), by and between the City of San Diego (the “City”) and the Redevelopment Agency of the City of San Diego (the “Agency” and, with the City, the “Members”), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the “Act”); and

WHEREAS, the Authority is authorized pursuant to Article 4 of the Act to borrow money to provide financing and refinancing for public capital improvements of public entities, including the Members; and

WHEREAS, the City has determined it is in the public interest and will benefit the inhabitants of the City that the City finance the costs of the acquisition, design, construction, installation, improvement, replacement, and equipping of certain capital improvement projects of the City from time to time (the “Projects”) and costs of issuance of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes (the “Commercial Paper Notes”), and in order to provide funds for such financing, the City has requested the Authority to issue its Commercial Paper Notes from time to time in an aggregate principal amount not exceeding the Maximum Principal Amount pursuant to this Indenture; and

WHEREAS, in order to provide for the repayment of the Commercial Paper Notes, the City will lease certain real property of the City (the “Leased Property”) to the Authority pursuant to the Site Lease, dated as of [Dated Date] (the “Site Lease”), and the Authority will lease back the Leased Property to the City pursuant to the Facilities Lease, dated as of [Dated Date] (the “Lease”), under which the City will be required to make Base Rental Payments to the Authority which will be calculated to be sufficient to enable the Authority to pay the principal of and interest on the Commercial Paper Notes when due and payable; and

WHEREAS, to establish and declare the terms and conditions upon which the Commercial Paper Notes are to be issued and secured and to secure the payment of the principal thereof, and interest thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has determined that all acts and proceedings required by law necessary to make the Commercial Paper Notes, when executed by the Authority and authenticated and delivered by the Issuing and Paying Agent as provided in the Issuing and Paying Agency

Agreement and duly issued, the valid, binding and legal limited obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture have been in all respects duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of the principal and interest on all Commercial Paper Notes at any time issued and outstanding under this Indenture and to secure the obligations of the Authority to the Credit Facility Providers under each Credit Facility Agreement, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Commercial Paper Notes are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Commercial Paper Notes by the Owners thereof and the issuance of the Credit Facilities by the Credit Facility Providers, and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, as follows:

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes of this Indenture, of any Supplemental Indenture, of the Lease, of the Commercial Paper Notes and of any certificate, opinion, request or other documents herein mentioned, have the meanings herein specified. All other capitalized terms used herein without definition shall have the meaning given to such terms in the Lease.

“Additional Rental” means all amounts payable by the City pursuant to Section 6.01(c) of the Lease.

“Acquisition Fund” means the fund by that name established and held by the City pursuant to Section 3.04.

“Advance” means each advance of funds made under and subject to the provisions contained in the applicable Credit Facility and the applicable Credit Facility Agreement.

“Alternate Credit Facility” means an irrevocable letter of credit, a line or lines of credit, a noncancellable insurance policy or other credit facility provided by an Alternate Credit Facility Provider with respect to a Series of Commercial Paper Notes in accordance with the provisions of Section 2.11 hereof, as such alternate credit facility may be amended or supplemented.

“Alternate Credit Facility Provider” means each provider of an Alternate Credit Facility.

“Assumed Interest Cost” means, with respect to Commercial Paper Notes or Bank Notes, as applicable, as of any date of calculation, for any Base Rental Period or portion thereof, as applicable, the aggregate amount of interest that is projected to be due and payable during such Base Rental Period or portion thereof, as applicable, based upon the weighted average principal

amount of Commercial Paper Notes or Bank Notes, as applicable, expected to be Outstanding during such Base Rental Period or portion thereof, as applicable, an assumed weighted average interest rate reasonably determined by the Authority with respect to the aggregate amount of interest that is projected to be due and payable on the weighted average principal amount of Commercial Paper Notes Outstanding during such Base Rental Period or portion thereof, as applicable, and other reasonable projections and assumptions with respect to the amount of principal and interest that is projected to be due and payable during such Base Rental Period or portion thereof, as applicable.

“Authorized Representative” means the Chair, Vice Chair, Treasurer or Secretary of the Authority or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair and filed with the City and the Trustee.

“Authorized City Representative” means the Chief Financial Officer of the City, the Director of Debt Management, the City Comptroller or such other officer or employee of the City or other person who has been designated in writing as such representative by the Chief Financial Officer to act on behalf of the City under or with respect to this Indenture and all other agreements related thereto.

“Bank Note” means, with respect to a Series of Commercial Paper Notes, any promissory note issued pursuant to the provisions of the applicable Credit Facility Agreement in evidence of Advances made by the related Credit Facility Provider under the applicable Credit Facility Agreement.

“Base Rental Payments” means the amounts payable by the City as Base Rental pursuant to Section 6.01(a) of the Lease.

“Base Rental Period” means the one-year period commencing on [July 1] of each year and ending on the following [June 30], provided that the first Base Rental Period shall commence on the Closing Date and end on [June 30], 2019.

“Base Rental Payment Subaccount” means the Base Rental Payment Subaccount established within the Notes Payment Account as provided in Section 4.02(a) hereof.

“Bond Counsel” means (a) Hawkins Delafield & Wood LLP, or (b) any other firm of attorneys, designated by the City, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America. Any Opinion of Bond Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City, the Trustee or the Authority, unless such Counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which their opinion may be based, is erroneous.

“Business Day” means any day other than (i) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State

of California or in the State of New York for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon which commercial banks are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under the Credit Facility.

“City” means the City of San Diego, a municipal corporation organized and existing under and by virtue of its charter and the laws of the State.

“Closing Date” means [\_\_\_\_\_], 2018.

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

“Commercial Paper Notes” means the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes.

“Construction Costs” means all costs of acquiring, constructing, installing or improving the Projects, including but not limited to:

(i) all costs which the Authority or the City shall be required to pay to a manufacturer, vendor or contractor or any other person under the terms of any contract or contracts for the acquisition, construction, installation or improvement of the Projects;

(ii) obligations of the Authority or the City incurred for labor and materials (including obligations payable by the Authority or the City for actual out of pocket expenses of the Authority or the City) in connection with the acquisition, construction, installation or improvement of the Projects, including reimbursement to the Authority or the City for all advances and payments made in connection with the Projects prior to or after delivery of the Commercial Paper Notes;

(iii) the costs of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect during the course of acquisition, construction, installation or improvement of the Projects;

(iv) all costs of planning, development, design, engineering and architectural services, including the actual out of pocket costs of the Authority or the City for test borings, surveys, estimates, third-party prepared appraisals, plans and specifications and preliminary investigations therefor, development fees and sales commissions, and for supervising acquisition, construction, installation and improvement, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction, installation or improvement of the Projects; and

(v) any sums required to reimburse the Authority or the City for advances made by the Authority or the City for any of the above items or for any other costs incurred and for work done by the Authority or the City which are properly chargeable to the acquisition, construction, installation or improvement of the Projects.

“Costs of Issuance” means all expenses directly or indirectly incurred in connection with the authorization, execution and delivery of the Site Lease, the Lease and the Indenture (including any supplements or amendments) and the Commercial Paper Notes, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority or the City, initial fees and expenses of the Trustee and the Issuing and Paying Agent (including but not limited to fees and expenses for legal counsel), compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation, reproduction and publication of documents, out-of-pocket expenses of the Authority or the City, Authority and City staff costs and costs of printing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.03.

“Credit Facility” means (a)(i) with respect to Series [X] Commercial Paper Notes, the Series [X] Credit Facility, (ii) with respect to Series [XX] Commercial Paper Notes, the Series [XX] Credit Facility, and (iii) with respect to any Additional Series of Commercial Paper Notes, any irrevocable letter of credit, a line or lines of credit, a noncancellable insurance policy or other credit facility provided by a Credit Facility Provider to facilitate the payment of Commercial Paper Notes of such Additional Series and (b) any Alternate Credit Facility.

“Credit Facility Agreement” means (a) the Series [X] Credit Facility Agreement, (b) the Series [XX] Credit Facility Agreement, and (c) any reimbursement agreement and related fee letter agreement entered into among the Authority, the City and a Credit Facility Provider in connection with the delivery of a Credit Facility.

“Credit Facility Proceeds Subaccount” means the Credit Facility Proceeds Subaccount established within the Notes Payment Account as provided in Section 4.02(a) hereof.

“Credit Facility Provider” means (i) with respect to the Series [X] Commercial Paper Notes, [Bank 1] or upon delivery of an Alternate Credit Facility with respect to the Series [X] Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility; (ii) with respect to the Series [XX] Commercial Paper Notes, [Bank 2] or, upon delivery of an Alternate Credit Facility with respect to the Series [XX] Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility; and (iii) with respect to one or more other Series of Commercial Paper Notes, a provider or providers of a Credit Facility with respect to such Series of Commercial Paper Notes or, upon delivery of an Alternate Credit Facility with respect to such Series of Commercial Paper Notes, any Alternate Credit Facility Provider issuing an Alternate Credit Facility.

“Draw” means any drawing by the Issuing and Paying Agent on a Credit Facility.

“Drawn” means at any time any Draw theretofore made.

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



“Dealer” means each dealer appointed pursuant to Section 10.17 hereof or any additional dealer or any successor entity or entities thereto which may be appointed as a Dealer hereunder by the Authority.

“Dealer Agreement” means each Dealer Agreement entered into with a Dealer by the Authority with respect to the Commercial Paper Notes.

“Defeasance Obligations” means (a) Federal Securities and Federal Certificates which are fixed rate and not callable for redemption prior to their maturity by any person other than the owner thereof and (b) other Permitted Investments (i) which either are not callable for redemption prior to their maturities by any person other than the owner thereof or for which an option to redeem prior to maturity has previously been irrevocably exercised (or an irrevocable covenant to exercise such option has previously been made by the person entitled to exercise such option) and the redemption date of such securities has thereby been irrevocably fixed prior to the use of any such securities as Defeasance Obligations, and (ii) which are rated, at the time of their initial deposit with the Trustee as Defeasance Obligations, by two Rating Agencies in their highest Rating Category.

“Event of Default” means any of the events specified in Section 6.01 hereof.

“Federal Certificates” means evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Federal Securities, including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Federal Securities; (ii) the owner of the Federal Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Federal Securities; and (iii) the underlying Federal Securities are held in trust in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

“Federal Securities” means: direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon and obligations of the Resolution Funding Corporation which constitute interest strips) if held by a custodian on behalf of the Trustee; obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; and prerefunded municipal obligations rated, at the time of purchase, by two Rating Agencies in their highest Rating Category; provided that “structured securities” (including flip notes, range notes, inverse floaters and step-ups) will not be considered Federal Securities; provided further that floaters (based on single, interest rate based indices) and callable securities of the above-enumerated agencies may be treated as Federal Securities.

“Final Drawing Notice” means, with respect to a Series of Commercial Paper Notes, a Final Drawing Notice delivered from the related Credit Facility Provider to the Issuing and Paying Agent pursuant to the respective Credit Facility.

“Fitch” means Fitch Ratings, New York, New York, or its successors, and if such organization shall for any reason no longer perform the functions of a securities rating agency,

“Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“Funding Commitment” means the available stated amount of a Credit Facility plus the principal amount of Advances outstanding under the respective Bank Note.

“Indenture” means this Indenture, as supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

“Issuing and Paying Agency Agreement” means the Issuing and Paying Agency Agreement, dated as of [Dated Date] by and between the Authority and the Issuing and Paying Agent, as the same may be amended and supplemented from time to time, or any other issuing and paying agency agreement entered into by the Authority from time to time with respect to Commercial Paper Notes.

“Issuing and Paying Agent” means U.S. Bank National Association, or any other institution, appointed by the Authority to serve as Issuing and Paying Agent in accordance with the Issuing and Paying Agency Agreement, or any successor thereto pursuant to this Indenture and the Issuing and Paying Agency Agreement.

“Issuing and Paying Agent Fund” means the fund by that name established and held by the Issuing and Paying Agent as provided in Section 4.02(a).

“Lease” means the Facilities Lease, dated as of [Dated Date], by and between the Authority, as sublessor, and the City, as sublessee, as amended or supplemented, in accordance with the terms thereof and of this Indenture.

“Leased Property” means the real property and improvements leased by the City to the Authority pursuant to the Site Lease and subleased by the Authority to the City pursuant to the Lease, as amended and supplemented pursuant to the Lease.

“Master Note” means the Commercial Paper Master Note evidencing the issuance of Commercial Paper Notes by the Authority from time to time.

“Maximum Base Rental” means the amounts specified as such in Section 6.01(a) of the Lease as such amounts may be adjusted from time to time in accordance with the terms of the Lease, excluding Additional Rental.

“Maximum Interest Rate” means 10% per annum.

“Maximum Principal Amount” means, as of any date of calculation. \$[PRINCIPAL AMOUNT], or, if less, the greatest principal amount of Commercial Paper Notes and Bank Notes which, if they bear interest at the Maximum Interest Rate and such interest is payable annually on the first day of each Base Rental Period (commencing on the first day of the first Base Rental Period to commence after the date of calculation), could be fully retired from amounts then payable by the City as Maximum Base Rental (adjusted upon the destruction or condemnation of or title defect with respect to the Leased Property as provided in Section 4.03 and for any abatement pursuant to Section 6.04 of the Lease) during the remaining term of the Lease.

“Moody’s” means Moody’s Investors Service, New York, New York, or its successors, and if such organization shall for any reason no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“Note” means any Commercial Paper Note or Bank Note.

“Notes Payment Account” means the Notes Payment Account established within the Issuing and Paying Agent Fund as provided in Section 4.02(a) hereof.

“Note Proceeds Subaccount” means the Note Proceeds Subaccount established within the Notes Payment Account as provided in Section 4.02(a) hereof.

“No-Issuance Notice” means, with respect to a Series of Commercial Paper Notes, a No Issuance Notice from a Credit Facility Provider to the Issuing and Paying Agent in accordance with the respective Credit Facility.

