

**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft Revenue Bond Indenture**

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REVENUE BOND INDENTURE

by and between

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

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Dated as of January 1, 2013

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Providing for the issuance of Bay Area Water Supply  
and Conservation Agency Revenue Bonds  
(Capital Cost Recovery Prepayment Program)

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## REVENUE BOND INDENTURE

This REVENUE BOND INDENTURE, dated as of January 1, 2013 (the “Indenture”), by and between BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (the “Agency”), a public agency duly formed and existing under the laws of the State of California, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee (the “Trustee”);

### WITNESSETH:

WHEREAS, the Agency is a public agency formed and existing pursuant to the Bay Area Water Supply and Conservation Agency Act, Division 31 of the Water Code of the State of California (the “Act”); and

WHEREAS, in accordance with the Act, twenty-four public entities in San Mateo County, Alameda County and Santa Clara County, the California Water Services Company and Stanford University are members of the Agency (the “Members”); and

WHEREAS, the Members have entered into a Water Supply Agreement dated July 2009 (the “WSA”) with the City and County of San Francisco (the “San Francisco”) providing for the sale of water by San Francisco to the Members; and

WHEREAS, pursuant to the WSA, the Members are obligated to make payments to San Francisco to provide capital cost recovery for “Existing Regional Assets” as defined in the WSA (“Capital Cost Recovery Payments”); and

WHEREAS, the WSA provides that the Members, acting through the Agency, may prepay the remaining principal balance of the Capital Cost Recovery Payments, in whole or in part (a “Prepayment”); and

WHEREAS, certain Members (“Participating Members”) have authorized or may authorize the Agency to make a Prepayment on behalf of such Members; and

WHEREAS, pursuant to the Act, the Agency is authorized to issue revenue bonds to finance all or a portion of any Prepayment; and

WHEREAS, in accordance with the Act, the Agency may, to provide for payment of such revenue bonds, impose a surcharge on water sold by San Francisco to Participating Members; and

WHEREAS, the Agency has determined that it is desirable and necessary and in the best interest of the Agency and the Participating Members to enter into this Indenture in order to provide for the authentication and delivery of revenue bonds (the “Bonds”) to finance or refinance the Prepayment, to establish and declare the terms and conditions upon which the Bonds shall be issued and secured and to secure the payment of the principal of and premium (if any) and interest thereon; and



WHEREAS, the Bonds will be special, limited obligations of the Agency payable solely from Revenues and from amounts on deposit in certain funds and accounts held under this Indenture; and

WHEREAS, the execution and delivery of this Indenture has in all respects been duly and validly authorized by a resolution duly passed and approved by the Board of Directors of the Agency; 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 the entering into of this Indenture do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Indenture;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the premium, if any, and the interest on all Bonds at any time issued, authenticated and delivered hereunder and to provide the terms and conditions under which all property, rights and interests hereby assigned and pledged are to be dealt with and disposed of, and to secure the performance and observance of the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and in consideration of the premises and of the material covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration, the receipt of which is hereby acknowledged, the Agency does hereby agree and covenant with the Trustee for the benefit of the respective Owners, from time to time, of the Bonds, as follows:

## ARTICLE I

### EQUALITY OF SECURITY; DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01. Equality of Security. In consideration of the acceptance of the Bonds by the Owners thereof from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Agency, the Trustee and the Owners from time to time of the Bonds and the covenants and agreements herein set forth to be performed by or on behalf of the Agency or the Trustee shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds, without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reasons of the series, time of issue, sale or negotiation thereof or for any cause whatsoever, except as expressly provided therein or herein. Nothing herein shall prevent additional security being provided to particular Bonds or the creation of a separate bond reserve fund therefor under any Supplemental Indenture.

SECTION 1.02. Definitions. The terms defined in this Section shall, for all purposes of this Indenture and of any Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

### Act

“Act” means the Bay Area Water Supply and Conservation Agency Act (being Division 31 of the Water Code of the State of California, as amended) and all laws amendatory thereof or supplemental thereto.

### Agency

“Agency” means the Bay Area Water Supply and Conservation Agency and its successors and assigns.

### Board

“Board” means the Board of Directors of the Agency or any other legislative body of the Agency hereafter provided for pursuant to law.

### Bonds; Serial Bonds; Term Bonds

“Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program) authorized by, and at any time Outstanding pursuant to, this Indenture.

“Serial Bonds” means Bonds, maturing in specified years, for which no mandatory sinking fund payments are provided.

“Term Bonds” means Bonds payable at or before their specified maturity date or dates from mandatory sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

### Bond Year

“Bond Year” means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; provided that the first Bond Year shall end on October 1, 2013.

### Business Day

“Business Day” means any day other than a Saturday, Sunday, or a day on which banking institutions in the State or the State of New York are authorized or obligated by law or executive order to be closed.

### Capital Cost Recovery Payment

“Capital Cost Recovery Payment” means a payment obligated to be made to San Francisco pursuant to the WSA to provide capital cost recovery for “Existing Regional Assets” (as defined in the WSA).

### Certificate, Statement, Request, Requisition or Order of the Agency

“Certificate,” “Statement,” “Request,” “Requisition” or “Order” of the Agency mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Agency by its Chair, Vice Chair or General Manager/Chief Executive Officer or any other person authorized by the Chair, Vice Chair or General Manager/Chief Executive Officer or by a resolution of the Board to execute such instruments. 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. If and to the extent required by Section 1.03 hereof, certificates and opinions shall include the statements provided for in Section 1.03 hereof.

### Code

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

### Continuing Disclosure Agreement

“Continuing Disclosure Agreement” means any Continuing Disclosure Agreement executed and delivered by the Agency relating to any Series of Bonds.

### Corporate Trust Office

“Corporate Trust Office” or “corporate trust office” means the corporate trust office of the Trustee at \_\_\_\_\_, except that with respect to presentation of Bonds 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 trust agency business shall be conducted, or such other or additional offices as may be designated by the Trustee.

### Costs of Issuance

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Agency and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, surety, insurance and credit enhancement costs, and any other cost, charge or fee in connection with the delivery of Bonds.

### Debt Service

“Debt Service” means, during any period of computation, the amount obtained for such period by totaling the following amounts: (a) the principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period; (b) the minimum principal amount

of all Outstanding Term Bonds scheduled to be redeemed by operation of mandatory sinking fund deposits in such period; and (c) the interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

#### Defeasance Obligations

“Defeasance Obligations” means: (a) cash; (b) non-callable Federal Securities (including State and Local Government Securities); (c) direct obligations of the United States of America which have been stripped by the Department of the Treasury of the United States of America; (d) CATS, TIGRS and similar securities; (e) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America: (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) obligations of the Federal Financing Bank; (iv) participation certificates of the General Services Administration; (v) guaranteed Title XI financings of the U.S. Maritime Administration; (vi) New Communities debentures; (vii) U.S. government guaranteed public housing notes and bonds; and (viii) project notes and local authority bonds of the U.S. Department of Housing and Urban Development; and (f) pre-refunded municipal bonds rated “Aaa” by Moody’s and “AAA” by Standard & Poor’s; provided, however, pre-refunded municipal bonds rated by Standard & Poor’s only (i.e., no Moody’s rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipal bonds.

#### Event of Default

“Event of Default” means any of the events specified in Section 7.01 hereof.

#### Fair Market Value

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

### Federal Securities

“Federal Securities” means direct and general obligations of the United States of America, or those which are fully and unconditionally guaranteed as to timely payment of principal and interest by the same.

### Generally Accepted Accounting Principles

“Generally Accepted Accounting Principles” means generally accepted accounting principles applicable to governments as promulgated by the Governmental Accounting Standards Board or its successor.

### Indenture

“Indenture” means this Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and the Trustee, as originally executed and as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions hereof.

### Independent Accountant

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Agency, and who, or each of whom (a) is in fact independent and not under domination of the Agency; (b) does not have any substantial interest, direct or indirect, in the Agency; and (c) is not connected with the Agency as an officer or employee of the Agency but who may be regularly retained to make annual or other audits of the books of or reports to the Agency.

### Information Services

“Information Services” means the Municipal Securities Rulemaking Board or such other national information services that disseminate securities redemption notices; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds, or no such services, as the Agency may designate in a written request delivered to the Trustee.

### Interest Fund

“Interest Fund” means the fund by that name established with the Trustee pursuant to Section 5.02 hereof.

### Interest Subsidy Payments

“Interest Subsidy Payments” means cash subsidy payments entitled to be received by the Agency from the United States Treasury with respect to Bonds.

### Maximum Annual Debt Service

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum aggregate amount of the Debt Service with respect to the Bonds coming due and payable for the current or any future Bond Year during the term of this Indenture.

### Member

“Member” means any member of the Agency.

### Moody’s

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Agency.

### Opinion of Bond Counsel

“Opinion of Bond Counsel” means a written opinion of a law firm of national standing in the field of public finance selected by the Agency.

### Outstanding

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (1) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the Agency shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) referred to in Section 11.10; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

### Owner or Bondholder or Bondowner

“Owner” or “Bondholder” or “Bondowner,” whenever used herein with respect to a Bond, means the person in whose name such Bond is registered.

### Participating Member

“Participating Member” means a Member on whose behalf the Agency has made a Prepayment.

### Permitted Investments

“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, but only to the extent that the same are acquired at Fair Market Value (provided the Trustee may rely

upon the Request of the Agency directing investment hereunder as a determination that such investment is a Permitted Investment):

(a) Federal Securities;

(b) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank (Eximbank), (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) obligations of the Federal Financing Bank, (iv) debentures of the Federal Housing Administration (FHA); (v) participation certificates of the General Services Administration; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations (participation certificates) of the Government National Mortgage Association (GNMA); (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures (U.S. government guaranteed debentures) or U.S. public housing notes and bonds (U.S. government guaranteed public housing notes and bonds) of the U.S. Department of Housing and Urban Development (HUD);

(c) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation (FHLMC); (iii) mortgaged-backed securities and senior debt obligations of the Federal National Mortgage Association (FNMA); (iv) senior debt obligations of the Student Loan Marketing Association (SLMA); (v) obligations of the Resolution Funding Corporation (REFCORP), and (v) consolidated systemwide bonds and notes of the Farm Credit System;

(d) money market mutual funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor's of "AAAm-G" or "AAAm" and, if rated by Moody's, having a rating by Moody's of "Aaa," including money market funds from which the Trustee or its affiliates derive a fee for investment advisory or other services to the fund or for which the Trustee or any of its affiliates serve as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(e) Repurchase and reverse repurchase agreements collateralized with Federal Securities, including those of the Trustee or any of its affiliates.

(f) certificates of deposit secured at all times by collateral described in (a) or (b) above, issued by commercial banks, savings and loan associations or mutual savings banks (such

collateral must be held by a third party and the Trustee must have a perfected first security interest in such collateral);

(g) certificates of deposit (including those placed by third parties pursuant to an agreement between the Agency and the Trustee), trust funds, trust accounts, overnight bank deposits, interest bearing money market accounts, time deposits, savings accounts, deposit accounts, bankers' acceptances or money market deposits which are fully insured by the Federal Deposit Insurance Corporation, including those of the Trustee or its affiliates;

(h) commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1+" or better by Standard & Poor's;

(i) bonds or notes issued by any state or municipality which, at the time of purchase, are rated by Moody's and Standard & Poor's in one of the two highest long-term rating categories assigned by such agencies;

(j) federal funds, certificates of deposit (including those placed by third parties pursuant to an agreement between the Agency and the Trustee), trust funds, trust accounts, overnight deposits, time deposits, interest-bearing deposits, interest-bearing money market accounts or bankers' acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1+" or better by Standard & Poor's;

(k) Guaranteed investment contracts with entities the long-term, unsecured debt obligations of which are rated (1) in one of the two highest long-term rating categories by Moody's and Standard & Poor's (or whose payment obligations under such guaranteed investment contract are insured or guaranteed by an entity the unsecured obligations of which are so rated) or (2) in one of the three highest long-term rating categories by Moody's and Standard & Poor's (or whose payment obligations under such guaranteed investment contract are insured or guaranteed by an entity the unsecured obligations of which are so rated) if fully collateralized by collateral described in clauses (1) and (2) marked to market at least weekly; and

(l) The Local Agency Investment Fund of the State of California, created pursuant to section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

### Prepayment

"Prepayment" means a prepayment made by the Agency on behalf of one or more Participating Members of a Capital Cost Recovery Payment.

### Principal Fund

"Principal Fund" means the fund by that name established with the Trustee pursuant to Section 5.02 hereof.



### Rebate Fund

“Rebate Fund” means the fund by that name established with the Trustee pursuant to Section 6.12 hereof.

### Rebate Requirement

“Rebate Requirement” means the Rebate Requirement defined in the Tax Certificate.

### Redemption Fund

“Redemption Fund” means the fund by that name established with the Trustee pursuant to Section 5.02 hereof.

### Redemption Price

“Redemption Price” means, with respect to any Bond (or portion thereof) the Bond Obligation of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Indenture.

### Revenue Fund

“Revenue Fund” means the fund by that name established with the Trustee pursuant to Section 5.02 hereof.

### Revenues

“Revenues” means (1) all Surcharges collected by (or by San Francisco on behalf of) the Agency; (2) all Interest Subsidy Payments, if any, received by the Agency; and (3) all interest or other income from the investment of amounts held in any funds or account held by the Trustee under this Indenture (other than the Rebate Fund).

### San Francisco

“San Francisco” means the City and County of San Francisco.

### San Francisco Agreement

“San Francisco Agreement” means the Prepayment and Collection Agreement, dated as of January 1, 2013, between the Agency and San Francisco, as supplemented or amended from time to time.

### Securities Depositories

“Securities Depositories” means the following registered securities depository: The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attention: Call Notification Department, Fax (212) 855-7232; or in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no

such other securities depositories, as the Agency may designate in a written request delivered to the Trustee.

### Series

“Series,” whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

### Series 2013 Bonds

“Series 2013 Bonds” means, collectively, Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A, and Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable).

### Sinking Account

“Sinking Account” means an account within the Principal Fund established pursuant to a Supplemental Indenture for the redemption of Term Bonds.

### Stabilization Fund

“Stabilization Fund” means the fund by that name established with the Trustee pursuant to Section 5.02 hereof.

### Stabilization Requirement

“Stabilization Requirement” means an amount equal to 50% of the Maximum Annual Debt Service.

### Standard & Poor’s

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Agency.

### State

“State” means the State of California.

### Supplemental Indenture

“Supplemental Indenture” means any indenture hereafter duly executed and delivered, supplementing, modifying or amending this Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

### Surcharge

“Surcharge” means a charge imposed by the Agency with respect to the Bonds and collected from a Participating Member pursuant to Section 81438(2) of the Water Code of the State of California.

### Tax Certificate

“Tax Certificate” means the Tax Certificate delivered by the Agency at the time of the issuance and delivery of any Series of Bonds, as the same may be amended or supplemented in accordance with its terms.

### Trustee

“Trustee” means The Bank of New York Mellon Trust Company, N.A., acting as trustee hereunder, or its successor, as Trustee as provided in Section 8.01.

### WSA

“WSA” means the Water Supply Agreement dated July 2009 among San Francisco and the Members, as amended and supplemented from time to time.

SECTION 1.03. Content of Certificates and Opinions. Every certificate or opinion provided for in this Indenture with respect to compliance with any provision hereof shall include (1) a statement that the person making or giving such certificate or opinion has read such provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate or opinion made or given by an officer of the Agency may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant, a financial advisor, an investment banker or an independent consultant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant or an independent consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Agency) upon a certificate or opinion of or representation by an officer of the Agency, unless

such counsel, accountant or independent consultant 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 such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the Agency, or the same counsel or accountant or independent consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel, accountants or independent consultants may certify to different matters, respectively.

## ARTICLE II

### THE BONDS

SECTION 2.01. Authorization of Bonds. Bonds may be issued hereunder, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Agency. The maximum principal amount of Bonds which may be issued hereunder is not limited; subject, however, to the right of the Agency, which is hereby reserved, to limit the aggregate principal amount of Bonds which may be issued or Outstanding hereunder. The Bonds are designated generally as "Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program)"; each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Bonds. The Bonds may be issued in such Series as from time to time shall be established and authorized by the Agency, subject to the covenants, provisions and conditions herein contained.

SECTION 2.02. Terms of the Bonds. The Bonds of each Series shall bear interest, if any, at such rate or rates or determined in such manner and payable at such intervals as may be determined by the Agency at the time of issuance thereof pursuant to the Supplemental Indenture under which such Bonds are issued, not to exceed the maximum rate of interest permitted by law and shall mature and become payable on such date or dates and in such year or years as the Agency may determine by the Supplemental Indenture creating such Series. Principal of and premium, if any, and interest on such Bonds shall be payable in such manner as may be specified in the Supplemental Indenture creating such Series.

The Bonds of any Series may be issued in such denominations as may be authorized by the Supplemental Indenture creating such Series in fully registered form without coupons or in fully registered book-entry form or, for a Series maturing in one year or less, bearer form.

SECTION 2.03. Form of Bonds. The Bonds of any Series shall be in such form or forms as may be specified in the Supplemental Indenture creating such Series.

SECTION 2.04. Execution of Bonds. The Bonds shall be executed in the name and on behalf of the Agency with the facsimile or manual signature of the Chair, Vice Chair or General Manager/Chief Executive Officer of the Agency. Unless otherwise provided in any Supplemental Indenture, the Bonds shall then be delivered to the Trustee for authentication by it. In case any of the officers who shall have signed any of the Bonds shall cease to be such officer or officers of the Agency before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Agency, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the

Agency as though those who signed the same had continued to be such officers of the Agency, and also any Bond may be signed on behalf of the Agency by such persons as at the actual date of execution of such Bond shall be the proper officers of the Agency although at the nominal date of such Bond any such person shall not have been such officer of the Agency.

Except as may be provided in any Supplemental Indenture, only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form recited in the Supplemental Indenture creating such Series, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of authentication when manually executed by the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.05.       Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of Section 2.07 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee.

Whenever any Bond or Bonds shall be surrendered for transfer, the Agency shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, of the same Series, tenor, maturity and interest rate and for a like aggregate principal amount; provided that no registration or transfer may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Agency.

SECTION 2.06.       Exchange of Bonds. Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations of the same Series, tenor, maturity and interest rate by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation; provided that, unless otherwise provided in any Supplemental Indenture, no exchange may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Agency.

SECTION 2.07.       Bond Register. The Trustee will keep or cause to be kept, at its Corporate Trust Office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection during normal business hours by the Agency upon reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided.

SECTION 2.08. Temporary Bonds. The Bonds may be issued in temporary form exchangeable for definitive Bonds. Any temporary Bond may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the Agency, shall be in registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. A temporary Bond may be in the form of a single Bond payable in installments, each on the date, in the amount and at the rate of interest established for the Bonds maturing on such date. Every temporary Bond shall be executed by the Agency and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Agency issues temporary Bonds it will execute and deliver definitive Bonds after being requested to do so, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of the same Series, tenor and maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Agency, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated and provision of indemnity satisfaction to the Trustee. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the Order of, the Agency. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Agency and the Trustee and, if such evidence be satisfactory to both and indemnity satisfactory to them shall be given, the Agency, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity). The Agency may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Agency and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Agency whether or not the Bond 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 Bonds secured by this Indenture. Neither the Agency nor the Trustee shall be required to treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement Bond shall be treated as one and the same.

### ARTICLE III

#### ISSUANCE OF BONDS

SECTION 3.01. Issuance of Bonds. The Agency may, by Supplemental Indenture, establish one or more Series of Bonds payable from Revenues and secured by the pledge made

under this Indenture equally and ratably with Bonds previously issued, and the Agency may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Bonds of any Series so established, in such principal amount as shall be determined by the Agency, but only, with respect to each Series of Bonds, for the purpose of financing or refinancing a Prepayment and upon compliance by the Agency with the provisions of Section 3.02 hereof (except the Series 2013 Bonds may be issued upon compliance by the Agency with the requirements of Section 3.02(c) and without further condition) and any additional requirements set forth in said Supplemental Indenture and subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such additional Series of Bonds (provided that the following conditions will not apply to the Series 2013 Bonds):

- (a) no Event of Default shall have occurred and then be continuing;
- (b) the aggregate principal amount of Bonds issued hereunder shall not exceed any limitation imposed by law or otherwise;
- (c) upon the issuance of such Bonds, the amount on deposit in the Stabilization Fund will be equal to the Stabilization Requirement;
- (d) Principal on such Bonds shall be paid on October 1; and
- (e) Interest on such Bonds shall be paid on April 1 and October 1.

SECTION 3.02. Proceedings for Issuance of Additional Series of Bonds. Whenever the Agency shall determine to issue a Series of Bonds pursuant to Section 3.01, the Agency shall authorize the execution of a Supplemental Indenture specifying the principal amount, and prescribing the form or forms of Bonds of such additional Series and providing the terms, conditions, distinctive designation, denominations, date, maturity date or dates, interest rate or rates (or the manner of determining the same), redemption provisions and place or places of payment of principal and premium, if any, of and interest on such Bonds and any other provisions respecting the Bonds of such Series not inconsistent with the terms of this Indenture.

Before such additional Series of Bonds shall be issued and delivered, the Agency shall file the following documents with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Bonds have been satisfied):

- (a) an executed copy of the Supplemental Indenture authorizing such Series;
- (b) a Certificate of the Agency stating that no Event of Default has occurred and is then continuing;
- (c) an Opinion of Bond Counsel to the effect that the execution of the Supplemental Indenture has been duly authorized by the Agency in accordance with this Indenture; that such Series, when duly executed by the Agency and authenticated and delivered by the Trustee, will be valid and binding limited obligations of the Agency; and
- (d) satisfaction by the Agency of the requirements of Section 3.01(c).

SECTION 3.03. Issuance of Refunding Bonds. Notwithstanding any provisions herein, the Agency may issue Bonds at any time to refund any outstanding Bonds without compliance with Section 3.01(c); provided, however, that the Maximum Annual Debt Service following the issuance of such refunding Bonds and the application of the proceeds thereof shall not exceed the Maximum Annual Debt Service immediately prior to such issuance.

SECTION 3.04. Application of Proceeds. Proceeds of each Series of Bonds shall be applied as specified in the Supplemental Indenture pursuant to which such Series of Bonds is created.

SECTION 3.05. Limitations on the Issuance of Obligations. The Agency will not, so long as any of the Bonds are Outstanding, issue or incur any obligations or securities, howsoever denominated, payable in whole or in part from Revenues, except the following:

- (a) Bonds of any Series authorized pursuant to Sections 3.01 and 3.02; and
- (b) Refunding Bonds authorized pursuant to Section 3.03.

This Section 3.05 shall not limit the Agency's ability to issue bonds or incur other obligations payable from charges or revenues that do not constitute Surcharges or Revenues.

## ARTICLE IV

### REDEMPTION OF BONDS

SECTION 4.01. Terms of Redemption. Each Series of Bonds may be made subject to redemption prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions and upon such notice and with such effect as may be provided in the Supplemental Indenture creating such Series of Bonds.

Unless otherwise specified in a Supplemental Indenture, each notice of redemption shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, to each Owner, the Securities Depositories and one or, if so directed in writing by the Agency two or more, Information Services. Notice of redemption to the Securities Depositories shall be given by certified, registered or overnight mail or by such other method as may be requested by the Securities Depositories. Each notice of redemption shall state the date of such notice, the date of issue of the Bonds to which such notice relates, the redemption date, the Redemption Price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the Agency nor the Trustee shall have any responsibility for any



defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Agency nor the Trustee shall be liable for any inaccuracy in such numbers.

With respect to any notice of optional redemption of Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of and premium, if any, and interest on such Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall be within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Failure by the Trustee to give notice to any one or more of the Information Services or Securities Depositories or failure of any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

## ARTICLE V

### REVENUES; FUNDS AND ACCOUNTS

#### SECTION 5.01. Pledge of Revenues.

The Bonds are special, limited obligations of the Agency and are payable as to principal and interest, and any premium upon redemption thereof, exclusively from Revenues and from the other funds pledged hereunder. All Revenues are hereby pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds in accordance with their terms, subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein. There are hereby pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds in accordance with their terms all amounts (including proceeds of the Bonds) held by the Trustee hereunder (except for amounts held in the Rebate Fund), subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein. Said pledge shall also secure all other payment obligations of the Agency arising under this Indenture. Said pledge shall constitute a first lien on the Revenues and amounts in such funds and shall be valid and binding from and after delivery by the Trustee of the Bonds, without any physical delivery thereof or further act.

The Revenues are hereby pledged to the payment of Bonds without priority or distinction of one over the other and the Revenues constitute a trust fund for the security and payment of the Bonds; but nevertheless out of Revenues, certain amounts may be applied for other purposes as provided herein. The pledge of Revenues herein shall be irrevocable until all of the Bonds are no longer Outstanding.

SECTION 5.02.       Establishment of Funds and Accounts. The Trustee shall establish, maintain and hold in trust, so long as any Bonds remain Outstanding, the following funds and accounts:

- (1)     Revenue Fund
- (2)     Interest Fund
- (3)     Principal Fund (with Sinking Accounts for Term Bonds)
- (4)     Redemption Fund
- (5)     Stabilization Fund

SECTION 5.03.       Deposit of Revenues.

(A) The Agency shall deposit (or shall cause San Francisco to deposit) with the Trustee for deposit in the Revenue Fund, on or before the tenth day of the month following the month in which such Surcharges are received, all Surcharges received by or on behalf of the Agency.

(B) The Agency shall deposit with the Trustee for deposit in the Revenue Fund, upon receipt, any Interest Subsidy Payment received by the Agency.

SECTION 5.04.       Allocation of Amounts in the Revenue Fund. On or before the fifteenth day of each month, the Trustee shall withdraw from the Revenue Fund for deposit in the following funds and accounts in the following order of priority the following amounts, the requirements with respect to each such fund or account to be satisfied prior to the making of a deposit to any subsequent fund or account:

(1)     Interest Fund. The Trustee shall first set aside in the Interest Fund the amount necessary to increase the amount on deposit in the Interest Fund to an amount equal to the full amount of interest to be paid on the Bonds in such Bond Year (less amounts, if any, previously paid).

(2)     Principal Fund; Sinking Accounts. The Trustee shall second set aside in the Principal Fund the amount necessary to increase the amount on deposit in the Principal Fund to an amount equal to (a) principal remaining becoming due and payable on the Outstanding Serial Bonds in such Bond Year (less amounts, if any, previously paid) plus (b) the mandatory sinking fund payments to be paid into the respective Sinking Accounts for the Term Bonds in such Bond Year (less amounts, if any, previously paid). All of the aforesaid mandatory sinking fund payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3)     Trustee Fees and Expenses. The Trustee shall third pay fees and expenses of the Trustee then due and payable.

(4) Stabilization Fund. The Trustee shall fourth set aside in the Stabilization Fund any amount necessary to increase the amount on deposit in the Stabilization Fund to the Stabilization Requirement.

If, on any date, the full amount required to be deposited in the Interest Fund and the Principal Fund for the then-current Bond Year have been made, all Trustee expenses for the then-current Bond Year have been paid or provided for and the amount on deposit in the Stabilization Fund is equal to the Stabilization Requirement, the Trustee shall, upon receipt of a Request of the Agency, transfer any amount remaining on deposit in the Revenue Fund on such date specified in such Request of the Agency to the Agency fee and clear of the lien of this Indenture.

SECTION 5.05. Application of Interest Fund. All amounts in the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture).

SECTION 5.06. Application of Principal Fund.

(A) All amounts in the Principal Fund shall be used and withdrawn by the Trustee solely for the purposes of paying the principal of the Bonds when due and payable, except that all amounts in the Sinking Accounts shall be used and withdrawn by the Trustee solely to purchase or redeem or pay at maturity Term Bonds, as provided herein.

(B) The Trustee shall establish and maintain within the Principal Fund a separate sinking account for the Term Bonds of each Series and maturity. On any date upon which a mandatory sinking fund payment is due, the Trustee shall transfer the amount of such mandatory sinking fund payment from the Principal Fund to the applicable Sinking Account. With respect to each Sinking Account, on each mandatory sinking fund payment date established for such Sinking Account, the Trustee shall apply the mandatory sinking fund payment required on that date to the redemption of Term Bonds of such Series and maturity for which such Sinking Account was established, in the manner provided in the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon receipt of a Request of the Agency, apply moneys in such Sinking Account to the purchase of Term Bonds of such Series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund) as is directed by the Agency, except that the purchase price (excluding accrued interest) shall not exceed the principal amount thereof. If the Trustee has purchased Term Bonds of such Series and maturity with moneys in such Sinking Account, or purchased or redeemed Term Bonds of such Series and maturity at any time from the Redemption Fund and allocable to said mandatory sinking fund payment, or if the Agency has purchased or otherwise acquired Term Bonds and deposited such Term Bonds with the Trustee, such Term Bonds so purchased or deposited or redeemed by the Trustee or the Agency shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund payment. All Term Bonds purchased or deposited pursuant to this subsection shall be canceled and destroyed by the Trustee. Any amounts remaining in a Sinking Account when all of the Term Bonds for which such account was established are no

longer Outstanding shall be withdrawn by the Trustee and deposited in the Revenue Fund. All Term Bonds so purchased shall be allocated first to the next succeeding mandatory sinking fund payment for such Series and maturity of Term Bonds, then as a credit against such future mandatory sinking fund payment for such Series and maturity of Term Bonds as may be specified in a Request of the Agency. All Term Bonds redeemed from the Redemption Fund shall be credited to such future mandatory sinking fund payment for such Series and maturity of Term Bonds as may be specified in a Request of the Agency.

SECTION 5.07. Application of Redemption Fund. All moneys deposited by the Agency with the Trustee for the purpose of redeeming Bonds of any Series pursuant to optional redemption or special mandatory redemption provisions applicable to such Series of Bonds shall, unless otherwise directed by the Agency, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Bonds of such Series, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving notice of such redemption, the Trustee shall, upon receipt of a Request of the Agency, apply such amounts to the purchase of Bonds of such Series at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund) as is directed by the Agency, except that the purchase price (exclusive of such accrued interest) may not exceed the Redemption Price then applicable to such Bonds. All Term Bonds purchased or redeemed from the Redemption Fund shall be allocated to mandatory sinking fund payments applicable to such Series and maturity of Term Bonds as may be specified in a Request of the Agency.

SECTION 5.08. Stabilization Fund. Amounts in the Stabilization Fund shall be used and withdrawn by the Trustee solely for the purpose of making up any deficiency in the Interest Fund or the Principal Fund as provided in Section 5.09 or (together with any other funds available ) for the payment or redemption of all Outstanding Bonds. The Trustee shall calculate the Stabilization Requirement as of April 1 and October 1 of each year and as of any other date requested by the Agency. The Trustee shall notify the Agency promptly if at any time the amount on deposit in the Stabilization Fund is less than the Stabilization Requirement. Upon request of the Agency, the Trustee shall transfer amounts on deposit in the Stabilization Fund in excess of the Stabilization Requirement to the Revenue Fund.

SECTION 5.09. Deficiencies in the Interest Fund or the Principal Fund. Any provision in this Indenture to the contrary notwithstanding:

(a) In the event that the amount in the Interest Fund is insufficient to pay interest on the Bonds when due, the Trustee shall transfer to the Interest Fund the amount of such deficiency by withdrawing said amount from the following funds or accounts in the following order of priority: (1) the Revenue Fund, (2) the Stabilization Fund, (3) the Redemption Fund (to the extent that moneys therein have been set aside for the redemption of Bonds with respect to which notice of redemption has previously been given), and (4) the Principal Fund.

(b) In the event that the amount in the Principal Account is insufficient to pay the principal of the Bonds when due, the Trustee shall transfer to the Principal Fund the amount

of such deficiency by withdrawing said amount from the following funds or accounts in the following order of priority: (1) the Revenue Fund, (2) the Stabilization Fund, and (3) the Redemption Fund (to the extent that moneys therein have been set aside for the redemption of Bonds with respect to which notice of redemption has previously been given).