“Office” means, with respect to the Trustee, the designated corporate trust office of the Trustee which is initially located in \_\_\_\_\_, except that with respect to presentation of Commercial Paper Notes for payment or for registration of transfer and exchange, such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate agency business shall be conducted.

“Outstanding” means, when used as of any particular time with respect to any Commercial Paper Notes, as the context requires, such Commercial Paper Notes theretofore issued by the Authority under this Indenture, except:

(a) Commercial Paper Notes theretofore cancelled or delivered to the Issuing and Paying Agent for cancellation and, in all cases, with the intent to extinguish the debt represented thereby; and

(b) Commercial Paper Notes with respect to which all liability of the Authority shall have been discharged in accordance with Section 9.01 hereof; and

(c) Commercial Paper Notes in lieu of, or in substitution for, which other Commercial Paper Notes have been issued and delivered under Section 2.09 hereof.

(d) For purposes of the foregoing sentence, no Commercial Paper Note shall be deemed to be Outstanding on its date of maturity to the extent that the proceeds of one or more Commercial Paper Notes or other sufficient funds are available to be used to pay such Commercial Paper Note the maturity date thereof.

“Outstanding Credit Exposure” means, as to any Credit Facility Provider at any time, the aggregate principal amount of outstanding Advances evidenced by its Bank Note.

“Owner” means the person in whose name the ownership of such Commercial Paper Note is registered on the Registration Books.

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

(vi) Federal Securities or Federal Certificates;

(vii) The following listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

(a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

(b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes

(c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations

(d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

(iii) Obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing, that are rated, at the time of purchase, in the highest Rating Category by two Rating Agencies;

(iv) Bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are rated, at the time of purchase, by “A1/P1/F1” by two Rating Agencies or, if the term of such indebtedness is longer than one year, rated in the highest Rating Category by two Rating Agencies;

(v) Taxable commercial paper or tax-exempt commercial paper with a maturity of not more than 270 days, which are rated, at the time of purchase, “A1/P1/F1” by two Rating Agencies;

(vi) Deposit accounts or certificates of deposit, whether negotiable or non-negotiable, issued by a state or national bank (including the Trustee) or a state or federal savings and loan association or a state-licensed branch of a foreign bank; provided, however, that such certificates of deposit or deposit accounts shall be either (a) continuously insured by the Federal Deposit Insurance Corporation; or (b) have maturities of not more than 365 days (including certificates of deposit) and are issued by any state or national bank or a state or federal savings and loan association, the short-term obligations of which are rated, at the time of purchase, in the highest short term rating by two Rating Agencies ;

(vii) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which bank has short-term obligations outstanding which are rated, at the time of purchase, by two Rating Agencies in the highest short-term Rating Category, and which bankers acceptances mature not later than 365 days from the date of purchase;

(viii) Any repurchase agreement: (a) with (i) any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee), or a state-licensed branch of a foreign bank, having a minimum permanent capital of one hundred million dollars (\$100,000,000) and having short-term debt which is rated, at the time of the purchase, by two Rating Agencies in one of the three highest short-term Rating Categories; or (ii) any government bond dealer reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York; and (b) which agreement is secured by any one or more of the securities and obligations described in clause (i) or (ii) of this definition and having maturities equal to or less than 5 years from the date of delivery, which shall have a market value (valued at least monthly) not less than 102% of the principal amount of such investment and shall be placed with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement. The entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to the Trustee that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to 102% the principal amount of such repurchase agreement, and the Trustee shall be entitled to rely on each such undertaking;

(ix) Any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii) and (viii) of this definition and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii) (iii) and (viii) of this definition and which money market fund is rated, at the time or purchase, by two Rating Agencies in the highest Rating Category;

(x) Any guaranteed investment contract, including forward delivery agreements (“FDAs”) and forward purchase agreements (“FPAs”), with a financial institution or insurance company which has (or which is unconditionally guaranteed by a legal entity which has), at the date of execution thereof, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims-paying ability which is rated, at the time of purchase, by two Rating Agencies in one of two highest long-term Rating Categories. Only Permitted Investments described in clause (i) and (ii) above and having maturities equal to or less than 30 years from their date of delivery will be considered eligible for any collateralization/delivery purposes for guaranteed investment contracts, FDAs or FPAs;

(xi) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or of any political subdivision or public agency thereof which are rated, at the time of purchase, by two Rating Agencies in the highest short-term Rating Category or within one of the three highest long-term Rating Categories, but excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date;

(xii) For amounts less than \$100,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank, or a state or federal savings and loan association in the State, fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof;

(xiii) Investments in taxable money market funds or portfolios restricted to obligations with an average maturity of one year or less and which funds or portfolios are: (a) rated,

at the time of purchase, by two Rating Agencies in one of the two highest Rating Categories; or (b) have or are portfolios guaranteed as to payment of principal and interest by the full faith and credit of the United States of America;

(xiv) Investments in the City's pooled investment fund;

(xv) Investments in the Local Agency Investment Fund created pursuant to Section 16429.1 of the Government Code of the State;

(xvi) Shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xiii) of this definition and which companies are: (a) rated, at the time of purchase, by two Rating Agencies in the highest Rating Category; or (b) have an investment advisor registered with the Securities and Exchange Commission with not less than five years' experience investing in such securities and obligations and with assets under management in excess of five hundred million dollars (\$500,000,000);

(xvii) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which consists exclusively of investments permitted by Section 53601 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended; and

(xviii) Any other investment, with confirmation (or other action, satisfactory to the City) from each rating agency that has a current rating on the Commercial Paper Notes at the time of initial purchase thereof, that its rating on the Commercial Paper Notes will not be lowered or withdrawn as a result of such investment.

"Projects" means the acquisition, design, construction, installation, improvement, replacement, and equipping of certain capital improvement projects of the City.

"Rating Agency" means Moody's, S&P or Fitch, or any other nationally recognized statistical rating organization.

"Rating Category" means one of the generic categories of rating by a Rating Agency applicable to a Permitted Investment, without regard to any refinement or graduation of such rating category by a plus or minus sign or a numeral.

"Rebate Fund" means the fund by that name established and held by the Trustee pursuant to Section 5.07.

"Reconstruction" shall have the meaning given to such term in Section 7.07(a)(1) of the Lease.

"Registration Books" means the records maintained by the Trustee pursuant to Section 2.06 for the registration and transfer of ownership of the Commercial Paper Notes.

"Reimbursement Account" means the account of that name established within the Issuing and Paying Agent Fund pursuant to Section 4.02(a) hereof.

“Required Credit Facility Providers” means Credit Facility Providers in the aggregate having greater than 50% of the Funding Commitments; provided, however, if the Funding Commitment of a Credit Facility Provider has been terminated in accordance with its Credit Facility Agreement, then the Funding Commitment of such Credit Facility Provider shall be based on such Credit Facility Provider’s Outstanding Credit Exposure at such time.

“Required Principal Reduction Amount” means, as of any date of calculation, the aggregate principal amount of Commercial Paper Notes that must be paid and not reissued and the aggregate principal amount of Bank Notes that must be repaid or prepaid, such that immediately after such payment the aggregate principal amount of Commercial Paper Notes and Bank Notes Outstanding collectively will not exceed the Maximum Principal Amount for the next succeeding Base Rental Period.

“Revenue Account” means the account of that name established within the Issuing and Paying Agent Fund pursuant to Section 4.02(a) hereof.

“Revenues” means (a) all Base Rental Payments, prepayments, insurance proceeds and condemnation proceeds with respect to the Leased Property and (b) the Issuing and Paying Agent Fund and all interest and other income deposited in the Issuing and Paying Agent Fund.

“Securities Depositories” means The Depository Trust Company, 55 Water Street, 50th Floor, New York, NY 10041-0099, Attention: Call Notification Department, Fax (212) 855 7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a Written Certificate of the City delivered to the Trustee.

“Series” means all of the Commercial Paper Notes authorized for issuance pursuant to this Indenture and designated as being of the same series as provided herein.

“Series [X] Credit Facility” means the irrevocable direct-pay letter of credit issued by [Bank 1] pursuant to the Series [X] Credit Facility Agreement, and, upon the issuance of any Alternate Credit Facility with respect to the Series [X] Commercial Paper Notes, such Alternate Credit Facility.

“Series [X] Credit Facility Agreement” means the Credit Facility and Reimbursement Agreement dated as of [Dated Date], among the Authority, the City and [Bank 1], together with any related fee letter agreement among the Authority, the City and [Bank 1], as amended or supplemented, or other agreement and related fee letter agreement executed from time to time in connection with the delivery of a Series [X] Credit Facility.

“Series [XX] Credit Facility” means the irrevocable direct-pay letter of credit issued by [Bank 2] pursuant to the Series [XX] Credit Facility Agreement, and, upon the issuance of any Alternate Credit Facility with respect to the Series [XX] Commercial Paper Notes, such Alternate Credit Facility.

“Series [XX] Credit Facility Agreement” means the Credit Facility and Reimbursement Agreement dated as of [Dated Date], among the Authority, the City and [Bank 2], together with

any related fee letter agreement among the Authority, the City and [Bank 2], as amended or supplemented, or other agreement and related fee letter agreement executed from time to time in connection with the delivery of a Series [XX] Credit Facility.

“Site” means the Leased Property more particularly described in Exhibit A to the Site Lease and in Exhibit A to the Lease.

“Site Lease” means the Site Lease, dated as of [Dated Date], by and between the City, as lessor, and the Authority, as lessee, together with any duly authorized and executed amendments thereto.

“Standard & Poor’s” or “S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or its successors and if such organization shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“State” means the State of California.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Certificate” means the Tax Certificate of the Authority and City with respect to tax matters relating to a Series of Tax-Exempt Commercial Paper Notes.

“Tax-Exempt Commercial Paper Notes” means those Commercial Paper Notes which, by their terms, bear interest that is excluded from gross income for federal income tax purposes, pursuant to the Code.

“Taxable Commercial Paper Notes” means those Commercial Paper Notes which, by their terms, bear interest that is included in gross income for federal income tax purposes, pursuant to the Code.

“Termination Date” means the stated expiration date of a Credit Facility.

“Trustee” means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in Section 7.01.

“Written Certificate,” “Certificate,” “Written Request,” “Request” and “Written Requisition” of the Authority or the City mean, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

Section 1.02 Rules of Construction. All references in the Indenture to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of



the Indenture; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or subdivision hereof.

Section 1.03 Equal Security. In consideration of the acceptance of the Commercial Paper Notes by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of the Commercial Paper Notes; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Commercial Paper Notes without preference, priority or distinction as to security or otherwise of any of the Commercial Paper Notes over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

Section 1.04 Timing of Actions. Whenever in this Indenture there is designated a time of day at or by which a certain action must be taken, such time shall be local time in San Diego, California, except as otherwise specifically provided herein. If the date for making any payment or the last day for the performance of any act or the exercise of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, except as otherwise specifically provided herein. Notwithstanding the foregoing, if an Interest Payment Date for the Commercial Paper Notes falls on a day which is not a Business Day, then amounts due with respect to the Outstanding Commercial Paper Notes on such Interest Payment Date shall be paid on the next succeeding Business Day but interest shall accrue only to such Interest Payment Date.

Section 1.05 Content of Certificates. Every Written Certificate, Certificate, Written Request, Request and Written Requisition of the Authority with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any certificate of the Authority or the City may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters information with respect to which is in the possession of the Authority or the City, upon a representation by an officer or officers of the Authority or the City unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

Section 1.06 Actions by Authority and City. Except as otherwise expressly provided herein, for all purposes of the Indenture the Authorized Representative of the Authority shall be authorized to act upon behalf of the Authority, and the Authorized City Representative of the City shall be authorized to act upon behalf of the City.

## ARTICLE II

### COMMERCIAL PAPER NOTES

Section 2.01 Authorization of Issuance. There is hereby authorized to be issued from time to time upon compliance with the terms of Section 2.03 hereof for the purposes set forth in Section 2.02 hereof Commercial Paper Notes which shall be designated as “Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes” and which shall be entitled to the benefits, protection and security of this Indenture. The principal amount of the Commercial Paper Notes to be issued shall be determined by an Authorized City Representative, provided that the aggregate principal amount of all Commercial Paper Notes Outstanding at any time plus the aggregate principal amount of Bank Notes Outstanding as of the date of issuance of such Commercial Paper Notes collectively shall not exceed the Maximum Principal Amount. For purposes of the foregoing sentence, no Commercial Paper Note shall be deemed to be Outstanding to the extent that the proceeds of one or more Commercial Paper Notes are available to be used to pay such Commercial Paper Note on such day or if sufficient funds for the payment of such Commercial Paper Note are held by the Issuing and Paying Agent for the payment of such Owners of such Commercial Paper Note on the maturity date thereof. The Commercial Paper Notes shall be subject to the terms, conditions and limitations provided or referred to herein and in the Issuing and Paying Agency Agreement. The Authority may create one or more series or subseries of the Commercial Paper Notes or designate and redesignate the Commercial Paper Notes in such a manner as may be determined by an Authorized City Representative. Bank Notes shall be and are hereby authorized to be issued in accordance with the terms and conditions of the related Credit Facility Agreement for the purpose of evidencing Advances thereunder.

Section 2.02 Purposes of Commercial Paper Notes; Application of Commercial Paper Note Proceeds. At the direction of an Authorized City Representative, the Commercial Paper Notes shall be issued from time to time and the proceeds thereof may be used for any and each of the following purposes: (1) to pay or reimburse Construction Costs, (2) to pay principal of and interest on Commercial Paper Notes at maturity or to reimburse the related Credit Facility Provider for Draws under the related Credit Facility, directly or indirectly, and (3) to pay costs incurred in connection with the issuance of Commercial Paper Notes.

Section 2.03 Terms Applicable to Commercial Paper Notes.

- (a) Commercial Paper Notes:
  - (i) shall be dated the date of their delivery,
  - (ii) shall mature on such dates and shall bear interest from its date of issuance at such rates as shall be determined by an Authorized City Representative at the date of issuance;

provided that (A) the term of any Commercial Paper Note (1) shall not exceed 270 days from the date of its issue, and (2) shall not extend beyond a date which is two Business Days prior to the Termination Date of the Credit Facility relating to such Commercial Paper Notes, and (B) no Commercial Paper Note shall bear interest at a rate in excess of the lesser of the Maximum Interest Rate or the maximum rate of interest permitted by law,

(iii) may be issued only if the aggregate principal amount of Commercial Paper Notes Outstanding immediately after the issuance of such Commercial Paper Notes of such Series, together with the aggregate principal amount of Bank Notes Outstanding collectively shall not exceed the Maximum Principal Amount as of the date of issuance of such Commercial Paper Notes,

(iv) if the issuance of such Commercial Paper Notes is for a purpose other than refinancing, renewing or refunding Commercial Paper Notes and if the issuance of such Commercial Paper Notes was not taken into account in completing the Debt Service Certificate - Annual for the current Base Rental Period, may be issued only if the Authority shall have provided to the City a Debt Service Certificate – Additional Commercial Paper Notes in the form of Exhibit C-2 to the Lease, and the City shall have complied with Section 6.01(b)(ii) of the Lease, as applicable,

(v) may be issued only if the Issuing and Paying Agent shall not have received and there is not in effect a No-Issuance Notice or a Final Drawing Notice from the Credit Facility Provider for such Series,

(vi) shall be issued in registered form either through the book-entry system of a Securities Depository or by itself, as determined by an Authorized City Representative,

(vii) shall be issued in the denomination of \$100,000 or any integral multiple of \$1,000 in excess thereof, as determined by an Authorized City Representative,

(viii) shall be numbered consecutively from 1 upwards in order of their issuance, prefixed by the applicable designation to identify the appropriate series or subseries, as applicable, and may bear such other or alternative identification as an Authorized City Representative may deem appropriate, and

(ix) shall be issued as either Tax-Exempt Commercial Paper Notes or Taxable Commercial Paper Notes as shall be set forth in the written instructions received by the Issuing and Paying Agent pursuant to the Issuing and Paying Agency Agreement; and

(x) shall not be subject to redemption prior to maturity.

Commercial Paper Notes may be issued as interest-bearing obligations or at a discount and at such price as determined by an Authorized City Representative. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the aggregate principal amount (or face amount in the case of Commercial Paper Notes issued at a discount) of all Outstanding Commercial Paper Notes supported by such Credit Facility (after giving effect to such issuance) would exceed the amount that may be Drawn thereunder in respect of principal of

Commercial Paper Notes or the sum of the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes would exceed the amount that may be Drawn thereunder in respect of interest on such Commercial Paper Notes.

(b) Both principal of and interest on Commercial Paper Notes shall be payable in any coin or currency of the United States of America which shall then be legal tender for the payment of public and private debts. Except in the case of Book-Entry Commercial Paper Notes, principal of and interest on Commercial Paper Notes shall be payable upon presentation and surrender thereof at the principal office of the Issuing and Paying Agent at \_\_\_\_\_.

(c) Interest on Commercial Paper Notes shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed to the dates on which such Commercial Paper Notes mature.

(d) Commercial Paper Notes shall be paid at maturity and not reissued and Bank Notes shall be repaid or prepaid all in an aggregate principal amount not less than the Required Principal Reduction Amount no later than [June 30] of each Base Rental Period, commencing [June 30], 20[\_\_\_].

Section 2.04 Form of Commercial Paper Notes. A separate Master Note evidencing each series of Commercial Paper Notes shall be issued by the Authority substantially in the form of Exhibit B hereto, with such appropriate series designations, insertions, omissions, substitutions and other variations as are permitted or required by this Indenture, and may have such letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures, or CUSIP) and such legends and endorsements thereon as may, consistent herewith, be approved by an Authorized Representative.

Commercial Paper Notes issued directly by the Authority shall be in substantially the form of Exhibit A hereto, with such appropriate series designations, insertions, omissions, substitutions and other variations as are permitted or required by this Indenture, and may have such letters, numbers or other marks of identifications (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures, or CUSIP) and such legends and endorsements thereon as may, consistent herewith, be approved by an Authorized Representative.

No Master Note or other form of Commercial Paper Note shall be valid or obligatory for any purpose until manually countersigned for authentication by the Issuing and Paying Agent.

Section 2.05 Master Note. The ownership and transfer of any Master Note shall be registered on the books of the Issuing and Paying Agent, which shall be kept for that purpose at the principal office of the Issuing and Paying Agent. Any Master Note shall be transferable by the registered owner thereof in person or by his or her attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Issuing and Paying Agent duly executed by the registered owner or his or her duly authorized attorney. Upon the registration of transfer of a Master Note, the Issuing and Paying Agent shall issue in the name of the transferee a new Master Note, evidencing the Authority's obligations with respect to the same Book-Entry Commercial Paper Notes as the instrument surrendered.

Section 2.06 Transfer and Exchange, and Registration of Commercial Paper Notes.

Whenever any Note shall be surrendered to the Issuing and Paying Agent for transfer, the Authority shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Note, of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount. The Issuing and Paying Agent shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Any Note may be exchanged for a new Note of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount upon surrender thereof to the Issuing and Paying Agent. The Issuing and Paying Agent shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Trustee shall keep or cause to be kept sufficient books for the registration, transfer and exchange of the Notes, which shall be available for inspection by the Issuing and Paying Agent, the Authority, any Credit Facility Provider and any Owner of Commercial Paper Notes, or his agent or representative duly authorized in writing, at reasonable hours, and under reasonable circumstances; and, upon presentation of any Notes for such purpose, the Trustee shall, under such reasonable procedures as it may prescribe, register, transfer or exchange, or cause to be registered, transferred or exchanged, such Notes on such books as hereinabove provided. The Authority and the Trustee may treat the person in whose name a Note is registered in the Registration Books kept by the Trustee as the absolute Owner of such Note for the purpose of receiving payment thereof and for all purposes, and the Authority and the Trustee shall not be affected by any notice or knowledge to the contrary.

Section 2.07 Book-Entry-Only System for Commercial Paper Notes.

(a) Notwithstanding any other provision of this Indenture, the Authority may employ a book-entry-only system of note registration with respect to all or any of the registered Commercial Paper Notes, all as more fully set forth in subsections (b) and (c) of this Section 2.07. Any provisions of this Indenture inconsistent with book-entry-only Commercial Paper Notes shall not be applicable to such Book-Entry Commercial Paper Notes.

(b) DTC shall act as the initial Securities Depository for the Commercial Paper Notes. Each Authorized Representative is hereby authorized to execute and deliver on behalf of the Authority a Master Note, letter of representation or other agreements, documents or instruments in connection with the implementation or operation of such a book-entry-only system and may prescribe changes to the form of Commercial Paper Note to the extent necessary or convenient to make such Commercial Paper Note or Notes eligible for deposit under such a book-entry-only system. The provisions of any letter of representation or other agreement with a Securities Depository shall be deemed to be incorporated in this Indenture and, in accordance with subsection (a) of this Section 2.07, any provision of this Indenture inconsistent with such letter or agreement shall not apply to Commercial Paper Notes thereafter issued in book-entry-only form.

(c) The Authority and the Issuing and Paying Agent may treat as, and deem the nominee or Securities Depository to be, the absolute owner of each Commercial Paper Note issued as a book-entry-only Commercial Paper Note for the purpose of payment of the principal of and interest on such Commercial Paper Note, for other matters with respect to such Commercial Paper Note, for the purpose of registering transfers with respect to such Commercial Paper Note and for all other purposes whatsoever.

(d) With respect to all Book-Entry Commercial Paper Notes, neither the Authority nor the Issuing and Paying Agent shall have any responsibility or obligation to any Securities Depository participant or indirect participant, or any nominee of any thereof, any person claiming a beneficial ownership interest in book entry Commercial Paper Notes under or through the Securities Depository or any Securities Depository participant or indirect participant or any other person which is not shown on the books of the Issuing and Paying Agent as being the Owner of a Master Note, with respect to (1) sending transaction statements; (2) maintaining, supervising or reviewing, or the accuracy of, any records maintained by the Securities Depository or any Securities Depository participant or other nominees of such beneficial owners; (3) payment or the timeliness of payment by the Securities Depository to any Securities Depository participant, or by any Securities Depository participant or other nominees of beneficial owners to any beneficial owners, of any amount in respect of the principal of or interest on book-entry Commercial Paper Notes; (4) delivery or timely delivery by the Securities Depository to any Securities Depository participant, or by any Securities Depository participant or other nominees of beneficial owners to any beneficial owners, of any notice which is permitted or required to be given to Owners under this Resolution; or (5) any action taken by the Securities Depository or its nominee as Owner of book-entry Commercial Paper Notes.

(e) The Securities Depository may determine not to continue to act as securities depository for the Commercial Paper Notes, and the Authority may determine to discontinue the book-entry-only issuance of the Commercial Paper Notes through the Securities Depository and in such case shall deliver a certificate to the Issuing and Paying Agent and the affected Dealer to that effect. In either case, if the Authority determines to replace the Securities Depository with another qualified securities depository, the Authority shall prepare or direct the preparation of one or more new, separate, fully registered Master Notes, registered in the name of such successor or substitute qualified securities depository or its nominee, or make such other arrangements acceptable to the Authority, the Issuing and Paying Agent and the replacement Securities Depository as are not inconsistent with the terms of this Indenture. If the Authority fails to identify another securities depository to replace the Securities Depository, the Authority may amend this Indenture pursuant to Section 8.01 hereof and shall deliver to the Issuing and Paying Agent for safekeeping, completion, authentication and delivery in accordance with the provisions of this Indenture, as so amended, and of the Issuing and Paying Agency Agreement, Commercial Paper Notes executed on behalf of the Authority, with the date of issuance, principal amount, maturity date, owner and rate of interest left blank. Each such Commercial Paper Note instrument shall be held in safekeeping by the Issuing and Paying Agent until authenticated and issued in accordance with the provisions of this Indenture and of the Issuing and Paying Agency Agreement.

Section 2.08 Execution and Authentication of Commercial Paper Notes. Each Authorized Representative is hereby authorized and directed to execute by his or her manual or facsimile signature the Commercial Paper Notes in the name of the Authority and the corporate seal (or a facsimile thereof) shall be affixed, imprinted, engraved or otherwise reproduced thereon. In case any such Authorized Representative who shall have signed the Master Note issued through a Securities Depository or any Commercial Paper Notes not issued through a Securities Depository shall cease to be such Authorized Representative before the Master Note shall have been executed by the Issuing and Paying Agent or the Commercial Paper Notes shall have been authenticated by

the Issuing and Paying Agent, the Commercial Paper Notes may nevertheless be issued as though the person who signed such notes had not ceased to be such Authorized Representative.

In the event the Commercial Paper Notes are issued through a Securities Depository, the Issuing and Paying Agent is hereby authorized (1) to execute by manual signature the Master Note and deliver the same to a Securities Depository or any agent designated by a Securities Depository upon the order of an Authorized Representative and (2) to proceed with the issuance of additional obligations under the Master Note in such amounts, at such times and pursuant to such terms as an Authorized Representative shall specify in accordance with the terms of the Issuing and Paying Agency Agreement and the applicable Dealer Agreement. Such directions may be given only by written instruction to the Issuing and Paying Agent, either in hard copy or via Electronic Means (as such term is defined in the Issuing and Paying Agency Agreement), in accordance with the terms of the Issuing and Paying Agency Agreement.

In the event the Commercial Paper Notes are not issued through a Securities Depository, the Issuing and Paying Agent is hereby authorized to authenticate by manual or facsimile signature the Commercial Paper Notes and deliver the same to the purchasers upon the order of an Authorized Representative, in such amounts and at such times as the Issuing and Paying Agent shall be directed by an Authorized Representative in accordance with the terms of the Issuing and Paying Agency Agreement and the applicable Dealer Agreement. Such directions may be given only by written instruction to the Issuing and Paying Agent, either in hard copy or via Electronic Means, in accordance with the terms of the Issuing and Paying Agency Agreement.

Section 2.09      Commercial Paper Notes Mutilated, Lost, Destroyed or Stolen. If any Commercial Paper Note shall become mutilated, the Authority, at the expense of the Owner of said Commercial Paper Note, shall execute, and the Issuing and Paying Agent shall deliver, a new Commercial Paper Note of like tenor in exchange and substitution for the Commercial Paper Note so mutilated, but only upon surrender to the Issuing and Paying Agent of the Commercial Paper Note so mutilated. Every mutilated Commercial Paper Note so surrendered to the Issuing and Paying Agent shall be canceled by it and delivered to, or upon the order of, the Authority. If any Commercial Paper Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Issuing and Paying Agent and if such evidence is satisfactory to the Authority and indemnity satisfactory to the Issuing and Paying Agent, the Authority and the City has been given, the Issuing and Paying Agent shall, at the expense of the Owner, execute and deliver a new Commercial Paper Note of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount in lieu of and in substitution for the Commercial Paper Note so lost, destroyed or stolen. The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Commercial Paper Note issued under this Section 2.09 and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any Commercial Paper Note issued under the provisions of this Section 2.09 in lieu of any Commercial Paper Note alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Commercial Paper Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Commercial Paper Notes secured by this Indenture.