**SECTION 5.10. Investment of Moneys in Funds and Accounts.** All moneys in any of the funds and accounts held by the Trustee and established pursuant to this Indenture shall be invested, as directed by the Agency, solely in Permitted Investments. All Permitted Investments shall, as directed by the Agency in writing, be acquired subject to the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the Agency. The Trustee may conclusively rely upon any investment direction from the Agency as a certification to the Trustee that such investment constitutes a Permitted Investment. If and to the extent the Trustee does not receive investment instructions from the Agency with respect to the moneys in the funds and accounts held by the Trustee pursuant to this Indenture, such moneys shall be invested in Permitted Investments of the type described in paragraph (d) of the definition thereof.

Unless otherwise provided herein or in a Supplemental Indenture, all interest, profits and other income received from the investment of moneys in any fund or account, other than the Rebate Fund, shall be transferred by the Trustee to the Revenue Fund when received. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund, except as provided in Section 6.11. Notwithstanding anything to the contrary contained herein, an amount of interest received with respect to any Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such Permitted Investment shall be credited to the fund or account from which such accrued interest was paid.

The Trustee may commingle any of the funds or accounts established pursuant to this Indenture into a separate fund or funds for investment purposes only, provided that all funds or accounts held by the Trustee hereunder shall be accounted for separately as required by this Indenture. The Trustee may act as principal or agent in the making or disposing of any investment and may impose its customary charge therefor. The Trustee may sell or present for redemption, any Permitted Investment purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment.

The Trustee and the Agency shall each keep proper books of record and accounts containing complete and correct entries of all transactions made by it relating to the receipt, investment, disbursement, allocation and application of the moneys related to the Bonds, including moneys derived from, pledged to, or to be used to make payments on the Bonds. Such records shall specify the account or fund to which each investment (or portion thereof) is to be allocated and shall set forth, in the case of each investment security, (a) its purchase price, (b) identifying information, including par amount, coupon rate, and payment dates, (c) the amount received at maturity or its sale price, as the case may be, including accrued interest, (d) the amounts and dates of any payments made with respect thereto, and (e) the dates of acquisition and disposition or maturity.

The Agency acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Agency the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the Agency will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Agency periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

The Trustee shall also provide to the Agency in accordance with a Request of the Agency, with respect to each Permitted Investment such documentation as is reasonably available to the Trustee and specified by the Agency to the Trustee in writing and is required by the Code or other applicable law to be obtained by the Agency as evidence to establish that each investment had been acquired and disposed of on an established market in an arm's-length transaction at a price equal to its fair market value and with no amounts having been paid to reduce the yield on the investments, or shall be United States Treasury Obligations-State and Local Government Series as set forth in the Tax Certificate.

## ARTICLE VI

### COVENANTS

SECTION 6.01. Punctual Payment. The Agency will punctually pay or cause to be paid the principal or Redemption Price of and interest on all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, and shall punctually pay or cause to be paid all mandatory sinking fund payments, but in each case only out of Revenues, as provided in this Indenture.

SECTION 6.02. Extension of Payment of Bonds. The Agency shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section 6.02 shall be deemed to limit the right of the Agency to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

SECTION 6.03. Maintenance of Existence. The Agency agrees that while any Bonds remain Outstanding it will take all legal action necessary to maintain its existence as a public agency pursuant to the laws of the State of California.

SECTION 6.04. Records and Accounts. The Agency covenants that it shall keep proper books of record and accounts related to the Bonds, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Bonds. Said books shall, upon reasonable request, be subject to the inspection of the Owners of not less than ten percent (10%) of the Outstanding Bonds or their representatives authorized in writing.

The Agency covenants that it will cause the books and accounts related to the Bonds to be audited annually by an Independent Accountant and will make available for inspection by the Bond Owners at the Corporate Trust Office of the Trustee, upon reasonable request, a copy of the report of such Independent Accountant.

SECTION 6.05. Rate Covenant. The Agency hereby covenants that it shall impose fixed Surcharges for each Bond Year in an amount determined by the Agency to be reasonable and prudent for the maintenance of rate stability and projected to produce Revenues which, together with amounts on deposit in the Revenue Fund at the start of such Bond Year, will be sufficient to pay the Debt Service coming due and payable during such Bond Year, to pay Trustee fees and other expenses hereunder and to result in the amount on deposit in the Stabilization Fund at the end of such Bond Year being equal to the Stabilization Requirement.

SECTION 6.06. Collection of Surcharges. The Agency shall collect (or shall cause San Francisco to collect on its behalf) from Participating Members all Surcharges imposed by the Agency and shall take such action (or shall cause San Francisco to take such action) as shall be necessary to enforce Participating Members' obligations to pay such Surcharges.

SECTION 6.07. San Francisco Agreement.

(a) The Agency shall take all steps, actions and proceedings reasonably necessary in the judgment of the Agency to enforce the terms, covenants and conditions of the San Francisco Agreement.

(b) The Agency shall not amend, modify or supplement the San Francisco Agreement without the written consent of the Trustee. The Trustee shall give such written consent only if (1) in the opinion of the Trustee, which may be based upon such certificates or opinions as the Trustee may deem appropriate, such changes will not materially adversely affect the interests of the Bondholders or result in any material impairment of the security given by the Indenture for the payment of the Bonds, (2) the Trustee first obtains the written consent of the Owners of a majority in aggregate amount of Bonds outstanding to such amendment, modification or supplementation, or (3) such amendment, modification or supplementation is necessary to cure any ambiguity, inconsistency, omission or defective provision or to conform to the provisions of this Indenture.

SECTION 6.08. No Priority for Additional Obligations. The Agency covenants that no additional bonds, notes or other indebtedness shall be issued or incurred having any priority in payment of principal or interest out of the Revenues over the Bonds.

SECTION 6.09. Waiver of Laws. The Agency will 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 law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Agency to the extent permitted by law.

SECTION 6.10. Further Assurances. The Agency will make, execute and deliver any and all such 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 Bonds of the rights and benefits provided in this Indenture.

SECTION 6.11. Defense of Bondholder Rights. The Agency is duly authorized pursuant to law to issue the Bonds 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 Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Agency in accordance with their terms, and the Agency 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 of Revenues and other assets and all the rights of the Bondholders under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.12. Rebate Fund.

(A) The Trustee shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund. Within the Rebate Fund, the Trustee shall maintain, at the Agency's request, such accounts as shall be necessary to comply with the terms of any 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 payment to the government of the United States of America. Neither the Agency nor the Owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate. The Trustee shall be deemed conclusively to have complied with such provisions, which include the provisions of paragraph (E) of this Section 6.12, if it follows the directions of the Agency, 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 Agency with the terms of the Tax Certificate.

(B) Upon the Agency's written direction, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the Agency if and to the extent required, so that the balance of the Rebate Fund after such deposits shall equal the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the Agency in accordance with the Tax Certificate.

(C) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section other than from moneys held in the Rebate Fund or from other moneys provided to it by the Agency.



(D) The Trustee shall invest all amounts held in the Rebate Fund in Investments Securities as directed by the Agency, which directions shall be in compliance with the restrictions set forth in the Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided in paragraph (E) below.

(E) Upon receipt of the Agency's written directions, 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 Agency so directs, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds as directed by the Agency's written directions; provided, however, only moneys in excess of the Rebate Requirement may 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 prepayment and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Agency.

(F) Notwithstanding any other provision of this Indenture, including in particular Article X hereof, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

SECTION 6.13. Continuing Disclosure Agreement. The Agency will comply with and carry out all of its obligations under any Continuing Disclosure Agreement executed in connection with a Series of Bonds. Upon the failure of the Agency to comply with the Continuing Disclosure Agreement relating to any Series of Bonds, the Trustee (at the written request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% in aggregate principal amount of the related Series of Bonds, shall, but only to the extent indemnified to its satisfaction from any liability or expense, including, without limitation, fees and expenses of its attorneys) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Agency, to comply with its obligations under this section. For purposes of this section, "Beneficial Owner" shall have the meaning prescribed thereto in the respective Continuing Disclosure Agreement relating to such Series of Bonds.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF BONDHOLDERS

SECTION 7.01. Events of Default. The following events shall be Events of Default:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, or otherwise in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any interest on any Bond when and as such interest shall become due and payable;

(c) failure by the Agency to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Agency by the Trustee; except that, if such failure can be remedied but not within such thirty (30) day period and if the Agency has taken all action reasonably possible to remedy such failure within such thirty (30) day period, such failure shall not become an Event of Default for so long as the Agency shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee (which period shall not be more than 365 days from the date of the default notice) or any insurer of the Bonds;

(d) the filing by the Agency of a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or an assignment by the Agency for the benefit of creditors, or the admission by the Agency in writing to its insolvency or inability to pay debts as they mature, or the consent by the Agency in writing to the appointment of a trustee or receiver for itself;

(e) the entering by a court of competent jurisdiction of an order, judgment or decree declaring the Agency insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Agency, or approving a petition filed against the Agency seeking reorganization of the Agency under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(f) the assumption, under the provisions of any other law for the relief or aid of debtors, by any court of competent jurisdiction of custody or control of the Agency or of the Revenues and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

For purposes of paragraph (c) above, so long as the Agency imposes Surcharges for a Bond Year in accordance with Section 6.05, the failure of Revenues in such Bond Year to equal projected Revenues for such Bond Year shall not constitute an Event of Default.

SECTION 7.02. Remedies; No Acceleration. Upon the occurrence of an Event of Default the Trustee, shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Agency or any member of the Board of Directors, officer or employee thereof, and to compel the Agency or any such member of the Board of Directors, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of an Event of Default to require the Agency and its members of the Board of Directors, officers and employees to account as the trustee of an express trust.

Notwithstanding the above, the Trustee shall have no right to declare the principal of or interest on any Bond to be due and payable immediately.

SECTION 7.03. Application of Funds After Default. Subject to Section 6.12 hereof, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VIII shall be deposited in a segregated account and shall be applied by the Trustee in the following order and upon presentation of the several Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, Costs and Expenses: to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default, including reasonable compensation to its or their agents, accountants and counsel;

Second, Interest: to the payment to the persons entitled thereto of all payments of interest on the Bonds then due, and, if the amount available shall not be sufficient to pay in full any payment or payments of interest becoming due 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

Third, Principal: to the payment to the persons entitled thereto of the unpaid principal of the Bonds which shall have become due, with interest on the overdue principal of the Bonds to be paid at a rate equal to the rate or rates of interest then applicable to the Bonds if paid in accordance with their terms, and, if the amount available shall not be sufficient to pay in full all the amounts due on the Bonds on any date, 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 7.04. Trustee to Represent Bondholders. The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, 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 Bonds 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 Bonds, this Indenture and applicable provisions of any other 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 Bondholders, the Trustee in its discretion may, and upon the written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, 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 (which may be in accordance with the advice of counsel) 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 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 Net Revenues, and other assets pledged under this Indenture, pending such proceedings. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds 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 Bonds, subject to the provisions of this Indenture (including Section 7.06). Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

SECTION 7.05. Bondholders' Direction of Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing the Trustee with indemnification satisfactory to it, 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, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders or holders of Parity Debt not parties to such direction.

SECTION 7.06. Limitation on Bondholders' Right to Sue. No Owner of any Bond 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 or any other applicable law with respect to such Bond, unless (1) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds 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; (3) such Owner or said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (4) the Trustee shall have refused or omitted 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 (5) the Trustee shall not have received contrary directions from the Owners of a majority in aggregate principal amount of the Bonds 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 Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds 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 Bonds, or to enforce any right under this Indenture or other applicable law with respect to the Bonds, 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 Bonds, subject to the provisions of this Indenture.

SECTION 7.07. Absolute Obligation of the Agency. Nothing in any other provision of this Indenture or in the Bonds contained shall affect or impair the obligation of the Agency, which is absolute and unconditional, to pay the principal or Redemption Price of and interest on the Bonds to the respective Owners of the Bonds at their respective due dates therefor or upon call for redemption, 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 Bonds.

SECTION 7.08. Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Bondholders 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 or the Bondholders, then in every such case the Agency, the Trustee and the Bondholders, 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 Agency, the Trustee and the Bondholders shall continue as though no such proceedings had been taken.

SECTION 7.09. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners of the Bonds 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 7.10. No Waiver of Default. No delay or omission of the Trustee or of any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VIII

### THE TRUSTEE

SECTION 8.01. Appointment; Duties, Immunities and Liabilities of Trustee.

(A) The Bank of New York Mellon Trust Company, N.A., is hereby appointed as Trustee under this Indenture and hereby accepts the trust imposed upon it as Trustee hereunder and to perform all the functions and duties of the Trustee hereunder, subject to the terms and conditions set forth in this Indenture. 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 specifically set forth in this Indenture and no implied 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 their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(B) The Agency 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 an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds 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, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its 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 thereupon shall appoint a successor Trustee by an instrument in writing.

(C) The Trustee may at any time resign by giving written notice of such resignation to the Agency and by giving the Bondholders notice of such resignation by mail at the addresses shown on the registration books maintained by the Trustee. Upon receiving such notice of resignation, the Agency 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 forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the retiring Trustee or any Bondholder (on behalf of himself and all other Bondholders) may 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 Agency and to 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 Request of the Agency 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 property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Agency 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 Agency shall give notice of the succession of such Trustee to the trusts hereunder by mail to the Bondholders at the addresses shown on the

registration books maintained by the Trustee. If the Agency 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 Agency.

(E) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall be a national banking association, trust company or bank having the powers of a trust company having a corporate trust office in the State, having a combined capital and surplus of at least fifty million dollars (\$50,000,000) and subject to supervision or examination by federal or state authority. If such national banking association, bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such national banking association, bank or trust company 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.

SECTION 8.02. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (E) of Section 8.01, 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 8.03. Liability of Trustee.

(A) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Agency, and the Trustee assumes no responsibility for the correctness of the same (other than the certificate of authentication of the Trustee on each Bond), and makes no representations as to the validity or sufficiency of this Indenture or of the Bonds or of any Permitted Investment, as to the sufficiency of the Revenues, or the priority of the lien of this Indenture thereon, or as to the financial or technical feasibility of the Enterprise and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express terms and conditions hereof. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owner of a Bond may be entitled to take, with like effect as if the Trustee was not the Trustee under this Indenture. The Trustee may in good faith hold any other form of indebtedness of the Agency, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the Agency and make disbursements for the Agency and enter into any commercial or business arrangement therewith, without limitation.

(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. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, but the Trustee shall be answerable for the negligence or misconduct of any such attorney, agent, or receiver selected by it; provided, however, that the Trustee shall not be answerable for the negligence or misconduct of any agent, receiver, attorney or certified public accountant selected by it with due care; provided further that the Trustee shall remain responsible for the performance of its obligations hereunder.

(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 twenty-five percent (25%) in aggregate principal amount of the Bonds then 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 be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Bondholders pursuant to the provisions of this Indenture, including, without limitation, the provisions of Article VII hereof, unless such Bondholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(E) 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 or exercise of any of its duties hereunder.

(F) The Trustee shall not be deemed to have knowledge of and shall not be required to take any action with respect to, any Event of Default (other than an Event of Default described in subsections (a) or (b) of Section 7.01) or event which would, with the giving of notice, the passage of time or both, constitute an Event of Default, unless the Trustee shall have actual knowledge of such event or shall have been notified of such event by the Agency or the Owners of twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain, monitor or inquire as to the performance or observance by the Agency of the terms, conditions, covenants or agreements set forth in Article VI hereof, other than the covenants of the Agency to make payments with respect to the Bonds when due as set forth in Section 6.01 and to file with the Trustee when due, such reports and certifications as the Agency is required to file with the Trustee hereunder.

(G) 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.

(H) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Trustee, in



its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Agency, personally or by agent or attorney.

(I) The Trustee shall not be responsible for:

(1) the application or handling by the Agency of any Revenues or other moneys transferred to or pursuant to any Requisition or Request of the Agency in accordance with the terms and conditions hereof;

(2) the application and handling by the Agency of any other fund or account designated to be held by the Agency hereunder;

(3) any error or omission by the Agency in making any computation or giving any instruction pursuant to Section 6.11 hereof and may rely conclusively on any computations or instructions furnished to it by the Agency in connection with the requirements of Section 6.11 and the Tax Certificate; or

(4) the imposition or collection of any Surcharge by the Agency.

(J) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VIII.

(K) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(L) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Agency elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Agency agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(M) 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 enforced delay ("unavoidable 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 project, 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.

(N) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

SECTION 8.04. Right of Trustee to Rely on Documents. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, counsel of or to the Agency, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance herewith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

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 Certificate of the Agency, and such Certificate 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 Certificate, 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 seem reasonable. The Trustee may also rely conclusively on any report or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the Agency or selected by the Trustee with due care in connection with matters required to be proven or ascertained in connection with its administration of the trusts created hereby.

SECTION 8.05. Compensation and Indemnification of Trustee. The Agency shall cause to be paid to the Trustee from time to time reasonable compensation for all service rendered under this Indenture, and also all reasonable expenses, charges, counsel fees and expenses and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture. The Agency further agrees to indemnify and save the Trustee, its officers, directors, agents and employees harmless from and against any costs, claims, expenses, losses, judgments, suits, damages or liabilities, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence, misconduct or default.

## ARTICLE IX

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

#### SECTION 9.01. Amendments Permitted.

(A) (1) This Indenture and the rights and obligations of the Agency, the Owners of the Bonds and the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture, which the Agency and the Trustee may enter into with the written consent of the Owners of a majority in aggregate principal amount of the Bonds (or, if such Supplemental Indenture is only applicable to a Series of Bonds, such Series of Bonds) then Outstanding shall have been filed with the Trustee; provided that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this Section.

(2) For any Series of Bonds for which there is a letter of credit or policy of bond insurance in place securing such Series of Bonds, the written consents of each provider of a letter of credit or a policy of bond insurance for such Series of Bonds filed with the Trustee shall be accepted in lieu of consent of the Owners of such Series of Bonds and shall be deemed to be the consent of all of the Owners of such Series of Bonds for purposes of satisfying the requirements of Section 9.01(A)(1) hereof, provided that at the time such consent is given the payment of all the principal of and interest on all Outstanding Bonds of such Series shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, in one of the two highest rating categories of Moody's or Standard & Poor's.

(3) No such modification or amendment shall (a) extend the fixed maturity of any Bond, or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any mandatory sinking fund payment provided for the payment of any Bond, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof exclusively, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of principal amount of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (in each case, except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bondholders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution and delivery by the Trustee and the Agency of any Supplemental Indenture pursuant to this subsection (A), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture to the Owners of the Bonds at the addresses shown on the registration books of the Trustee. Any failure to give

such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(B) This Indenture and the rights and obligations of the Agency, of the Trustee and of the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Agency may adopt without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Agency in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Agency;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Agency may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(3) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said Act or similar federal statute, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(4) to provide for the issuance of Bonds in book-entry form or bearer form, provided that no such provision shall materially and adversely affect the interests of the Owners of the Bonds;

(5) if the Agency agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(6) to provide for the issuance of an additional Series of Bonds pursuant to provisions of Section 3.02 or Section 3.03; and

(7) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

(C) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (A) or (B) of this Section which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(D) The Trustee shall be entitled to receive and rely on an Opinion of Counsel to the effect that such Supplemental Indenture is authorized or permitted hereunder prior to executing

such Supplemental Indenture and, in connection with such execution and delivery, the Trustee and counsel may rely upon certifications made by the Issuer respecting factual matters.

SECTION 9.02. Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Agency, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after any Supplemental Indenture becomes effective pursuant to this Article may, and if the Agency so determines shall, bear a notation by endorsement or otherwise in form approved by the Agency and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Owner of any Bond Outstanding at the time of such execution and presentation of his Bond for such purpose at the Corporate Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bond. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Agency and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Agency and authenticated by the Trustee, and upon demand of the Owners of any Bonds then Outstanding shall be exchanged at the Principal Corporate Trust Office, without cost to any Bondholder, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts of the same Series, tenor and maturity.

SECTION 9.04. Amendment of Particular Bonds. The provisions of this Article shall not prevent any Bondholder from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## ARTICLE X

### DEFEASANCE

SECTION 10.01. Discharge of Indenture. Bonds of any Series or a portion thereof may be paid by the Agency in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligation of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

If the Agency shall pay all Series for which any Bonds are Outstanding and also pay or cause to be paid all other sums payable hereunder by the Agency, then and in that case (but subject to any additional requirements in connection therewith as may be imposed by any insurer of the Bonds and set forth in a Supplemental Indenture), at the election of the Agency (evidenced by a Certificate of the Agency filed with the Trustee signifying the intention of the Agency to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture and all covenants, agreements and other obligations of the Agency under this Indenture shall cease, terminate, become void and be completely discharged and satisfied, except for the Agency's obligations under Section 8.05 hereof, which shall survive. In such event, upon Request of the Agency, the Trustee shall cause an accounting for such period or periods as may be requested by the Agency to be prepared and filed with the Agency and shall execute and deliver to the Agency all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Agency all moneys or securities or other property held by it pursuant to this Indenture which, as evidenced (with respect to a deposit of securities described in Section 10.03(b) hereof) by a verification report, upon which the Trustee may conclusively rely, from a firm of certified public accountants, are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

SECTION 10.02. Discharge of Liability on Bonds. Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then (but subject to any additional requirements with respect thereto as may be imposed by any insurer of the Bonds and set forth in a Supplemental Indenture) all liability of the Agency in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the Agency shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04 and the continuing duties of the Trustee hereunder.

The Agency may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Agency may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. Deposit of Money or Securities With Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Defeasance Obligations, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Request of the Agency) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

SECTION 10.04. Payment of Bonds After Discharge of Indenture. Any moneys held by the Trustee in trust for the payment of the principal or Redemption Price of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption as provided in this Indenture), 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 all of the Bonds became due and payable, shall be repaid to the Agency free from the trust 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 Agency as aforesaid, the Trustee may (at the cost of the Agency) first mail to the Owners of any Bonds remaining unpaid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Agency of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Owners thereof and the Trustee shall not be required to pay Owners any interest on, or be liable to the Owners or any other person (other than the Agency) for any interest earned on, moneys so held. Any interest earned thereon shall belong to the Agency and shall be transferred monthly by the Trustee to the Agency.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.01. Liability of Agency Limited to Revenues. Notwithstanding anything in this Indenture or in the Bonds contained, the Agency shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged hereunder for any of the purposes in this Indenture mentioned, whether for the payment of the principal or Redemption Price of or interest on the Bonds or for any other purpose of this Indenture.

The Bonds are special, limited obligations of the Agency. The Bonds shall not be deemed to constitute a debt or liability of the Agency, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the Agency, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held hereunder pledged therefor, solely from Revenues. Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. The Agency has no taxing power.

SECTION 11.02. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Agency 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 Agency or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. In the event of the dissolution of the Agency, all the agreements, conditions, covenants and terms contained herein by or on behalf of, or for the benefit of, the Agency shall bind or inure to the benefit of the successors of the Agency from time to time and any officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Agency shall be transferred.

SECTION 11.03. Limitation of Rights to Agency, Trustee and Bondholders. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Agency, the Trustee and the Owners of the Bonds and any Parity Obligations, 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 Agency, the Trustee and the Owners of the Bonds and any Parity Obligations.

SECTION 11.04. Waiver of 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.



SECTION 11.05. Destruction or Delivery of Canceled Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Agency of any Bonds, the Trustee may, in its sole discretion, in lieu of such cancellation and delivery, destroy such Bonds, and, upon the Agency's request, deliver a certificate of such destruction to the Agency.

SECTION 11.06. Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds 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 Agency hereby declares that it would have executed and delivered this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds 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 11.07. Notice to Agency and Trustee. Any notice to or demand upon the Trustee may be served or presented, and such demand may be made, at the Corporate Trust Office of the Trustee. Any notice to or demand upon the Agency, shall be deemed to have been sufficiently given or served for all purposes by being deposited, first-class mail postage prepaid, in a post office letter box, addressed, as the case may be, to the Agency at 155 Bovet Road, Suite 650, San Mateo, CA 94402, Attention: General Manager/Chief Executive Officer (or such other address as may have been filed in writing by the Agency with the Trustee).

SECTION 11.08. Evidence of Rights of Bondholders. Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bondholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bondholders in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Agency if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the bond registration books held by the Trustee. The Trustee may establish a record date as of which to measure consent of the Bondowners in order to determine whether the requisite consents are received.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Agency in accordance therewith or reliance thereon.

SECTION 11.09. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Agency, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Agency or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination; except that in determining whether the Trustee shall be protected in relying upon any such approval or consent of an Owner, only Bonds which the Trustee actually knows to be owned or held by or for the account of the Agency, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Agency or any other obligor on the Bonds, shall be disregarded unless all Bonds are owned or held by or for the account of the Agency, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Agency or any other obligor on the Bonds, in which case such Bonds shall be considered Outstanding for the purposes of such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Agency or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Agency shall specify in a certificate to the Trustee those Bonds disqualified pursuant to this Section 11.09 and the Trustee may conclusively rely on such certificate.

SECTION 11.10. Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds (or portions of Bonds in the case of registered Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, subject, however, to the provisions of Section 10.04.

SECTION 11.11. Funds and Accounts. Any fund 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 shall at all times be maintained in accordance with customary standards of the corporate trust industry, to the extent practicable, and with due regard for the protection of the security of the Bonds and the rights of every holder thereof.

SECTION 11.12. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies

hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 11.13. Waiver of Personal Liability. No Board of Directors member, officer, agent or employee of the Agency or the Trustee shall be individually or personally liable for the payment of the principal or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such Board of Directors member, officer, agent or employee of the Agency or the Trustee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.14. Governing Law. This Indenture shall be construed and governed in accordance with the laws of the State.

SECTION 11.15. Business Day. Except as specifically set forth in a Supplemental Indenture, any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day with the same effect as if made on such preceding non-Business Day.

SECTION 11.16. Effective Date of Indenture. This Indenture shall take effect upon its execution and delivery.

SECTION 11.17. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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

BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY

By: \_\_\_\_\_  
General Manager/Chief Executive Officer

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,  
as Trustee

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

**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft First Supplemental Indenture**

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FIRST SUPPLEMENTAL  
REVENUE BOND INDENTURE

by and between the

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

---

Dated as of January 1, 2013

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(Supplemental to the Revenue  
Bond Indenture dated as of January 1, 2013)

Providing for the issuance of:

\$ \_\_\_\_\_  
Bay Area Water Supply and Conservation  
Agency Revenue Bonds (Capital Cost  
Recovery Prepayment Program), 2013  
Series A

\$ \_\_\_\_\_  
Bay Area Water Supply and Conservation  
Agency Revenue Bonds (Capital Cost  
Recovery Prepayment Program), 2013 Series B  
(Taxable)

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THE 2013 BONDS

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FIRST SUPPLEMENTAL WATER REVENUE BOND INDENTURE  
(SUPPLEMENTAL TO THE REVENUE BOND INDENTURE  
DATED AS OF JANUARY 1, 2013) AUTHORIZING THE ISSUANCE OF  
\$\_\_\_\_\_ AGGREGATE PRINCIPAL AMOUNT OF  
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY REVENUE BONDS  
(CAPITAL COST RECOVERY PREPAYMENT PROGRAM), 2013 SERIES A, AND BAY  
AREA WATER SUPPLY AND CONSERVATION AGENCY REVENUE BONDS (CAPITAL  
COST RECOVERY PREPAYMENT PROGRAM), 2013 SERIES B (TAXABLE)

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This FIRST SUPPLEMENTAL REVENUE BOND INDENTURE, dated as of January 1, 2013 (the "First Supplement"), by and between BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (the "Agency"), a public agency duly formed and existing under the laws of the State of California, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee (the "Trustee"),

W I T N E S S E T H :

WHEREAS, the Agency and the Trustee have entered have entered into a Revenue Bond Indenture, dated as of January 1, 2013 (the "Indenture"), providing for the issuance of revenue bonds thereunder (the "Bonds"); and

WHEREAS, the Indenture provides that the Agency may issue Bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, this First Supplement is supplemental to the Indenture; and

WHEREAS, the Agency has determined that it is desirable and necessary and in the best interest of the Agency that the Agency enter into this First Supplement in order to establish and declare, in conjunction with the Indenture, the terms and conditions upon which Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A (the "Series 2013A Bonds"), and Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (the "Series 2013B Bonds" and, together with the Series 2013A Bonds, the "Series 2013 Bonds"), shall be issued and secured and to secure the payment of the principal thereof and premium (if any) and interest thereon; and

WHEREAS, the Agency has determined that 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 the entering into of this First Supplement 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 First Supplement;

NOW, THEREFORE, the parties hereto agree, as follows:

## ARTICLE XII

### THE 2013 BONDS

SECTION 12.01. Definitions. The terms defined in this Section shall, for all purposes of this First Supplement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

#### First Supplement

“First Supplement” means this First Supplemental Revenue Bond Indenture, dated as of January 1, 2013, between the Agency and the Trustee.

#### Securities Depository

“Securities Depository” shall have the meaning assigned to such term in Section 12.13(A) hereof.

#### Series 2013 Bonds

“Series 2013 Bonds” collectively the Series 2013A Bonds and the Series 2013B Bonds.

#### Series 2013A Bonds

“Series 2013A Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A, as described in Section 12.02(A) hereof.

#### Series 2013B Bonds

“Series 2013B Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable), as described in Section 12.02(A) hereof.

#### Series 2013 Costs of Issuance Fund

“Series 2013 Costs of Issuance Fund” means the fund by that name established pursuant to Section 12.11 hereof.

#### Series 2013 Prepayment Fund

“Series 2013 Prepayment Fund” means the fund by that name established pursuant to Section 12.12 hereof.

### SECTION 12.02. Authorization; Terms of the Series 2013 Bonds.

(A) A Series of Bonds to be issued under the Indenture is hereby created. Such Series shall consist of two subseries, one of which shall be known as the “Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013

Series A” (the “Series 2013A Bonds”), and the other of which shall be known as “Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable)” (the “Series 2013B Bonds”). The Series 2013A Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_ and the Series 2013B Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_, each accordance with the Act and this Indenture for the purposes of (i) making a Prepayment, (ii) funding a deposit to the Stabilization Fund, (iii) funding a deposit to the Interest Fund, and (iv) paying Costs of Issuance in connection with the issuance and delivery of the Series 2013 Bonds.

(B) The Series 2013 Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.”, as nominee of The Depository Trust Company. The Series 2013 Bonds shall be evidenced by one Series 2013 Bond maturing on each of the maturity dates as set forth in subsection 12.02(C) in a denomination corresponding to the total principal amount of the Series 2013 Bonds of such maturity. Each Series 2013 Bond may be assigned by the Agency a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2013 Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 12.13.

(C) The Series 2013 Bonds shall be dated the date of delivery, shall be issued in denominations of \$5,000 or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum and shall mature on the following dates in the following amounts:

### Series 2013A Bonds

<u>Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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The Series 2013A Bonds maturing on October 1, \_\_\_\_ through October 1 \_\_\_\_, inclusive, are hereby designated Serial Bonds. The Series 2013A Bonds maturing on October 1, \_\_\_\_ and on October 1, \_\_\_\_ are hereby designated Term Bonds.

### Series 2013B Bonds

<u>Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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The Series 2013B Bonds maturing on October 1, \_\_\_\_ through October 1, \_\_\_\_, inclusive, are hereby designated Serial Bonds. The Series 2013B Bonds maturing on October 1, \_\_\_\_ and October 1, \_\_\_\_ are hereby designated Term Bonds.

Interest on the Series 2013 Bonds shall be payable commencing on April 1, 2013 and semiannually thereafter on April 1 and October 1 of each year in lawful money of the United States of America by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date; provided, that upon the written request of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Series 2013 Bonds received by the Trustee prior to the applicable record date (which such request shall remain in effect until rescinded in writing by such Owner), interest shall be paid by wire transfer in immediately available funds. Interest on the Series 2013 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2013 Bonds are payable when due upon presentation thereof at the Corporate Trust Office of the Trustee, in lawful money of the United States of America.

So long as the Series 2013 Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer.