Section 2.10 Draws Under Credit Facility for Commercial Paper Notes. The Issuing and Paying Agent shall draw moneys, or demand payment, in accordance with the terms of a Credit Facility in amounts necessary to make timely payment of the principal of and interest on the respective Series of Commercial Paper Notes upon the maturity thereof. The Issuing and Paying Agent shall deposit the moneys received with respect to each drawing or payment under each such Credit Facility in the related subaccount of the Credit Facility Proceeds Subaccount established pursuant to Section 4.02(a) hereof. Moneys in the applicable subaccount of the Credit Facility Proceeds Subaccount shall not be commingled with any other moneys and shall be used and applied only to pay the principal of or interest on the Series of Commercial Paper Notes for which the draw or payment under such Credit Facility was made and may be used and applied for no other purpose. Any monies in the applicable subaccount of the Credit Facility Proceeds Subaccount until applied for the purposes herein provided shall be held uninvested.

Section 2.11 Credit Facilities for Commercial Paper Notes; Alternate Credit Facilities.

(a) All Commercial Paper Notes shall be supported by a Credit Facility. The Authority agrees and covenants that it shall maintain, or cause the City to maintain, a right under each such Credit Facility to, and thereby shall permit the Issuing and Paying Agent to, draw funds under each such Credit Facility to pay the principal of and interest on all Commercial Paper Notes supported thereby in an aggregate amount at least equal to (i) the principal amount (or face amount in the case of Commercial Paper Notes issued at a discount) of all related Outstanding Commercial Paper Notes and (ii) the interest accrued and to accrue on all related Outstanding Commercial Paper Notes.

(b) The Authority shall not substitute an Alternate Credit Facility for any Credit Facility or consent to any assignment by a Credit Facility Provider under any Credit Facility with respect to any Commercial Paper Notes that such Credit Facility supports prior to the payment or defeasance of the Commercial Paper Notes supported by such Credit Facility. The Authority shall not cause more than one Credit Facility to be in effect at any particular time with respect to any Series of Commercial Paper Notes.

(c) The Issuing and Paying Agent shall hold and maintain each Credit Facility provided for the benefit of the Owners of each Series of Commercial Paper Notes until the expiration or termination of such Credit Facility. The Issuing and Paying Agent shall diligently enforce all terms, covenants and conditions of each such Credit Facility, including payment when due of any draws on, or payment demands under, such Credit Facility, and will not consent to, agree to or permit any amendment or modification of any such Credit Facility which would materially adversely affect the rights or security of the Owners of such Series of Commercial Paper Notes. In no event shall the Issuing and Paying Agent's removal or resignation become effective unless and until each Credit Facility is transferred to the successor Issuing and Paying Agent.



## ARTICLE III

### APPLICATION OF PROCEEDS

Section 3.01      Application of Proceeds of Sale of Commercial Paper Notes. The proceeds of the sale of Commercial Paper Notes of a Series shall be deposited in accordance with the Issuing and Paying Agency Agreement and applied in accordance with Section 4.02(c) hereof.

Section 3.02      Application of Proceeds of Advances. The proceeds of all Advances shall be deposited in accordance with the Issuing and Paying Agency Agreement and applied in accordance with Section 4.02(c) hereof.

Section 3.03      Establishment and Application of Costs of Issuance Fund. The Trustee shall establish, maintain and keep separate and apart from all other funds held by the Trustee a separate fund designated as the "Costs of Issuance Fund." Notwithstanding any other provision of this Indenture, the Cost of Issuance Fund is not pledged to, nor does it does it secure, the Commercial Paper Notes.

The moneys in the Costs of Issuance Fund shall be used by the Trustee to pay the Costs of Issuance upon submission of a Written Requisition of the City in the form of Exhibit C hereto stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund and accompanied by a bill or statement of account for each obligation. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

On \_\_\_\_\_, 20\_\_, or upon the earlier Written Request of the City, all amounts remaining in the Costs of Issuance Fund shall be transferred by the Trustee to the Revenue Account and applied to pay interest on the Commercial Paper Notes.

Section 3.04      Acquisition Fund.

(a)      The City shall establish and maintain a fund designated as the "Acquisition Fund." Notwithstanding any other provision of this Indenture, the Acquisition Fund is not pledged to, nor does it secure, the Commercial Paper Notes.

The City shall hold the moneys in the Acquisition Fund separate and apart from all other funds held by the City and shall use such moneys to pay the Construction Costs. Such payments of Construction Costs shall be made from time to time upon receipt by the City of a Written Requisition of the Authority in the form of Exhibit D hereto stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund and accompanied by a bill or statement of account for each obligation. Each such written requisition shall be sufficient evidence to the City of the facts stated therein and the City shall have no duty to confirm the accuracy of such facts.

If, after payment by the City of all Written Requisitions of the Authority, there shall remain any balance of money in the Acquisition Fund, all money so remaining shall be transferred by the City to the Revenue Account and applied to pay interest on the Commercial Paper Notes.

#### ARTICLE IV

#### FUNDS AND ACCOUNTS

##### Section 4.01      Pledge and Assignment; Application of Revenues.

(a) Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts held in the Issuing and Paying Agent Fund are hereby pledged to secure the payment of the principal and interest on the Notes and all amounts due to each Credit Facility Provider in accordance with their terms and the provisions of this Indenture, and the Revenues shall not be used for any other purpose while any of the Commercial Paper Notes remain Outstanding; provided, however, that out of the Revenues and other moneys there may be applied in such sums and for such purposes as are permitted hereunder; and provided further that the proceeds of the sale of a Series of Commercial Paper Notes on deposit in any such fund or account shall not secure any other Series of Commercial Paper Notes or the related Bank Note, and the proceeds of any drawing or payment under a Credit Facility for a Series shall not secure any other Series of Commercial Paper Notes and the related Bank Notes. This pledge shall constitute a pledge of and charge and lien upon the Revenues and money in the Issuing and Paying Agent Fund for the payment of debt service on the Commercial Paper Notes and payment to each Credit Facility Provider in accordance with the terms hereof. Said pledge shall constitute a first lien on and security interest in such assets and shall attach, be perfected and be valid and binding, without any physical delivery thereof or further act.

(b) The Authority hereby transfers in trust, grants a security interest in and assigns to the Trustee, for the benefit of the Owners and each Credit Facility Provider (i) all of the Revenues and all amounts held in the respective accounts of the Issuing and Paying Agent Fund and (ii) all of the rights of the Authority in the Lease (except for certain rights to indemnification set forth therein), and in the Site Lease (except for certain rights to indemnification set forth therein). The Trustee shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and shall, subject to the provisions of Article VII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority, all of the obligations of the City under the Lease.

The assignment of the Lease and the Site Lease to the Trustee is solely in its capacity as Trustee under this Indenture and the duties, powers and liabilities of the Trustee in acting thereunder shall be subject to the provisions of this Indenture, including, without limitation, the provisions of Article VII hereof. The Trustee shall not be responsible for any representations, warranties, covenants or obligations of the Authority.

Section 4.02      Application of Issuing and Paying Agent Fund.

(a) Pursuant to the terms of the Issuing and Paying Agency Agreement, the Issuing and Paying Agent has established in trust, on behalf of the Trustee, a special fund designated as the “Issuing and Paying Agent Fund,” which shall be held by the Issuing and Paying Agent and which shall be kept separate and apart from all other funds and moneys held by the Issuing and Paying Agent. The Issuing and Paying Agent Fund shall be maintained by the Issuing and Paying Agent until all required Base Rental Payments are paid in full pursuant to the terms of the Lease and all obligations payable to the Credit Facility Providers have been satisfied and all Credit Facilities have expired or terminated. Within the Issuing and Paying Agent Fund, the Issuing and Paying Agent shall establish the following accounts and subaccounts (and may establish such additional subaccounts within such accounts and subaccounts as directed by an Authorized City Representative), for each Series of Commercial Paper Notes:

(i) Revenue Account;

(ii) Notes Payment Account, including the following subaccounts for each Series of Commercial Paper Notes:

(1) Credit Facility Proceeds Subaccount;

(2) Note Proceeds Subaccount; and

(3) Base Rental Payment Subaccount.

(iii) Reimbursement Account.

(b) There shall be deposited into the Revenue Account (i) Base Rental Payments and any proceeds of rental interruption insurance with respect to any Leased Property received by the Issuing and Paying Agent or the Trustee, and (ii) the proceeds of any obligations issued to pay the principal and interest on any Commercial Paper Notes at final maturity.

(i) Except to the extent that payment is made of principal and/or interest of Commercial Paper Notes from proceeds of the sale of Commercial Paper Notes or the proceeds of a Draw under the related Credit Facility, on each maturity date of any Commercial Paper Notes, the Issuing and Paying Agent shall transfer from the Revenue Account and deposit in the Base Rental Payment Subaccount that amount of money that, together with any amounts on deposit in the Base Rental Payment Subaccount, equals the aggregate amount of principal and interest of such Commercial Paper Notes due and payable on such maturity date. No deposit need to be made in the Base Rental Payment Subaccount if the amount contained in the Base Rental Payment Subaccount equals at least the aggregate amount of principal and interest of Commercial Paper Notes due and payable on such maturity date.

(ii) On each maturity date of any Commercial Paper Notes, and to the extent that payment is made of principal and interest of such Commercial Paper Notes not from proceeds of the sale of Commercial Paper Notes but from the proceeds of a Draw under

the related Credit Facility, the Issuing and Paying Agent shall transfer from the Revenue Account and deposit in the applicable subaccount of the Reimbursement Account that amount of money that equals the aggregate amount of principal and interest of such Commercial Paper Notes due and payable on such maturity date paid from the proceeds of a Draw under the related Credit Facility. On any date any payment is due under a Bank Note, the Trustee shall transfer from the Revenue Account and deposit in the applicable subaccount of the Reimbursement Account that amount of money that, together with any amounts transferred pursuant to the preceding sentence, equals the amount of the interest and principal then due and payable with respect to such Bank Note.

(iii) Any amounts remaining in the Revenue Account on the last day of a Base Rental Period of each year following any transfers required to be made on or prior to such date (other than any proceeds of rental interruption insurance which shall remain on deposit in the Revenue Account) shall be applied first, to pay any amounts due on Bank Notes, and second, to retire Commercial Paper Notes or prepay any outstanding Bank Notes, or to pay any other amounts payable to the Credit Facility Providers as required under each Credit Facility Agreement, and thereafter shall be transferred to the City to be used for any lawful purpose.

(c) Amounts on deposit in the accounts of the Issuing and Paying Agent Fund shall be applied as follows:

(i) On the maturity date of any Commercial Paper Notes (A) payment shall be made of the principal and interest of such Commercial Paper Notes from proceeds of the sale of Commercial Paper Notes on deposit in the applicable subaccount of the Note Proceeds Subaccount or the proceeds of a Draw under the related Credit Facility on deposit in the applicable subaccount of the Credit Facility Proceeds Subaccount, or to the extent not made from proceeds of the sale of Commercial Paper Notes or the proceeds of a Draw under the related Credit Facility, payment shall be made of the principal and interest of such Commercial Paper Notes from amounts on deposit in the Base Rental Payment Subaccount, and to the extent amounts on deposit in the Base Rental Payment Subaccount are insufficient to pay all principal and interest of Commercial Paper Notes then due and payable, such amounts shall be applied first to the payment of interest then due and payable and second, to the payment of principal then due and payable and (B) amounts on deposit in the respective subaccount of the Reimbursement Account shall be applied to reimburse the related Credit Facility Provider for amounts drawn under the related Credit Facility to pay the principal and interest of such Commercial Paper Notes.

(ii) On the date any payment is due under a Bank Note, payment shall be made of the interest and principal then due and payable with respect to such Bank Note from amounts on deposit in the respective subaccount of the Reimbursement Account.

Section 4.03 Repair or Replacement; Application of Insurance Proceeds, Condemnation Awards and Title Insurance.

(a) Upon the receipt of any proceeds of insurance or eminent domain with respect to any portion of the Leased Property, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 4.03.

(b) Insurance Proceeds. Any Net Proceeds of insurance against accident or destruction of the Leased Property collected by the City in the event of any such accident or destruction shall be paid to the Trustee by the City pursuant to Section 7.07 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination within forty-five (45) days following the date of such deposit to replace, repair, restore, modify or improve the Leased Property, the Trustee shall transfer such Net Proceeds to the Issuing and Paying Agent for deposit in the Revenue Account, which Net Proceeds together with any funds budgeted and appropriated by the City, in its sole discretion, and transferred by the City to the Issuing and Paying Agent for deposit in the Revenue Account pursuant to Section 7.07(a)(4) of the Lease, shall be applied to the payment at maturity of Commercial Paper Notes and repayment or prepayment of Bank Notes to the extent that such Net Proceeds and transferred funds permit and in connection therewith, the Maximum Principal Amount shall be modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease resulting from the damaged or destroyed portions of the Leased Property. All Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Revenue Account shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of Written Requisitions of the City, as agent for the Authority, which (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. If costs of Reconstruction exceed the amount of Net Proceeds and any funds budgeted and appropriated by the City, in its sole discretion, pursuant to Section 7.07(a)(2) of the Lease, the Maximum Principal Amount shall be modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease for the Leased Property resulting from the portions of the Reconstruction that are not fully completed. Any balance of the proceeds remaining after such Reconstruction has been completed as certified by the City to the Trustee shall after payment of amounts due the Trustee be paid to the City.

(c) Condemnation Awards. If all or any part of the Leased Property are taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain), the Net Proceeds therefrom shall be paid to the Trustee by the City pursuant to Section 7.07 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund.

(i) If the City has not given written notice to the Trustee, within forty-five (45) days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall transfer such Net Proceeds to the Issuing and Paying Agent for deposit in the Revenue Account, which Net Proceeds shall be applied to the payment at maturity of Commercial Paper Notes and repayment or prepayment of Bank Notes to the extent that such Net Proceeds permit and in connection therewith, the Maximum Principal Amount shall be modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease resulting from the portions of the Leased Property taken by such eminent domain proceedings.