The Trustee shall provide to Bondholders (to the extent provided to it by or on behalf of the Agency) CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

#### SECTION 12.03. Redemption of Series 2013 Bonds.

(A) Optional Redemption — Series 2013A Bonds. The Series 2013A Bonds maturing on or after October 1, \_\_\_\_ are subject to redemption prior to the stated maturity thereof at the option of the Agency at any time and from time to time on or after \_\_\_\_\_ 1, \_\_\_\_, in whole or in part (if in part, the maturities or portions thereof to be redeemed to be selected by the Agency in its sole discretion), in each case at a redemption price equal to the principal amount of such Series 2013A Bonds or portions thereof to be redeemed plus accrued interest to the date of redemption. Upon the optional redemption of any Series 2013A Bonds in part, the Agency shall specify the maturities of the Series 2013A Bonds to be redeemed and the sinking account payments to be modified.

(B) Make-Whole Optional Redemption – Series 2013B Bonds. The Series 2013B Bonds are subject to redemption prior to their stated maturity dates at the option of the Agency, in whole or in part on any date, at a redemption price (the “Make-Whole Redemption Price”) equal to the greater of:

(1) the issue price set forth on Schedule 1 attached hereto [attached maturity schedule] (but not less than 100%) of the principal amount of the Series 2013B Bonds to be redeemed; or

(2) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the Series 2013B Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Series 2013B Bonds are to be redeemed, discounted to the date on which the 2013B Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate, plus \_\_ basis points;

plus, in each case, accrued interest on the Series 2013B Bonds to be redeemed to the redemption date.

“Treasury Rate” means, with respect to any redemption date for a particular Series 2013B Bond, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days, but not more than forty-five (45) calendar days, prior to the redemption date (excluding inflation indexed securities) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Series 2013B Bonds to be redeemed; provided, however, that if the period from the

redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

At the request of the Trustee, the redemption price of the Series 2013B Bonds to be redeemed at the option of the Agency pursuant to this Section 12.03(B) shall be determined by an independent accounting firm, investment banking firm or financial advisor retained by the Agency at the Agency's expense to calculate such redemption price. The Trustee may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor and shall not be liable for such reliance.

(C) Sinking Account Redemption — Series 2013A Bonds. The Series 2013A Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ shall be subject to mandatory redemption from Sinking Account payments on the following dates in the following amounts:

Date	Amount
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\* Maturity

The Series 2013A Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ shall be subject to mandatory redemption from Sinking Account payments on the following dates in the following amounts:

Date	Amount
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\* Maturity

(D) Sinking Account Redemption — Series 2013B Bonds. The Series 2013B Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ shall be subject to mandatory redemption from Sinking Account payments on the following dates in the following amounts:

Date	Amount
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\* Maturity

The Series 2013B Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ shall be subject to mandatory redemption from Sinking Account payments on the following dates in the following amounts:

Date	Amount

\*

\* Maturity

(E) Upon the optional redemption of Series 2013A Bonds or Series 2013B Bonds in part, the Agency shall specify the maturities of the Series 2013A Bonds or Series 2013B Bonds, as applicable, to be redeemed and the sinking account payments to be modified.

SECTION 12.04. Selection of Series 2013 Bonds for Redemption.

(A) Whenever provision is made in this First Supplement for the redemption of less than all of the Series 2013A Bonds of any maturity (and interest rate), the Trustee shall select the Series 2013A Bonds to be redeemed, from all Series 2013A Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. The Trustee shall promptly notify the Agency in writing of the Series 2013A Bonds so selected for redemption.

(B) Whenever provision is made in this First Supplement for the redemption of less than all the Series 2013B Bonds of any maturity (and interest rate), the Trustee shall select the Series 2013B Bonds to be redeemed, from all Series 2013B Bonds of the respective maturity (and interest rate) not previously called for redemption, pro rata based on the principal amount of Series 2013B Bonds held by each Bondholder. The Trustee shall promptly notify the Agency in writing of the portions of the Series 2013B Bonds so selected for redemption.

SECTION 12.05. Notice of Redemption of Series 2013 Bonds. The Agency shall notify the Trustee at least forty-five (45) days (or such lesser number of days as the Trustee shall approve) prior to the redemption date for Series 2013 Bonds pursuant to Section 12.03(A)(B). Notice of redemption of any Series 2013 Bonds shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2013 Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, (ii) to the Securities Depositories by facsimile and by first-class mail, and (iii) to the Information Services by first-class mail. Notice of redemption shall be given in the form and in accordance with the terms of the Indenture.

SECTION 12.06. Partial Redemption of Series 2013 Bonds. Upon surrender of any Series 2013 Bond redeemed in part only, the Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Agency, a new Series 2013

Bond of authorized denominations, and of the same subseries, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2013 Bond surrendered.

SECTION 12.07. Effect of Redemption of Series 2013 Bonds. Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2013 Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Series 2013 Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice, together with interest accrued thereon to the date fixed for redemption, interest on the Series 2013 Bonds so called for redemption shall cease to accrue, said Series 2013 Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Series 2013 Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Series 2013 Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION 12.08. Form of Series 2013 Bonds. The Series 2013 Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series 2013 Bond designation letters and numbers, maturity dates, principal amounts, and interest rates and yields to maturity shall be inserted therein in conformity with Section 12.02.

SECTION 12.09. Issuance of Series 2013 Bonds. At any time after the execution and delivery of this First Supplement, the Agency may execute and the Trustee shall authenticate and deliver the Series 2013A Bonds in the aggregate principal amount of \$\_\_\_\_\_ and the Series 2013B Bonds in the aggregate principal amount of \$\_\_\_\_\_ upon the Order of the Agency.

SECTION 12.10. Application of Proceeds of Series 2013 Bonds.

(A) The proceeds of the sale of the Series 2013A Bonds in the amount of \$\_\_\_\_\_ (computed as \$\_\_\_\_\_ aggregate principal amount of the Series 2013A Bonds, less \$\_\_\_\_\_ underwriter's discount, plus \$\_\_\_\_\_ original issue premium) shall be received by the Trustee on behalf of the Agency and held in trust and set aside as follows:

(i) The Trustee shall deposit in the Series 2013 Costs of Issuance Fund \$\_\_\_\_\_, to be applied in accordance with Section 12.11 hereof;

(ii) The Trustee shall deposit in the Series 2013 Prepayment Fund \$\_\_\_\_\_, to be applied in accordance with Section 12.12 hereof;

(iii) The Trustee shall deposit in the Stabilization Fund \$\_\_\_\_\_, which, together with the amount deposited pursuant to paragraph (b)(iii) below, shall be equal to the amount of the Stabilization Requirement; and



(iv) The Trustee shall deposit in the Interest Fund, \$\_\_\_\_\_.

(B) The proceeds of the sale of the Series 2013B Bonds in the amount of \$\_\_\_\_\_ (computed as \$\_\_\_\_\_ aggregate principal amount of the Series 2013B Bonds, less \$\_\_\_\_\_ underwriter's discount, plus \$\_\_\_\_\_ original issue premium) shall be received by the Trustee on behalf on the Agency and held in trust and set aside as follows:

(i) The Trustee shall deposit in the Series 2013 Costs of Issuance Fund \$\_\_\_\_\_, to be applied in accordance with Section 12.11 hereof;

(ii) The Trustee shall deposit in the 2013 Prepayment Fund \$\_\_\_\_\_, to be applied in accordance with Section 12.12 hereof;

(iii) The Trustee shall deposit in the Stabilization Fund \$\_\_\_\_\_, which, together with the amount deposited pursuant to paragraph (a)(iii) above, shall be equal to the Stabilization Requirement; and

(iv) The Trustee shall deposit in the Interest Fund, \$\_\_\_\_\_.

**SECTION 12.11. Establishment and Application of Series 2013 Costs of Issuance Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Series 2013 Costs of Issuance Fund," which fund is hereby created and which fund the Trustee hereby agrees to maintain until July 1, 2013. The Trustee shall deposit to the Series 2013 Costs of Issuance Fund the amount specified in Section 12.10 hereof. All money in the Series 2013 Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay or reimburse the Agency for costs of issuance of the Series 2013 Bonds upon receipt of Requisitions of the Agency filed with the Trustee, each of which shall be sequentially numbered and shall state 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. On July 1, 2013 or upon the earlier Request of the Agency, any remaining balance in the Series 2013 Costs of Issuance Fund shall be transferred to the Revenue Fund.

**SECTION 12.12. Establishment and Application of Series 2013 Prepayment Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Series 2013 Prepayment Fund," which fund is hereby created and which fund the Trustee hereby agrees to maintain. The Trustee shall deposit to the Series 2013 Prepayment Fund the amounts specified in Section 12.10 hereof. All money in the Series 2013 Prepayment Fund shall be used and withdrawn by the Trustee to make a Prepayment upon receipt of a Requisition of the Agency filed with the Trustee, which shall state the person to whom payment is to be made, the amount to be paid and that such payment is a proper charge against the 2013 Prepayment Fund. Such Requisition of the Agency 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.

**SECTION 12.13. Use of Depository.** Notwithstanding any provision of the Indenture or this First Supplement to the contrary:

(A) The Series 2013 Bonds shall be issued in fully registered form, in authorized denominations and shall be initially registered in the name of “Cede & Co.”, as nominee of The Depository Trust Company (the “Securities Depository”), and shall be evidenced by one Series 2013 Bond maturing on each of the maturity dates as set forth in subsection 12.02(C) in a denomination corresponding to the total principal amount of the Series 2013 Bonds of such maturity. Each Series 2013 Bond shall be assigned by the Agency a distinctive number or letter or letter and number, and a record of the same shall be maintained by the Trustee.

Registered ownership of the Series 2013 Bonds, or any portions thereof, may not thereafter be transferred except:

(i) To any successor of The Depository Trust Company or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (A) (a “Substitute Depository”); provided that any successor of The Depository Trust Company or Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) To any Substitute Depository not objected to by the Trustee, upon (1) the resignation of The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the Agency that The Depository Trust Company or its successor (or any Substitute Depository or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of The Depository Trust Company or its successor (or Substitute Depository or its successor) from its functions as depository; provided that no Substitute Depository which is not objected to by the Trustee can be obtained, or (2) a determination by the Agency that it is in the best interests of the Agency to remove The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its function as depository.

(B) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 12.13(A), upon receipt of all Outstanding Series 2013 Bonds by the Trustee, together with a Certificate of the Agency to the Trustee, a single new Series 2013 Bond for each maturity shall be executed and delivered, registered in the name of such successor or such Substitute Depository, or their nominees, as the case may be, all as specified in such Certificate of the Agency. In the case of any transfer pursuant to clause (iii) of subsection 12.13(A) hereof, upon receipt of all Outstanding Series 2013 Bonds by the Trustee together with a Certificate of the Agency to the Trustee, new Series 2013 Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the Agency, subject to the limitations of Section 12.02 hereof; provided the Trustee shall not be required to deliver such new Series 2013 Bonds within a period less than 60 days from the date of receipt of such a Certificate of the Agency.

(C) In the case of partial redemption, cancellation or an advance refunding of any Series 2013 Bonds evidencing all or a portion of the principal maturing in a particular year, The

Depository Trust Company shall make an appropriate notation on the Series 2013 Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The Agency and the Trustee shall be entitled to treat the person in whose name any Series 2013 Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Agency; and the Agency and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Series 2013 Bonds. Neither the Agency nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or Substitute Depository or its successor), except to the Owner of any Series 2013 Bond.

(E) So long as all Outstanding Series 2013 Bonds are registered in the name of “Cede & Co.” or its registered assign, the Agency and the Trustee shall cooperate with “Cede & Co.,” as sole registered Owner, and its registered assigns in effecting payment of the principal of and redemption premium, if any, and interest on the Series 2013 Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

SECTION 12.14. Terms of Series 2013 Bonds Subject to the Indenture. Except as in this First Supplement expressly provided, every term and condition contained in the Indenture shall apply to the First Supplement and to the Series 2013 Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the First Supplement.

The First Supplement and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby, subject to the next sentence.

SECTION 12.15. Effective Date of First Supplement. The First Supplement shall take effect upon its execution and delivery.

SECTION 12.16. Execution in Counterparts. The First Supplement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 12.17. Tax Covenants – Series 2013A Bonds.

(A) The Agency hereby covenants that, notwithstanding any other provisions of this Indenture, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on the Series 2013A Bonds under Section 103 of the Code. The Agency shall not, directly or indirectly, use or permit the use of proceeds of the Series 2013A Bonds or any of the property financed or refinanced with proceeds of the Series 2013A Bonds, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of interest on the Series 2013A Bonds.

(B) The Agency shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Series 2013A Bonds to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Series 2013A Bonds or any of the property financed or refinanced with proceeds of the Series 2013A Bonds, or any portion thereof, or any other funds of the Agency, that would cause the Series 2013A Bonds to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any Bonds are Outstanding, the Agency, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder, to the extent such requirements are, at the time, applicable and in effect. The Agency shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of the Series 2013A Bonds as “governmental bonds.”

(C) The Agency shall not, directly or indirectly, use or permit the use of any proceeds of any Series 2013A Bonds, or of any property financed or refinanced thereby, or take or omit to take any action, that would cause the Series 2013A Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(D) The Agency shall not make any use of the proceeds of the Series 2013A Bonds, or take or omit to take any other action, that would cause the Series 2013A Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the Agency covenants that it will comply with the provisions of each Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Series 2013A Bonds. The incorporation by reference herein of the Tax Certificates notwithstanding, the consent to or approval by the Trustee of any amendment to a Tax Certificate shall not be required, the Trustee shall not be deemed to have notice of any provisions contained in the Tax Certificates and the Trustee shall have no duties with respect thereto other than to comply with written instructions given to the Trustee by the Agency pursuant thereto.

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IN WITNESS WHEREOF, the parties hereto have executed the First Supplement by their officers thereunto duly authorized as of the day and year first written above.

BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY

By: \_\_\_\_\_  
General Manager/Chief Executive Officer

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Trustee

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

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EXHIBIT A

(FORM OF SERIES 2013 BOND)

THIS BOND MAY NOT BE TRANSFERRED EXCEPT  
TO ANY SUCCESSOR TO THE DEPOSITORY TRUST  
COMPANY OR ITS NOMINEE OR TO A SUBSTITUTE  
DEPOSITORY (AS DEFINED IN THE INDENTURE)

No. \_\_\_\_\_ \$ \_\_\_\_\_

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
REVENUE BONDS (CAPITAL COST RECOVERY PREPAYMENT PROGRAM),  
2013 SERIES A, AND BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
REVENUE BONDS (CAPITAL COST RECOVERY PREPAYMENT PROGRAM),  
2013 SERIES B (TAXABLE)

<u>Maturity Date</u>	<u>Interest Rate Per Annum</u>	<u>Dated Date</u>	<u>CUSIP</u>
		January __, 2013	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The BAY AREA WATER SUPPLY AND CONSERVATION AGENCY, a public agency duly organized and existing under the laws of the State of California (the "Agency"), for value received, hereby promises to pay (but only out of the Revenues and other funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal sum specified above together with interest thereon from the dated date specified above until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on April 1, 2013, and semiannually thereafter on April 1 and October 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the Corporate Trust Office (as defined in the Indenture) of The Bank of

New York Mellon Trust Company, N.A., as trustee (together with any successor as trustee under said Indenture, the "Trustee"), in lawful money of the United States of America.

This bond is one of a duly authorized issue of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Program) (the "Bonds") of the series and designation indicated on the face hereof. Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Indenture provided, all issued and to be issued pursuant to the provisions of the Bay Area Water Supply and Conservation Agency Act (Division 31 of the Water Code of the State of California) and a Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and the Trustee, providing for the issuance of the Bonds, and a First Supplemental Revenue Bond Indenture, dated as of January 1, 2013 (the "First Supplement"), by and between the Agency and the Trustee, authorizing the issuance of a series of bonds (the "Series 2013 Bonds") of which this Bond is one (said indenture as amended and supplemented, including as supplemented by the First Supplement collectively, the "Indenture"). Reference is hereby made to the Indenture for a description of the terms under which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture are hereby incorporated herein and constitute a contract between the Agency and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Series 2013 Bonds and any Bonds hereafter issued by the Agency are payable from, and are secured by a pledge of and lien on, Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund), subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions provided in the Indenture.

The Bonds are special, limited obligations of the Agency. The Bonds shall not be deemed to constitute a debt or liability of the Agency, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the Agency, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Revenues. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. The Agency has no taxing power.

The Series 2013 Bonds are subject to redemption prior to maturity on the terms and conditions set forth in the Indenture.



This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its duly authorized attorney, at the Corporate Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange here for.

The Agency, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the Agency, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the Agency and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the laws of the State of California, and that this Bond, together with all other indebtedness of the Agency pertaining to the Revenues, is within every debt and other limit prescribed by the laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or otherwise.

This Bond 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 Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

IN WITNESS WHEREOF, the BAY AREA WATER SUPPLY AND CONSERVATION AGENCY has caused this Bond to be executed in its name and on its behalf by the General Manager/Chief Executive Officer of the Agency.

BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY

By: \_\_\_\_\_  
General Manager /Chief Executive Officer

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

Dated:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Trustee

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

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**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft Continuing Disclosure Certificate**

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## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the Bay Area Water Supply and Conservation Agency (the “Agency”) pursuant to a Revenue Bond Indenture, dated as of January 1, 2013, between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), and a First Supplemental Revenue Bond Indenture, dated as of January 1, 2013, between the Agency and the Trustee (collectively, the “Indenture”), providing the issuance of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A and 2013 Series B (Taxable) (collectively, the “Bonds”). The Agency covenants and agrees as follows:

**SECTION 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the Agency for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** The following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Agency pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“Beneficial Owner” shall mean any person which: (a) has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) including, but not limited to, the power to vote or consent with respect to any Bonds or to dispose of ownership of any Bonds; or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Dissemination Agent” shall mean the Agency, acting in its capacity as Dissemination Agent under this Disclosure Certificate, or any successor Dissemination Agent designated in writing by the Agency and which has filed with the Agency a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Bonds, or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Events” shall mean any of the events listed in Section 5(a) and (b) of this Disclosure Certificate.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB currently located at <http://emma.msrb.org>.

“Participating Underwriter” shall mean any of the original underwriters or purchasers of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**SECTION 3. Provision of Annual Reports.**

(a) The Agency shall, or shall cause the Dissemination Agent to, not later than 270 days after the end of the Agency’s fiscal year (which is June 30), commencing with the report for the 2012-13 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. If the Dissemination Agent is not the Agency, the Agency shall provide the Annual

Report to the Dissemination Agent not later than 15 days prior to said date. The Annual Report must be submitted in electronic format and accompanied by such identifying information as is prescribed by the MSRB, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; *provided*, that if the audited financial statements of the Agency are not available by the date required above for the filing of the Annual Report, the Agency shall submit unaudited financial statements and submit the audited financial statements as soon as they are available. If the Agency's Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) If the Agency is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the Agency shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall (if the Dissemination Agent is other than the Agency), file a report with the Agency certifying the date that the Annual Report was provided to the MSRB pursuant to this Disclosure Certificate.

**SECTION 4. Content of Annual Reports.** The Agency's Annual Report shall contain or incorporate by reference the following information, as required by the Rule:

(a) the audited general purpose financial statements of the Agency prepared in accordance with generally accepted accounting principles applicable to governmental entities;

(b) an update of the information contained in the following tables:

[List of tables with financial and operating data to be included to be added]

Any or all of the items listed above may be set forth in a document or set of documents, or may be included by specific reference to other documents, including official statements of debt issues of the Agency or related public entities, which are available to the public on the MSRB website. If the document included by reference is a final official statement, it must be available from the MSRB. The Agency shall clearly identify each such other document so included by reference.

**SECTION 5. Reporting of Significant Events.**

(a) The Agency shall give, or cause to be given, notice of the occurrence of any of the following events numbered 1-9 with respect to the Bonds not later than ten business days after the occurrence of the event:

1. Principal and interest payment delinquencies;
2. Unscheduled draws on debt service reserves reflecting financial difficulties;
3. Unscheduled draws on credit enhancements reflecting financial difficulties;
4. Substitution of credit or liquidity providers, or their failure to perform;
5. Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB) or adverse tax opinions;
6. Tender offers;
7. Defeasances;
8. Rating changes; or
9. Bankruptcy, insolvency, receivership or similar event of the obligated person.

Note: for the purposes of the event identified in subparagraph (9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets



or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(b) The Agency shall give, or cause to be given, notice of the occurrence of any of the following events numbered 10-16 with respect to the Bonds not later than ten business days after the occurrence of the event, if material:

10. Unless described in paragraph 5(a)(5), other material notices or determinations by the Internal Revenue Service with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
11. Modifications to rights of Bond holders;
12. Unscheduled or contingent Bond calls;
13. Release, substitution, or sale of property securing repayment of the Bonds;
14. Non-payment related defaults;
15. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; or
16. Appointment of a successor or additional trustee or the change of name of a trustee.

(c) The Agency shall give, or cause to be given, in a timely manner, notice of a failure to provide the annual financial information on or before the date specified in Section 3, as provided in Section 3(b).

(d) Whenever the Agency obtains knowledge of the occurrence of a Listed Event described in Section 5(b), the Agency shall determine if such event would be material under applicable federal securities laws.

(e) If the Agency learns of the occurrence of a Listed Event described in Section 5(a), or determines that knowledge of a Listed Event described in Section 5(b) would be material under applicable federal securities laws, the Agency shall within ten business days of occurrence file a notice of such occurrence with the MSRB in electronic format, accompanied by such identifying information as is prescribed by the MSRB. Notwithstanding the foregoing, notice of the Listed Event described in subsection 5(b)(12) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Holders of affected Bonds pursuant to the Resolution.

**SECTION 6. Termination of Reporting Obligation.** The Agency's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Agency shall give notice of such termination in the same manner as for a Listed Event under Section 5(e).

**SECTION 7. Dissemination Agent.** The Agency may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate.

**SECTION 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Certificate, the Agency may amend or waive this Disclosure Certificate or any provision of this Disclosure Certificate, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 3(b), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the owners of a majority in aggregate principal amount the Bonds or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders.

In the event of any amendment or waiver of a provision of this Disclosure Certificate, the Agency shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Agency. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements: (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5; and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**SECTION 9. Additional Information.** Nothing in this Disclosure Certificate shall be deemed to prevent the Agency from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Agency chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Agency shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. Default.** In the event of a failure of the Agency to comply with any provision of this Disclosure Certificate, any Participating Underwriter, Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Agency to comply with its obligations under this Disclosure Certificate. The sole remedy under this Disclosure Certificate in the event of any failure of the Agency to comply with this Disclosure Certificate shall be an action to compel performance.

**SECTION 11. Beneficiaries.** This Disclosure Certificate shall inure solely to the benefit of the Agency, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Date: January \_\_, 2013.

BAY AREA WATER SUPPLY AND CONSERVATION  
AGENCY

By \_\_\_\_\_  
General Manager/Chief Executive Officer

**CONTINUING DISCLOSURE CERTIFICATE EXHIBIT A**

**FORM OF NOTICE TO THE  
MUNICIPAL SECURITIES RULEMAKING BOARD  
OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

Name of Issue: BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
REVENUE BONDS (CAPITAL COST RECOVERY PREPAYMENT  
PROGRAM), 2013 SERIES A AND 2013 SERIES B (TAXABLE)

Date of Issuance: January \_\_, 2013

NOTICE IS HEREBY GIVEN that the Agency has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Certificate of the Bay Area Water Supply and Conservation Agency, dated the Date of Issuance. The Agency anticipates that the Annual Report will be filed by \_\_\_\_\_.

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

BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY

By: \_\_\_\_\_ [to be signed only if filed]  
Title \_\_\_\_\_

**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft Preliminary Official Statement**

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**PRELIMINARY OFFICIAL STATEMENT DATED JANUARY \_\_, 2013**

**NEW ISSUE - BOOK-ENTRY ONLY**

**RATINGS:** Moody's: "\_\_\_\_"  
S&P: "\_\_\_\_"  
See "RATINGS" herein.

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Agency, based on an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2013A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986. In the further opinion of Bond Counsel, interest on the Series 2013A Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Bond Counsel is of the opinion that interest on the Series 2013B Bonds is not excluded from gross income for federal income tax purposes. Bond Counsel is also of the opinion that interest on the Series 2013 Bonds is exempt from State of California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series 2013 Bonds. See "TAX MATTERS" herein.*

**\$385,000,000\***

**Bay Area Water Supply and Conservation Agency**

\$\_\_\_\_\_\*  
**Revenue Bonds (Capital Cost Recovery  
Prepayment Program), Series 2013A**

\$\_\_\_\_\_\*  
**Revenue Bonds (Capital Cost Recovery  
Prepayment Program), Series 2013B  
(Taxable)**

**Dated: Date of Delivery**

**Due: October 1, as shown on inside cover page**

The Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013A (the "Series 2013A Bonds") and the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013B (Taxable) (the "Series 2013B Bonds" and, together with the "Series 2013A Bonds, the "Series 2013 Bonds"), will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the Series 2013 Bonds. Individual purchases of Series 2013 Bonds will be made in book-entry form only, in denominations of \$5,000 or any integral multiple thereof. Purchasers of Series 2013 Bonds will not receive certificates representing their interest in the Series 2013 Bonds purchased but will receive a credit balance in the records of DTC. Principal and interest are payable directly to DTC by The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The Series 2013 Bonds will be issued pursuant to a Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and the Trustee, and a First Supplemental Revenue Bond Indenture, dated as of January 1, 2013 (the "First Supplement"), by and between the Agency and the Trustee (said indenture as amended and supplemented, including as supplemented by the First Supplement collectively, the "Indenture").

Principal is payable on the dates set forth on the inside cover page. Interest on the Series 2013 Bonds is payable semiannually on each April 1 and October 1, commencing April 1, 2013. Upon receipt of payments of principal and interest, DTC is obligated in turn to remit such principal and interest to the DTC Participants (as defined herein) for subsequent disbursement to purchasers of the Series 2013 Bonds, as described herein. As used herein, the term "Bonds" means the Bay Area Water Supply and Conservation Agency Revenue Bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**The Series 2013 Bonds are subject to optional and mandatory redemption prior to maturity. See "THE SERIES 2013 BONDS-Redemption" herein.**

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\* Preliminary, subject to change.

The Series 2013 Bonds are being issued to finance the prepayment of the capital cost recovery payment obligation of certain retail water service providers in Alameda County, Santa Clara County and San Mateo County who are members of the Agency (the "Participating Members") to the City and County of San Francisco pursuant to a water supply agreement providing for the delivery of water to Agency members through the San Francisco Regional Water System. The Series 2013 Bonds will be secured by a pledge of and payable from surcharges imposed by the Agency and collected by the Public Utilities Commission of the City and County of San Francisco on water sold to Participating Members and interest and investment earnings on amounts held by the Trustee under the Indenture ("Revenues").

The Bonds are special, limited obligations of the Agency. The Bonds shall not be deemed to constitute a debt or liability of the Agency, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the Agency, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Revenues. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment. The Agency has no taxing power.

This cover page contains information for quick reference only. It is not a summary of this issue. Potential purchasers must read the entire Official Statement to obtain information essential to making an informed investment decision.

*The Series 2013 Bonds are offered when, as, and if delivered to and received by the Underwriters, subject to the approval of legality by Orrick, Herrington & Sutcliffe LLP, Bond Counsel. Certain legal matters will be passed upon for the Agency and Hanson Bridgett LLP and for the underwriters by Stradling, Yocca, Carlson & Rauth, a Professional Corporation. It is anticipated that the Series 2013 Bonds will be available for delivery through the facilities of DTC in New York, New York on or about \_\_\_\_\_, 2013.*

**Goldman, Sachs & Co.**

**De La Rosa & Co.**

**Citigroup**

**Morgan Stanley**

**Dated: January \_\_, 2013**



## MATURITY SCHEDULE\*

**\$385,000,000**

### **Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program)**

#### **Series 2013A**

\$\_\_\_\_\_ **Serial Bonds**

<b>Maturity Date (October 1)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP No.<sup>†</sup></b>
--------------------------------------	-------------------------	----------------------	--------------	------------------------------

\$\_\_\_\_\_ \* \_\_\_\_\_% Term Bonds due October 1, \_\_\_\_\_ – Yield \_\_\_\_\_% CUSIP No. \_\_\_\_\_<sup>†</sup>  
\$\_\_\_\_\_ \* \_\_\_\_\_% Term Bonds due October 1, \_\_\_\_\_ – Yield \_\_\_\_\_% CUSIP No. \_\_\_\_\_<sup>†</sup>

#### **Series 2013B (Taxable)**

\$\_\_\_\_\_ **Serial Bonds**

<b>Maturity Date (October 1)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP No.<sup>†</sup></b>
--------------------------------------	-------------------------	----------------------	--------------	------------------------------

\$\_\_\_\_\_ \* \_\_\_\_\_% Term Bonds due October 1, \_\_\_\_\_ – Yield \_\_\_\_\_% CUSIP No. \_\_\_\_\_<sup>†</sup>  
\$\_\_\_\_\_ \* \_\_\_\_\_% Term Bonds due October 1, \_\_\_\_\_ – Yield \_\_\_\_\_% CUSIP No. \_\_\_\_\_<sup>†</sup>

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\* Preliminary, subject to change.

<sup>†</sup> Copyright 2013, American Bankers Association. CUSIP numbers provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP data herein are set forth for convenience of reference only. This data is not intended to serve as a database and does not in any way serve as a substitute for the CUSIP Service Bureau. The Agency and the Underwriters assume no responsibility for the accuracy of such data.

# SAN FRANCISCO REGIONAL WATER SYSTEM



Figure 1-1 (Not to Scale) – The above map depicts the San Francisco Regional Water System.

## BAY AREA WATER SUPPLY AND CONSERVATION AGENCY MEMBERS

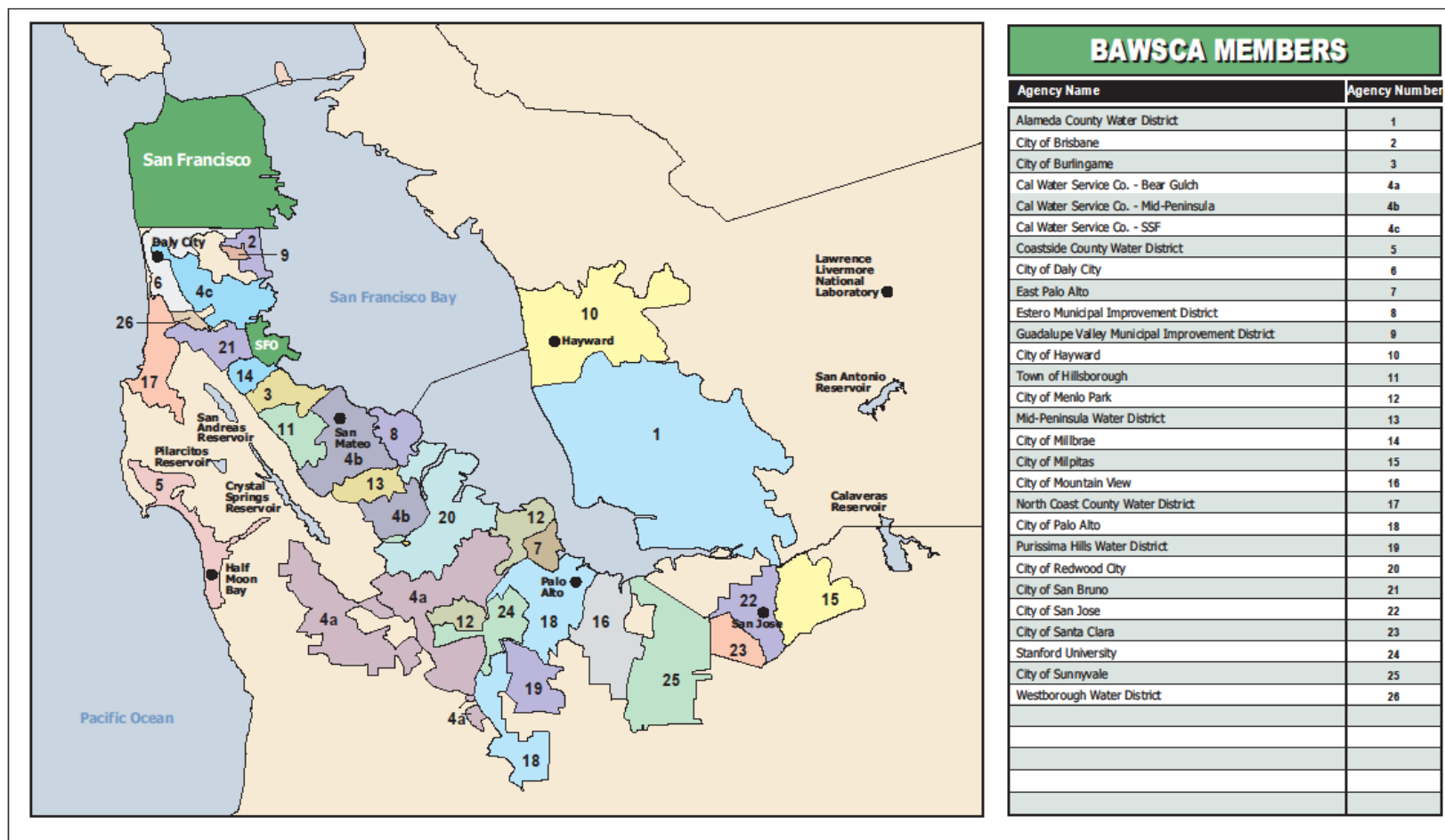


Figure 1-2 (Not to Scale) – The above map depicts the Members of the Agency.

# **BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

## **BOARD OF DIRECTORS**

**[To Be Updated]**

### **Chair**

BARBARA PIERCE  
City of Redwood City

### **Vice-Chair**

IRENE O'CONNELL  
City of San Bruno

JOHN H. WEED  
Alameda County Water District

SEPI RICHARDSON  
City of Brisbane

ROSALIE O'MAHONY  
City of Burlingame

ROBERT GUZZETTA  
California Water Service Company

KENNETH L. COVERDELL  
Coastside County Water District

MICHAEL P. GUINGONA  
City of Daly City

RUBEN ABRICA  
City of East Palo Alto

CHARLIE BRONITSKY  
Estero Municipal Improvement District

RANDY BREAUULT  
Guadalupe Valley Municipal Improvement District

AL MENDALL  
City of Hayward

KELLY FERGUSON  
City of Menlo Park

LOUIS VELLA  
Mid-Peninsula Water District

DAN QUIGG  
City of Millbrae

ARMANDO GOMEZ  
City of Milpitas

MIKE KASPERZAK  
City of Mountain View

TOM PICCOLOTTI  
North Coast County Water District

LARRY KLEIN  
City of Palo Alto

ROBERT ANDERSON  
Purissima Hills Water District

CHUCK REED  
City of San Jose

JAMIE MCLEOD  
City of Santa Clara

MARTY LAPORTE  
Stanford University

JIM GRIFFITH  
City of Sunnyvale

THOMAS KASTEN  
Town of Hillsborough

THOMAS CHAMBERS  
Westborough Water District

# **BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

## **STAFF**

**General Manager and Chief Executive Officer**  
ARTHUR R. JENSEN

**Water Resources Planning Manager**  
NICOLE M. SANDKULLA

**Water Resources Planner**  
ANONA DUTTON

**Senior Administrative Analyst**  
CHRISTINA TANG

## **SPECIAL SERVICES**

**Agency Counsel**  
HANSON BRIDGETT LLP  
San Francisco, California

**Financial Advisor**  
KNN PUBLIC FINANCE  
A Division of Zions First National Bank  
Oakland, California

**Bond Counsel and Disclosure Counsel**  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
San Francisco, California

**Trustee**  
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.  
San Francisco, California

No dealer, broker, salesperson or other person has been authorized by the Agency or the Underwriters to give any information or to make any representations other than those contained herein and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2013 Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. This Official Statement is not to be construed as a contract with the purchasers of the Series 2013 Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as a representation of facts.

The information set forth herein has been furnished by the Agency and from other sources that are believed to be reliable, but is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the Underwriters. The information and expression of opinion herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Agency or any other parties described herein since the date hereof.

The Underwriters have provided the following sentence for inclusion in this Official Statement: the Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibility to investors under the federal securities law as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND "FORWARD-LOOKING STATEMENTS." ALL FORWARD-LOOKING STATEMENTS ARE PREDICTIONS AND ARE SUBJECT TO KNOWN AND UNKNOWN RISKS AND UNCERTAINTIES. NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS "ESTIMATE", "PROJECT", "PARTICIPATE", "EXPECT", "INTEND", "BELIEVE" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVES KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER FACTORS THAT MAY CAUSE THE ACTUAL RESULTS, PERFORMANCE, OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE, OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. NO UPDATES OR REVISIONS TO THESE FORWARD-LOOKING STATEMENTS ARE EXPECTED TO BE ISSUED IF OR WHEN THE EXPECTATIONS, EVENTS, CONDITIONS, OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED CHANGE. GIVEN THEIR UNCERTAINTY, INVESTORS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON SUCH STATEMENTS.

The issuance and sale of the Series 2013 Bonds have not been registered under the Securities Act of 1933 or the Securities Exchange Act of 1934, both as amended, in reliance upon exemptions provided thereunder by Sections 3(a)2 and 3(a)12, respectively, for the issuance and sale of municipal securities. This Official Statement does not constitute an offer to sell or a solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF THE SERIES 2013 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE SERIES 2013 BONDS TO CERTAIN DEALERS AND DEALER BANKS AND BANKS ACTING AS AGENT AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ON THE INSIDE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

The Agency maintains a website at <http://www.bawsca.org>. However, the information presented at such website is not part of this Official Statement, is not incorporated by reference herein, and should not be relied upon in making an investment decision with respect to the Series 2013 Bonds.

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## OFFICIAL STATEMENT

\$ \_\_\_\_\_\*  
**Bay Area Water Supply and Conservation Agency  
Revenue Bonds (Capital Cost Recovery Prepayment  
Program), Series 2013A**

\$ \_\_\_\_\_\*  
**Bay Area Water Supply and Conservation Agency  
Revenue Bonds (Capital Cost Recovery Prepayment  
Program), Series 2013B  
(Taxable)**

### INTRODUCTION

The purpose of this Official Statement is to provide certain information concerning the issuance, sale and delivery by the Bay Area Water Supply and Conservation Agency (the “Agency”), a public agency formed and existing under the Bay Area Water Supply and Conservation Agency Act, Division 31 of the Water Code of the State of California (the “Act”), of its Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013A (the “Series 2013A Bonds”), in the aggregate principal amount of \$ \_\_\_\_\_\*, and Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013B (Taxable) (the “Series 2013B Bonds” and, together with the Series 2013A Bonds, the “Series 2013 Bonds”), in the aggregate principal amount of \$ \_\_\_\_\_\*. Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned thereto as set forth in “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions.”

In accordance with the Act, twenty-four public entities in Alameda County, Santa Clara County and San Mateo County, the California Water Services Company (a private water company) and Stanford University (a private nonprofit institution), all retail water service providers, are members of the Agency (the “Members”). All of the Members have been, for many years, wholesale purchasers of water delivered by the Public Utilities Commission of the City and County of San Francisco (the “SFPUC”), a department of the City and County of San Francisco (“San Francisco”), through the facilities of the San Francisco Regional Water System (the “Regional Water System”). The Members and San Francisco entered into a new Water Supply Agreement dated July 2009 (the “Water Supply Agreement”) and respective individual water sales contracts replacing the existing contracts between San Francisco and the Members and providing for the sale and delivery of water by San Francisco to the Members through the Regional Water System. Pursuant to the Water Supply Agreement, the Members are required to make payments to San Francisco for water delivered and, as a component price of water, the Members collectively are obligated to make annual payments to San Francisco through 2034 to provide capital cost recovery for certain assets of the Regional Water System for which San Francisco had not recovered fully its capital costs at the time of the execution and delivery of the Water Supply Agreement (“Capital Cost Recovery Payments”). As of June 30, 2012, the aggregate principal amount of the remaining Capital Cost Payments was \$371,634,824, and, in accordance with the Water Supply Agreement, the principal amount of the remaining Capital Cost Recovery Payment obligation accrues interest at a rate of 5.13% per annum.

The Water Supply Agreement provides that the Members, acting through the Agency, may prepay the remaining Capital Cost Recovery Payments, in whole or in part, and, in order to achieve cost savings, [certain] Members (the “Participating Members”) have authorized the Agency to make a prepayment on behalf of such Members. Pursuant to the Act, the Agency is authorized to issue revenue bonds to finance any such prepayment. The Agency has determined to issue the Series 2013 Bonds in order to finance a prepayment on Capital Cost Recovery Payments (the “Prepayment”) in the amount of \$ \_\_\_\_\_\* on behalf of the Participating Members.

The Series 2013 Bonds will be issued pursuant to a Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), and a First Supplemental Revenue Bond Indenture, dated as of January 1, 2013 (the “First Supplement”), by and between the Agency and the Trustee (said indenture as amended and supplemented, including as supplemented by the First Supplement, collectively, the “Indenture”). The Series 2013 Bonds are special limited obligations of the Agency payable from Surcharges imposed on the Participating Members and interest on or other income from the investment of amounts held in funds and accounts held by the Trustee under the Indenture (other than the Rebate Fund) (collectively, the “Revenues”) and other funds held by the Trustee under the Indenture (except the Rebate Fund) as described herein. See “SECURITY AND SOURCES OF PAYMENT – Pledge of Revenues.”

The Series 2013 Bonds are being issued for the purpose of (i) making the Prepayment, (ii) funding an initial deposit to the Stabilization Fund, (iii) funding interest on the 2013 Bonds through October 1, 2013, and (iv) paying costs of issuance in connection with the issuance and delivery of the Series 2013 Bonds.

Pursuant to the Act, the Agency is authorized to impose rates, fees and charges in amounts necessary to pay debt service on bonds, such as the Series 2013 Bonds, issued to finance a prepayment of Capital Cost Recovery Payments and to satisfy other obligations of the Agency related thereto. To provide for payment of the Series 2013 Bonds, the Agency will impose surcharges on water sold to Participating Members (“Surcharges”). The Agency covenants in the Indenture to impose fixed Surcharges for each year in an amount determined by the Agency to be reasonable and prudent for the maintenance of rate stability and projected to produce Revenues which, together with certain other funds, will be sufficient to pay debt service on the Bonds, to pay Trustee fees and other expenses thereunder and to result in the amount on deposit in the Stabilization Fund at the end of such Bond Year being equal to the Stabilization Requirement. See “SECURITY AND SOURCES OF PAYMENT—Rate Covenant.” The Agency will, each year, calculate the Surcharges to be imposed on Participating Members in the next Fiscal Year to yield an aggregate amount projected to satisfy the requirements of the Indenture. Each Participating Member will be charged a fixed amount based upon such Participating Member’s share of water delivered by the SFPUC in the Fiscal Year prior to the one in which such charge is calculated. Each Participating Member’s payment obligation is expected to be adjusted in subsequent Fiscal Years to reflect such Participating Member’s actual share of water deliveries in the current Fiscal Year. Surcharges will be billed and collected for the Agency by the SFPUC together with amounts billed by the SFPUC for water deliveries under the Water Supply Agreement pursuant to a Prepayment and Collection Agreement (the

“Prepayment and Collection Agreement”), dated as of January 1, 2013, by and between the Agency and San Francisco. See “IMPOSITION AND COLLECTION OF SURCHARGES.”

Brief descriptions of the Series 2013 Bonds, the security and sources of payment for the Series 2013 Bonds, the Members, the Prepayment, the imposition and collection of surcharges, the Agency and the Regional Water System are provided herein. Such descriptions do not purport to be comprehensive or definitive. Definitions of certain capitalized terms used herein may be found in “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions.” All references made to various documents herein are qualified in their entirety by reference to the forms thereof, all of which are available for inspection at the office of the Agency.

## **BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

### **Organization, Purposes and Powers**

The Agency is an independent special district established by the separate, but parallel, actions of 26 local government agencies in the San Francisco Bay Area, as authorized by AB 2058, enacted by the California Legislature in 2002. The Agency was created in accordance with the Act on May 27, 2003 to represent the interests of its Members, comprising 24 cities and water districts, the California Water Services Company (a private water company) and Stanford University (a private nonprofit institution) in Alameda, Santa Clara and San Mateo counties that purchase water on a wholesale basis from the Regional Water System. See “—Member Agencies.” The Agency has the authority to coordinate water conservation, supply and recycling activities for its agencies, acquire water and make it available to other agencies on a wholesale basis, finance projects, including the financing and refinancing of improvements to the Regional Water System and build facilities jointly with other local public agencies or on its own to carry out the Agency’s purposes.

### **Members Agencies**

Collectively, the Members provide retail water service to approximately 1.76 million people in their respective service areas. As of November 1, 2012, 17 of the 26 Members derive over 90% of their water from the SFPUC.

The following is a list of the Members:

Municipalities	Water Purveying Districts	Private Entities
City of Brisbane	Alameda County Water District	California Water Service
City of Burlingame	Coastside County Water District	Company
City of Daly City	Estero Municipal Improvement District	Stanford University
City of East Palo Alto	Guadalupe Valley Municipal Improvement	
City of Hayward	District	
City of Menlo Park	Mid-Peninsula Water District	
City of Millbrae	North Coast County Water District	
City of Milpitas	Purissima Hills Water District	
City of Mountain View	Westborough Water District	
City of Palo Alto		
City of Redwood City		
City of San Bruno		
City of San Jose		
City of Santa Clara		
City of Sunnyvale		
Town of Hillsborough		

## Board of Directors

The Agency is governed by a 26-member Board of Directors (the “Board”) that includes a representative from each Member. Generally, each director has one vote and the affirmative vote of all directors is necessary and sufficient to carry any motion, resolution or ordinance. Prior to the close of voting, however, any director can call for a weighted vote. When weighted voting is in effect, carrying a motion, resolution or ordinance requires the affirmative vote of directors representing both (1) a majority of the members of the board present and voting, and (2) a majority of the number of votes, with each vote weighted based upon water deliveries in the 2000-01 Fiscal Year.

The Board also has one standing committee, the Board Policy Committee, which was formed to advise the Board and the General Manager and Chief Executive Officer of the Agency on matters of policy.

Members of the Agency each appoint a director to serve on the Board, which director may be, but is not required to be, a member of the governing body of such Member. The Act directs the Board of Supervisors of San Mateo County to appoint an officer or employee of California Water Service Company to serve as a member of the Board and further directs the Board of Supervisors of Santa Clara County to appoint an officer or employee of Stanford University to serve as a member of the Board. Directors serve four year terms and may be reappointed an unlimited number of times. The Board elects a Chair of the Board and a Vice-Chair of the Board at its first meeting in each January. Barbara Pierce of Redwood City was elected Chair of the Board and Irene O’Connell of San Bruno was elected Vice-Chair of the Board at a meeting of the Board held on January 19, 2012.

## **Management**

Management of the Agency is led by the General Manager and Chief Executive Officer. The General Manager and Chief Executive Officer serves at the pleasure of the Board of Directors. Brief biographies of the General Manager and Chief Executive Officer and principal members of the senior management of the Agency are set forth below.

Arthur R. Jensen has served as the General Manager and Chief Executive Officer of the Agency since it was established in 2003. From 1995 until 2003, Mr. Jensen served as General Manager for the Bay Area Water Users Association (“BAWUA”), a non-profit mutual benefit corporation organized to represent the interests of the wholesale customers of the Regional Water System (the “Wholesale Customers”), including all of the Members and the Cordilleras Mutual Water Association, that was a predecessor to the Agency. Prior to that time, Mr. Jensen was Director of Planning with the Contra Costa Water District for five years and Deputy General Manager and Acting General Manager of the SFPUC’s Water Department. Mr. Jensen holds Doctor of Philosophy and Master of Science degrees in Environmental Engineering Science from the California Institute of Technology, and a Bachelor of Science in Engineering Physics from the University of California at Berkeley.

Nicole M. Sandkulla has been the Water Resources Planning Manager of the Agency since 2010. From 1999 to 2010, Ms. Sandkulla was Senior Water Resources Engineer for the Agency and, prior to the establishment of the Agency, BAWUA. Before joining BAWUA, Ms. Sandkulla was employed by the East Bay Municipal Utility District for over nine years as water resources engineer. She received a Bachelor of Science degree in Civil Engineering from Cal Poly, San Luis Obispo and is a registered Civil Engineer in the State of California.

Anona Dutton serves as the Water Resources Planner for the Agency. Ms. Dutton joined the Agency in May 2009. Prior to joining the Agency, Ms. Dutton was employed as the Director of Water Resources for Erler & Kalinowski, Inc. She received a Master of Science degree in Hydrogeology and a Bachelor of Science degree in Environmental Science from Stanford University. Ms. Dutton is a registered Professional Geologist and a Certified Hydrogeologist in the State of California.

Christina Tang serves as the Senior Administrative Analyst of the Agency. Ms. Tang joined the Agency in April 2012 following more than eight years of day-to-day financial operations with City and County governments and special district governmental entities, including four years as a Senior Budget Analyst with the San Mateo County Transit District. Ms. Tang received her Master of Science degree in Finance from the University of Houston and her Master of Public Administration from the University of Illinois at Springfield

## **Budget**

The operating budget of the Agency is primarily funded through assessments imposed on each of its Members based on a formula specified in the Act. Assessment rates are reviewed and established annually during preparation of the coming year’s operating budget. Preparation of the annual operating budget starts by establishing a work plan that specifies results to be achieved during the next fiscal year, the estimated workload and associated costs. Following its

adoption by the Board, which has historically occurred in May, the Agency's operating budget takes effect on July 1 of each year.

Agency revenues generally exceed expenditures in any given year. Based on the Agency's General Reserve Policy, revenues received by the Agency during a fiscal year that are not expended or obligated by June 30 of such year are transferred to the Agency's General Reserve. The General Reserve Policy establishes guidelines for the maximum reserve balance, which is thirty five percent (35%) of the current budget year's operating budget. The purpose of the General Reserve is to enable the Agency to apply resources to unforeseen needs without imposing special assessments on Members in the middle of the Fiscal Year.

### **Employee Relations; Pension Benefits**

As of October 31, 2012, the Agency has seven full time equivalent employees.

***CalPERS Defined Benefit Pension Plan.*** The Agency contributes to the California Public Employees Retirement System ("CalPERS"), an agent multiple-employer public employee defined benefit pension plan. CalPERS provides retirement, disability benefits, and death benefits to plan members and beneficiaries. The Agency's contributions to CalPERS for fiscal years ended June 30, 2011 and June 30, 2012 were \$99,433 and \$88,327, respectively. For the fiscal years ended June 30, 2011 and June 30, 2012, the Agency's annual contribution rates were 12.198 percent and 12.060 percent, respectively, of salaries and wages. For the fiscal year ending June 30, 2013, the contribution rate is 12.244 percent of salaries and wages. Agency employees pay the entire seven percent of the employees required contribution.

***Other Post-Employment Benefits.*** The Agency provides health benefits to employees who retire directly from the Agency at age 55 with five years of service. The Agency pays CalPERS health coverage premiums of eligible retirees, up to the Agency's monthly contribution cap. The Agency's contribution for retirees shall be increased annually by 10 percent of the monthly contribution for employees, until such as the contributions are equal. CalPERS health is the only health benefit provided by the Agency to retirees. Retirees are not eligible for dental or vision plan, nor are they eligible for the employee assistance program.

For the fiscal years ended June 30, 2011 and June 30, 2012, the Agency contributed \$8,784 and \$9,112 in current premiums, respectively.

## **THE SERIES 2013 BONDS**

### **General Provisions**

The Series 2013 Bonds will be dated as of their date of delivery, will bear interest from such date at the rates per annum set forth on the inside cover page hereof, payable semiannually on each April 1 and October 1, commencing April 1, 2013, and will mature on October 1, in each of the designated years in the principal amounts set forth on the inside cover page hereof.

The Series 2013 Bonds, when issued, will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC," together with any successor securities depository, the "Securities Depository"). DTC

will act as Securities Depository for the Series 2013 Bonds so purchased. Individual purchases will be made in book-entry-only form. Purchasers will not receive a certificate representing their beneficial ownership interest in Series 2013 Bonds. So long as Cede & Co. is the registered owner of the Series 2013 Bonds, as nominee of DTC, references herein to the Bondholders, holders or registered owners shall mean Cede & Co. as aforesaid, and shall not mean the “Beneficial Owners” of the Series 2013 Bonds. In this Official Statement, the term “Beneficial Owner” shall mean the person for whom a Participant (as defined herein) acquires an interest in the Series 2013 Bonds. See “APPENDIX F – SECURITIES DEPOSITORY AND THE BOOK-ENTRY SYSTEM.”

## **Book-Entry System**

Interest on the Series 2013 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2013 Bonds are payable when due upon presentation thereof at the Corporate Trust Office of the Trustee, in lawful money of the United States of America. So long as the Series 2013 Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to Cede & Co., as nominee for DTC. DTC is obligated, in turn, to remit such amounts to the DTC Participants for subsequent disbursement to the Beneficial Owners. See “APPENDIX F – SECURITIES DEPOSITORY AND THE BOOK-ENTRY SYSTEM.”

## **Redemption**

*Optional Redemption — Series 2013A Bonds.* The Series 2013A Bonds maturing on or after October 1, 2023 are subject to redemption prior to the stated maturity thereof at the option of the Agency at any time and from time to time on or after April 1, 2023, in whole or in part (if in part, the maturities or portions thereof to be redeemed to be selected by the Agency in its sole discretion), in each case at a redemption price equal to the principal amount of such Series 2013A Bonds or portions thereof to be redeemed plus accrued interest to the date of redemption. Upon the optional redemption of any Series 2013A Bonds in part, the Agency shall specify the maturities of the Series 2013A Bonds to be redeemed and the sinking account payments to be modified.

*Make-Whole Optional Redemption — Series 2013B Bonds.* The Series 2013B Bonds are subject to redemption prior to their stated maturity dates at the option of the Agency, in whole or in part on any date, at a redemption price, known as the “Make-Whole Redemption Price”, equal to the greater of:

(1) the issue price set forth on the inside front cover of this Official Statement (but not less than 100%) of the principal amount of the Series 2013B Bonds to be redeemed; or

(2) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the Series 2013B Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Series 2013B Bonds are to be redeemed, discounted to the date on which the 2013B Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate, plus \_\_ basis points;



plus, in each case, accrued interest on the Series 2013B Bonds to be redeemed to the redemption date.

“Treasury Rate” means, with respect to any redemption date for a particular Series 2013B Bond, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days, but not more than forty-five (45) calendar days, prior to the redemption date (excluding inflation indexed securities) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Series 2013B Bonds to be redeemed; provided, however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

At the request of the Trustee, the redemption price of the Series 2013B Bonds to be redeemed at the option of the Agency as described under this heading “Make Whole Redemption – Series 2013B Bonds” shall be determined by an independent accounting firm, investment banking firm or financial advisor retained by the Agency at the Agency’s expense to calculate such redemption price. The Trustee may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor and shall not be liable for such reliance.

*Sinking Account Redemption — Series 2013A Bonds.* The Series 2013A Bonds maturing on October 1, 2034 shall be subject to mandatory redemption from Sinking Account payments on October 1, 2029, and October 1 in each year thereafter to and including October 1, 2034, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption.

Redemption Date (October 1)	Principal Amount
2029	
2030	
2031	
2032	
2033	
2034 <sup>†</sup>	

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<sup>†</sup> Maturity.

The Series 2013B Bonds maturing on October 1, 2034 shall be subject to mandatory redemption from Sinking Account payments on October 1, 2029, and October 1 in each year thereafter to and including October 1, 2034, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption.

Redemption Date (October 1)	Principal Amount
2029	
2030	
2031	
2032	
2033	
2034 <sup>†</sup>	

---

<sup>†</sup> Maturity.

Upon the optional redemption of any Series 2013A Bonds or Series 2013B Bonds in part, the Agency shall specify the maturities of the Series 2013A Bonds or Series 2013B Bonds to be redeemed and the sinking account payments to be modified.

*Selection of Series 2013A Bonds for Redemption.* Whenever provision is made for the redemption of less than all of the Series 2013A Bonds of any maturity (and interest rate), the Trustee shall select the Series 2013A Bonds to be redeemed, from all Series 2013A Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. The Trustee shall promptly notify the Agency in writing of the Series 2013A Bonds so selected for redemption.

*Selection of Series 2013B Bonds for Redemption.* The Agency shall designate which maturities of any Series 2013B Bonds are to be called for redemption. If provision is made for the redemption of less than all of the Series 2013B Bonds of any maturity (and interest rate), the Trustee shall select the Series 2013B Bonds to be redeemed, from all Series 2013B Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, pro rata based on the principal amount of the Series 2013B Bonds owned by each Beneficial Owner. The Trustee shall promptly notify the Agency in writing of the Series 2013B Bonds so selected for redemption.

For so long as a book-entry only system is in effect with respect to the Series 2013B Bonds and DTC or a successor securities depository is the sole registered owner of such Series 2013B Bonds, in the event of the redemption of less than all of the Series 2013B Bonds of a maturity (and interest rate), the particular ownership interests of such Series 2013B Bonds to be redeemed will be determined by DTC and DTC Direct Participants and Indirect Participants (as defined in “APPENDIX F – SECURITIES DEPOSITORY AND THE BOOK-ENTRY SYSTEM”), or by any successor securities depository or any other intermediary, in accordance with their respective operating rules and procedures. The Series 2013B Bonds will be made

eligible for partial redemptions to be treated by DTC, in accordance with its rules and procedures, as a “pro rata pass-through distribution of principal,” and partial redemptions are expected to be processed by DTC on a pro rata distribution of principal basis in accordance with such rules and procedures. In the event of a partial redemption of the Series 2013B Bonds, the security position at DTC will not be reduced but the balance will be subject to adjustment by a factor to be provided to DTC by the Trustee. Reductions in the holdings of beneficial owners upon any partial redemption of the Series 2013B Bonds will depend on the procedures used by the DTC Direct Participant and Indirect Participants, and neither the Agency nor the Trustee can give any assurance in that regard. If, at the time of a partial redemption of the Series 2013B Bonds, the Trustee fails to identify the Series 2013B Bonds being redeemed as being subject to a pro rata pass through distribution of principal and/or fails to furnish such factor to DTC, DTC’s rules and procedures provide that such redemption or purchase will be processed by random lottery. The Agency provides no assurance that DTC and any DTC Direct Participant and Indirect Participant, or any successor securities depository or other intermediary, will make any such determination, will make such determination on a pro rata basis or effectuate a pro rata pass through distribution of principal in the case of a partial redemption of the Series 2013B Bonds, or that the Trustee will identify the Series 2013B Bonds and provide the appropriate factor as described above in the case of a partial redemption of the Series 2013B Bonds, and in each case any failure to do so shall not affect the sufficiency or the validity of the related redemption of the Series 2013B Bonds.

*Notice of Redemption of Series 2013 Bonds.* So long as DTC is acting as securities depository for the Series 2013 Bonds, notice of redemption, containing the information required by the Indenture, will be mailed by first class mail, postage prepaid, by the Trustee to DTC (not to the Beneficial Owners of any Series 2013 Bonds designated for redemption) not less than thirty (30) nor more than sixty (60) days prior to the redemption date. With respect to any notice of optional redemption of Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of and premium, if any, and interest on such Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall be within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Neither the failure to receive any notice nor any defect therein shall affect the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Agency, for and on behalf of the Agency.

*Partial Redemption of Series 2013 Bonds.* Upon surrender of any Series 2013 Bond redeemed in part only, the Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Agency, a new Series 2013 Bond of authorized denominations, and of the same Series, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2013 Bond surrendered.

*Effect of Redemption of Series 2013 Bonds.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2013 Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Series 2013 Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice, together with interest accrued thereon to the date fixed for redemption, interest on the Series 2013 Bonds so called for redemption shall cease to accrue, said Series 2013 Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of said Series 2013 Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

## **Defeasance**

The obligations of the Agency and the pledge, lien, covenants and agreements of the Agency made or provided for in the Indenture will be fully discharged and satisfied as to any Series 2013 Bonds and such Bond shall no longer be deemed to be outstanding thereunder if certain conditions set forth in the Indenture are satisfied. See “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Defeasance.”

If the Agency defeases any Series 2013B Bond, such Series 2013B Bond may be deemed to be retired and “reissued” for federal income tax purposes as a result of the defeasance. In that event, the Beneficial Owner of the Series 2013B Bond will recognize taxable gain or loss equal to the difference between the amount realized from the deemed sale, exchange or retirement (less any accrued qualified stated interest which will be taxable as such) and the Beneficial Owner’s adjusted tax basis in the Series 2013B Bond. (See “TAX MATTERS.”)

## DEBT SERVICE SCHEDULE

The following table sets forth the debt service requirements for the Series 2013 Bonds:

Year Ending October 1	Series 2013A Bonds		Series 2013B Bonds		Total
	Principal	Interest	Principal	Interest	
2013*	\$	\$	\$	\$	\$
2014					
2015					
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					
2033					
2034					
	\$	\$	\$	\$	\$

## ESTIMATED SOURCES AND USES OF PROCEEDS

	Series 2013A Bonds	Series 2013B Bonds	Total
<b>SOURCES</b>			
Par Amount of Series 2013 Bonds	\$	\$	\$
Original Issue Premium			
Total Sources	\$	\$	\$
<b>USES</b>			
Deposit to 2013 Prepayment Fund	\$	\$	\$
Deposit to Stabilization Fund			
Deposit to Interest Fund			
Costs of Issuance <sup>(1)</sup>			
Total Uses	\$	\$	\$

(1) Pay interest on the Series 2013 Bonds through October 1, 2013.

(2) Includes legal and financing costs, underwriters' discount, fees of rating agencies and initial fees of the Trustee.

## SECURITY AND SOURCES OF PAYMENT

### Pledge of Revenues

Under the Indenture, all Revenues are pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds in accordance with their terms, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein. Under the Indenture, there are also pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds in accordance with their terms all amounts (including proceeds of the Bonds) held by the Trustee hereunder (except for amounts held in the Rebate Fund), subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein. Said pledge shall also secure all other payment obligations of the Agency arising under this Indenture. Said pledge shall constitute a first lien on the Revenues and amounts in such funds and shall be valid and binding from and after delivery by the Trustee of the Bonds, without any physical delivery thereof or further act.

“Revenues”, as defined in the Indenture, generally means all Surcharges collected by (or by the SFPUC on behalf of) the Agency and all interest or other income from the investment of amounts held in any funds or account held by the Trustee under the Indenture (other than the Rebate Fund).

### Special Limited Obligation

The Bonds are special, limited obligations of the Agency. The Bonds shall not be deemed to constitute a debt or liability of the Agency, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the Agency, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture

and pledged therefor, solely from Revenues. Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment. The Agency has no taxing power.

Notwithstanding anything in the Indenture or the Bonds, the Agency is not required to advance any moneys derived from any source other than the Revenues and other assets pledged under the Indenture for the payment of the principal or Redemption Price of or interest on the Bonds or for any other purpose of the Indenture.

### **Allocation of Revenues**

The Agency shall deposit (or shall cause SFPUC to deposit) with the Trustee for deposit in the Revenue Fund, on or before the tenth day of the month following the month in which such Surcharges are received, all Surcharges received by or on behalf of the Agency. On or before the fifteenth day of each month, the Trustee shall withdraw from the Revenue Fund for deposit in the following funds and accounts in the following order of priority the following amounts, the requirements with respect to each such fund or account to be satisfied prior to the making of a deposit to any subsequent fund or account:

(1) Interest Fund. The Trustee shall first set aside in the Interest Fund the amount necessary to increase the amount on deposit in the Interest Fund to an amount equal to the full amount of interest to be paid on the Bonds in such Bond Year (less amounts, if any, previously paid).