(ii) If the City has given written notice to the Trustee, within forty-five (45) days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such repair or rehabilitation, upon the filing of Written Requisitions of the City as agent for the Authority in the form and containing the provisions set forth in Section 4.03(b) hereof. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

(d) Title Insurance. Proceeds of any policy of title insurance received by the Trustee in respect of the Leased Property or any portion thereof for the benefit of the Owners shall be applied and disbursed by the Trustee as follows:

(i) If the City determines that the title defect giving rise to such proceeds has not materially affected the City's right to the use and possession of the Leased Property and will not result in an abatement of Base Rental Payments by the City under the Lease, upon Written Request of the City such proceeds shall, if there is first delivered to the Trustee a Written Certificate of a City Representative to the effect that the annual fair rental value of the Leased Property, notwithstanding the title defect for which the payment was made, is at least equal to the Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease, be paid to the City to be used for any lawful purpose. If the City cannot deliver the certificate described in the preceding sentence, the City shall deliver the certification and Written Request of the City described in Section 4.03(d)(ii) hereof.

(ii) If any portion of the Leased Property has been affected by a title defect and the City certifies in writing that such title defect will result in an abatement of Base Rental Payments by the City under the Lease, then upon Written Request of the City, either (A) such title insurance proceeds shall be used by the City to remove the title defect or (B) the Trustee shall, if not notified in writing by a City Representative within 90 days of the receipt by the Trustee of such title insurance proceeds that the City will use such title insurance proceeds to remove the title defect, transfer such title insurance proceeds to the Issuing and Paying Agent for deposit in the Revenue Account to be applied to the payment at maturity of Commercial Paper Notes and repayment or prepayment of Bank Notes to the extent that such title insurance proceeds permit and in connection therewith, the Maximum Principal Amount shall be modified assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Lease resulting from such title defect.

(iii) Any excess title insurance proceeds remaining after application pursuant to the terms of this Indenture shall be paid to the City to be used for any lawful purpose.

Section 4.04 Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the City (as agent for the Authority) pursuant to a Written Request of the City filed with the Trustee at least two (2) Business Days in advance of the making of such investments which Written Request shall constitute the City's determination that such investments constitute a Permitted Investment. In the absence of any such directions from the City, the Trustee shall invest any such moneys in Permitted Investments described in subparagraph (ix) of the definition thereof. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. The Authority shall take the liquidity needs of the moneys held hereunder into account in making investments.

Unless otherwise provided in a Supplemental Indenture, all interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder (except the Acquisition Fund, the Costs of Issuance Fund and the Rebate Fund) shall be deposited by the Trustee in the Revenue Account, and interest or gain derived from the investment of the amount in the Acquisition Fund, the Costs of Issuance Fund, and the Rebate Fund shall, subject to Section 3.04 with respect to the Acquisition Fund, be retained therein.

To the extent that any investment agreement requires the payment of fees, such fees shall be paid from Additional Rental. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee or its affiliates may act as sponsor or depository with respect to any Permitted Investment. To the extent that any Permitted Investment purchased by the Trustee are registrable securities such Permitted Investment shall be registered in the name of the Trustee on behalf of the Owners. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section 4.05.

The Authority acknowledges (and the City by its execution of the Site Lease acknowledges) that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

Such investments shall be valued by the Trustee not less often than quarterly, at the market value thereof, exclusive of accrued interest.

The Trustee may utilize securities pricing services that may be available to it making such valuations, including those within its accounting system with respect to the Commercial Paper Notes, and conclusively rely thereon.

Section 4.05 Additional Rental. In the event the Trustee receives Additional Rental pursuant to the Lease, such Additional Rental shall be applied by the Trustee solely to the payment of any amounts in respect of which such Additional Rental was received, and shall not be commingled in any way with any other funds received by the Trustee pursuant to the Lease or this Indenture.

## ARTICLE V

### PARTICULAR COVENANTS

Section 5.01 Punctual Payment. The Authority shall punctually pay or cause to be paid the principal of and interest on all the Commercial Paper Notes in strict conformity with the terms of the Commercial Paper Notes and of this Indenture, according to the true intent and meaning thereof, but only from Draws under a Credit Facility and out of Revenues and other assets pledged for such payment as provided in this Indenture.

Section 5.02 Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Notes are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes. Nothing in this section shall in any way limit the City's ability (i) to encumber its assets other than Leased Property or (ii) to encumber the Leased Property in accordance with the terms of the Lease.

Section 5.03 Power to Issue Commercial Paper Notes and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Commercial Paper Notes and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Commercial Paper Notes and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Commercial Paper Note Owners and Credit Facility Providers under this Indenture against all claims and demands of all persons whomsoever.

Section 5.04 Accounting Records. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Commercial Paper Notes, the Revenues, the Lease and all funds and accounts established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Authority and the City, during business hours and under reasonable circumstances.

Section 5.05 Compliance with Indenture. The Trustee will not execute or deliver any Commercial Paper Notes in any manner other than in accordance with the provisions hereof, and



the Authority will not suffer or permit any default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements, conditions, covenants and terms hereof required to be complied with, kept, observed and performed by it.

Section 5.06 Tax Covenants for Tax-Exempt Commercial Paper Notes. The Authority covenants to and for the benefit of the Owners of the Tax-Exempt Commercial Paper Notes that, notwithstanding any other provisions of this Indenture (other than Section 10.01 hereof), it will:

(a) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Tax-Exempt Commercial Paper Notes or the moneys and investments held in the funds and accounts established under this Indenture which would cause the Tax-Exempt Commercial Paper Notes to be arbitrage bonds under Section 103(b) and Section 148 of the Code or which would otherwise cause the interest payable on the Tax-Exempt Commercial Paper Notes to be includable in gross income for federal income tax purposes;

(b) not take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Tax-Exempt Commercial Paper Notes to be includable in gross income for federal income tax purposes;

(c) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Authority on the Tax-Exempt Commercial Paper Notes will be excluded from the gross income, for federal income tax purposes, of the Owners pursuant to Section 103 of the Code; and

(d) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Tax-Exempt Commercial Paper Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the covenants in this Section 5.06, the Authority shall execute, deliver and comply with the provisions of the Tax Certificate for Tax-Exempt Commercial Paper Notes, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full including all of the defined terms therein, and by its acceptance of this Indenture the Trustee acknowledges receipt of such Tax Agreement and acknowledges its incorporation in this Indenture by this reference. The Trustee agrees it will invest funds held under this Indenture in accordance with the terms of this Indenture (this covenant shall extend throughout the term of the Commercial Paper Notes, to all funds and accounts created under this Indenture and all moneys on deposit to the credit of any fund or account).

Section 5.07 Rebate Fund for the Tax-Exempt Commercial Paper Notes.

(a) The Trustee shall establish and maintain, when required, a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund for the Tax-Exempt Commercial Paper Notes, which is not pledged to the Commercial Paper Notes. Neither the Authority nor the Owner of any Commercial Paper Notes shall have any rights in or claim to such money. Within the Rebate Fund, the Trustee shall maintain such accounts as shall be necessary to comply with instructions of the City given pursuant to the terms and conditions of the

Tax Certificate. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Tax Certificate) for the Tax-Exempt Commercial Paper Notes, for payment to the federal government of the United States of America.

All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 5.07, by Section 5.06 and by the Tax Certificate (which is incorporated herein by this reference). The Trustee shall be deemed conclusively to have complied with such provisions if it follows the Written Request of the City including supplying all necessary information in the manner provided in the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Authority or City with the terms of the Tax Certificate or any other tax covenants contained herein. The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate report or rebate calculations. The Trustee shall have no independent duty to review such calculations or enforce the compliance by the City with such rebate requirements. The Trustee shall have no duty or obligation to determine the applicability of the Code and shall only be obligated to act in accordance with Written Request provided by the City.

(b) Upon the City's Written Request, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the City, if and to the extent required, so that the balance in the Rebate Fund shall equal the Rebate Requirement for the Tax-Exempt Commercial Paper Notes. Computations of the Rebate Requirement shall be furnished by or on behalf of the City in accordance with the Tax Certificate. The Trustee shall supply to the City all necessary information in the manner provided in the Tax Certificate, to the extent such information is reasonably available to the Trustee.

(c) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section 5.07, other than from moneys held in the funds and accounts created under this Indenture or from other moneys provided to it by the City.

(d) At the Written Request of the City, the Trustee shall invest all amounts held in the Rebate Fund in Permitted Investments. Moneys shall not be transferred from the Rebate Fund except as provided in paragraph (e) below. The Trustee shall not be liable for any consequences arising from such investment.

(e) Upon receipt of the City's Written Request, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. In addition, if the City so directs, the Trustee will deposit money into or transfer money out of the Rebate Fund from or into such accounts or funds as directed by the City's Written Request; provided, however, only moneys in excess of the Rebate Requirement may, at the written direction of the City, be transferred out of the Rebate Fund to such other accounts or funds or to anyone other than the United States in satisfaction of the arbitrage rebate obligation. Any funds remaining in the Rebate Fund after each five year remission to the United States and final payment of all of the maturing Tax-Exempt Commercial Paper Notes and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the City.

(f) Notwithstanding any other provision of this Indenture, including in particular Article IX, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of this Section 5.07, Section 5.06 and the Tax Certificate shall survive the defeasance or final payment of all of the maturing Commercial Paper Notes.

Section 5.08 Collection of Amounts Due Under Lease; Amendments. The Trustee shall promptly collect all amounts due from the City pursuant to the Lease. Subject to the provisions of Article VII, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority, for the enforcement of all of the obligations of the City under the Lease.

The Authority shall not amend, modify or terminate any of the terms of the Lease or the Site Lease, or consent to any such amendment, modification or termination, without the prior written consent of the Trustee. The Trustee shall give such written consent only if it determines the requirements of Section 11.05 of the Lease have been complied with.

Section 5.09 Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension of law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Commercial Paper Notes, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

Section 5.10 Further Assurances. The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Commercial Paper Notes of the rights and benefits provided in this Indenture.

Section 5.11 Retirement of Commercial Paper Notes. So long as any Commercial Paper Notes are Outstanding, the Authority shall cause the Dealers to retire and not remarket, renew or refinance Commercial Paper Notes, in an aggregate principal amount equal to or in excess of the Required Principal Reduction Amount no later than [June 30] of each Base Rental Period, commencing [June 30], 20[\_\_\_], with any such Advances repaid or prepaid prior to retirement of any such Commercial Paper Notes.

Section 5.12 Debt Service Certificate—Additional Interest/Principal. If at any time during a Base Rental Period, the aggregate amount on deposit in the Revenue Account, Notes Payment Account or the Reimbursement Account shall not be sufficient to pay all principal and interest projected to be due and payable on the Commercial Paper Notes and Bank Notes during such Base Rental Period and the Required Principal Reduction Amount for such Base Rental Period, if any, the Authority shall file with the City, the Trustee and the Issuing and Paying Agent a Debt Service Certificate—Additional Interest/Principal.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

Section 6.01      Events of Default; Notice. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal or interest on any Commercial Paper Notes when and as the same shall become due and payable.

(b) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Commercial Paper Notes contained, if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(c) The occurrence and continuation of an event of default under and as defined in the Lease.

(d) The Trustee receives written notice from any Credit Facility Provider of the occurrence of an “event of default” under the respective Credit Facility Agreement.

If an Event of Default occurs hereunder, the Trustee shall give notice, at the expense of the City, of such Event of Default to the Owners and each Credit Facility Provider. Such notice shall state that an Event of Default has occurred and shall provide a brief description of such Event of Default. The Trustee in its discretion may withhold notice if it deems it in the best interests of the Owners. Such notice provided shall be given by first-class mail, postage prepaid, to the Owners within 30 days of the Trustee’s receipt of knowledge of the occurrence of such Event of Default.

Section 6.02      Remedies Upon Event of Default.

(a) Upon the occurrence and continuance of any Event of Default, then and in every such case, with the written consent of the Required Credit Facility Providers, the Trustee in its discretion may, and upon the written request of the Owners of not less than 50% in principal amount of Commercial Paper Notes then Outstanding and receipt of indemnity to its satisfaction, and payment of its fees and expenses, including the fees and expenses of its counsel, with the consent of the Required Credit Facility Providers, and, at the written direction of the Required Credit Facility Providers, shall in its own name and as the Trustee of an express trust:

(1) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners hereunder, and require the Authority or the City to carry out any agreements with or for the benefit of the Owners of Commercial Paper Notes and the Credit Facility Providers and to perform its or their duties under the Lease and this Indenture,

provided that any such remedy may be taken only to the extent permitted under the applicable provisions of the Lease or this Indenture, as the case may be;

(2) bring suit upon the Commercial Paper Notes;

(3) by action or suit in equity require the Authority to account as if it were the trustee of an express trust for the Owners of Commercial Paper Notes and the Credit Facility Providers; or

(4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of Commercial Paper Notes or the Credit Facility Providers hereunder.

(b) Upon the occurrence of an Event of Default, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers for the Revenues, ex parte, and without notice, and the Authority consents to the appointment of such receiver upon the occurrence of an Event of Default. In the case of any receivership, insolvency, bankruptcy, or other judicial proceedings affecting the Authority or the City, the Trustee shall be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have the claims of the Trustee, the Commercial Paper Note Owners and the Credit Facility Providers allowed in such proceedings, without prejudice, however, to the right of any Commercial Paper Note Owner or any Credit Facility Provider to file a claim on his or her own behalf; provided, the Trustee shall be entitled to compensation and reimbursement for the reasonable fees and expenses of its counsel and indemnity for its reasonable expenses and liability from the Authority, the City or the Commercial Paper Note Owners, as appropriate.