(2) Principal Fund; Sinking Accounts. The Trustee shall second set aside in the Principal Fund the amount necessary to increase the amount on deposit in the Principal Fund to an amount equal to (a) principal remaining becoming due and payable on the Outstanding Serial Bonds in such Bond Year (less amounts, if any, previously paid) plus (b) the mandatory sinking fund payments to be paid into the respective Sinking Accounts for the Term Bonds in such Bond Year (less amounts, if any, previously paid). All of the aforesaid mandatory sinking fund payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) Trustee Fees and Expenses. The Trustee shall third pay fees and expenses of the Trustee then due and payable.

(4) Stabilization Fund. The Trustee shall fourth set aside in the Stabilization Fund any amount necessary to increase the amount on deposit in the Stabilization Fund to the Stabilization Requirement.

If, on any date, the full amount required to be deposited in the Interest Fund and the Principal Fund for the then-current Bond Year have been made, all Trustee expenses for the then-current Bond Year have been paid or provided for and the amount on deposit in the Stabilization Fund is equal to the Stabilization Requirement, the Trustee shall, upon receipt of a Request of the Agency, transfer any amount remaining on deposit in the Revenue Fund on such

date specified in such Request of the Agency as directed by the Agency free and clear of the lien of the Indenture.

### **Stabilization Fund**

The Stabilization Fund is established under the Indenture and, upon issuance of the Series 2013 Bond, an amount equal to the Stabilization Requirement will be deposited in the Stabilization Fund.

Amounts in the Stabilization Fund shall be used and withdrawn by the Trustee solely for the purpose of making up any deficiency in the Interest Fund or the Principal Fund (together with any other funds available) for the payment or redemption of all Outstanding Bonds. The Trustee shall calculate the Stabilization Requirement as of April 1 and October 1 of each year and as of any other date requested by the Agency. Upon request of the Agency, the Trustee shall transfer amounts on deposit in the Stabilization Fund in excess of the Stabilization Requirement to the Revenue Fund.

“Stabilization Requirement”, as defined in the Indenture, means an amount equal to 50% of the Maximum Annual Debt Service.

“Maximum Annual Debt Service”, as defined in the Indenture, means, as of the date of any calculation, the maximum aggregate amount of the principal of interest with respect to the Bonds coming due and payable for the current or any future Bond Year during the term of this Indenture.

### **Rate Covenant**

The Agency covenants in the Indenture that it shall impose fixed Surcharges for each Bond Year in an amount determined by the Agency to be reasonable and prudent for the maintenance of rate stability and projected to produce Revenues which, together with amounts on deposit in the Revenue Fund at the start of such Bond Year, will be sufficient to pay the Debt Service coming due and payable during such Bond Year, trustee fees and other expenses under the Indenture and to result in the amount on deposit in the Stabilization Fund at the end of such Bond Year being equal to the Stabilization Requirement.

### **Investment Funds**

All moneys in any of the funds and accounts held by the Trustee and established pursuant to this Indenture shall be invested, as directed by the Agency, solely in Permitted Investments. All Permitted Investments shall, as directed by the Agency in writing, be acquired subject to the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the Agency. The Trustee may conclusively rely upon any investment direction from the Agency as a certification to the Trustee that such investment constitutes a Permitted Investment. If and to the extent the Trustee does not receive investment instructions from the Agency with respect to the moneys in the funds and accounts held by the Trustee pursuant to this Indenture, such moneys shall be invested in Permitted Investments of the type described in paragraph (d) of the definition thereof.



See “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Definitions.”

### **Additional Series of Bonds**

The Agency may, by Supplemental Indenture, establish one or more Series of Bonds payable from Revenues and secured by the pledge made under the Indenture equally and ratably with Bonds previously issued, and the Agency may issue in such principal amount as shall be determined by the Agency, but only, with respect to each Series of Bonds, provided:

- (a) no Event of Default shall have occurred and then be continuing;
- (b) the aggregate principal amount of Bonds issued under the Indenture shall not exceed any limitation imposed by law or otherwise;
- (c) upon the issuance of such Bonds, the amount on deposit in the Stabilization Fund will be equal to the Stabilization Requirement;
- (d) Principal on such Bonds shall be paid on October 1; and
- (e) Interest on such Bonds shall be paid on April 1 and October 1.

Notwithstanding any provisions herein, the Agency may issue Bonds at any time to refund any outstanding Bonds without compliance with the requirement (c) above; provided, however, that the Maximum Annual Debt Service following the issuance of such refunding Bonds and the application of the proceeds thereof shall not exceed the Maximum Annual Debt Service immediately prior to such issuance.

## **IMPOSITION AND COLLECTION OF SURCHARGES**

### **Imposition of Surcharges by the Agency**

Pursuant to the Act, the Agency is authorized to impose on its Members (and, as applicable, any entity subsequently serving a Member’s service area) rates, fees and charges in amounts necessary to pay debt service on bonds, such as the Series 2013 Bonds, issued to finance a prepayment of Capital Cost Recovery Payments and to satisfy other obligations of the Agency related thereto. To provide for payment of the Series 2013 Bonds, the Agency will impose surcharges based on the amount of water sold by the SFPUC to Participating Members (“Surcharges”). The Agency covenants in the Indenture to impose fixed Surcharges for each Fiscal Year in an amount determined by the Agency to be reasonable and prudent for the maintenance of rate stability and projected to produce Revenues which, together with certain other funds, will be sufficient to pay debt service on the Bonds during such Fiscal Year and certain other amounts. See “SECURITY AND SOURCES OF PAYMENT—Rate Covenant.” Pursuant to the Prepayment and Collection Agreement, Surcharges will be billed and collected for the Agency by the SFPUC together with amounts billed by the SFPUC for water deliveries under the Water Supply Agreement. See “—Collection of Surcharges.”

The Agency will, in each Fiscal Year commencing with the 2013-14 Fiscal Year, impose fixed Surcharges on Participating Members in an aggregate amount projected to satisfy the requirements of the Indenture, including any payments of principal of, premium if any, and interest on the Bonds and to deposit funds, as necessary, in the Stabilization Fund in order to satisfy the Agency's obligation to meet the Stabilization Requirement. See "SECURITY AND SOURCES OF PAYMENT—Rate Covenant," "—Stabilization Fund." The Agency will calculate such Surcharges and notify the SFPUC of the initial amount of such Surcharges no later than [May 1] in the Fiscal Year prior to the one in which such Surcharges become effective. The fixed Surcharge imposed by the Agency on each individual Participating Member will be based on such Member's share of the aggregate amount of water delivered to Participating Members during the Fiscal Year prior to the one in which the Agency performs such calculations. In order to determine the amount of the Surcharge to impose on each Participating Member, the Agency expects to multiply (x) a Participating Member's share of the aggregate water deliveries to Participating Members in such prior Fiscal Year, expressed as a percentage, by (y) the aggregate Surcharge to be imposed on all Participating Members in the next Fiscal Year pursuant to the requirements of the Indenture and the Rate Covenant. The Agency expects to make, in subsequent Fiscal Years, adjustments to each Participating Member's Surcharge payment obligations to reflect the difference between (p) the water delivery share percentage used to calculate the Surcharge imposed on such Participating Member in a given Fiscal Year, and (q) the Participating Member's actual share water deliveries in such Fiscal Year.

The Agency may also adjust Surcharges imposed on Participating Members at any time by notifying the SFPUC no less than [ ] days' in advance, including in the event of a payment default or delay by one or more Participating Members. Should a payment default or delay occur or be anticipated to occur with respect to one or more Participating Members, the Agency has the authority to increase Surcharges on the remaining Participating Members to generate Revenues sufficient to comply with the Agency's obligations under the Indenture, including the Rate Covenant, until such time as the payment default or delay is resolved.

### **Collection of Surcharges**

Pursuant to the Act and the Prepayment and Collection Agreement, the SFPUC will collect Surcharges imposed on Participating Members by the Agency. The Prepayment and Collection Agreement requires the SFPUC to include Surcharges on the first water bill delivered each month to Participating Members pursuant to the Water Supply Agreement and to collect such Surcharges in the same manner as the SFPUC collects charges for water under the Water Supply Agreement. See "APPENDIX C—SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT—Billing." The Prepayment and Collection Agreement obligates the SFPUC to remit proceeds of all Surcharge payments it has collected in each calendar month, including any investment earnings thereon, to the Trustee by no later than the fifteenth (15<sup>th</sup>) day of the following calendar month for deposit in the Revenue Fund. See "APPENDIX C—SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT—Collection of Surcharges; Transfers of Surcharge Proceeds to the Agency."

In the event a Participating Member makes a partial payment of an amount billed by the SFPUC on any single bill for delivery of water that includes a Surcharge, the Prepayment and Collection Agreement permits the SFPUC to apply the proceeds of such partial payment first to

pay SFPUC water-delivery-related charges due pursuant to the Water Supply Agreement and second to pay the applicable Surcharge; *provided that*, if a Participating Member makes a partial payment of amounts due with respect to a bill that includes a Surcharge and specifies that such payment is being reduced because the Participating Member contests the validity, accuracy or any other aspect of a charge billed by San Francisco excepting the Surcharge (including, but not limited to, charges relating to interim supply limitations, environmental enhancement or drought, in lieu water charges and meter reading disputes), the proceeds of the Participating Member's partial payment will be applied toward the remainder of the amounts billed, including the Surcharge, as if such contested amounts had not been billed and none of the proceeds of the partial payment will be applied to, or reserved to pay, such contested amounts. See "APPENDIX C—SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT—Enforcement; Allocation of Partial Payments."

Participating Members' obligations to pay Surcharges will be enforced by the SFPUC in the same manner that the SFPUC enforces payment obligations of Members to the SFPUC under the Water Supply Agreement. The Agency has covenanted in the Indenture to enforce the terms of the Prepayment and Collection Agreement, including the SFPUC's obligations to bill, collect and remit proceeds of the Surcharges as described in the Prepayment and collection Agreement. See "APPENDIX C—SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT—Enforcement; Allocation of Partial Payments."

The Agency may also levy additional rates, fees and charges on Members pursuant to the Act for purposes authorized therein, which rates, fees and charges may in the future be collected by the SFPUC on behalf of the Agency.

***Non-Participating Member Capital Cost Recovery Payments Collections and SFPUC Cost Balancing.*** In addition to collecting Surcharges from Participating Members, the SFPUC will continue to collect remaining Capital Cost Recovery Payments from Members who do not participate in the Prepayment (the "Non-Participating Members"). Following the end of any given Fiscal Year, to the extent that Participating Members have in the aggregate prepaid a larger portion of the original Capital Cost Recovery Payments as compared to their actual share of water deliveries in a given Fiscal Year, the SFPUC is obligated to rebate excess amounts to the Trustee for deposit in the Revenue Fund. To the extent that Participating Members have in the aggregate prepaid a smaller portion of the original Capital Cost Recovery Payments as compared to their share of actual water deliveries in a given Fiscal Year, the Agency will remit, solely from any available amounts released from the lien of the Indenture pursuant to the terms thereof, moneys equal to that portion of the original Capital Cost Recovery Payments underpaid by Participating Members. Should any such amounts remain unpaid to the SFPUC at the end of the following Fiscal Year, the Agency has covenanted to impose an additional charge on Participating Members in the next succeeding Fiscal Year calculated to generate excess Revenues such that the moneys released from the lien of the Indenture pursuant to the terms thereof are sufficient to pay such amounts. See "APPENDIX C—SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT—Capital Cost Recovery Payments for Non-Participating Members."

***Collections History.*** There have been no material non-payments or delays in payment by any Participating Members of amounts due to the SFPUC under the Water Supply Agreement or the Master Water Sales Contract that preceded it. In the event, however, any Participating Member fails to pay, or makes only a partial payment of, and Surcharge when due and owing, the remedies available to the Agency against such Participating Member may be limited to a suit for payment of such Surcharge. See “RISK FACTORS—Payment Delays and Defaults; Bankruptcy or Financial Failure of a Participating Member,” and “—Limitations on Remedies.”

## **WATER SUPPLY AGREEMENT**

In 2009, San Francisco and the Wholesale Customers entered into the Water Supply Agreement, with an effective date of July 1, 2009. The Water Supply Agreement has a 25-year term (with provisions for two conditional five-year extensions). The Water Supply Agreement replaces the Settlement Agreement and Master Water Sale Contract entered into in 1984 to settle litigation over certain rate-setting practices.

### **Water Supply**

The Water Supply Agreement reconfirms the “Supply Assurance,” San Francisco’s perpetual commitment to deliver 184 million gallons per day (“mgd”) (measured on an annual average basis), to the Wholesale Customers, collectively, other than San Jose and Santa Clara (the “Supply Assurance”). The Cities of San Jose and Santa Clara are served wholesale water on an interruptible basis and such sales are not deemed to be within the Supply Assurance. The Agreement formally reconfirms the allocation of the collective Supply Assurance among the Wholesale Customers as individual supply guarantees within the 184 mgd. The quantified individual supply guarantees remain subject to pro rata reduction if and when collective use exceeds 184 mgd, in order to preserve the City of Hayward’s claimed entitlement under its previously negotiated 1962 contract with San Francisco that did not limit its water use. The Agreement also preserves the other Wholesale Customers reservations of their right to challenge such a reduction. The Agreement also allows the Wholesale Customers to permanently transfer portions of their individual supply guarantees among themselves.

The Water Supply Agreement also acknowledges San Francisco’s unilateral decision to impose an interim supply limitation which limits the amount of water delivered to the retail customers of the SFPUC (the “Retail Customers”) and Wholesale Customers from the San Francisco watersheds to 265 mgd through 2018 (the “Interim Supply Limitation”). Under the Interim Supply Limitation, San Francisco allocated its Retail Customers 81 mgd and allocated the Wholesale Customers 184 mgd. As part of the implementation of the Interim Supply Limitation, the SFPUC allocated the 184 mgd among the Wholesale Customers, including San Jose and Santa Clara, in 2010. Under the Interim Supply Limitation, while the Cities of San Jose and Santa Clara continue to have a temporary, interruptible status, the SFPUC agrees to supply up to a combined annual average of nine mgd to the two cities, collectively, through 2018. The nine mgd allocated to San Jose and Santa Clara is not a part of the Supply Assurance, but is included within the wholesale portion of the Interim Supply Limitation of 184 mgd. If Wholesale Customers’ use is projected to exceed 184 mgd, the allocation to San Jose and Santa Clara may be reduced or terminated upon 5 years’ notice and following a CEQA process.

## Water Charges

The Water Supply Agreement provides for the separation of asset and expense categories among wholesale only, retail only and shared regional uses. Annual operations and maintenance expenses are recovered on the basis of proportionate annual use of the Regional Water System in most cases. Hetch Hetchy power costs and revenues are also separated—the Wholesale Customers do not pay for power-related costs, and do not share in power revenues. The Water Supply Agreement also addresses coordination of wholesale rates with the annual SFPUC budget process, annual compliance audits, resolution of rate disputes via binding arbitration, and annual true up of costs using a balancing account.

The annual amount due from all Wholesale Customers (the “Wholesale Revenue Requirement”) is determined by applying the Agreement’s detailed cost allocation rules to the costs actually incurred, based on actual water usage by San Francisco retail and Wholesale Customers during the year. Under the Water Supply Agreement, the cost of service for suburban resale is calculated on the same “cash basis” as retail rates. Using the cash basis, the cost of service for Wholesale Customers will include a pro-rata share of operation and maintenance expense.

Under the Water Supply Agreement capital costs are recovered as follows:

- The costs of existing assets placed in service prior to June 30, 2009, are to be repaid through Capital Cost Recovery Payments based on audited actual costs in monthly installments by Wholesale Customers at an annual interest rate of 5.13% over a 25-year period, in lieu of depreciation and a weighted return on these assets. All or a portion of these payments will be paid through the Prepayment.
- The costs of new regional assets are to be paid for using the cash method. Annual wholesale rates are set to recover the Wholesale Customers’ share of regional asset costs from current revenues for cash-funded assets. Wholesale contributions for debt-financed assets include appropriate contributions towards debt service and coverage based on the Wholesale Customers’ proportionate annual use of the Regional Water System.
- For the portion of capital projects costs that were appropriated but not expended as of June 30, 2009, a 10-year repayment schedule including 4.00% interest has been calculated, based on audited actual costs.

Finally, the Water Supply Agreement contains a rate device known as the balancing account, which provides for the annual reconciliation of amounts due from the Wholesale Customers and the amount actually charged Wholesale Customers. Any difference between the revenues received and the actual earned revenues associated with the allocated cost of wholesale service is placed in the balancing account, will earn interest, and can be taken into account in setting rates for future years. For example, “positive” balances (those in favor of the Wholesale Customers) will in general be held as a rate stabilization account; and “negative” balances (those in favor of SFPUC) may be drawn down over three years. Interest is earned by or charged to the balancing account based on the rate earned in San Francisco’s pooled investment program.

The operating costs and plant investment for Hetch Hetchy Water and Power are allocated in a similar manner. Costs are first classified as power-specific, water-specific and joint (45% of which are reallocated to water). The water related costs are then allocated between Retail Customers and Wholesale Customers based on their pro-rata share of water delivered.

Under the Water Supply Agreement, adjustments to the Wholesale Customers' rate schedule, other than emergency rate adjustments and drought pricing, discussed below, are coordinated with the budget development process. If the SFPUC desires to increase Wholesale Customer rates, it is required to provide certain yearly budget and other financial information to the Wholesale Customers prior to adoption of any such rate increases. Failure to do so will not prohibit the SFPUC from adoption of such rates, but, in the event of such failure, the Wholesale Customers may either invoke arbitration, or seek injunctive relief to compel the SFPUC to remedy the failure as soon as reasonably practical.

The SFPUC may increase the water rates applicable to the Wholesale Customers without compliance with the above described procedures in the event a non-drought event such as earthquake, other catastrophic event, failure of the Regional Water System infrastructure or other emergency which requires an increase in rates. Rates may be increased on an emergency basis to cover operating expenses and capital costs. Any such emergency rate increase must be accompanied by a rate increase for Retail Customers of an equal percentage.

Drought pricing for Wholesale Customers, if required, could also be changed under similar terms and conditions set forth for emergency rate increases. Any drought-related pricing or surcharge adopted by the Commission would also remain in effect only until the next budget coordinated rate-setting cycle.

The following table lists wholesale water rate adjustments since Fiscal Year 1991-92 for the Wholesale Customers.

**TABLE \_\_\_\_**  
**HISTORICAL PERCENTAGE INCREASES (DECREASES)**  
**IN WHOLESALE WATER RATES**

<b>Date</b>	<b>Rate (/ccf)</b>	<b>Change in Wholesale Rates<sup>(1)</sup></b>
July 2012	\$2.93	11.4%
July 2011	2.63	38.4
July 2010	1.90	15.2
July 2009	1.65	15.4
July 2008	1.43	10.0
July 2007	1.30	6.6
July 2006	1.22	19.6
July 2005	1.02	(9.7) <sup>(2)</sup>
July 2004	1.13	2.7
July 2003	1.10	25.0
July 2002	0.88	0.0
July 2001	0.88	2.3
July 2000	0.86	4.9
July 1999	0.82	36.7
July 1998	0.60	(13.0)
July 1997	0.69	0.0
July 1996	0.69	0.0
July 1995	0.69	0.0
July 1994	0.69	19.0
July 1993	0.58	(33.3)
July 1992	0.87	19.2
July 1991	0.73	40.4

<sup>(1)</sup> Wholesale rates are set prospectively based on an estimate of the Wholesale Revenue Requirement. As such, rates may increase or decrease significantly from year to year.

<sup>(2)</sup> Adjustment effective April 1, 2005.

Source: Bay Area Water Supply and Conservation Agency

Finally, the SFPUC has established an “Environmental Enhancement Surcharge” to enforce the Interim Supply Limitation. The Environmental Enhancement Surcharge would apply to purchases over 81 mgd (by Retail Customers) or over the individual limitations assigned to each of the Wholesale Customers, only if total combined retail and wholesale water deliveries from the Regional Water System watersheds exceed 265 mgd. No Environmental Enhancement Surcharges have been imposed and it appears unlikely that any such surcharges will be imposed through 2018.

The Water Supply Agreement continues the practice of binding arbitration for rate related disputes.

***Individual Water Supply Contracts.*** While the Water Supply Agreement establishes the rate-setting mechanism and the overall supply assurance level for Wholesale Customers, each Wholesale Customer has an individual water supply contract with San Francisco that defines the terms and conditions (including, among others, the point of delivery and service area) by which water is supplied to each such Wholesale Customer. In addition, four dual source agencies, the cities of Milpitas, Mountain View and Sunnyvale, and the Alameda County Water District, must meet minimum “take or pay” commitments under the Water Supply Agreement and these requirements are memorialized in their Individual Water Supply Contracts.

## **THE SAN FRANCISCO REGIONAL WATER SYSTEM**

Water sold by the SFPUC is delivered through the Regional Water System. The Regional Water System is a complex system which supplies water from two primary sources: (i) the Tuolumne River through the Hetch Hetchy Reservoir, and (ii) local runoff into Bay Area reservoirs in the Alameda and Peninsula watersheds. Water originating in the Hetch Hetchy watershed represents the majority of the water supply available to the SFPUC. On average, the Hetch Hetchy Reservoir provides approximately 85% of the water delivered and runoff into Bay Area reservoirs provide approximately 15% of the water delivered through the Regional Water System. Water production is dependent on precipitation and the ability of the SFPUC to regulate watershed runoff.

The Regional Water System consists of over 280 miles of pipeline, over 60 miles of tunnels, 11 reservoirs, five pump stations, and two water treatment plants located outside San Francisco. Water collected in the Hetch Hetchy is delivered by gravity to Bay Area reservoirs and users. The remaining water supply is drawn from local surface waters in the Alameda and Peninsula watersheds. The Regional Water System does not include local water distribution facilities, including those in San Francisco.

The Regional Water System was constructed and is owned by San Francisco and is operated by the SFPUC. The Regional Water System delivers approximately 66% of its water to Wholesale Customers in Alameda County, Santa Clara County and San Mateo County. All of the Wholesale Customers, with the exception of the Cordilleras Mutual Water Association, are Members. The Wholesale Customers pay for the Regional Water System in proportion to their purchases of water.

### **San Francisco Public Utilities Commission**

The SFPUC, a department of San Francisco, is responsible for the maintenance, operation and development of three utility enterprises: the Water Enterprise, the Wastewater Enterprise and the Power Enterprise (of which Hetch Hetchy Water and Power is a component).

The Water Enterprise provides drinking water to Retail Customers in San Francisco, to certain Retail Customers outside San Francisco and to the Wholesale Customers. The Water Enterprise operates the Regional Water System including the Hetch Hetchy Reservoir and two other Sierra reservoirs, the hydropower facilities, the Bay Area reservoirs, and regional water treatment facilities. The Water Enterprise also maintains and operates the retail water distribution system



inside San Francisco, which is not part of the Regional Water System. The Wastewater Enterprise provides wastewater and stormwater collection, treatment and disposal services for San Francisco. The Power Enterprise schedules hydroelectric power generation and delivery, solar and other power for municipal and public infrastructure, services and facilities. The SFPUC's enterprises are operated and managed as separate financial entities with separate enterprise funds.

## Wholesale Service Area

The Regional Water System provides water service to 26 Wholesale Customers and the City and County of San Francisco. The Wholesale Customers comprise 24 public agencies, one private utility (California Water Service Company) and one private nonprofit university (Stanford University). All of the Wholesale Customers are located within the County of Alameda, the County of Santa Clara and the County of San Mateo. As of January 1, 2012, the Whole Customers provide water services to a population of approximately 1.7 million people.

The land area and population of the portions of those three counties served as Wholesale Customers is summarized below.

**TABLE \_\_\_\_**  
**WHOLESALE CUSTOMER POPULATIONS AND SERVICE AREA BY COUNTY**

County	Service Area (sq. mi.)		Population	
	Member Service Area	% of County Total	Member Population	% of County Total
San Mateo	185	41%	713,399	98%
Santa Clara	117	9%	515,357	28%
Alameda	166	20%	473,000	31%
Total:	468	18%	1,701,756	42%

Source: Bay Area Water Supply and Conservation Agency

Alameda County, Santa Clara County and San Mateo County all have diversified economies and median household incomes higher than State and national averages.

## Water Supply

As early as the 1880s, San Francisco began looking to the Sierra Nevada Mountains and the Tuolumne River in what is now Yosemite National Park as a possible source of abundant, clean water for San Francisco and the Bay Area. Hetch Hetchy Valley, which is located on the Tuolumne River in Yosemite National Park, was first recommended as a reservoir site at the turn of the 20th Century in a U.S. Geological Survey Study.

Following the 1906 earthquake, San Francisco began to develop a preliminary design for the Hetch Hetchy System. It also entered into negotiations with the Modesto Irrigation District and the Turlock Irrigation District (the “Districts”), to protect the Districts’ existing water rights and to provide them a share of the hydroelectric power to be produced by Hetch Hetchy facilities, at cost-based rates.

The federal Raker Act, enacted on December 19, 1913, and planned to benefit the greater San Francisco Bay Area population, grants rights-of-way and public land use on U.S. government property in the Sierra Nevada Mountains to construct, operate and maintain reservoirs, dams, conduits and other structures necessary or incidental to developing and using water and power. It also imposes restrictions on San Francisco’s use of the Hetch Hetchy Reservoir, including (among others) the requirement that San Francisco recognize the prior rights of the Districts to receive water, up to specified amounts of natural daily flow, for direct use and storage. After twenty years of construction of dams and aqueducts, water from the Hetch Hetchy System was first delivered to San Francisco Bay Area in 1934. The SFPUC diverts water under rights acquired under State water law, which permit the appropriation of a volume of water in excess of 400 mgd from the Tuolumne River and its tributaries.

The amount of water available to the Wholesale Customers is constrained by hydrology, physical facilities, and the institutional parameters that allocate the water supply of the Tuolumne River. While in most years adequate water supply is available to meet demands, the SFPUC is, due to these constraints, very dependent on reservoir storage to firm up its water supplies. More importantly, reservoir storage provides the Regional Water System with year-to-year water supply carry-over capability. During dry years, the SFPUC has a very small share of Tuolumne River runoff available and the local Bay Area watersheds produce very little water. Reservoir storage is critical during drought cycles since it enables the SFPUC to carry-over water supply from wet years to dry years.

## **Water Facilities, Distribution and Treatment**

The Regional Water System is geographically delineated between the Hetch Hetchy Project and the Bay Area water system facilities.

- The Hetch Hetchy Project generally comprises the reservoirs, hydroelectric generation and transmission facilities, and water transmission facilities from Hetch Hetchy Valley west to the Alameda East Portal of the Coast Range Tunnel in Sunol Valley.
- The local Bay Area water system generally comprises the facilities west of Alameda East Portal and includes the Alameda and Peninsula watershed reservoirs, two water treatment plants and the distribution system that delivers water to the SFPUC’s Retail Customers and Wholesale Customers. The local Bay Area is sometimes described in two parts: the “Alameda System” and the “Peninsula System.”

***Hetch Hetchy System.*** In the Hetch Hetchy System, water is diverted from Hetch Hetchy Reservoir into a series of tunnels and aqueducts from the Sierra Nevada to the San Joaquin

Pipelines that cross the San Joaquin Valley to the Coast Range Tunnel (collectively, the “Hetch Hetchy System”) which connects to the Alameda System at the Alameda East Portal.

***The Alameda System.*** The “Alameda System” includes two reservoirs, San Antonio Reservoir and Calaveras Reservoir, which collect water from the upper Alameda and San Antonio Creek watersheds in Alameda County plus conveyance facilities connecting the Hetch Hetchy System and Alameda water sources to the Peninsula System. These conveyance facilities include pipelines known as the Alameda Siphons that connect the Coast Range Tunnel to the Irvington Tunnel.

The Irvington Tunnel supplies the four Bay Division Pipelines that cross the South Bay Area to the Peninsula System. Bay Division Pipelines 1 and 2 cross the Bay near the Dumbarton Bridge. Bay Division Pipelines 3 and 4 traverse the southerly edge of the Bay delivering water to SFPUC customers along the way. All four pipelines reconnect near the inlet to the Pulgas Tunnel on the Peninsula.

The Sunol Valley Water Treatment Plant filters and disinfects water supplied from San Antonio and Calaveras Reservoirs.

A turnout from the South Bay Aqueduct of the California State Water Project can supply limited supplemental water to San Antonio Reservoir. However, the SFPUC currently possesses no entitlements to water from the State Water Project.

Interties have been constructed between the Regional Water System and two other Bay Area treated water delivery systems. A pipeline and pumping station in and through the City of Hayward connects the Regional Water System with the East Bay Municipal Utility District’s treated water system. In Milpitas, a pipeline and pumping station connect the Regional Water system with the Santa Clara Valley Water District’s treated water system.

***Peninsula System.*** The “Peninsula System” includes conveyance facilities connecting the Bay Division Pipelines to the San Francisco’s in-City distribution system and to other SFPUC customers on the Peninsula. Two reservoirs, Crystal Springs and San Andreas, collect runoff from the San Mateo Creek watershed and store water from the Regional Water System. Water from Pilarcitos Reservoir, on Pilarcitos Creek, serves one of the Wholesale Customers, the Coastside County Water District (which includes the City of Half Moon Bay), directly and can also deliver water to Crystal Springs and San Andreas Reservoirs. Water delivered from the Bay Division Pipelines in excess of Peninsula System and San Francisco’s retail water demands is stored in Crystal Springs and San Andreas Reservoirs. The Harry Tracy Water Treatment Plant filters and disinfects water supplied from Crystal Springs and San Andreas Reservoirs before it is delivered to Peninsula customers and the San Francisco’s in-City distribution system.

The facilities making up the Regional Water System are summarized below.

**TABLE \_\_**  
**SUMMARY OF REGIONAL SYSTEM FACILITIES**

Pipelines	280 miles
Tunnels	60 miles
Pump Stations	5
Reservoirs and/or Water Tanks	11
Treatment Plants	2

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Source: SFPUC, Water Enterprise

***Water Treatment.*** The Hetch Hetchy Reservoir is the largest unfiltered water supply on the West Coast and one of only a few large unfiltered municipal water supplies in the nation. The water originates from spring snowmelt flowing down the Tuolumne River to the Hetch Hetchy Reservoir, where it is stored. This pristine water source meets or exceeds all federal and State criteria for watershed protection. Based on the SFPUC’s disinfection treatment practice, extensive water quality monitoring, and high-operational standards, the U.S. Environmental Protection Agency and the State of California Department of Health Services have determined that the Hetch Hetchy water source meets federal and State drinking water quality requirements without filtration, and thus the SFPUC is not required to filter water from the Hetch Hetchy Reservoir.

The SFPUC’s new Tesla Treatment Facility enhances high water quality through ultraviolet (“UV”) treatment, and is a key component of the SFPUC’s Water System Improvement Program (the “WSIP”). See “THE SAN FRANCISCO REGIONAL WATER SYSTEM—Water System Improvement Program.” The facility uses UV light to disinfect Hetch Hetchy water to meet new federal requirements to control the waterborne parasite *Cryptosporidium*, and is among the largest drinking-water UV disinfection facilities in North America.

***Local Water.*** All water derived from sources other than the Hetch Hetchy Reservoir is currently treated at one of two treatment plants: the Sunol Valley Water Treatment Plant or the Harry Tracy Water Treatment Plant. The Sunol Valley Water Treatment Plant in Alameda County has a peak capacity of 160 mgd and a sustainable capacity of 120 mgd. Should the Bay Area be cut off from Hetch Hetchy supplies because of an emergency, the treatment plant must sustainably treat 160 million gallons of water a day to meet minimum customer demands. The Harry Tracy Water Treatment Plant in San Mateo County primarily treats water from the Peninsula System reservoirs and has a peak capacity of 140 mgd and a sustainable capacity of 120 mgd.

Major upgrades of these two facilities are in progress as part of the SFPUC’s WSIP. See “THE SAN FRANCISCO REGIONAL WATER SYSTEM—Water System Improvement Program.”

## **Water Storage**

***Up-Country Storage.*** The majority of the water delivered by the SFPUC is supplied by runoff from the upper Tuolumne River watershed on the western slope of the central Sierra Nevada. Three major reservoirs collect runoff: Hetch Hetchy Reservoir, Lake Lloyd, and Lake Eleanor.

Water stored in the Hetch Hetchy Reservoir is also used for hydroelectric generation and released downstream to satisfy instream flow requirements. Normally only Hetch Hetchy Reservoir supplies water exported to the Bay Area for municipal and industrial uses. Releases from Lake Eleanor and Lake Lloyd are used to satisfy instream flow requirements, satisfy Raker Act entitlements to downstream irrigation districts and produce hydroelectric power. Releases of water stored in New Don Pedro Reservoir, which is located on the Tuolumne River downstream of the Hetch Hetchy System and owned by the Districts, is credited to San Francisco's water bank account, allows San Francisco to meet its Raker Act water obligations to the Districts and divert water supply from Hetch Hetchy Reservoir to the Bay Area.

***Local Storage.*** In the Alameda Creek watershed (Alameda County), the SFPUC operates the Calaveras Reservoir and San Antonio Reservoir. On the San Francisco Peninsula, the SFPUC utilizes Upper and Lower Crystal Springs Reservoirs, San Andreas Reservoir and Pilarcitos Reservoirs located in San Mateo County to capture local watershed runoff. In addition to using these facilities to capture runoff, San Andreas, San Antonio and Upper and Lower Crystal Springs reservoirs also provide storage for Hetch Hetchy Project diversions, and, along with Calaveras, serve as an emergency water supply in the event of an interruption to Hetch Hetchy Project deliveries.

***Dam Supervision.*** Eighteen dams under the jurisdiction of the SFPUC are presently supervised by the California Department of Water Resources' Division of Safety of Dams ("DSOD"). The SFPUC's Calaveras Dam is currently operating under DSOD imposed restrictions. Overall, as of [January 1, 2013], dams under the jurisdiction of the SFPUC are [at normal levels for such date.]

**TABLE \_\_**  
**REGIONAL WATER SYSTEM STORAGE CAPACITY**  
**(AS OF JUNE 1, 2012)**

Reservoir	Maximum Storage Capacity (Acre-feet)	Current Storage Levels as a Percent of Maximum
<b>Up-Country<sup>(1)</sup></b>		
Hetch Hetchy	360,340	99.7%
Lake Lloyd <sup>(2)</sup>	273,340	98.6%
Lake Eleanor <sup>(3)</sup>	27,100	98.6%
Water Bank	570,000	93.4%
Subtotal Tuolumne	1,230,780	96.5%
<b>Local Bay Area</b>		
Calaveras (East Bay) <sup>(4)</sup>	96,824	22.0%
San Antonio (East Bay)	50,496	94.4%
Crystal Springs (Peninsula)	58,377	88.3%
San Andreas (Peninsula)	18,996	96.1%
Pilarcitos (Peninsula)	2,995	93.5%
Subtotal Local	227,688	62.2%
<b>Total Regional Water System</b>	1,458,468	91.1%

- (1) Storage capacity shown includes capacity when drum gates (i.e., floodgates for shutting out or releasing the flow of water over spillways) are activated.
- (2) Storage capacity shown includes flashboards, which are boards or structures of boards extending above a dam to increase its capacity.
- (3) Storage capacity shown with flashboards out.
- (4) Since December 2001, in response to safety concerns about the seismic stability of the dam and mandates from the DSOD, the SFPUC has held the maximum water level at approximately 37,800 acre-feet (roughly 40% of the maximum capacity shown), pending construction of a new comparably sized replacement dam downstream.

Source: SFPUC, Water Enterprise

## Seismic Hazards

The facilities of the Regional Water System are located in seismically active regions of the State. During the past 150 years, the San Francisco Bay Area has experienced several major and numerous minor earthquakes. The largest was the 1906 San Francisco earthquake along the San Andreas Fault with an estimated magnitude of 8.2 on the Richter scale. Another was the 1868 Hayward earthquake along the Hayward Fault. The most recent significant earthquake was the October 1989 Loma Prieta earthquake on the San Andreas Fault, which had a magnitude of 7.1 on the Richter scale and an epicenter near Santa Cruz, approximately 55 miles south of San Francisco. According to United States Geological Survey findings, a significant earthquake along these or other faults is probable prior to the final maturity date of the Series 2013 Bonds.

## **Water Supply Reliability and Drought Planning**

The Regional Water System's reliability is expressed in terms of its ability to deliver water during droughts. Reliability is defined by the amount and frequency of water delivery reductions required to balance customer demands with available supplies in droughts. The total amount of water the SFPUC has available to deliver to its Wholesale Customers during a defined period of time is dependent on several factors that include the amount of water that is available to SFPUC from natural runoff, the amount of water in reservoir storage, and the amount of water that must be released from the SFPUC's system for commitments to purposes other than customer deliveries (such as releases below Hetch Hetchy reservoir to meet Raker Act and fishery purposes).

The SFPUC operates its system under a "Water First" policy to optimize the reliability and quality of its water deliveries. To ensure water supply, Hetch Hetchy Project reservoirs remain high through the early winter, until sufficient snowmelt runoff is forecasted at 90% certainty to fill all Hetch Hetchy Project reservoirs. When the forecasted snowmelt is certain to be in excess of the fill volume, the reservoirs may be drawn down through power operations to increase revenue without risking water supply. Similarly, the Regional Water System's Bay Area reservoirs are operated to conserve watershed runoff. As such, reservoirs are drawn down early in the winter period to capture storms and reduce the potential for spilling water out of the reservoirs. In the spring, Hetch Hetchy water (snowmelt) is often transferred to three of the Bay Area reservoirs that are capable of receiving the water.

At current delivery levels and reservoir capacities, the Regional Water System can be expected to experience up to a 25% shortage from 15% to 20% of the time. These estimates come from computer analyses that model the performance of the system over multiple-year drought sequences.

During a drought, the Wholesale Customers would experience a reduction in the amount of water received from the Regional Water System. For declared water shortage emergencies, the amount of the reduction is specified in the Water Shortage Allocation Plan ("WSAP"), an exhibit to the Water Supply Agreement between San Francisco and the Wholesale Customers. The WSAP provides specific allocations of available water between the Retail Customers and the Wholesale Customers collectively for different levels of system-wide shortages.

A separate agreement among the Wholesale Customers specifies how their aggregate share of water would be allocated to each agency. The allocation of water to Retail Customers of the individual Wholesale Customers would be determined by each local governing body.

The WSAP applies to system-wide water shortages of up to 20%. For system-wide shortages in excess of 20%, the WSAP provides that if agreement cannot be reached as to how water should be allocated between San Francisco's retail and wholesale customers, the SFPUC may allocate water at its discretion, subject to legal challenge by Wholesale Customers. The WSAP also includes provisions for drought surcharges in the event that an agency uses water from the Regional Water System in excess of its drought allocation. The WSAP allows customers to "bank" drought allocations and to transfer such allocations to other Wholesale Customers.

System delivery capability is defined as the water delivery the Regional Water System is able to sustain over historical hydrologic conditions including multiple-year drought sequences. Under existing SFPUC operations policies and procedures, the SFPUC has a system delivery capability of 258 mgd. That is, the Regional Water System is capable of sustaining a 258 mgd annual average delivery over a hydrologic period equivalent to that experienced from 1921 to 2002 with shortages due to drought. After completion of the WSIP and development of dry-year supplies, the system delivery capability is anticipated to increase to 262 mgd. During non-drought years, the Regional Water System is capable of sustainably delivering 265 mgd.

## Wholesale Water Deliveries

The following table shows recent water sales by volume to the top ten Wholesale Customers by volume purchased in Fiscal Year 2011.

**TABLE \_\_**  
**HISTORIC WHOLESALE WATER SALES**  
**FISCAL YEARS ENDED JUNE 30**  
**(IN MGD)**

	2008	2009	2010	2011
<b>Wholesale Customers</b>				
California Water Service Company	37.7	36.0	32.6	32.2
Hayward Municipal Water	19.3	19.0	17.3	17.0
City of Palo Alto	12.7	11.6	11.0	11.1
City of Redwood City	11.0	10.3	9.6	9.1
City of Mountain View	10.5	9.9	8.9	8.6
City of Sunnyvale	10.5	10.7	9.9	8.1
Alameda County Water	12.9	11.3	10.8	8.0
City of Milpitas	7.0	6.9	6.3	6.1
City of Daly City	4.5	4.4	5.1	5.3
Estero Muni Improvement District	5.5	5.1	4.9	4.7
All Other Wholesale Customers	41.7	38.8	35.0	35.5
<b>Wholesale water sales<sup>†</sup></b>	173.4	164.0	151.3	145.7

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<sup>†</sup> Totals may not add due to independent rounding.

## Future Water Demand and Supply

As part of the development of its Long-Term Reliable Water Supply Strategy, the Agency has updated demand projections for each of the Wholesale Customers, which the Agency included in its “Long-Term Reliable Water Supply Strategy Phase II A Final Report” released July 3, 2012.

The total projected water demands of the Wholesale Customers are shown in Table \_\_.



**TABLE \_\_\_\_**  
**PROJECTED WHOLESALE CUSTOMER WATER DEMAND AND SUPPLIES**  
**(MGD)**

<b>Source</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>	<b>2030</b>	<b>2035</b>
Regional Water System	171	162 - 171	167 - 176	173 - 182	177 - 186
Other Supplies <sup>(1)</sup>	94	106 – 115	113 - 122	122 - 131	129 - 138
Total Wholesale Customer Demand <sup>(2)</sup>	265	277	289	304	315

<sup>(1)</sup> Estimated as the difference between the Total Wholesale Customer Demand and the Wholesale Customer Purchases from the Regional Water System.

<sup>(2)</sup> Totals may not add due to rounding.

Note: Amounts set forth in the table are projections. Actual results may differ materially from these projections. See the discussion related to “Forward-Looking Statements” above.

Source: The Agency’s Long-Term Reliable Water Supply Strategy Phase II A Final Report, July 3, 2012.

In Fiscal Year 2010-11, Wholesale Customers collectively received approximately 66% of their water supply from the Regional Water System, with 17 of the 26 Members deriving over 90% of their water from the Regional Water System as of November 1, 2012. Future projections indicate that between 2015 and 2035 this figure will be in the range of 56% to 65%. For the year 2035, water demands of the Wholesale Customers (regardless of water source) are projected to increase to approximately 315.2 mgd. Other water supplies available and developed by the Wholesale Customers, which include increased water conservation and recycling, show a net projected increase of about 32.9 mgd.

### **Water System Improvement Program**

The Water System Improvement Program (“WSIP”) is an approximately \$4.6 billion dollar, multi-year capital improvement program undertaken by the SFPUC to upgrade the Regional Water System and San Francisco’s in-City water distribution system to meet water quality requirements, improve seismic and delivery reliability, and meet water supply goals.

The WSIP presently includes a total of 86 projects, which vary in size from a few million dollars to over \$400 million. WSIP is divided into two sub-programs – Local and Regional.

The Regional Program includes 46 projects that benefit both Retail Customers and Wholesale Customers, and include a wide variety of improvements such as upgrades to and the addition of new treatment, transmission (pipelines, tunnels, pump stations), and storage (dams and reservoirs) facilities spread over seven counties. The Wholesale Customers pay a proportionate share of the costs of these projects pursuant to the terms of the Water Supply Agreement.

As of March 5, 2012, the approved WSIP budget was \$4.586 billion, of which \$3.471 billion had been expended or encumbered. The adopted WSIP completion date is July 2016.

## Wholesale Customer Alternative and Supplemental Sources of Water Supply

Water supply from the Regional Water System is the primary source of supply for most Members. On average, Members rely on the Regional Water System for approximately two-thirds of their total aggregate water supply. In addition to aggressive water conservation, Members use local groundwater, local surface water, imported water from State and federal water systems, and recycled water to supplement their water purchases from the Regional Water System in order to meet the remaining one-third of their water needs. In Fiscal Year 2010-11, seventeen agencies relied on the SFPUC supply to meet over 90% of their customers' water demands.

**TABLE \_\_**  
**PERCENTAGE OF WATER PURCHASED FROM THE REGIONAL WATER SYSTEM**  
**BY WHOLESALE CUSTOMERS IN FISCAL YEAR 2011**

	Population	Water Purchased (mgd)		
		SFPUC	Total	% SF
California Water Service Company	242,762	32.11	33.78	95%
City of Hayward	146,000	17.0	17.0	100
City of Palo Alto	64,403	11.2	11.9	94
City of Redwood City	84,557	9.2	9.7	94
City of Mountain View	75,275	8.5	10.3	83
City of Sunnyvale	141,099	8.3	18.7	44
Alameda County Water District	327,000	7.8	42.9	18
City of Milpitas	66,790	6.1	9.9	61
Estero Municipal Improvement District	36,100	4.7	4.7	100
San Jose Municipal Water System - North	14,624	4.2	4.6	91
City of Burlingame	30,282	4.0	4.3	93
North Coast County Water District	40,000	3.3	3.3	100
City of Menlo Park	14,198	3.1	3.1	100
Town of Hillsborough	10,825	3.0	3.0	100
City of Daly City	101,920	2.9	4.2	69
Mid-Peninsula Water District	26,130	2.9	2.9	100
City of Millbrae	21,532	2.2	2.2	99
City of Santa Clara	118,830	2.2	20.9	10
Stanford University	28,218	2.1	3.2	66
East Palo Alto Water District	26,181	1.8	1.8	100
Purissima Hills Water District	6,118	1.7	1.7	100
Coastside County Water District	20,216	1.7	1.8	90
City of San Bruno	41,114	1.6	3.6	43
Westborough County Water District	13,300	0.8	0.8	100
Brisbane Water District / Guadalupe Valley Municipal Improvement District	4,282	0.6	0.6	100
<b>Total All Agencies</b>	<b>1,701,756</b>	<b>142.7</b>	<b>220.9</b>	<b>65%</b>

Four Members have access significant alternative water supplies from State and federal water projects: the Cities of Milpitas, Sunnyvale, and Mountain View, and Alameda County Water District. Each of these Members is subject to a minimum purchase requirement under the Water Supply Agreement, specifying minimum quantities of water that must be purchased from the Regional Water System on an average annual basis, whether or not water is delivered.

Opportunities for Members to develop significant alternatives to purchasing water from the SFPUC with delivery through the Regional Water System are limited. The SFPUC and its predecessor agency, the Spring Valley Water Company, developed the majority of local surface water supplies in San Mateo and Alameda Counties. Groundwater resources in San Mateo and Southern Alameda County are relatively scarce and largely already developed. Groundwater supplies in Santa Clara County have also been previously developed, and the Santa Clara Valley Water District replenishes groundwater in much of Santa Clara County, monitors its use and imposes a tax on its pumping.

The table below summarizes the sources of supply currently in use by the Wholesale Customers as a whole.

**TABLE \_\_**  
**WATER DELIVERIES TO WHOLESALE CUSTOMERS BY SOURCE**

<b>Source</b>	<b>Acre-Feet</b>	<b>Percent of Total</b>
San Francisco PUC	162,343	65.0%
Other Sources (Includes State/Federal)	39,619	15.9
Groundwater	32,069	12.8
Surface Water	8,427	3.4
Recycled Water	7,452	3.0
<b>Total</b>	<b>249,911</b>	

Increasing effort has gone in to developing supplies to supplement water provided by the Regional Water System, however, for both dry years and normal years. Members have become concerned about how they would meet future increase in water supply needs for their customers given the SFPUC's unilateral decision in October 2008 to establish an 184 mgd limitation on Members' aggregate purchases from the Regional Water System through at least 2018. As a result, the Agency initiated its Long-Term Reliable Water Supply Strategy in September 2009. The purpose of the Strategy is to quantify the water supply needs of Members through 2035, quantify the supplemental water supply needed in addition to currently available sources, primarily the Regional Water System, identify the water supply management projects that could be developed to meet those needs, and prepare an implementation plan for bringing those supplies on line. The Phase II Report on the Long-Term Reliable Water Supply Strategy, containing recommended projects for future development, is scheduled to be completed by December 2014.

## **Regulatory Matters**

Public water supply systems in the State, such as the Regional Water System and San Francisco's in-City distribution system operated by the Water Enterprise, are primarily regulated by the California Department of Public Health ("CDPH") and, in some limited instances, by the EPA, the California State Water Resources Control Board, and California Regional Water Quality Control Boards ("RWQCBs").

Drinking water delivered to the Retail Customers must comply with statutory and regulatory water quality standards designed to protect public health and safety and in accordance with a water system permit issued by the CDPH. The CDPH reissued a drinking water supply permit in 2004 prescribing conditions and requirements for the SFPUC to operate the Regional Water System. The CDPH issued a separate permit for San Francisco's in-City distribution system. These two permits are expected to be updated sometime 2015 to reflect new facilities and operations. The Water Supply Agreement commits San Francisco to deliver treated water meeting federal and state primary drinking water standards including maximum contaminant levels and certain treatment techniques.

The CDPH also issues permits for each Wholesale Customer water distribution system under its jurisdiction. These permits cite the Regional Water System as an approved source of drinking water.

## **FERC Proceeding to Increase Flows in the Lower Tuolumne River**

The Federal Energy Regulatory Commission ("FERC") licenses the Don Pedro Project, which is owned and operated by the Districts. In July 1996, FERC approved a settlement agreement regarding the Lower Tuolumne River that required increased flows to protect fisheries and riparian resources. The increased flows will be provided by the Districts, who hold the FERC license for the Don Pedro Project.

Pursuant to an existing agreement between San Francisco and the Districts, San Francisco might have been liable to provide a portion of those increased flows. Instead, San Francisco and the Districts entered into a new agreement whereby the Districts provide all flows ordered by FERC to implement the 1996 settlement agreement for the term of the license (through 2016), in exchange for which San Francisco pays to the Districts on a monthly basis an amount aggregating to \$3.5 million per year. After ten months of payments an escalation clause applied to keep pace with inflation. Any time after sixty payments, all of which have been made, San Francisco may withdraw from the agreement with the Districts upon one year's notice.

The Don Pedro Project will be subject to re-licensing by FERC in 2016. On February 10, 2011, the Districts filed a notice of intent to file a license application for a new license for the Don Pedro Project. The Districts have also initiated a pre-filing process with stakeholders and agencies on the studies necessary for a new license. License conditions, such as release requirements, could change in a new license. Changed release requirements could affect the availability and reliability of Tuolumne River water to the Regional Water System. The Agency is participating in these proceedings on behalf of its member agencies to protect the reliability of their primary water supply.

## **Dam Licensing and Safety Issues**

The DSOD supervises the safety of non-federal dams and reservoirs, routinely inspects operating dams to assure that they are adequately maintained and conducts investigations of selected dams, directing the owners to additional investigations and detailed safety evaluations when necessary. The DSOD also reviews plans and specifications for the construction of new dams or for the enlargement, alteration, repair or removal of existing dams, under applications, and must grant written approval before the owner can proceed with construction.

The Regional Water System has eighteen dams under the jurisdiction of the DSOD, and the Calaveras Dam is currently the subject of orders by the DSOD due to seismic stability concerns. The DSOD has restricted the amount of water stored in Calaveras Reservoir to a target maximum of 38,000 acre feet, a reduction in storage capacity of approximately 60%. A replacement dam and reservoir will store 96,800 acre-feet of water, the historical maximum capacity. It is expected that the recovered storage will be available to the Regional Water System by [2016].

## **Proposals to Restore Hetch Hetchy Valley**

Some environmental organizations advocate for the removal of the Hetch Hetchy Reservoir and the restoration of Hetch Hetchy Valley. The Yosemite Restoration Campaign, sponsored by an organization called “Restore Hetch Hetchy,” qualified an initiative ordinance that was entitled the “Water Sustainability and Environmental Restoration Planning Act of 2012” for the November 2012 San Francisco ballot. Among other provisions, the initiative would have required that San Francisco develop a plan to identify alternative sources of water and, subject to certain additional conditions, end using Hetch Hetchy Valley as a reservoir so it could be restored as part of Yosemite National Park. The initiative was rejected by voters.

There have been previous studies that examined prior proposals to remove the Hetch Hetchy Reservoir. For example, the California Department of Water Resources and the California Department of Parks and Recreation issued a comprehensive report and concluded that it does appear technically feasible to restore Hetch Hetchy valley, but expressed caution about the financial feasibility. The study estimated that the total cost for such a project would range from nearly \$3 billion to \$10 billion. The planning effort alone, they concluded, would take up to ten years to complete and would cost an additional \$65 million dollars.

## **THE PARTICIPATING MEMBERS**

Of the \_\_ Participating Members, \_\_ are cities, \_\_ are established as districts under various State statutes providing for the formation of districts for water-related purposes and \_\_\_\_ are privately owned entities. The Participating Members have various sources of water supply. Of the Participating Members, \_\_ receive 90% or more of the water they sell from the Regional Water System. The Participating Members all provide water for municipal, commercial and industrial purposes.

Certain of the Participating Members also provide other services, including flood control, groundwater replenishment, sewage collection and disposal, solid waste and trash collection and disposal, hydroelectric power generation and first-aid, ambulance and paramedical services.

Of the Participating Members \_\_\_ are governed by a city council, \_\_\_ by elected boards of directors, and \_\_\_\_ by their corporate organizations. Rates and charges of the publicly owned Participating Members are generally set by each Participating Member’s governing body and are not presently subject to any state or federal regulatory agency. Water rates set by the California Water Company are regulated by the California Public Utilities Commission.

### **Selected Participating Members Data**

The table entitled “The Participating Members” set forth for each Participating Member the year in which it was established, its estimated population and principal water-related activities.

**TABLE \_\_**  
**PARTICIPATING MEMBER POPULATIONS**

<u>Participating Members</u>	<u>Estimated December 31, ____ Population</u>
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For additional information on [\_\_\_\_\_,] [\_\_\_\_\_,] and [\_\_\_\_\_,], Participating Members expected collectively to pay approximately \_\_\_\_% of the total surcharges in the initial years following the Prepayment, see “APPENDIX A – SELECTED INFORMATION OF CERTAIN PARTICIPATING MEMBERS.”

### **Certain Limitations on Participating Member Revenue Sources**

This section describes certain constitutional or statutory provisions that may limit the ability of some or all of the Participating Members to levy and collect fees, charges, taxes or assessments.

***Article XIII A of the Constitution.*** An initiative measure approved by the California voters on June 6, 1978 (Proposition 13), added Article XIII A to the California Constitution. Section 1(a) of Article XIII A limits the maximum ad valorem taxes on real property to one percent of the “full cash value” of the property, subject to certain exceptions, including ad valorem taxes to pay debt service indebtedness approved by voters prior to July 1, 1978. “Full cash value” is defined as the valuation of real property as shown on the 1975-76 tax roll, and thereafter the appraised value of property when purchased, newly constructed or a change in ownership has occurred. The value base of the property may also be increased to reflect the inflation rate, but not to exceed 2 percent per year.

On June 3, 1986, the California voters approved an amendment to Section 1(b) of Article XIII A permitting *ad valorem* taxes or special assessments in excess of the one percent limit in Section 1(a) to pay the interest and redemption charges on any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978 by two-thirds of the votes cast by the voters voting on the proposition.

***Article XIIC and Article XIID of the Constitution.*** A substantial portion of the revenues of the Participating Members is derived from the collection of charges for water service. The Participating Members' ability to collect such charges, and to levy such taxes or assessments, may be limited by the Right to Vote on Taxes Act ("Proposition 218"), an initiative amendment to the California Constitution approved by the California voters in November 1996.

Proposition 218 added Articles XIIC and XIID to the California Constitution, creating additional requirements for the imposition by most local governments of "general taxes," "special taxes," "assessments," "fees," and "charges." Proposition 218 became effective, pursuant to its terms, as of November 6, 1996, although compliance with some of its provisions was deferred until July 1, 1997, and certain of its provisions purport to apply to any tax imposed for general governmental purposes (i.e., "general taxes") imposed, extended or increased on or after January 1, 1995 and prior to November 6, 1996. Article XIID imposes substantive and procedural requirements on the imposition, extension or increase of any "fee" or "charge" subject to its provisions. A "fee" or "charge" subject to Article XIID includes any levy, other than an *ad valorem* tax, special tax or assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership. Article XIID prohibits, among other things, the imposition of any proposed fee or charge, and, possibly, the increase of any existing fee or charge, in the event written protests against the proposed fee or charge are presented at a required public hearing on the fee or charge by a majority of owners of the parcels upon which the fee or charge is to be imposed. Except for fees and charges for water, sewer and refuse collection services, the approval of a majority of the property owners subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area, is required within 45 days following the public hearing on any such proposed new or increased fee or charge. The California Supreme Court decisions in *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) ("Richmond"), and *Bighorn-Desert View Water Agency vs. Verjil* (published July 24, 2006) ("Bighorn") have clarified some of the uncertainty surrounding the applicability of Section 6 of Article XIID to service fees and charges. In *Richmond*, the Shasta Community Services District charged a water connection fee, which included a capacity charge for capital improvements to the water system and a fire suppression charge. The Court held that both the capacity charge and the fire suppression charge were not subject to Article XIID because a water connection fee is not a property-related fee or charge because it results from the property owner's voluntary decision to apply for the connection. In both *Richmond* and *Bighorn*, however, the Court stated that a fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" within the meaning of Article XIID, rejecting, in *Bighorn*, the water agency's argument that consumption-based water charges are not imposed "as an incident of property ownership" but as a result of the voluntary decisions of customers as to how much water to use.

Article XIID also provides that "standby charges" are considered "assessments" and must follow the procedures required for "assessments" under Article XIID and imposes several

procedural requirements for the imposition of any assessment, which may include (1) various notice requirements, including the requirement to mail a ballot to owners of the affected property; (2) the substitution of a property owner ballot procedure for the traditional written protest procedure, and providing that “majority protest” exists when ballots (weighted according to proportional financial obligation) submitted in opposition exceed ballots in favor of the assessments; and (3) the requirement that the levying entity “separate the general benefits from the special benefits conferred on a parcel” of land. Article XIID also precludes standby charges for services that are not immediately available to the parcel being charged.

Article XIID provides that all existing, new or increased assessments are to comply with its provisions beginning July 1, 1997. Existing assessments imposed on or before November 5, 1996, and “imposed exclusively to finance the capital costs or maintenance and operations expenses for [among other things] water” are exempted from some of the provisions of Article XIID applicable to assessments.

Article XIIC extends the people’s initiative power to reduce or repeal existing local taxes, assessments, fees and charges. This extension of the initiative power is not limited by the terms of Article XIIC to fees, taxes, assessment fees and charges imposed after November 6, 1996 and absent other authority could result in retroactive reduction in any existing taxes, assessments, fees or charges. In Bighorn, the Court concluded that under Article XIIC local voters by initiative may reduce a public agency’s water rates and delivery charges. The Court noted, however, that it was not holding that the authorized initiative power is free of all limitations, stating that it was not determining whether the electorate’s initiative power is subject to the public agency’s statutory obligation to set water service charges at a level that will “pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due.”

In November 2010, California voters approved the Supermajority Vote to Pass New Taxes and Fees Act (“Proposition 26”), an initiative amendment to Article XIII C. Proposition 26 amended Article XIII C to add additional restrictions on local agencies’ ability to impose new or increase existing charges. These additional restrictions do not, however, apply to, among other things, “property-related fees imposed in accordance with the provisions of Article XIII D,” which includes a fee for ongoing water service.

The Agency does not believe that imposition of Surcharges is subject to the requirements of Articles XIIC and XIID. However, no assurance may be given that Articles XIIC and XIID will not have a material adverse impact on Participating Members’ ability to generate revenues.

***Other Initiative Measures.*** Articles XIII A, XIIC and XIID were adopted, and in some cases amended, pursuant to California’s constitutional initiative process. From time to time other initiative measures could be adopted by California voters, placing additional limitations on the ability of the Participating Members to increase revenues.



## **Participating Member Official Statements and Continuing Disclosure Filings**

Various Participating Members periodically file official statements and disclosure reports with the Municipal Securities Rulemaking Board (the “MSRB”) in connection with their publicly offered debt. Such official statements and disclosure reports are available from the MSRB but are not incorporated by reference herein and neither the Agency nor the Underwriters assume any responsibility for the completeness or accuracy thereof. The Participating Members are not obligated for the payment of principal of or interest on the Series 2013 Bonds and have not provided and will not provide any certifications regarding this Official Statement, nor have the Participating Members made any undertaking for the benefit of the owners and beneficial owners of the Series 2013 Bonds to file any information with the MSRB.

## **RISK FACTORS**

The following section describes certain special considerations and risk factors affecting the risk of nonpayment or the security for the Series 2013 Bonds. The following discussion is not meant to be an exhaustive or definitive description of the risks associated with a purchase of any Series 2013 Bond and does not necessarily reflect the relative importance of the various risks. Potential investors are advised to consider the following special factors regarding the Series 2013 Bonds, together with all other information in this Official Statement in order to make an informed investment decision with respect to the Series 2013 Bonds. There can be no assurance that other risk factors are not or will not become material in the future.

### **Bonds Are Limited Obligations**

The Bonds are special, limited obligations of the Agency. The Bonds shall not be deemed to constitute a debt or liability of the Agency, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Revenues. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. The Agency has no taxing power.

### **Variations in Water Sales**

Water sales to Participating Members may vary substantially from year to year depending upon, among other things, the availability of water supply as a result of climatic conditions (such as drought) and legal constraints, retail user demand, the operation of the Regional Water System and the availability to and use by Participating Members of other sources of water supply. See “THE SAN FRANCISCO REGIONAL WATER SYSTEM – Water Supply Reliability and Drought Planning.” A decrease in aggregate water sales to Participating Members generally would increase the amount payable by Participating Members for a particular volume of water

purchased. Such increase may or may not adversely impact a Participating Member's financial condition.

Individual Wholesale Customers' shares of the total water purchased by Wholesale Customers may also vary over time, resulting in variations in the relative Surcharge obligations of Participating Members. See "IMPOSITION AND COLLECTION OF SURCHARGES – Collection of Surcharges."

### **Seismic and Other Water System Casualty Risks**

The Regional Water System is located in a seismically active region of the State and its aqueducts and pipelines cross three major known active fault zones (the San Andreas Fault, the Hayward fault and the Calaveras Fault). Earthquakes and other natural disasters, including without limitation wildfires, flooding and landslides, or man-made disasters, including without limitation natural gas pipeline failures or explosions, could interrupt operation of the Regional Water System. Such an interruption could impact deliveries of water to Wholesale Customers, potentially for 60 days or more, which could impair billing and collection of Surcharges.

The Agency and the SFPUC have, since 1995, actively pursued a program to manage this risk by rehabilitating portions of the Regional Water System and improving its ability to deliver water after a major earthquake or other disaster. See "THE SAN FRANCISCO REGIONAL WATER SYSTEM – Seismic Hazards" and "—Water System Improvement Program."

### **Proposals to Restore Hetch Hetchy Valley**

Various environmental advocates have from time to time proposed the dismantling of Hetch Hetchy Dam with the aim of draining Hetch Hetchy reservoir and restoring the river valley, most recently through a ballot initiative ordinance to require a planning process for the restoration of Hetch Hetchy Valley that failed in the November 2012 election. Any such proposals, if implemented, would impose substantial additional operating and capital expenses on the Regional Water System. See "THE SAN FRANCISCO REGIONAL WATER SYSTEM – Proposals to Restore Hetch Hetchy Valley."

### **Economic, Political, Social and Environmental Conditions**

Prospective investors are encouraged to evaluate current and prospective economic, political, social, and environmental conditions as part of an informed investment decision. Changes in economic political, social, or environmental conditions on a local, state, federal, and/or international level may adversely affect investment risk generally. Such conditional changes may include (but are not limited to) fluctuations in business production, consumer prices, or financial markets, unemployment rates, technological advancements, shortages or surpluses in natural resources or energy supplies, changes in law, social unrest, fluctuations in the crime rate, political conflict, acts of war or terrorism, environmental damage, and natural disasters.