(c) In no event are the Notes subject to acceleration of principal or interest due with respect to the Notes prior to their stated due dates.

Section 6.03 Application of Revenues and Other Funds After Default. If an Event of Default shall occur and be continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee as follows and in the following order:

(a) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Commercial Paper Notes and the Credit Facility Providers and payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture;

(b) To the payment of the principal of and interest then due on the Notes in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date,

then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Notes which shall have become due, with interest on the overdue principal at the rate borne by the respective Notes (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Notes, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

Section 6.04 Trustee to Represent Commercial Paper Note Owners. The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Commercial Paper Notes, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Commercial Paper Notes for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Commercial Paper Notes, this Indenture and applicable provisions of any law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Commercial Paper Note Owners, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Commercial Paper Notes then Outstanding, and upon being indemnified to its satisfaction therefor, the Trustee shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under the Commercial Paper Notes, this Indenture or any other law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Revenues and other assets pledged under this Indenture, pending such proceedings. All rights of action under this Indenture or the Commercial Paper Notes or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Commercial Paper Notes or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Commercial Paper Notes, subject to the provisions of this Indenture.

Section 6.05 Commercial Paper Note Owners' Direction of Proceedings. Subject to right of the Required Credit Facility Providers to direct remedies hereunder, anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Commercial Paper Notes then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, and upon indemnification of the Trustee to its reasonable satisfaction, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would expose it to liability.

Section 6.06 Limitation on Commercial Paper Note Owners' Right to Sue. Notwithstanding any other provision hereof, no Owner of any Commercial Paper Notes shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Commercial Paper Notes, unless (a) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Commercial Paper Notes then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have failed to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) no direction inconsistent with such written request shall have been given to the Trustee during such sixty (60) day period by the Owners of a majority in aggregate principal amount of the Commercial Paper Notes then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Commercial Paper Notes of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Commercial Paper Notes shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Commercial Paper Notes, or to enforce any right under the Commercial Paper Notes, this Indenture, the Lease or other applicable law with respect to the Commercial Paper Notes, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Commercial Paper Notes, subject to the provisions of this Indenture.

Section 6.07 Absolute Obligation of Authority. Nothing in Section 6.06 or in any other provision of this Indenture or in the Commercial Paper Notes contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest on the Commercial Paper Notes to the respective Owners of the Commercial Paper Notes at their respective dates of maturity, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Commercial Paper Notes.

Section 6.08 Termination of Proceedings. If any proceedings taken by the Trustee or any one or more Commercial Paper Note Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, the Commercial Paper Note Owners or Credit Facility Providers, then the Authority, the Trustee, the Commercial Paper Note Owners and Credit Facility Providers, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee, the Commercial Paper Note Owners and Credit Facility Providers shall continue as though no such proceedings had been taken.

Section 6.09 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee, the Owners or Credit Facility Providers is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

Section 6.10 No Waiver of Default. No delay or omission of the Trustee, any Owner or Credit Facility Providers to exercise any right or power arising upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee, the Owners of the Commercial Paper Notes or Credit Facility Providers may be exercised from time to time and as often as may be deemed expedient.

Section 6.11 Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Authority, the Trustee, their officers, employees and agents, the Owners and Credit Facility Providers any right, remedy or claim under or by reason of this Indenture, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the City, the Authority, the Trustee, their officers, employees and agents, the Owners and Credit Facility Providers.

Section 6.12 Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the City Charter and other applicable law, and all of the provisions of this Article are intended to be subject to the City Charter and all other applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this instrument or the provisions hereof invalid or unenforceable under the provisions of the City Charter or other applicable law.

Section 6.13 Direction of Remedies by Credit Facility Providers. Any provision herein to the contrary notwithstanding, the Trustee shall exercise the remedies provided for hereunder or under the Sublease or under any applicable law only if and as directed or consented to in writing by the respective Credit Facility Providers and shall not waive any Event of Default without the prior written consent of the respective Credit Facility Providers; provided, that in each such instance, the Credit Facility Providers shall only include a Credit Facility Provider for only so long as the applicable Credit Facility is in effect and so long as such Credit Facility Provider has not failed to honor a properly presented and conforming drawing on such Credit Facility.

## ARTICLE VII

### THE TRUSTEE

Section 7.01 Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are



expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The City may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by the Owners of not less than a majority in aggregate principal amount of the Commercial Paper Notes then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section 7.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its Leased Property shall be appointed, or any public officer shall take control or charge of the Trustee or of its Leased Property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and the City and thereupon shall appoint a successor Trustee by an instrument in writing. Any such removal shall be made upon at least thirty (30) days' prior written notice to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Commercial Paper Note Owners notice of such resignation by mail at the addresses shown on the Registration Books. Upon receiving such notice of resignation, the City as agent for the Authority shall promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within sixty (60) days of giving notice of removal or notice of resignation as aforesaid, the City (as agent of the Authority) shall petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executing and delivering to the Authority, the City and its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the City (as agent of the Authority) or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any Leased Property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other Leased Property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority

shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Commercial Paper Notes and to the Commercial Paper Note Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise trust powers, shall have (or, in the case of a corporation or national banking association included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least one hundred million dollars (\$100,000,000), shall be subject to supervision or examination by federal or state agency, so long as any Commercial Paper Notes are Outstanding. If such corporation or national banking association publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining agency above referred to then for the purpose of this subsection (e), the combined capital and surplus of such corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section 7.01.

Section 7.02 Merger or Consolidation. Any bank or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 7.01 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 7.03 Liability of Trustee.

(a) The recitals of facts herein and in the Commercial Paper Notes contained shall not be taken as statements of the Trustee, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Commercial Paper Notes or the Lease, nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations herein or in the Commercial Paper Notes assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Commercial Paper Notes. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Commercial Paper Notes with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Commercial Paper Note Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Commercial Paper Notes then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Commercial Paper Notes at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

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

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof, at its Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or of any of the documents executed in connection with the Commercial Paper Notes, or as to the existence of an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee shall not be responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City and the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of the City to make Lease Payments to the Trustee when due, such reports and certifications as the City are required to file with the Trustee thereunder.

(f) Except for giving notice of an Event of Default pursuant to Section 6.01 hereof, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it is not assured to its satisfaction that the repayment of such funds or adequate indemnity against such risk or liability is reasonably assured to it.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of Owners pursuant to this Indenture, unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture and the Lease relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of Section 7.01(a), this Section 7.03 and Section 7.04 hereof.

(j) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Property.

(l) Except to the extent that information was provided by the Trustee, the Trustee shall have no responsibility with respect to any information, statement, or recital in any offering memorandum or any other disclosure material prepared or distributed with respect to the Commercial Paper Notes.

(m) The indemnities extended to the Trustee also extend to its directors, officers, employees and agents.

(n) The Trustee may become the owner or pledgee of any Commercial Paper Notes with the same rights it would have if it were not Trustee.

(o) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Leased Property, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(p) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

Section 7.04 Right to Rely on Documents. The Trustee shall be protected in acting upon any notice, facsimile, e-mail, resolution, request, requisition, consent, order, certificate, report, opinion, notes or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Commercial Paper Notes appearing in the Registration Books as the absolute owners of the Commercial Paper Notes for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

Section 7.05 Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained by the Trustee and shall be subject at all reasonable times to the inspection of the Authority, the City and any Commercial Paper Note Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Section 7.06 Compensation and Indemnification. The Authority shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all reasonable expenses and disbursements (including fees and expenses of counsel), incurred in and about the performance of its powers and duties under this Indenture, in accordance with the fee schedule set forth in a written agreement between the Authority and the Trustee.

The Authority shall indemnify, defend and hold harmless the Trustee against any loss, liability or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. As security for the performance of the obligations of the Authority under this Section 7.06 to the Trustee, the Trustee shall have a lien prior to the lien of the Notes upon all Leased Property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Notes. The rights of the Trustee and the obligations of the Authority under this Section 7.06 shall survive the resignation or removal of the Trustee or the discharge of this Indenture.

## ARTICLE VIII

### AMENDMENTS TO INDENTURE

Section 8.01 Amendments to Indenture. This Indenture may be amended only in writing by agreement among the City, the Authority and the Trustee with the written consent of the Credit Facility Providers. No such modification or amendment shall (i) extend the maturity of or reduce the interest rate on any Commercial Paper Note or otherwise alter or impair the obligation of the Authority to pay the principal or interest at the time and place and at the rate and in the currency provided therein of any Commercial Paper Note without the express written consent of the Owner of such Commercial Paper Note, or (ii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

## ARTICLE IX

### DEFEASANCE

Section 9.01 Defeasance. If, when all or any portion of the Commercial Paper Notes shall have become due and payable in accordance with their terms or otherwise as provided in this Indenture, the entire principal and interest so due and payable upon said Commercial Paper Notes shall be paid, or if at or prior to the date said Commercial Paper Notes have become due and payable, sufficient moneys or Defeasance Obligations, the principal of and interest on which will provide sufficient moneys for such payment, as verified by a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay said Commercial Paper Notes in full on the dates that principal of and interest on said Commercial Paper Notes is due, shall be held in trust by the Trustee or the Authority and provision shall also be made for paying all other sums payable hereunder by the Trustee or the Authority with respect to said Commercial Paper Notes, the pledge herein created with respect to said Commercial Paper Notes shall thereupon cease, terminate and become discharged and said Commercial Paper Notes shall no longer be deemed Outstanding for purposes of this Indenture and all the provisions of this Indenture, including all covenants, agreements, liens and pledges made herein, shall be deemed duly discharged, satisfied and released with respect to said Commercial Paper Notes; provided, however, that any such defeasance shall be subject to delivery by the Authority of an opinion of Bond Counsel to the effect that the provisions for paying such Commercial Paper Notes (assuming compliance by the Authority, the Issuing and Paying Agent and the Trustee with their duties under the Indenture and the Issuing and Paying Agency Agreement) will not, by itself, adversely affect the tax-exempt status of the Tax-Exempt Commercial Paper Notes and written confirmation from each Rating Agency that such defeasance shall not result in a downgrade or withdrawal of the then current short-term ratings on said Commercial Paper Notes.

## ARTICLE X

### MISCELLANEOUS

Section 10.01 Liability of Authority Limited to Revenues. Notwithstanding anything in this Indenture or in the Commercial Paper Notes contained, the Authority shall not be required

to advance any moneys derived from any source other than the Revenues and other assets pledged or assigned under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Notes or for any other purpose of this Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

Section 10.02 Limitation of Rights to Parties and Commercial Paper Note Owners. Nothing in this Indenture or in the Commercial Paper Notes expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Commercial Paper Notes, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Trustee, the City, the Authority and the Owners of the Commercial Paper Notes.

Section 10.03 Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 4.04 and for the protection of the security of the Commercial Paper Notes and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary to perform its obligations hereunder. The Trustee shall deliver a monthly accounting to the Authority and to the City of the funds and accounts held hereunder; provided, that the Trustee shall not be obligated to deliver an accounting for any fund or account that has had no activity since the last reporting date and that has a balance of zero.

Section 10.04 Unclaimed Funds. Notwithstanding any provisions of this Indenture, and subject to applicable provisions of State law, any moneys held by the Trustee in trust for the payment of the principal or interest on any Commercial Paper Notes and remaining unclaimed for two (2) years after the principal of the last maturing Commercial Paper Notes became due and payable, if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when the last maturing Commercial Paper Notes became due and payable, shall be repaid to the City free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the City as aforesaid, the Trustee shall (at the written request and cost of the City) first mail to the Owners of Commercial Paper Notes which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Commercial Paper Notes so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof. Thereafter, the Owner of such Commercial Paper Note shall look only to the City for payment and then only to the extent of the amount so returned to the City without any interest thereon, and the Trustee shall have no responsibility with respect to such money.

During any period in which the Trustee holds such unclaimed money, the Trustee shall not be required to invest such money; nonetheless if the Trustee should invest such money any earnings on such amounts shall be remitted to the City as such earnings are realized.

Section 10.05 Waiver of Notice; Requirement of Mailed Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice shall be required to be given by mail, such requirement shall be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

Section 10.06 Destruction of Commercial Paper Notes. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Commercial Paper Notes, the Trustee shall, in lieu of such cancellation and delivery, destroy such Commercial Paper Notes as may be allowed by law, and at the written request of the Authority or the City the Trustee shall deliver a certificate of such destruction to the Authority.

Section 10.07 Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Commercial Paper Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Commercial Paper Notes pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 10.08 Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) after deposit in the United States mail, postage prepaid, upon receipt, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.



If to the Authority: Public Facilities Financing Authority of the City of San Diego  
c/o City of San Diego  
City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney - Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

If to the City: City of San Diego  
Debt Management Department  
202 C Street, MS 7B  
San Diego, California 92101  
Attention: Director of Debt Management  
Phone: (619) 235-5840  
Fax: (619) 235-5835

If to the Trustee: U.S. Bank National Association  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Global Corporate Trust Services  
Phone: (213) 615-6051  
Fax: (213) 615-6199

If to the Issuing and  
Paying Agent U.S. Bank National Association  
100 Wall Street, 16th Floor  
New York, New York 10005  
Attention: Commercial Paper Operations  
Phone: (212) 951-8508  
Fax: (212) 509-4529

If to a Credit Facility  
Provider See its address as indicated in the applicable Credit Facility  
Agreement.

If to the Dealers See their addresses as indicated in their respective Dealer  
Agreements.

The City, the Authority and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 10.09 Evidence of Acts of Owners.

(a) Any request, direction, consent or other instrument provided hereby to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any

such agent and of the ownership of Commercial Paper Notes, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Trustee, Authority and City, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(1) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(2) The ownership of Commercial Paper Notes shall be proved by the Registration Books.

Nothing in this Section shall be construed as limiting the Trustee to the proof herein specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient including, without limitation, an affidavit evidencing beneficial ownership of Commercial Paper Notes while the Commercial Paper Notes are held in book-entry only system.

(b) Any action taken or suffered by the Trustee pursuant to any provision hereof, upon the request or with the assent of any person who at the time is the Owner of any Commercial Paper Note or Commercial Paper Notes, shall be conclusive and binding upon all future Owners of the same Commercial Paper Note or Commercial Paper Notes.

(c) Any request, consent, or other instrument or writing of the Owner of any Commercial Paper Note shall bind every future Owner of the same Commercial Paper Note and the Owner of every Commercial Paper Note issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

Section 10.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in the Indenture, shall be a legal holiday or a day on which the Authority, the City, the Trustee or banking institutions in the State are authorized by law or otherwise to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which the Authority, the City, the Trustee or such banking institutions are authorized by law or otherwise to remain closed, with the same force and effect as if done on the nominal date provided in the Indenture, and no interest shall accrue for the period after such nominal date.

Section 10.11 Money Held for Particular Commercial Paper Notes. The money held by the Trustee or the Issuing and Paying Agent for the payment of the interest or principal due with respect to particular Commercial Paper Notes shall, on and after such date and pending such payment, be set aside on its books and held in trust by or on behalf of the Trustee for the Owners of the Commercial Paper Notes entitled thereto, subject, however, to the provisions of Section 10.04 hereof but without any liability for interest thereon.

Section 10.12 Waiver of Personal Liability. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal or interest on the Commercial Paper Notes or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

Section 10.13 Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the City, the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City, the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 10.14 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 10.15 Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 10.16 Notices to the Rating Agencies. The Authority shall provide notice to the Rating Agencies then rating the Commercial Paper Notes of each of the following events: (a) the extension, renewal, expiration, termination or replacement of a Credit Facility pursuant to this Indenture; (b) any material modification or amendment to the Issuing and Paying Agent Agreement, the Indenture, the Lease, a Credit Facility (including any agreement providing for the delivery of a Credit Facility) or a Dealer Agreement; (c) the payment in full or the defeasance of the Commercial Paper Notes under the Indenture; and (d) the resignation or removal of, or the appointment of any successor to, the Trustee, the Issuing and Paying Agent or any Dealer.

Section 10.17 Dealers; Dealer Agreements. \_\_\_\_\_ have been appointed as the initial Dealers for the Commercial Paper Notes. A Dealer may resign or be discharged of the duties and obligations created by this Indenture and the Dealer Agreement in accordance with the applicable Dealer Agreement. The Authority agrees and covenants that it will maintain Dealer Agreements in full force and effect providing for the marketing of all Commercial Paper Notes.

Section 10.18 Issuing and Paying Agent. U.S. Bank National Association shall act as the Issuing and Paying Agent for the Commercial Paper Notes. The Issuing and Paying Agent may resign or be discharged of the duties and obligations created by the Issuing and Paying Agency Agreement in accordance with the Issuing and Paying Agency Agreement. The Authority shall promptly appoint a successor Issuing and Paying Agent in the event the Issuing and Paying Agent resigns or is discharged. Any Issuing and Paying Agent appointed under the provisions of this Section shall be a corporation or association that is qualified to act as Trustee pursuant to Section 7.01(e) hereof.

Section 10.19 Delegation of Authority to City Regarding the Commercial Paper Notes. The Authority hereby irrevocably delegates all authority to the City to act on behalf of the

Authority, and irrevocably appoints the City as its agent to take all actions and make all determinations to be performed or made by the Authority, and to receive all notices, reports and other information, with respect to any matter relating to the Commercial Paper Notes under this Indenture, the Lease, the Site Lease, the Issuing and Paying Agency Agreement, each Credit Facility, each Credit Facility Agreement, and each Dealer Agreement. Notwithstanding the foregoing, the Commercial Paper Notes shall continue to be special limited obligations of the Authority and any other payment or indemnification obligations of the Authority under this Indenture, the Issuing and Paying Agency Agreement and the Dealer Agreements remain obligations of the Authority.

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IN WITNESS WHEREOF, the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO has caused this Indenture to be signed in its name by its officers identified below and U.S. BANK NATIONAL ASSOCIATION, as Trustee, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Myrtle Cole, Chair

Attest:

\_\_\_\_\_  
Elizabeth S. Maland, Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

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

**EXHIBIT A**

**FORM OF COMMERCIAL PAPER NOTE**

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE COMMERCIAL PAPER NOTES**

Series: \_\_\_\_\_ Note Date: \_\_\_\_\_  
No.: \_\_\_\_\_  
Principal Amount: \_\_\_\_\_ Maturity Date: \_\_\_\_\_  
Interest to Maturity: \_\_\_\_\_ Number of Days: \_\_\_\_\_  
Due at Maturity: \_\_\_\_\_ Interest Rate (%): \_\_\_\_\_

The Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), acknowledges itself indebted to, and for value received, hereby promises to pay to the party specified above: (i) the principal amount specified above on the maturity date specified above, together with unpaid accrued interest thereon, if any, on said principal amount at said maturity date, from the above specified note date to said maturity date at the per annum interest rate shown above (calculated on the basis of a 365/366-day year for the actual number of days elapsed to the date on which this Commercial Paper Note matures). Both principal and interest on this Commercial Paper Note being payable in lawful money of the United States of America at the designated principal office of the U.S. Bank National Association, as Issuing and Paying Agent (the "Issuing and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal office of such successor.

It is hereby certified and recited that any and all things, conditions, and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Commercial Paper Note do exist, have happened, and have been performed in due time, form, and manner as required by the provisions of the Marks-Roos Local Bond Pooling Act of 1985, as amended, being Section 6584 *et seq.* of the Government Code of the State of California (the "Act") and the laws of the State of California (the "State"), and that the issue of this Commercial Paper Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution and laws of the State of California.

This Commercial Paper Note shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Issuing and Paying Agent.

This Commercial Paper Note is a duly authorized issue of commercial paper notes of the Authority designated as its "Lease Revenue Commercial Paper Notes" (the "Commercial Paper Notes"), all of which have been issued under the authority of and full compliance with the Act and the provisions of an Indenture, dated as of [Dated Date] (the "Indenture"), by and between the Authority and U.S. Bank National Association, as Trustee (the "Trustee").

Reference is hereby made to the Indenture (a copy of which is on file at said corporate trust office of the Trustee) for a description of the rights thereunder of the registered owners of the Commercial Paper Notes, of the nature and extent of the security, of the rights, duties, and immunities of the Trustee, and of the rights and obligations of the Authority thereunder. Reference is hereby made to the Indenture for definitions of terms used and not otherwise defined herein, and to all of the provisions of which (including provisions for issuance of obligations on a parity of security herewith) the Owner by acceptance hereof hereby assents.

The Authority has leased the Leased Property to the City pursuant to the Facilities Lease, dated as of [Dated Date] (the "Lease"), and pursuant to the Lease the City has agreed to pay Base Rental Payments to the Issuing and Paying Agent on behalf of the Trustee, as assignee of the Authority, for the use and occupancy of the Leased Property (as defined in the Lease).

This Commercial Paper Note is a limited obligation of the Authority and is payable, as to interest hereon and principal hereof, solely from the revenues derived from Base Rental Payments paid by the City under the Lease and other assets pledged or assigned under the Indenture, all as set forth in the Indenture. Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues (as defined in the Indenture) and all amounts held in the Issuing and Paying Agent Fund have been pledged to secure the payment of the principal and interest on the Commercial Paper Notes and Bank Notes and all amounts due to each Credit Facility Provider in accordance with their terms and the provisions of the Indenture; provided that the proceeds of the sale of a Series of Commercial Paper Notes on deposit in any such fund or account shall not secure any other Series of Commercial Paper Notes or the related Bank Note, and the proceeds of any drawing or payment under a Credit Facility for a Series shall not secure any other Series of Commercial Paper Notes and the related Bank Notes. In addition, the Authority has transferred in trust, granted a security interest in and assigned to the Trustee, for the benefit of the Owners and each Credit Facility Provider (i) all of the Revenues and all amounts held in the respective accounts of the Issuing and Paying Agent Fund and (ii) all of the rights of the Authority in the Lease (except for certain rights to indemnification set forth therein), and in the Site Lease (except for certain rights to indemnification set forth therein).

The Trustee has no obligation or liability to the registered owner of this Commercial Paper Note to make payments of principal of or interest on this Commercial Paper Note, except from amounts on deposit for such purposes with the Trustee. The Trustee's sole obligations are to administer for the benefit of the registered owner of this Commercial Paper Note the various funds and accounts established under the Indenture and, to the extent provided in the Indenture, to enforce the rights of the Authority under the Lease.

The Indenture and the rights and obligations of the Authority and of the registered owner of this Commercial Paper Note and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture.

The Authority and the Issuing and Paying Agent may deem and treat the person in whose name this Commercial Paper Note shall be registered upon the books of the Issuing and Paying Agent as the absolute owner of this Commercial Paper Note, whether this Commercial Paper Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of

and interest on this Commercial Paper Note and for all other purposes, and all such payments so made to any such registered owner or upon his or her order shall be valid and effectual to satisfy and discharge the liability upon this Commercial Paper Note to the extent of the sum or sums so paid, and neither the Authority nor the Issuing and Paying Agent shall be affected by any notice to the contrary.

The Commercial Paper Notes are special, limited obligations of the Authority and do not constitute a debt, liability or obligation of the City or of the State of California (the "State") or any political subdivision thereof and neither the faith and credit of the City nor the State are pledged to the payment of the principal of or interest on the Commercial Paper Notes. The Authority has no taxing power.



IN WITNESS WHEREOF, the Public Facilities Financing Authority of the City of San Diego has caused this Commercial Paper Note to be executed in its name and on its behalf by the facsimile signature of its Chair or Vice-Chair and attested to by the facsimile signature of its Secretary, and has caused this Commercial Paper Note to be dated the Dated Date stated above.

PUBLIC FACILITIES FINANCING  
AUTHORITY OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Chair or Vice-Chair

Attest:

\_\_\_\_\_  
Secretary

**ISSUING AND PAYING AGENT'S CERTIFICATE OF AUTHENTICATION**

This Commercial Paper Note is one of the Commercial Paper Notes described in the within-mentioned Indenture and Issuing and Paying Agency Agreement, which Commercial Paper Note has been authenticated and registered on the date set forth below.

Date of Authentication:

U.S. Bank National Association, as Issuing and  
Paying Agent

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

**ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

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

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

the within-mentioned Commercial Paper Note and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the registration books of the Authority with full power of substitution in the premises.

Dated:

Signature Guaranteed:

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

\_\_\_\_\_  
Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Commercial Paper Note in every particular without alteration or enlargement or any change whatsoever.

## **EXHIBIT B**

### **FORM OF MASTER NOTE**

[Attach to DTC Form of Municipal Commercial Paper – TECP Master Note]

#### **ANNEX I TO MUNICIPAL COMMERCIAL PAPER – TECP MASTER NOTE**

The Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”), acknowledges itself indebted to, and for value received, hereby promises to pay to Cede & Co., as nominee of DTC, or to registered assigns: (i) the principal amount, together with unpaid accrued interest thereon, if any, on the maturity date of each obligation identified on the records of the Authority (the “Underlying Records”) as being evidenced by this Master Note, which Underlying Records are maintained by U.S. Bank National Association (the “Issuing and Paying Agent”); (ii) interest on the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records; and (iii) the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records. Interest shall be calculated at the rate and according to the calculation convention specified on the Underlying Records. Payments shall be made solely from the sources stated on the Underlying Records by wire transfer to the registered owner from Issuing and Paying Agent without the necessity of presentation and surrender of this Master Note.

It is hereby certified and recited that any and all things, conditions, and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Book-Entry Commercial Paper Notes and this Master Note do exist, have happened, and have been performed in due time, form, and manner as required by the provisions of the Marks-Roos Local Bond Pooling Act of 1985, as amended, being Section 6584 *et seq.* of the Government Code of the State of California (the “Act”) and the laws of the State of California (the “State”), and that the issue of the Commercial Paper Notes and this Master Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution and laws of the State of California.

This Master Note shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the Issuing and Paying Agent shall have authenticated the same by manual signature.

The Commercial Paper Notes and this Master Note are a duly authorized issue of commercial paper notes of the Authority designated as its “Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes” (the “Commercial Paper Notes”), all of which have been issued under the authority of and full compliance with the Act and the provisions of an Indenture, dated as of [Dated Date] (the “Indenture”), each by and between the Authority and U.S. Bank National Association, as Trustee (the “Trustee”).

The Authority has leased the Leased Property to the City pursuant to the Facilities Lease, dated as of [Dated Date] (the “Lease”), and pursuant to the Lease the City has agreed to pay Base

Rental Payments to the Issuing and Paying Agent on behalf of the Trustee, as assignee of the Authority, for the use and occupancy of the Leased Property (as defined in the Lease).

This Commercial Paper Note is a limited obligation of the Authority and is payable, as to interest hereon and principal hereof, solely from the revenues derived from Base Rental Payments paid by the City under the Lease and other assets pledged or assigned under the Indenture, all as set forth in the Indenture. Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues (as defined in the Indenture) and all amounts held in the Issuing and Paying Agent Fund have been pledged to secure the payment of the principal and interest on the Commercial Paper Notes and Bank Notes and all amounts due to each Credit Facility Provider in accordance with their terms and the provisions of the Indenture; provided that the proceeds of the sale of a Series of Commercial Paper Notes on deposit in any such fund or account shall not secure any other Series of Commercial Paper Notes or the related Bank Note, and the proceeds of any drawing or payment under a Credit Facility for a Series shall not secure any other Series of Commercial Paper Notes and the related Bank Notes. In addition, the Authority has transferred in trust, granted a security interest in and assigned to the Trustee, for the benefit of the Owners and each Credit Facility Provider (i) all of the Revenues and all amounts held in the respective accounts of the Issuing and Paying Agent Fund and (ii) all of the rights of the Authority in the Lease (except for certain rights to indemnification set forth therein), and in the Site Lease (except for certain rights to indemnification set forth therein).