## **Payment Delays and Defaults; Bankruptcy or Financial Failure of a Participating Member**

The financial failure or bankruptcy of a Participating Member could adversely affect the ability of such Participating Member to honor its obligation to pay Surcharges.

The Agency is not aware of the existing or impending financial failure or bankruptcy of any Participating Member, but there can be no assurance that a financial failure or bankruptcy of a Participating Member will not occur. If a Participating Member were to become bankrupt, the Agency may be unable to collect Surcharges from such Participating Member or may experience delay in collecting such Surcharges.

If the collection of Surcharge payments from a Participating Member were to be delayed or such amounts were to remain uncollected in any Fiscal Year, payment of debt service on the Bonds may depend on the sufficiency of amounts in the Stabilization Fund until such payments can be collected or until Surcharges addressing such default can be collected from other Participating Members. See “—Limitations on Remedies” and “IMPOSITION AND COLLECTION OF SURCHARGES—Imposition of Surcharges by the Agency.”

## **Initiative, Referendum and Future Legislation**

Under the State Constitution, the voters of the State have the ability to initiate legislation and require a public vote on legislation passed by the California Legislature through the powers of initiative and referendum, respectively. The voters of various Participating Members have similar powers. The Agency is unable to predict whether any such initiatives might be submitted to or approved by the voters, the nature of such initiatives or their potential impact on the Agency, the Participating Members, the SFPUC, the Regional Water System or the Series 2013 Bonds. See “THE SAN FRANCISCO REGIONAL WATER SYSTEM—Proposals to Restore Hetch Hetchy Valley.”

## **Limitations on Remedies**

The enforceability of the rights and remedies of the owners of the Series 2013 Bonds and the Trustee, and the obligations incurred by the Agency, may be subject to the following: the limitations on legal remedies against public agencies in California; the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors’ rights generally, now or hereafter in effect; principles of equity which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the U.S. Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the Series 2013 Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitations or modification of their rights.

In addition to the limitations on remedies contained in the Indenture, the rights and obligations under the Series 2013 Bonds and the Indenture may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws

relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California. The opinion to be delivered by Orrick, Herrington & Sutcliffe LLP, Bond Counsel, concurrently with the issuance of the Series 2013 Bonds, that the Indenture has been duly authorized, executed and delivered by the Agency and constitute valid and legally binding agreements of the Agency, and that the Series 2013 Bonds are entitled to the benefits of the Indenture, will be subject to such limitations and the various other legal opinions to be delivered concurrently with the delivery of the Series 2013 Bonds will be similarly qualified. A complete copy of the proposed form of opinion of Bond Counsel is set forth in Appendix D hereto. In the event the Agency fails to comply with its covenants under the Indenture or to pay principal of and interest on the Series 2013 Bonds, there can be no assurance that available remedies will be adequate to fully protect the interests of the owners of the Series 2013 Bonds. It is unclear what remedies, beyond a suit for non-collection, would be available to the Agency in the event of a payment default or delay by a Participating Member.

### **Failure to Maintain Credit Ratings**

Certain rating agencies have assigned ratings to the Series 2013 Bonds. The ratings issued reflect only the views of such rating agencies. Any explanation of the significance of these ratings should be obtained from the respective rating agencies. The Agency undertakes no responsibility to maintain its current credit ratings on the Series 2013 Bonds or to oppose any such downward revision, suspension or withdrawal. See "RATINGS" herein. There is no assurance that current ratings of the Series 2013 Bonds will continue for any given period or that such ratings will not be revised downward or withdrawn entirely by the rating agencies if, in the respective judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings could be expected to have an adverse effect on the market price of the Series 2013 Bonds.

### **Loss of Tax Exemption/Risk of Tax Audit of Municipal Issuers**

As discussed under "TAX MATTERS," interest on the Series 2013A Bonds could fail to be excluded from the gross income of the owners thereof for purposes of federal income taxation retroactive to the date of the issuance of the Series 2013A Bonds as a result of future acts or omissions of the Agency or the SFPUC in violation of its covenants to comply with requirements of the Internal Revenue Code of 1986, as amended. Should such an event of taxability occur, the Series 2013A Bonds are not subject to special redemption or any increase in interest rate and will remain outstanding until maturity or until redeemed under one of the redemption provisions contained in the Indenture.

The Internal Revenue Service has initiated an expanded program for the auditing of tax-exempt securities issues, including both random and target audits. It is possible that the Series 2013A Bonds will be selected for audit by the Internal Revenue Service. It is also possible that the market value of the Series 2013A Bonds might be affected as a result of such an audit of the Series 2013A Bonds (or by an audit of similar securities).

## **Secondary Market**

There can be no guarantee that there will be a secondary market for the Series 2013 Bonds or, if a secondary market exists, that the Series 2013 Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

## **Other Risks**

The discussion in this section, “RISK FACTORS,” is not meant to be a comprehensive or definitive list of the risks associated with an investment in the Series 2013 Bonds. There may be other risks inherent in ownership of the 2013 Bonds in addition to those described in this section. Investors are advised to read the entire Official Statement in order to obtain information necessary to make an investment in the Series 2013 Bonds.

## **LITIGATION**

At the time of delivery of and payment for the Series 2013 Bonds, the Agency will certify that there is no action, suit, proceedings, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the knowledge of the Agency, threatened against the Agency affecting the existence of the Agency or the titles of its officers to their respective offices or seeking to restrain or to enjoin the sale or delivery of the Series 2013 Bonds, the application of the proceeds thereof in accordance with the Indenture, or in any way contesting or affecting the validity or enforceability of the Series 2013 Bonds, the Indenture or any action of the Agency contemplated by any of said documents, or in any way contesting the completeness or accuracy of this Official Statement or any amendment or supplement thereto, or contesting the powers of the Agency with respect to the Series 2013 Bonds or any action of the Agency contemplated by any of said documents, nor to the knowledge of the Agency, is there any basis therefor.

## **TAX MATTERS**

### **Series 2013A Bonds (Tax-Exempt)**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Agency (“Bond Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2013A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Series 2013A Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX D hereto.

To the extent the issue price of any maturity of the Series 2013A Bonds is less than the amount to be paid at maturity of such Series 2013A Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series 2013A Bonds ), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Series 2013A Bonds which is excluded from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series 2013A Bonds is the first price at which a substantial amount of such maturity of the Series 2013A Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Series 2013A Bonds accrues daily over the term to maturity of such Series 2013A Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series 2013A Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series 2013A Bonds. Beneficial Owners of the Series 2013A Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series 2013A Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such Series 2013A Bonds in the original offering to the public at the first price at which a substantial amount of such Series 2013A Bonds is sold to the public.

Series 2013A Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series 2013A Bonds. The Agency and the SFPUC have made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series 2013A Bonds will not become includable in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series 2013A Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series 2013A Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring), or any other matters coming to Bond Counsel’s attention after the date of issuance of the Series 2013A Bonds may adversely affect the value of, or the tax status of interest on, the Series 2013A Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Bond Counsel is of the opinion that interest on the Series 2013A Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series 2013A Bonds may otherwise affect a beneficial owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series 2013A Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. As one example, the Obama Administration recently announced a legislative proposal which, for tax years beginning on or after January 1, 2013, generally would limit the exclusion from gross income of interest on obligations like the Series 2013A Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Series 2013A Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series 2013A Bonds. Prospective purchasers of the Series 2013A Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Series 2013A Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Department or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Department has covenanted, however, to comply with the requirements of the Code.

Unless separately engaged, Bond Counsel is not obligated to defend the Agency or the beneficial owners regarding the tax-exempt status of the Series 2013A Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the Agency and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Agency legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2013A Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series 2013A Bonds, and may cause the Agency or the beneficial owners to incur significant expense.

## **Series 2013B Bonds (Taxable)**

Bond Counsel observes that interest on the Series 2013B Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code. Bond Counsel is of the opinion that interest on the Series 2013B Bonds is exempt from State of California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Series 2013B Bonds.

The following discussion summarizes certain U.S. federal tax considerations generally applicable to holders of the Series 2013B Bonds that acquire their Series 2013B Bonds in the initial offering. The discussion below is based upon laws, regulations, rulings, and decisions in effect and available on the date hereof, all of which are subject to change, possibly with retroactive effect. Prospective investors should note that no rulings have been or are expected to be sought from the IRS with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take contrary positions. Further, the following discussion does not deal with all U.S. federal income tax consequences applicable to any given investor, nor does it address the U.S. federal income tax considerations applicable to categories of investors some of which may be subject to special taxing rules (regardless of whether or not such persons constitute U.S. Holders (defined below)), such as certain U.S. expatriates, banks, REITs, RICs, insurance companies, tax-exempt organizations, dealers or traders in securities or currencies, partnerships, S corporations, estates and trusts, investors that hold their Series 2013B Bonds as part of a hedge, straddle or an integrated or conversion transaction, or investors whose “functional currency” is not the U.S. dollar. Furthermore, it does not address (i) alternative minimum tax consequences or (ii) the indirect effects on persons who hold equity interests in a holder. In addition, this summary generally is limited to investors that acquire their Series 2013B Bonds pursuant to this offering for the issue price that is applicable to such Series 2013B Bonds (i.e., the price at which a substantial amount of the Series 2013B Bonds are sold to the public) and who will hold their Series 2013B Bonds as “capital assets” within the meaning of Section 1221 of the Code.

As used herein, “U.S. Holder” means a beneficial owner of a Series 2013B Bond that for U.S. federal income tax purposes is an individual citizen or resident of the United States, a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any state thereof (including the District of Columbia), an estate the income of which is subject to U.S. federal income taxation regardless of its source or a trust where a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons (as defined in the Code) have the authority to control all substantial decisions of the trust (or a trust that has made a valid election under U.S. Treasury Regulations to be treated as a domestic trust). As used herein, “Non-U.S. Holder” generally means a beneficial owner of a Series 2013B Bond (other than a partnership) that is not a U.S. Holder. If a partnership holds Series 2013B Bonds, the tax treatment of such partnership or a partner in such partnership generally will depend upon the status of the partner and upon the activities of the partnership. Partnerships holding Series 2013B Bonds, and partners in such partnerships, should consult their own tax advisors regarding the tax consequences of an investment in the Series 2013B Bonds (including their status as U.S. Holders or Non-U.S. Holders).



The Series 2013B Bonds are not expected to be treated as issued with original issue discount for U.S. federal income tax purposes because the stated redemption price at maturity of the Series 2013B Bonds is not expected to exceed their issue price, or because any such excess is expected to only be a *de minimis* amount (as determined for tax purposes).

Prospective investors that are not individuals or regular C corporations who are U.S. persons purchasing the Series 2013B Bonds for investment should consult their own tax advisors as to any tax consequences to them from the purchase, ownership and disposition of the Series 2013B Bonds.

Disposition of the Series 2013B Bonds. Unless a nonrecognition provision of the Code applies, the sale, exchange, redemption, retirement (including pursuant to an offer by the State of California) or other disposition of a Series 2013B Bond, will be a taxable event for U.S. federal income tax purposes. In such event, in general, a U.S. Holder of a Series 2013B Bond will recognize gain or loss equal to the difference between (i) the amount of cash plus the fair market value of property received (except to the extent attributable to accrued but unpaid interest on the Series 2013B Bond which will be taxed in the manner described above) and (ii) the U.S. Holder's adjusted tax basis in the Series 2013B Bond (generally, the purchase price paid by the U.S. Holder for the Series 2013B Bond, decreased by any amortized premium). Any such gain or loss generally will be capital gain or loss. In the case of a noncorporate U.S. Holder of the Series 2013B Bonds, the maximum marginal U.S. federal income tax rate applicable to any such gain will be lower than the maximum marginal U.S. federal income tax rate applicable to ordinary income if such U.S. holder's holding period for the Series 2013B Bonds exceeds one year. The deductibility of capital losses is subject to limitations.

If the Agency defeases any Series 2013B Bond, such Series 2013B Bond may be deemed to be retired and "reissued" for federal income tax purposes as a result of the defeasance. In that event, the Beneficial Owner of the Series 2013B Bond will recognize taxable gain or loss equal to the difference between the amount realized from the deemed sale, exchange or retirement (less any accrued qualified stated interest which will be taxable as such) and the Beneficial Owner's adjusted tax basis in the Series 2013B Bond. (See "THE SERIES 2013 BONDS – Defeasance.")

### **Internal Revenue Service Circular 230 Notice**

Investors are urged to obtain independent tax advice based upon their particular circumstances. The tax discussion above was not intended or written to be used, and cannot be used, for the purposes of avoiding taxpayer penalties. The discussion was written to support the promotion or marketing of the Series 2013B Bonds.

### **APPROVAL OF LEGAL PROCEEDINGS**

The validity of the Series 2013 Bonds and certain other legal matters are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Agency. A complete copy of the proposed form of Bond Counsel opinion is contained in Appendix D hereto. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Orrick, Herrington & Sutcliffe LLP, as Disclosure Counsel, will provide certain other legal services for the Agency. Certain legal matters will be passed upon for the

Agency by Hanson Bridgett LLP and for the underwriters by Stradling, Yocca, Carlson & Rauth, a Professional Corporation.

## **RATINGS**

Moody's Investors Service, Inc. ("Moody's"), and Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business ("Standard & Poor's"), have assigned ratings of "\_\_\_" and "\_\_\_," respectively, to the Series 2013 Bonds. Such ratings are based in part upon information provided by the Agency. Each rating reflects only the views of the applicable rating agency, and an explanation of the significance of such rating may be obtained only from such rating agency. Such ratings are not a recommendation to buy, sell or hold the Series 2013 Bonds. There can be no assurance that either such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely if, in the judgment of the applicable rating agency, circumstances so warrant. Any such downward revision or withdrawal of any rating may have an adverse effect on the marketability or market price of the Series 2013 Bonds. The Agency undertakes no responsibility to maintain its current credit ratings on the Bonds or to oppose any downward revision, suspension or withdrawal.

## **UNDERWRITING**

Goldman, Sachs & Co., E. J. De La Rosa & Co., Inc., Citigroup Global Markets, Inc. and Morgan Stanley & Co., LLC, as underwriters (the "Underwriters"), have agreed, subject to certain conditions, to purchase the Series 2013A Bonds at a purchase price of \$\_\_\_\_\_ (equal to the original principal amount thereof, plus an original issue premium of \$\_\_\_\_\_, less an underwriters' discount of \$\_\_\_\_\_) and to purchase the Series 2013B Bonds at a purchase price of \$\_\_\_\_\_ (equal to the original principal amount thereof, plus an original issue premium of \$\_\_\_\_\_, less an underwriters' discount of \$\_\_\_\_\_). The initial public offering prices stated on the inside cover page of this Official Statement may be changed from time to time by the Underwriters. The Underwriters may offer and sell the Series 2013 Bonds to certain dealers (including dealers depositing Series 2013 Bonds into investment trusts), dealer banks, banks acting as agent and others at prices lower than said public offering prices.

The following two paragraphs have been provided by the Underwriters for inclusion in this Official Statement and the Agency cannot and does not assume any responsibility for the accuracy or completeness of such statements or information.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the Underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the Agency and to persons and entities with relationships with the Agency, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Agency (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Agency. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

### **CONTINUING DISCLOSURE**

The Agency has covenanted for the benefit of the Owners of the Series 2013 Bonds to provide certain financial information and operating data relating to the Agency not later than 270 days after the end of the Agency's Fiscal Year (which currently ends on June 30), commencing with the report for Fiscal Year 2012-13 (the "Annual Report") and to provide notices of the occurrence of certain enumerated events, if material. The Annual Report will be filed by the Agency with the MSRB through EMMA.

The specific nature of the information to be contained in the Annual Report or the notices of material events is summarized in "Appendix E—FORM OF CONTINUING DISCLOSURE CERTIFICATE". These covenants have been made in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2 12(b)(5).

The Agency has not previously made any undertakings with regard to the Rule.

### **FINANCIAL ADVISOR**

KNN Public Finance, A Division of Zions First National Bank, has served as financial advisor to the Agency in connection with the issuance of the Series 2013 Bonds.

### **MISCELLANEOUS**

So far as any statements made in this Official Statement involve matters of opinion, assumptions, projections, anticipated events or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and actual results may differ substantially from those set forth herein. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the owners of the Series 2013 Bonds.

The summaries of certain provisions of the Series 2013 Bonds, statutes and other documents or agreements referred to in this Official Statement do not purport to be complete, and reference is made to each of them for a complete statement of their provisions. Copies are available for review by making requests to the Agency.

The Appendices are an integral part of this Official Statement and must be read together with all other parts of this Official Statement.

The execution and delivery of this Official Statement have been duly authorized by the Agency.

**BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY**

By: \_\_\_\_\_  
General Manager and Chief Executive Officer

**APPENDIX A**  
**SELECTED INFORMATION ON CERTAIN PARTICIPATING MEMBERS**

**APPENDIX B**  
**SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE**

**APPENDIX C**  
**SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT**

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**APPENDIX D**  
**PROPOSED FORM OF OPINION OF BOND COUNSEL**

*As a condition to the delivery of the Series 2013 Bonds, Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Agency, is expected to render its final approving opinion with respect to the Series 2013 Bonds in substantially the following form:*

[Closing Date]

Bay Area Water Supply and Conservation Agency  
San Mateo, California

Bay Area Water Supply and Conservation Agency  
Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013A and  
Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013B (Taxable )  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the Bay Area Water Supply and Conservation Agency (the “Issuer”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery prepayment Program), Series 2013A (the “Series 2013A Bonds”), and \$\_\_\_\_\_ aggregate principal amount of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), Series 2013B (Taxable) (the “Series 2013B Bonds” and, together with the Series 2013A Bonds, the “Bonds”), issued pursuant to a Revenue Bond Indenture dated as of January 1, 2013 (the “Master Indenture”) and a First Supplemental Water Revenue Bond Indenture dated as of January 1, 2013 (the “First Supplemental Indenture” and collectively with the Master Indenture, the “Indenture”) between the Issuer and \_\_\_\_\_, as trustee (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate and Agreement executed by the Issuer in connection with the Series 2013A Bonds, dated the date hereof (the “Issuer Tax Certificate”), the Tax Certificate and Agreement executed by the Public Utilities Commission of the City and County of San Francisco in connection with the Series 2013A Bonds (the “SFPUC Tax Certificate” and, together with the Issuer Tax Certificate, the “Tax Certificates”), certificates of the Issuer, the Trustee, and others, opinions of counsel to the Issuer and the Trustee and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this opinion. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Issuer. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificates, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Series 2013A Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture, the Issuer Tax Certificate and the SFPUC Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against joint exercise of power agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, arbitration, judicial reference, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the foregoing documents nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on any such property. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding special, limited obligations of the Issuer;
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer, and the Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Revenues and other amounts held by the Trustee under the Indenture (except the Rebate Fund), subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. Interest on the Series 2013A Bonds is excluded from gross income for federal income tax purposes under section 103 of the Internal Revenue Code of 1986 and interest on the Bonds is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that interest on the 2013A Bonds is included in adjusted current earnings in calculating corporate alternative minimum taxable income. Interest on the Series 2013B Bonds is not excluded from gross income for federal income tax purposes. We express no opinion regarding other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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**APPENDIX E**  
**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

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## APPENDIX F

### SECURITIES DEPOSITORY AND BOOK-ENTRY SYSTEM

*The information in this APPENDIX has been provided by DTC for use in securities offering documents, and the Agency takes no responsibility for the accuracy or completeness thereof. The Agency cannot and does not give any assurances that DTC, DTC Participants (defined below) or Indirect Participants (defined below) will distribute to the beneficial owners either (a) payments of interest, principal or premium, if any, with respect to the Bonds or (b) certificates representing ownership interest in or other confirmation of ownership interest in the Bonds, or that they will so do on a timely basis or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Official Statement. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.*

*As used in this Appendix, "Securities" means the Series 2013 Bonds, "Issuer" means the Agency, and "Agent" means the Trustee.*

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant,

either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information contained on this Internet site is not incorporated herein by reference.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC’s MMI



Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

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**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft Prepayment and Collection Agreement with the SFPUC**

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PREPAYMENT AND COLLECTION AGREEMENT

between

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

THE CITY AND COUNTY OF SAN FRANCISCO

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Dated as of January 1, 2013

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Relating to

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
REVENUE BONDS (CAPITAL COST RECOVERY PREPAYMENT PROGRAM),  
2013 SERIES A AND 2013 SERIES B (TAXABLE)

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## **PREPAYMENT AND COLLECTION AGREEMENT**

This PREPAYMENT AND COLLECTION AGREEMENT, dated as of January 1, 2013 (the “Agreement”), is entered into by and between BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (the “Agency”), a public agency duly formed and existing under the laws of the State of California, and THE CITY AND COUNTY OF SAN FRANCISCO (“San Francisco”), acting by and through its Public Utilities Commission (the “SFPUC”), duly established and constituted under the San Francisco Charter:

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

WHEREAS, the Agency is a public agency formed and existing pursuant to the Bay Area Water Supply and Conservation Agency Act, Division 31 of the Water Code of the State of California (the “Act”); and

WHEREAS, in accordance with the Act, twenty-four public entities in San Mateo County, Alameda County and Santa Clara County, the California Water Services Company and Stanford University are members of the Agency (the “Members”); and

WHEREAS, the Members have entered into the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County, dated July 2009 (the “WSA”), providing for the sale of water by San Francisco to the Members; and

WHEREAS, pursuant to the WSA, the Members are obligated to make payments to San Francisco to provide capital cost recovery for existing regional assets (“Capital Cost Recovery Payments”); and

WHEREAS, the WSA provides that the Members, acting through the Agency, may prepay the remaining principal balance of the Capital Cost Recovery Payments, in whole or in part (a “Prepayment”); and

WHEREAS, certain Members (“Participating Members”) have authorized the Agency to make a Prepayment on behalf of such Members; and

WHEREAS, pursuant to the Act, the Agency is authorized to issue revenue bonds to finance all or a portion of any Prepayment; and

WHEREAS, in accordance with the Act, the Agency may impose charges, including charges in the form of surcharges on water sold by San Francisco to Participating Members (the “Surcharges”), in order to provide for payment of such revenue bonds; and

WHEREAS, in conjunction with the execution and delivery of this Agreement, the Agency is issuing its Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment), 2013 Series A and 2013 Series B (Taxable) (collectively, the “Series 2013 Bonds”), to finance the Prepayment pursuant to a Revenue Bond Indenture and a First Supplemental Indenture, each dated as of January 1, 2013 (collectively, the “Indenture”),

and each by and between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”); and

WHEREAS, the Series 2013 Bonds will be special, limited obligations of the Agency payable solely from Revenues, as such term is defined in the Indenture, including certain surcharges imposed by the Agency on Participating Members pursuant to Section 81438(2) of the Water Code of the State of California (the “Surcharges”); and

WHEREAS, the Agency wishes to apply a portion of the proceeds of the Bonds to effect a Prepayment of a portion of the Capital Cost Recovery Payments pursuant to Section 5.03(F) of the WSA; and

WHEREAS, the Agency has requested pursuant to the Act that San Francisco provide, and, pursuant to the Act and in consideration of the Prepayment and for other good and valuable consideration delivered in connection herewith, San Francisco agrees to provide, certain services relating to the billing and collection of the Surcharges as described in this Agreement; and

WHEREAS, an updated schedule setting forth the Capital Cost Recovery Payments that remain due pursuant to the terms of the WSA following the Prepayment described in this Agreement is attached hereto as Schedule B and has been approved by the General Manager of the SFPUC and the General Manager/Chief Executive Officer of the Agency to be substituted for Attachment K-3 and Attachment K-4 to the WSA pursuant to Section 5.03(F) of the WSA; 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 the entering into of this Agreement do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01. Definitions. The terms defined in this Section shall, for all purposes of this Agreement have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed thereto in the Indenture or the WSA, as context requires.

### Act

“Act” means the Bay Area Water Supply and Conservation Agency Act (being Division 31 of the Water Code of the State of California, as amended) and all laws amendatory thereof or supplemental thereto.

### Agency

“Agency” means the Bay Area Water Supply and Conservation Agency and its successors and assigns.

### Agreement

“Agreement” means this Prepayment and Collection Agreement, dated as of January 1, 2013, by and between the Agency and San Francisco, as originally executed and as it may from time to time be supplemented or amended pursuant to the provisions hereof.

### Non-Participating Members Balancing Subaccount

“Non-Participating Members Balancing Subaccount” means the account by that name established by San Francisco pursuant to Section 3.05(a) hereof.

### Bonds

“Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program) authorized by, and at any time Outstanding pursuant to, the Indenture.

### Capital Cost Recovery Payment

“Capital Cost Recovery Payment” means a payment obligated to be made to San Francisco pursuant to the WSA to provide capital cost recovery for “Existing Regional Assets” (as defined in the WSA).

### Code

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

### Collection Report

“Collection Report” has the meaning ascribed to such term in Section 3.06 of this Agreement.

### Fixed Charge

“Fixed Charge” means any Surcharge (or portion thereof) established without reference to the volume of water sales to the Participating Member attributable to the then-current Fiscal Year.



### Indenture

“Indenture” means the Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and the Trustee, as originally executed and as it may from time to time be supplemented or amended pursuant to the provisions thereof.

### Individual Water Sales Contract

“Individual Water Sales Contract” means the contracts entered into by the respective Members and San Francisco identified in Section 9.01 of the WSA which incorporate the terms of the WSA, set forth certain terms pursuant to which the respective Members each purchase water from San Francisco and describe certain other customer-specific matters relating to the sale and delivery of water by San Francisco to the respective Members, as such contracts may be amended from time to time pursuant to their terms.

### Member

“Member” means any member of the Agency as determined from time to time pursuant to the Act.

### Non-Participating Member

“Non-Participating Member” means a Member on whose behalf the Agency has not made a Prepayment and Cordilleras Mutual Water Association. As of the date of this Agreement, the Non-Participating Members are \_\_\_\_\_ and Cordilleras Mutual Water Association.

### Non-Participating Member Capital Cost Recovery Payment Collection Amount

“Non-Participating Member Capital Cost Recovery Payment Collection Amount” means, for each Fiscal Year, the aggregate amount collected by San Francisco with respect to Non-Participating Member Capital Cost Recovery Payment Obligations.

### Non-Participating Member Capital Cost Recovery Payment Obligation

“Non-Participating Member Capital Cost Recovery Payment Obligation” means, for each Non-Participating Member for each Fiscal Year, the Capital Cost Recovery Payment to be paid by such Non-Participating Member calculated as if the Prepayment had not been made and taking into account the balance in the subaccount of the Non-Participating Members Balancing Subaccount.

### Non-Participating Member Capital Cost Recovery Payment True-Up Amount

“Non-Participating Member Capital Cost Recovery Payment True-Up Amount” means, for each Fiscal Year, the product of the Non-Participating Member Sales Percentage and the Original Capital Cost Recovery Payment less the product of the Non-Prepayment Percentage and the Original Capital Cost Recovery Payment.

$$wy - xy = z$$

w = Non-Participating Member Sales Percentage

x = Non-Prepayment Percentage

y = Original Capital Cost Recovery Payment

z = Non-Participating Member Capital Cost Recovery Payment True-Up Amount

#### Non-Participating Member Sales Percentage

“Non-Participating Member Sales Percentage” means, for each Fiscal Year, the amount of water sold pursuant to the WSA to all Non-Participating Members divided by the amount of water sold pursuant to the WSA to all Members.

#### Non-Prepayment Percentage

“Non-Prepayment Percentage” means \_\_\_\_\_. [100% less the percentage of the total Capital Cost Recovery Payments prepaid.]

#### Original Capital Cost Recovery Payment

“Original Capital Cost Recovery Payment” means the respective annual Capital Cost Recovery Payments as set forth in the WSA immediately preceding the Prepayment described in this Agreement. The schedule of such payments is attached hereto as Schedule A.

#### Outstanding

“Outstanding” has the meaning ascribed to such term in the Indenture.

#### Participating Members

“Participating Members” means a Member on whose behalf the Agency has made a Prepayment, and such Member’s successors and assigns.

#### Prepayment

“Prepayment” means a prepayment made by the Agency on behalf of one or more Participating Members of a Capital Cost Recovery Payment.

#### Remaining Capital Cost Recovery Payments

“Remaining Capital Cost Recovery Payments” means the remaining Capital Cost Recovery Payments due on and after July 1, 2013 pursuant to the terms of the WSA following the Prepayment described in this Agreement. Such payments are reflected in Schedule B attached hereto, which has been approved by the General Manager of the SFPUC and the General Manager/Chief Executive Officer of the Agency to be substituted for Attachment K-3 and Attachment K-4 to the WSA pursuant to Section 5.03(F) of the WSA. The Remaining

Capital Cost Recovery Payments are the product of the Original Capital Cost Recovery Payments and the Non-Prepayment Percentage.

San Francisco

“San Francisco” means the City and County of San Francisco.

Series 2013 Bonds

“Series 2013 Bonds” means collectively the Series 2013A Bonds and the Series 2013B Bonds.

Series 2013A Bonds

“Series 2013A Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A, as described in the Indenture.

Series 2013B Bonds

“Series 2013B Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable), as described in the Indenture.

SFPUC

“SFPUC” means the Public Utilities Commission of the City and County of San Francisco and its successors and assigns.

Surcharge

“Surcharge” means a charge imposed by the Agency with respect to the Bonds and collected from a Participating Member pursuant to Section 81438(2) of the Water Code of the State of California.

Surcharge Rate

“Surcharge Rate” means any volumetric rate determined by the Agency applicable to water sales to Participating Members in calculating a Volumetric Charge.

Tax Certificate

“Tax Certificate” means the Tax Certificate dated [\_\_\_\_], 2013, executed and delivered by San Francisco in connection with the issuance and delivery of the Series 2013 Bonds, as the same may be amended or supplemented in accordance with its terms.

## Trustee

“Trustee” means The Bank of New York Mellon Trust Company, N.A., acting as trustee under the Indenture, or its successor thereunder.

## Volumetric Charge

“Volumetric Charge” means any Surcharge determined for a Fiscal Year with reference to the volume of water deliveries to the Participating Member in such Fiscal Year.

## WSA

“WSA” means the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County dated July 2009 among San Francisco and the Members, as amended and supplemented from time to time.

# ARTICLE II

## PREPAYMENT

SECTION 2.01. Prepayment; Remaining Capital Cost Recovery Payments. In connection with the execution of this Agreement, the Agency has transferred to San Francisco and San Francisco hereby acknowledges receipt of \$[ ] as the Prepayment of a portion of the Capital Cost Recovery Payments owing to San Francisco under the WSA. Upon the effectiveness of this Agreement, Attachment K-3 and Attachment K-4 to the WSA shall be replaced, pursuant to Section 5.03(F) of the WSA, by Schedule B to this Agreement, including the Remaining Capital Cost Recovery Payments set forth therein. Schedule B to this Agreement is hereby approved by the General Manager of the SFPUC and the Chief Executive Officer of the Agency, including for purposes of Section 5.03(F) of the WSA.

SECTION 2.02. Application of Prepayment Proceeds. San Francisco hereby covenants and agrees that it will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein, that all expenditures of proceeds of the Prepayment by San Francisco shall be made in accordance with the terms of the Tax Certificate. San Francisco will not expend proceeds of the Prepayment in a manner that results in Members being required to make cash advances for “revenue funded capital projects” relating to New Regional Assets. The parties understand that the expenditure of the Prepayment proceeds by San Francisco will not result in increased wholesale rates relative to current projections/expectations. To the extent proceeds of the Prepayment are expended on New Regional Assets, the Wholesale Revenue Requirement under the WSA shall not include a component for the wholesale share of cash funded New Regional Assets.