The Trustee and the Issuing and Paying Agent have no obligation or liability to the registered owners of the Book-Entry Commercial Paper Notes to make payments of principal of or interest on the Book-Entry Commercial Paper Notes, except from amounts on deposit for such purposes with the Trustee. The Trustee's and the Issuing and Paying Agent's sole obligations are to administer for the benefit of the registered owners of the Book-Entry Commercial Paper Notes the various funds and accounts established under the Indenture and, to the extent provided in the Indenture, to enforce the rights of the Authority under the Agreement.

The Indenture and the rights and obligations of the Authority and of the registered owners of the Book-Entry Commercial Paper Notes and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture.

The Book-Entry Commercial Paper Notes and this Master Note are special, limited obligations of the Authority and do not constitute a debt, liability or obligation of the City or of the State of California (the "State") or any political subdivision thereof and neither the faith and credit of the City nor the State are pledged to the payment of the principal of or interest on the Book-Entry Commercial Paper Notes or this Master Note. The Authority has no taxing power.

Unless this Master Note is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Authority or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR

OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**EXHIBIT C**

**FORM OF COSTS OF ISSUANCE FUND REQUISITION**

To: U.S. Bank National Association

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

Re: Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes – Costs of Issuance Fund

Requisition No. \_\_\_\_\_

The undersigned, on behalf of The City of San Diego (the “City”), hereby requests payment, from the Costs of Issuance Fund identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for Costs of Issuance in connection with the issuance of the Commercial Paper Notes identified above, as reflected in the related invoice(s) attached hereto. The payee(s), the purpose and the amount of the disbursement requested are as follows:

<b><u>Payee</u></b>	<b><u>Purpose</u></b>	<b><u>Amount</u></b>
[name and address]		\$
	Total	\$

The undersigned hereby certify that each obligation mentioned herein has been properly incurred, is a proper charge against the Costs of Issuance Fund and has not been the basis of any previous disbursement from the Costs of Issuance Fund. A copy of the bill or statement for each obligation mentioned herein is attached hereto.

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

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized City Representative

By: \_\_\_\_\_  
Comptroller [or his designee]

**EXHIBIT D**

**FORM OF ACQUISITION FUND REQUISITION**

To: Chief Investment Officer / City Treasurer  
Office of the City Treasurer  
City of San Diego

Re: Public Facilities Financing Authority of the City of San Diego Lease Revenue  
Commercial Paper Notes – Acquisition Fund

Requisition No. \_\_\_\_\_

The City of San Diego, on behalf of Public Facilities Financing Authority of the City of San Diego (the “Authority”), hereby requests payment from the Acquisition Fund funded with proceeds of the Commercial Paper Notes identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for Construction Costs incurred or expenditures made in connection with the Projects financed with the proceeds of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Commercial Paper Notes, as reflected in the related invoice(s) attached hereto. The payee(s), the purpose and the amount of the disbursement requested are as follows:

<b><u>Payee</u></b>	<b><u>Purpose</u></b>	<b><u>Amount</u></b>
[name and address]		\$
	Total	\$

The undersigned hereby certify that each obligation mentioned herein has been properly incurred, is a proper charge against the Acquisition Fund and has not been the basis of any previous disbursement from the Acquisition Fund. A copy of the bill or statement for each obligation mentioned herein is attached hereto.

Dated: \_\_\_\_\_, \_\_\_\_.

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Public Works Director [or his designee]

By: \_\_\_\_\_  
Comptroller [or his designee]





City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

Type of Contractor:  Construction  Vendor/Supplier  Financial Institution  Lessee/Lessor  
 Consultant  Grant Recipient  Insurance Company  Other

Name of Company: U.S. Bank National Association

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 800 Nicollet Mall

City: Minneapolis County: Hennepin State: MN Zip: 55402

Telephone Number: ( ) 651.466.3000 Fax Number: ( ) none

Name of Company CEO: Andy Cecere

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 100 Wall Street, 16th floor

City: New York County: New York State: NY Zip: 10005

Telephone Number: ( ) 212.361.6151 Fax Number: ( ) 212.361.6153 Email: judith.hypolite@usbank.com

Type of Business: Financial services Type of License: national banking association

The Company has appointed: Janet Wright

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 9996 W. Hollandale Drive, Boise, ID 83709

Telephone Number: ( ) 651.325.0939 Fax Number: ( ) none Email: janet.wright@usbank.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of U.S. Bank National Association

(Firm Name)

New York, New York hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 6 day of April, 2018

Judith Hypolite  
(Authorized Signature)

Judith Hypolite  
(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: U.S. Bank National Association

DATE: 4/6/2018

OFFICE(S) or BRANCH(ES): New York tower building

COUNTY: New York

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial	1	2	0	1	2	0	0	0	0	0	0	10	1	0	0
Professional	0	5	2	2	3	2	0	0	0	0	0	12	4	0	0
A&E, Science, Computer															
Technical															
Sales	0	0	0	0	0	1	0	0	0	0	0	2	1	0	0
Administrative Support	1	9	2	4	1	2	0	0	1	0	0	6	1	0	0
Services															
Crafts															
Operative Workers															
Transportation															
Laborers*															

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	2	16	4	7	6	5	0	0	1	0	30	7	0	0
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Grand Total All Employees

**78**

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															



City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING (EOC)**  
 1200 Third Avenue • Suite 200 • San Diego, CA 92101  
 Phone: (619) 236-6000 • Fax: (619) 236-5904

## WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED  
**CONTRACTOR IDENTIFICATION**

Type of Contractor:     Construction     Vendor/Supplier     Financial Institution     Lessee/Lessor  
                                   Consultant     Grant Recipient     Insurance Company     Other

Name of Company: U.S. Bank National Association

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 800 Nicollet Mall

City: Minneapolis    County: Hennepin    State: MN    Zip: 55402

Telephone Number: ( ) 651.466.3000    Fax Number: ( ) none

Name of Company CEO: Andy Cecere

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 633 W. 5th Street

City: Los Angeles    County: Los Angeles    State: CA    Zip: 90071

Telephone Number: ( ) 213.615.6051    Fax Number: ( ) 213.615.6199    Email: ilse.vlach@usbank.com

Type of Business: Financial services    Type of License: national banking association

The Company has appointed: Janet Wright

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 9996 W. Hollandale Drive, Boise, ID 83709

Telephone Number: ( ) 651.325.0939    Fax Number: ( ) none    Email: janet.wright@usbank.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of U.S. Bank National Association

(Firm Name)

Los Angeles, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 6 day of April, 2018

(Authorized Signature)

**Julia Hommel**  
**Vice President**

(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: U.S. Bank National Association

DATE: 4/6/2018

OFFICE(S) or BRANCH(ES): Los Angeles tower building

COUNTY: Los Angeles

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	3	1	2	5	2	7	0	0	1	0	20	10	0	1
Professional	7	3	4	16	5	12	0	0	0	1	29	7	3	0
A&E, Science, Computer														
Technical														
Sales	1	0	1	0	3	0	0	0	0	0	6	5	0	0
Administrative Support	1	4	6	17	3	11	0	0	1	0	6	12	0	1
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	12	8	13	38	13	30	0	0	2	1	61	34	3	2
--------------------	----	---	----	----	----	----	---	---	---	---	----	----	---	---

Grand Total All Employees

217

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	1	0	0	0	0	0	0	0	0	0	3	0	0	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: U.S. Bank National Association

DATE: 4/6/2018

OFFICE(S) or BRANCH(ES): Los Angeles tower building

COUNTY: Los Angeles

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column														

Grand Total All Employees  

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	1	0	0	0	0	0	0	0	0	0	0	3	0	0	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---



# CITY OF SAN DIEGO WORK FORCE REPORT

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (African-American, Hispanic or Latino, Asian, American Indian, Asian Pacific Islander, Caucasian, and Other Ethnicities) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

## MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

## TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

## **Exhibit A: Work Force Report Job categories-Administration**

Refer to this table when completing your firm's Work Force Report form(s).

### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

### **Professional**

Art and Design Workers
------------------------

Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers

Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

**Technical**

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

**Sales**

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

**Administrative Support**

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

**Services**

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

**Operative Workers**

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

**Transportation**

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

**Laborers**

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

## Exhibit B: Work Force Report Job categories-Trade

### Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

### Carpenters

#### Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

### Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

### Construction Laborers

#### Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

### Electricians

### Elevator Installers and Repairers

### First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers
-------------------------------------------------------------------------------

### Glaziers

### Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

### Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

### Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

### Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

### Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

### Plasterers and Stucco Masons

### Roofers

### Security Guards & Surveillance Officers

### Sheet Metal Workers

### Structural Iron and Steel Workers

### Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

### Workers, Extractive Crafts, Miners





City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

Type of Contractor:     Construction     Vendor/Supplier     Financial Institution     Lessee/Lessor  
                                  Consultant     Grant Recipient     Insurance Company     Other

Name of Company: Hawkins Delafield & Wood LLP

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 7 World Trade, New York, New York 10007

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) 212-820-9591 Fax Number: ( ) 212-514-8425

Name of Company CEO: Partnership

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: None

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Type of Business: Law Firm Type of License: \_\_\_\_\_

The Company has appointed: Bonnie Radafshar

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 7 World Trade, New York, New York 10007

Telephone Number: ( ) 212-820-9591 Fax Number: ( ) 212-514-8425 Email: BRadafshar@Hawkins.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Hawkins Delafield & Wood LLP

(Firm Name)

New York County, Manhattan, New York hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 23rd day of October, 2017

Bonnie Radafshar  
(Authorized Signature)

Bonnie Radafshar  
(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: Hawkins Delafield & Wood LLP

DATE: 10/16/17

OFFICE(S) or BRANCH(ES): New York City

COUNTY: NY County (Manhattan)

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial	1	1			1							2	2		
Professional		3	1		2	4						32	6		
A&E, Science, Computer															
Technical															
Sales															
Administrative Support	2	8	3	9		3						6	20		
Services															
Crafts															
Operative Workers															
Transportation															
Laborers*	<del>3</del>	<del>10</del>	<del>4</del>	<del>0</del>	<del>0</del>	<del>0</del>						<del>4</del>	<del>0</del>		

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	3	12	4	9		7						40	28		
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Grand Total All Employees

**103**

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled															
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Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															



City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

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**WORK FORCE REPORT**

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**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

Type of Contractor:     Construction     Vendor/Supplier     Financial Institution     Lessee/Lessor  
                                  Consultant     Grant Recipient     Insurance Company     Other

Name of Company: Hawkins Delafield & Wood LLP

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 7 World Trade, New York, New York 10007

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) 212-820-9591 Fax Number: ( ) 212-514-8425

Name of Company CEO: Partnership

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: None

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Type of Business: Law Firm Type of License: \_\_\_\_\_

The Company has appointed: Bonnie Radafshar

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- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Hawkins Delafield & Wood LLP

(Firm Name)

New York County, Manhattan, New York hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 23rd day of October, 2017

Bonnie Radafshar  
(Authorized Signature)

Bonnie Radafshar  
(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: Hawkins Delafield & Wood LLP

DATE: 10/16/17

OFFICE(S) or BRANCH(ES): Los Angeles

COUNTY: Los Angeles County

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional									2	2	1			
A&E, Science, Computer														
Technical														
Sales														
Administrative Support				1								1		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column			1					2	2	2				
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Grand Total All Employees 7

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:  
April 9, 2018

SUBJECT: Authorization for the Public Facilities Financing Authority of the City of San Diego General Fund Lease Revenue Commercial Paper Notes Program (the "CP Program")

**GENERAL CONTRACT INFORMATION**

Recommended Consultant: U.S. Bank, National Association  
Amount of this Action: TBD

Recommended Consultant: Public Facilities Financing Authority of the City of San Diego  
Amount of this Action: TBD

Recommended Consultant: Hawkins Delafield & Wood LLP  
Amount of this Action: TBD

Funding Source: Commercial Paper Proceeds (General Fund Lease Revenue Commercial Paper Notes)

Goals: N/A

**U.S. Bank, National Association**

**SUBCONSULTANT PARTICIPATION**

There is no subconsultant participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

U.S. Bank, National Association submitted a Work Force Report for their Los Angeles County employees dated, February 6, 2018 indicating 217 employees in their Administrative Work Force.

The Administrative Work Force indicates under representation in the following categories:

Latino in Management & Financial  
Female in Professional  
Latino and Female in Sales  
African-American and Latino in Administrative Support

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Municipal Code Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**Public Facilities Financing Authority of the City of San Diego**

**SUBCONSULTANT PARTICIPATION**

There is no subconsultant participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Public Facilities Financing Authority of the City of San Diego is a Government Agency created under authority of Public Entity), and as such, is exempt from submitting Work Force Reports. Refer to San Diego Municipal Code Section 22.2703(b).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**Hawkins Delafield & Wood LLP**

**SUBCONSULTANT PARTICIPATION**

There is no subconsultant participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Hawkins Delafield and Wood LLP submitted a Work Force Report for their Los Angeles County employees dated, October 16, 2017 indicating 7 employees in their Administrative Work Force.

The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Municipal Code Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

This action includes the authorization of the issuance of General Fund Lease Revenue Commercial Paper Notes in an amount not to exceed \$80.5 million to provide financing for General Fund CIP needs.

**MM**



The City of San Diego  
**Item Approvals**

**Item Subject:** Approval of City General Fund-Back Lease Revenue Commercial Paper Notes

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
OFFICE OF THE CITY ATTORNEY DEPARTMENT APPROVER	SINGER, SANNA	04/11/2018