## ARTICLE III

### IMPOSITION, COLLECTION AND REMITTANCE OF SURCHARGES

#### SECTION 3.01. Imposition and Determination of Surcharges; Delivery Data and Projections.

(a) All Surcharges shall be imposed by the Agency. The Agency may impose Surcharges as Fixed Charges, Volumetric Charges or a combination of Fixed Charges and Volumetric Charges. With respect to Fixed Charges, the Agency shall provide San Francisco a schedule of the Fixed Charges to be collected each month from each Participating Member. With respect to Volumetric Charges, the Agency shall provide San Francisco written notice of the Surcharge Rate applicable to each Participating Member. The Agency shall provide San Francisco the schedule of Fixed Charges or the notice of Surcharge Rates no later than the [ ] day of the month preceding the month in which such Fixed Charges and/or Surcharge Rates are to become effective. The Agency anticipates that Surcharges will be imposed on an annual basis and that new Fixed Charges and Surcharge Rates will become effective on the first day of July of each year. The Agency may, however, impose or adjust Fixed Charges, Volumetric Charges and Surcharge Rates at any time, any such imposition of adjustment to become effective on the first day of a calendar month, provided San Francisco will receive no less than [ ] days' notice of such imposition or adjustment.

(b) In addition to the materials San Francisco provides to the Agency under the terms of the WSA, including materials delivered pursuant to Article 6 and Article 8 thereof, San Francisco covenants to provide the Agency each month with San Francisco's year-to-date water deliveries to Members and projected year-end water sales to Members. San Francisco further agrees to provide the Agency, by no later than the annual meeting held in February of each year pursuant to Section 8.03 of the WSA, with forward-looking projections of water sales and deliveries to Members covering no less than a \_\_\_\_-year period.

#### SECTION 3.02. Billing.

(a) San Francisco shall, in accordance with the Act, include on the first water bill delivered to each Participating Member every month pursuant to the WSA and the respective Individual Water Sales Contracts, excepting bills delivered to California Water Service Company, a separately identified Surcharge in the amount determined pursuant to Section 3.01(a) of this Agreement, with respect to Fixed Charges, and Section 3.02(b), with respect to Volumetric Charges. San Francisco shall also, in accordance with the Act, include on the first water bill delivered to each of California Water Service Company's distinct service areas pursuant to the WSA and the Individual Water Sales Contract with California Water Service Company a separately identified Surcharge in the amount determined pursuant to Section 3.01(a) of this Agreement, with respect to Fixed Charges, and Section 3.02(b), with respect to Volumetric Charges. The total amount of Fixed Charges for a given Fiscal Year shall be billed by San Francisco by no later than June 30 of such Fiscal Year.

(b) With respect to Volumetric Charges, SFPUC shall calculate the amount of the Surcharge due from each Participating Member for each billing period by multiplying the Surcharge Rate, as provided by the Agency, by the volume of water purchased by such Participating Member in such billing period.

(c) San Francisco shall notify the Agency of any material changes in its billing practices no later than sixty (60) days prior to implementation of such changes.

SECTION 3.03. Collection of Surcharges; Transfers of Surcharge Proceeds to the Agency.

(a) San Francisco shall, in accordance with the Act, collect payments for Surcharges imposed on Participating Members by the Agency in the same manner as it collects charges for water pursuant to the WSA and the respective Individual Water Sales Contracts. All such collections shall be separate and apart from collections by San Francisco of any other amounts on behalf of the Agency or any of its Members. All proceeds of the Surcharges collected by San Francisco shall be held in trust and invested until remitted to the Trustee pursuant to the terms of this Agreement. By no later than the fifteenth (15<sup>th</sup>) day of each calendar month, San Francisco shall transfer all Surcharge payments received through the end of the preceding calendar month, plus any investment earnings on the investment of received Surcharge payments posted into the fund held by San Francisco through such date, to the Trustee for deposit in the Revenue Fund established by the Trustee pursuant to the Indenture. San Francisco shall have no rights or interest in the Surcharge Payments or related investment proceeds and may in no event set off any such amounts against obligations of the Agency or its Members to San Francisco.

(b) San Francisco hereby confirms that the Surcharges do not constitute “Revenues” within the meaning of the Amended and Restated Indenture, dated as of August 1, 2002, by and between the SFPUC and U.S. Bank National Association, as trustee, as amended.

SECTION 3.04. Enforcement; Allocation of Partial Payments.

(a) San Francisco shall enforce payment of Surcharges billed to Participating Members, and pursue remedies for any non-payment or partial payment of such amounts, in the same manner in which San Francisco enforces payment of other charges for water sales and pursues remedies for non-payment or partial payment thereof pursuant to the WSA. This Section 3.04(a) shall not, in any manner, limit the Agency’s ability to pursue directly against defaulting Participant Members remedies for any non-payment or partial payment of any Surcharges.

(b) [In the event a Participating Member remits a partial payment of an amount billed by San Francisco on any single bill for delivery of water that includes a Surcharge, San Francisco may, subject to Section 3.04(c), apply the proceeds of such partial payment first to pay amounts payable to San Francisco under the WSA and second to pay the applicable Surcharge.] [Subject to Rating Agency Confirmation]

(c) Notwithstanding anything to the contrary in Section 3.04(b), if a Participating Member remits a partial payment of amounts due with respect to a bill that includes a Surcharge and specifies that such payment is being reduced because the Participating Member contests the validity, accuracy or any other aspect of a charge billed by San Francisco excepting the Surcharge (including, but not limited to, charges relating to interim supply limitations, environmental enhancement or drought, in lieu water charges and meter reading disputes), the proceeds of the Participating Member's partial payment will be applied toward the remainder of the amounts billed, including the Surcharge, as if such contested amounts had not been billed and none of the proceeds of the partial payment shall be applied to, or reserved to pay, such contested amounts.

**SECTION 3.05.      Capital Cost Recovery Payments for Non-Participating Members.**

(a) San Francisco shall establish and maintain a subaccount designated as the "Non-Participating Members Balancing Subaccount" within the Balancing Account established under Section 6.05(b) of the WSA. San Francisco shall continue to bill and collect Non-Participating Member Capital Cost Recovery Payment Obligations from Non-Participating Members pursuant to the terms of the WSA. Following payment of the Non-Participating Member Capital Cost Recovery Payment True-Up Amount as set forth in Section 3.05(b) of this Agreement, San Francisco shall account for Non-Participating Member Capital Cost Recovery Payment Collection Amounts in aggregate amounts greater or less than the Remaining Capital Cost Recovery Payment due in the prior Fiscal Year as provided in Section 6.05(b) of the WSA, provided that all such amounts shall be credited and debited to the Non-Participating Members Balancing Subaccount. Funds on deposit in the Non-Participating Members Balancing Subaccount shall be held separate and apart from all other amounts in the Balancing Account.

(b) On or before December 31 each year the Agency shall calculate the Non-Participating Member Capital Cost Recovery Payment True-Up Amount for the preceding Fiscal Year. If the Non-Participating Member Capital Cost Recovery Payment True-Up Amount is positive, San Francisco shall transfer such amount to the Trustee. If the Non-Participating Member Capital Cost Recovery Payment True-Up Amount is negative, the Agency covenants as follows: (1) to include in Surcharges it imposes on Participating Members in the following Fiscal Year an amount calculated to produce Revenues under the Indenture sufficient to allow the Trustee to release to the Agency, pursuant to Section 5.04 of the Indenture, an amount at least equal the absolute value of the Non-Participating Member Capital Cost Recovery Payment True-Up Amount, and (2) to pay San Francisco the absolute value of the Non-Participating Member Capital Cost Recovery Payment True-Up Amount, as and to the extent that moneys become available therefor from funds released from the lien of the Indenture and transferred to the Agency pursuant to Section 5.04 of the Indenture.

**SECTION 3.06.      Reports and Accounting.** San Francisco agrees to make available to the Agency by the [ ] day of each month a report ("Collection Report") containing the following information: (i) an accounting of Surcharge amounts collected from each Participating Member during the preceding [two] calendar months; (ii) an accounting of Capital Cost Recovery Payments billed to and collected from each Non-Participating Member during the

preceding [two] calendar months; (iii) an accounting of all balancing accounts and other funds relating to Capital Cost Recovery Payments maintained by San Francisco with respect to each Non-Participating Member; (iv) an accounting of San Francisco's expenditures of proceeds of the Prepayment and the purposes or projects financed with such expenditures; (v) account statements and other documentation relating to the investment of Surcharge payments and other Capital Cost Recovery Payments; (vi) accounting of remittances to the Trustee during the preceding [two] calendar months; (vi) the amount of Surcharge payments not yet remitted to the Trustee; and (vii) any transfers of funds relating to the Surcharge or Non-Participating Member Capital Cost Recovery Payment True-Up Amounts from San Francisco to the Agency and from the Agency to San Francisco. The Collection Report may be delivered by any transmission method selected by San Francisco and acceptable to the Agency.

#### ARTICLE IV

##### NOTICES, MODIFICATION AND AMENDMENT, TERMINATION

SECTION 4.01. Notices. Except as otherwise provided herein, it shall be sufficient service or giving of notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, postage prepaid, or sent by electronic means, addressed to the appropriate party as provided below. Any such entity by notice given hereunder may designate any different addresses to which subsequent notices, certificates or other communications shall be sent, but no notice directed to any one such entity shall be thereby required to be sent to more than two addresses.

If to the Agency:

Bay Area Water Supply and Conservation Agency  
155 Bovet Road  
Suite 650  
San Mateo, CA 94402  
Attention: General Manager / Chief Executive Officer  
E-Mail: [ajensen@bawsca.org](mailto:ajensen@bawsca.org)  
Facsimile: (650) 349-8395

If to San Francisco:

San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
Attention: General Manager  
E-Mail: [\_\_\_\_\_]   
Facsimile: [\_\_\_\_\_]

SECTION 4.02. Modifications, Amendments and Waivers. This Agreement may not be modified or amended, or any provision thereof waived, except as permitted in the Indenture and in a writing signed by all the parties to this Agreement and with the written consent of the Trustee. In accordance with the Indenture, the Trustee may given such written



consent only if (1) in the opinion of the Trustee, which may be based upon such certificates or opinions as the Trustee may deem appropriate, such changes will not materially adversely affect the interests of the holders of the Series 2013 Bonds or result in any material impairment of the security given by the Indenture for the payment of the Series 2013 Bonds, (2) the Trustee first obtains the written consent of the holders of a majority in aggregate amount of Series 2013 Bonds Outstanding to such amendment, modification or supplementation, or (3) such amendment, modification or supplementation is necessary to cure any ambiguity, inconsistency, omission or defective provision or to conform to the provisions of the Indenture.

SECTION 4.03. Termination. This Agreement shall terminate on earlier of: (a) July 1, 2036; and (b) the date on which: (i) no Bonds remain Outstanding under the Indenture, (ii) the Agency has notified San Francisco in writing that no additional Surcharges will be imposed, and (iii) all amounts to be collected or transferred pursuant to the terms hereof for water delivered prior to such date have been collected from and transferred to the applicable parties. This Agreement may terminate prior to such date only as permitted in the Indenture and pursuant to a writing signed by all the parties to this Agreement.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 5.02. Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement 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 Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Agency and San Francisco hereby declare that each would have executed and delivered this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 5.03. Entire Agreement. This Agreement contains the entire and only agreement among all the parties to this Agreement with respect to (a) the interest of San Francisco in the proceeds of the Surcharge, and (b) San Francisco’s obligations to the Agency in connection with the Surcharge and all proceeds of the Surcharge.

SECTION 5.04. Waiver of Personal Liability. No Board of Directors member, officer, agent or employee of the Agency or San Francisco shall be individually or personally liable for any payment required hereunder; but nothing herein contained shall relieve any such Board of Directors member, officer, agent or employee of the Agency or San Francisco from the performance of any official duty provided by law or by this Agreement.

SECTION 5.05. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 5.06. Actions and Approvals by San Francisco. Whenever action or approval by San Francisco is required or contemplated by this Agreement, authority to act or approve shall be exercised by the SFPUC, except if such action is required by law to be taken, or approval required to be given, by the San Francisco Board of Supervisors. The SFPUC may delegate authority to the General Manager in accordance with the San Francisco City Charter and Administrative Code.

SECTION 5.07. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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

BAY AREA WATER SUPPLY AND  
CONSERVATION AGENCY

By: \_\_\_\_\_  
General Manager / Chief Executive Officer

THE CITY AND COUNTY OF  
SAN FRANCISCO, acting by and through  
its Public Utilities Commission

By: \_\_\_\_\_  
General Manager

**SCHEDULE A**  
**ORIGINAL CAPITAL COST RECOVERY PAYMENTS**

**SCHEDULE B**

**CAPITAL COST RECOVERY PAYMENTS FOLLOWING PREPAYMENT**

**REVISED ATTACHMENT K-3 & K-4 (WATER/HETCH HETCHY COMBINED)\***

(Section 5.03)

ANNUAL PAYMENTS FOR WHOLESALE SHARE OF 6/30/09 NET PLANT &amp; CWIP

**\*\*FULL PREPAYMENT SCENARIO\*\***

6/30/09 Wholesale Share of Net Plant & CWIP	397,022,960
Interest Rate through Prepayment Date:	5.13%
Term:	25
Monthly Principal & Interest Calculation through 6/30/13	2,351,127
Annual Wholesale Revenue Requirement through 6/30/13:	28,213,522
Prepayment Date (estimated):	1/22/13

Fiscal Yr Ending	Principal	Interest	Total	Prepay- ment	End Bal (6/30)
Jun-10	8,033,383	20,180,139	28,213,522		388,989,577
Jun-11	8,455,325	19,758,197	28,213,522		380,534,252
Jun-12	8,899,428	19,314,093	28,213,522		371,634,824
Jun-13	17,415,817	10,797,704	28,213,522	(1) 354,219,007	(0)
Jun-14	-	-	-		-
Jun-15	-	-	-		-
Jun-16	-	-	-		-
Jun-17	-	-	-		-
Jun-18	-	-	-		-
Jun-19	-	-	-		-
Jun-20	-	-	-		-
Jun-21	-	-	-		-
Jun-22	-	-	-		-
Jun-23	-	-	-		-
Jun-24	-	-	-		-
Jun-25	-	-	-		-
Jun-26	-	-	-		-
Jun-27	-	-	-		-
Jun-28	-	-	-		-
Jun-29	-	-	-		-
Jun-30	-	-	-		-
Jun-31	-	-	-		-
Jun-32	-	-	-		-
Jun-33	-	-	-		-
Jun-34	-	-	-		-
	42,803,953	70,050,133	112,854,086	354,219,007	

\* Separate schedules Water (K-3) and Hetch Hetchy (K-4) will be prepared.

Shown as combined here for simplicity.

(1) Calculated to maintain annual payment at \$28,213,522 taking into account the prepayment and the monthly amortization methodology referenced in Section 5.03 of the WSA.

**\*\*TO BE REPLACED BY REVISED K-3 AND K-4 SCHEDULES UPON PREPAYMENT\*\***

REVISED ATTACHMENT K-3 & K-4 (WATER/HETCH HETCHY COMBINED)\*  
Supporting Calculations for Revised K Schedules (Not in Final Revised Schedules)  
Monthly Calculation for FY 2012-13 For Prepaid Portion  
**\*\*FULL PREPAYMENT SCENARIO\*\***

6/30/12 Unpaid Balance	371,634,824
Interest Rate:	5.13%
Term:	25
Monthly Principal & Interest Calculation through 6/30/13	2,351,127
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Prepayment Date (estimated):	1/22/13

Month	Principal (1)	Interest (2)	Total	Prepay- ment	End Bal.
6/30/12					371,634,824
7/30/12	762,388	1,588,739	2,351,127		370,872,436
8/30/12	765,647	1,585,480	2,351,127		370,106,789
9/30/12	768,920	1,582,207	2,351,127		369,337,869
10/30/12	772,207	1,578,919	2,351,127		368,565,661
11/30/12	775,509	1,575,618	2,351,127		367,790,153
12/30/12	778,824	1,572,303	2,351,127		367,011,329
1/30/13	1,185,963	1,165,164 (1)	2,351,127	354,219,007	11,606,359
2/28/13	2,301,510	49,617	2,351,127		9,304,849
3/30/13	2,311,349	39,778	2,351,127		6,993,501
4/30/13	2,321,230	29,897	2,351,127		4,672,271
5/30/13	2,331,153	19,974	2,351,127		2,341,118
6/30/13	2,341,119	10,008	2,351,127		(0)
Total:	17,415,817	10,797,704	28,213,522		

- (1) Principal amortization is calculated to take into account the prepayment and to maintain the annual payment of \$28,213,522, calculated on the basis of level monthly principal and interest consistent with Section 5.06 of the WSA.
- (2) The month of prepayment reflects interest (30/360 day basis) on the prior month ending balance through the prepayment date and interest on prior month ending balance less the prepayment amount from the prepayment date through the end of the month.

**REVISED ATTACHMENT K-3 & K-4 (WATER/HETCH HETCHY COMBINED)\***

(Section 5.03)

ANNUAL PAYMENTS FOR WHOLESALE SHARE OF 6/30/09 NET PLANT &amp; CWIP

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Jun-17	-	-	-		-
Jun-18	-	-	-		-
Jun-19	-	-	-		-
Jun-20	-	-	-		-
Jun-21	-	-	-		-
Jun-22	-	-	-		-
Jun-23	-	-	-		-
Jun-24	-	-	-		-
Jun-25	-	-	-		-
Jun-26	-	-	-		-
Jun-27	-	-	-		-
Jun-28	-	-	-		-
Jun-29	-	-	-		-
Jun-30	-	-	-		-
Jun-31	-	-	-		-
Jun-32	-	-	-		-
Jun-33	-	-	-		-
Jun-34	-	-	-		-
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Shown as combined here for simplicity.

(1) Calculated to maintain annual payment at \$28,213,522 taking into account the prepayment and the monthly amortization methodology referenced in Section 5.03 of the WSA.

**\*\*TO BE REPLACED BY REVISED K-3 AND K-4 SCHEDULES UPON PREPAYMENT\*\***



REVISED ATTACHMENT K-3 & K-4 (WATER/HETCH HETCHY COMBINED)\*  
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10/30/12	772,207	1,578,919	2,351,127		368,565,661
11/30/12	775,509	1,575,618	2,351,127		367,790,153
12/30/12	778,824	1,572,303	2,351,127		367,011,329
1/30/13	1,185,963	1,165,164 (1)	2,351,127	354,219,007	11,606,359
2/28/13	2,301,510	49,617	2,351,127		9,304,849
3/30/13	2,311,349	39,778	2,351,127		6,993,501
4/30/13	2,321,230	29,897	2,351,127		4,672,271
5/30/13	2,331,153	19,974	2,351,127		2,341,118
6/30/13	2,341,119	10,008	2,351,127		(0)
Total:	17,415,817	10,797,704	28,213,522		

- (1) Principal amortization is calculated to take into account the prepayment and to maintain the annual payment of \$28,213,522, calculated on the basis of level monthly principal and interest consistent with Section 5.06 of the WSA.
- (2) The month of prepayment reflects interest (30/360 day basis) on the prior month ending balance through the prepayment date and interest on prior month ending balance less the prepayment amount from the prepayment date through the end of the month.

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**Board of Directors Meeting –November 15, 2012**

**ATTACHMENTS TO AGENDA ITEM #7C:**

**Draft Bond Purchase Agreement**

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\$ \_\_\_\_\_  
**Bay Area Water Supply and Conservation Agency  
Revenue Bonds  
(Capital Cost Recovery Prepayment Program),  
2013 Series A**

\$ \_\_\_\_\_  
**Bay Area Water Supply and Conservation Agency  
Revenue Bonds  
(Capital Cost Recovery Prepayment Program),  
2013 Series B (Taxable)**

**CONTRACT OF PURCHASE**

\_\_\_\_\_, 2013

Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 302  
San Mateo, California 94402

Ladies/Gentlemen:

Goldman, Sachs & Co., for itself and as representative (the "Representative") of E. J. De La Rosa & Co., Inc. ("De La Rosa"), Citigroup Global Markets Inc. ("Citigroup") and Morgan Stanley & Co., LLC ("Morgan Stanley," and together with the Representative, De La Rosa and Citigroup, the "Underwriters"), hereby offers to enter into this Contract of Purchase with the Bay Area Water Supply and Conservation Agency (the "Agency"), for the issuance by the Agency and the purchase by the Underwriters of \$\_\_\_\_\_ aggregate principal amount of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A (the "Series 2013A Bonds") and \$\_\_\_\_\_ aggregate principal amount of Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable) (the "Series 2013B Bonds," and together with the Series 2013A Bonds, the "Series 2013 Bonds"). The Series 2013 Bonds are payable from Revenues (as such term is defined in the hereinafter defined Indenture). This offer is made subject to acceptance by the Agency prior to 8:00 P.M., Pacific Standard Time, on the date hereof and upon such acceptance this Contract of Purchase shall be in full force and effect in accordance with its terms and shall be binding upon the Agency and the Underwriters. All terms not defined herein shall have the meanings set forth in the Indenture.

The Agency acknowledges and agrees that: (i) the purchase and sale of the Series 2013 Bonds pursuant to this Contract of Purchase is an arm's-length commercial transaction between the Agency and the Underwriters; (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm's length commercial transaction between the Agency and the Underwriters and the Underwriters have financial and other interests that differ from those of the Agency; (iii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principals and are not acting as Municipal Advisors (as defined in Section 15B of The Securities Exchange Act of 1934, as amended), financial advisors or fiduciaries to the Agency; (iv) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the Agency with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Agency on other matters); (v) the only obligations that the

Underwriters have to the Agency with respect to the transaction contemplated hereby are expressly set forth in this Contract of Purchase; and (vi) the Agency has consulted its own legal, financial and other advisors to the extent that it has deemed appropriate.

1. Upon the terms and conditions and upon the basis of the representations, warranties and agreements set forth herein, the Underwriters hereby agree to purchase and the Agency hereby agrees to sell to the Underwriters all (but not less than all) of the aggregate principal amount of the Series 2013A Bonds, at an aggregate purchase price of \$\_\_\_\_\_ (representing the principal amount thereof plus/less a net original issue premium/discount of \$\_\_\_\_\_ and less an Underwriters' discount of \$\_\_\_\_\_), and all (but not less than all) of the aggregate principal amount of the Series 2013B Bonds, at an aggregate purchase price of \$\_\_\_\_\_ (representing the principal amount thereof plus/less a net original issue premium/discount of \$\_\_\_\_\_ and less an Underwriters' discount of \$\_\_\_\_\_).

The Series 2013 Bonds shall be dated \_\_\_\_\_, 2013, the date of their delivery, and shall bear interest of rates and mature on the dates set forth in Exhibit A hereto. The Series 2013 Bonds are being issued to provide funds: (i) to finance the prepayment of [all of] [a portion of] the remaining principal balance of Capital Cost Recovery Payments payable under the Water Supply Agreement; (ii) to fund a stabilization fund for the Series 2013 Bonds; (iii) to fund capitalized interest on the Series 2013 Bonds through \_\_\_\_\_, 20\_\_\_\_; and (iv) to pay costs of issuance of the Series 2013 Bonds.

The Underwriters agree to make a bona fide public offering of all of the Series 2013 Bonds initially at the public offering prices set forth herein. Subsequent to the initial public offering, the Underwriters reserve the right to change the public offering prices as they deem necessary in connection with the marketing of the Series 2013 Bonds. The Series 2013 Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices.

The Series 2013 Bonds shall be as described in, and shall be secured under and pursuant to, the Revenue Bond Indenture, dated as of January 1, 2013 (the "Master Indenture"), by and between the Agency and \_\_\_\_\_, as trustee (the "Trustee"), and the First Supplemental Revenue Bond Indenture, dated as of January 1, 2013 (the "First Supplemental Indenture," and together with the Master Indenture, the "Indenture"), by and between the Agency and the Trustee, substantially in the forms previously submitted to the Representative with only such changes therein as shall be mutually agreed upon by the Agency and the Representative.

The Series 2013 Bonds will constitute special, limited obligations of the Agency payable solely from Revenues and certain amounts held under the Indenture.

2. The Agency has approved the use and distribution by the Underwriters prior to the date hereof of the Preliminary Official Statement relating to the Series 2013 Bonds dated \_\_\_\_\_, 20\_\_\_\_, in connection with the public offering of the Series 2013 Bonds (the "Preliminary Official Statement"). The Agency has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12.

The Agency hereby agrees to deliver or cause to be delivered to the Underwriters, not later than the earlier of: (i) the business day preceding the Closing (as defined herein); or (ii) the seventh (7th) business day following the date of this Contract of Purchase: (A) the form of the final Official

Statement relating to the Series 2013 Bonds in “designated electronic format” (as defined in Municipal Securities Rulemaking Board (“MSRB”) Rule G-32; and (B) copies of the final Official Statement relating to the Series 2013 Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the Agency and the Representative, the “Official Statement”), in such quantity as the Underwriters shall reasonably request. The Agency hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series 2013 Bonds. The Preliminary Official Statement and/or the Official Statement may be delivered in printed and/or electronic form to the extent permitted by applicable rules of the MSRB and as may be agreed by the Agency and the Representative. If the Official Statement is prepared for distribution in electronic form, the Agency hereby confirms that it does not object to distributions of the Official Statement in electronic form.

3. The Agency warrants, represents to and agrees with the Representative that:

(a) The Agency is a public agency formed and existing pursuant to the Bay Area Water Supply and Conservation Agency Act, Division 31 of the Water Code of the State of California (the “Act”), and has all necessary power and authority to enter into and perform its duties under the Indenture, the Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”) dated as of the Closing Date and executed by the Agency, the Prepayment and Collection Agreement, dated as of January 1, 2013 (the “Prepayment and Collection Agreement”) , by and between the Agency and the City and County of San Francisco (“San Francisco”) and this Contract of Purchase (collectively, the “Agency Documents”), including, but not limited to the imposition of the Surcharge, and, when executed and delivered by the respective parties thereto, the Agency Documents will constitute legal, valid and binding obligations of the Agency enforceable in accordance with their respective terms.

(b) The execution and delivery of the Agency Documents and compliance with the provisions on the Agency’s part contained herein and therein, and execution and delivery of the Official Statement, will not conflict with, or constitute a breach of, or default under, the Agency’s duties under said documents or any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, to which the Agency is subject or by which it is bound, which conflict, breach or default could have a material adverse effect upon the Agency’s ability to perform its obligations under the Agency Documents, including its obligation to impose the Surcharge and to pay debt service on the Series 2013 Bonds, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Agency under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture.

(c) By official action of the Agency prior to or concurrently with the acceptance hereof, the Agency has duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement and has duly authorized and approved the execution and delivery of, and the performance by the Agency of the obligations on its part contained in the Agency Documents and the consummation by it of all other transactions contemplated by the Official Statement and this Contract of Purchase.

(d) Except as may be required under Blue Sky or other securities laws of any state, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the Agency required for the execution and delivery of the Agency Documents, the issuance of the Series 2013 Bonds, the imposition of the Surcharge or the consummation by the Agency of the other transactions contemplated by the Agency Documents and the Official Statement.

(e) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or governmental agency, public board or body pending or threatened against the Agency affecting the existence of the Agency or challenging the title of any director of the Agency or the Chair of the Board of Directors of the Agency to their respective offices, or seeking to prohibit, restrain or enjoin the issuance of the Series 2013 Bonds or the imposition of the Surcharge or in any way contesting or affecting the validity or enforceability of the Agency Documents or the Series 2013 Bonds or in any way contesting the powers of the Agency or its authority to enter into or perform its obligations under any of the foregoing, or contesting in any way the completeness, accuracy or fairness of the Official Statement, or in which a final adverse decision could materially adversely affect the operations or financial condition of the Agency or the ability of the Agency to perform its obligations under the Agency Documents.

(f) The Agency is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Agency is a party or is otherwise subject, which breach or default could have a material adverse effect upon the Agency's ability to perform its obligations under the Agency Documents, including its obligation to pay debt service on the Series 2013 Bonds, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and which default could have a material adverse effect upon the Agency's ability to perform its obligations under the Agency Documents.

(g) The information contained in the Preliminary Official Statement as of its date was true and correct in all material respects and such information does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that no representation is made as to: (i) the information in the Preliminary Official Statement relating to The Depository Trust Company or its book-entry only system; (ii) the information permitted to be omitted therefrom in accordance with Rule 15c2-12; (iii) [SFPUC covered information]; (iv) information under the caption "UNDERWRITING;" and (v) information in APPENDIX A — "SELECTED INFORMATION ON CERTAIN PARTICIPATION MEMBERS."

(h) The Agency will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order: (1) to qualify the Series 2013 Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate; and (2) to determine the eligibility of the Series 2013 Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series 2013 Bonds; provided, however, that the Agency will not be required to execute a special or general consent to service of process or qualify as a foreign corporation in connection with any such qualification in any jurisdiction.



(i) As of the date hereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as such term is hereinafter defined) for the Series 2013 Bonds, the Official Statement did not and, if no event as described in the immediately following subparagraph occurs or, if such event occurs, the information contained in the Official Statement is amended or supplemented pursuant to such subparagraph, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that no representation is made as to: (i) the information in the Preliminary Official Statement relating to The Depository Trust Company or its book-entry only system; (ii) the information under the caption “UNDERWRITING;” and (iii) the information in APPENDIX A — “SELECTED INFORMATION ON CERTAIN PARTICIPATION MEMBERS.”

(j) During the period between the date of this Contract of Purchase and the date which is 25 days following the End of the Underwriting Period: (i) the Agency shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Representative; and (ii) if an event occurs, of which the Agency has knowledge, which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the Agency will notify the Representative, and if in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Agency will cooperate with the Representative in the preparation of an amendment or supplement to the Official Statement in a form and in a manner approved by the Representative, provided that all expenses thereby incurred will be paid for by the Agency.

(k) If the information contained in the Official Statement is amended or supplemented pursuant to the immediately preceding subparagraph, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series 2013 Bonds, the portions of the Official Statement so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading; provided, however, that no representation is made as to: (i) the information in the Preliminary Official Statement relating to The Depository Trust Company or its book-entry only system; (ii) the information under the caption “UNDERWRITING;” and (iii) the information in APPENDIX A — “SELECTED INFORMATION ON CERTAIN PARTICIPATION MEMBERS.”

(l) As used herein and for the purposes of the foregoing, the term “End of the Underwriting Period” shall mean the Closing unless the Representative advises the Agency that the Underwriters continue to hold Series 2013 Bonds for sale at the time of the Closing, in which case the “End of the Underwriting Period” shall have the meaning set forth in Rule 15c2-12.

(m) Between the date hereof and the Closing, without the prior written consent of the Representative, the Agency will not have issued any bonds, notes or other obligations for borrowed money on behalf of the Agency, except for such borrowings as may be described in or contemplated by the Official Statement.

(n) The Agency has not previously entered into any undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of material events.

(o) The execution and delivery of this Contract of Purchase by the Agency shall constitute a representation by the Agency to the Underwriters that the representations and warranties contained in this Section 3 are true and correct as of the date hereof.

4. At 8:00 A.M., Pacific Standard Time, on \_\_\_\_\_, 2013, or at such other time or on such earlier or later date as the Agency and the Representative mutually agree upon (herein called the "Closing"), the Agency will deliver or cause to be delivered to the Underwriters: (a) through the facilities of The Depository Trust Company, the Series 2013 Bonds; and (b) at the offices of Orrick, Herrington & Sutcliffe LLP, 405 Howard Street San Francisco, California 94105-2669 ("Bond Counsel"), or such other place as the Agency and the Representative mutually agree upon, the other documents hereinafter mentioned. Each maturity of each series of the Series 2013 Bonds will be issued in the form of a separate single fully registered bond. Upon initial execution, the ownership of such Series 2013 Bonds shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as the nominee of The Depository Trust Company.

CUSIP identification numbers shall be printed on the Series 2013 Bonds, but the failure to print such number on any Series 2013 Bond or any error with respect thereto shall not constitute cause for a failure or refusal by the Underwriters to accept delivery of, or pay for, the Series 2013 Bonds in accordance with the terms of this Contract of Purchase. All expenses in relation to the printing of CUSIP numbers on said Series 2013 Bonds and the CUSIP Service Bureau charge for the assignment of said numbers shall be paid for by the Agency from Series 2013 Bond proceeds.

The Underwriters will accept delivery of the Series 2013 Bonds and pay the purchase price thereof in immediately available funds to the order of the Trustee in an amount equal to the purchase price.

5. The Underwriters have entered into this Contract of Purchase in reliance upon the representations and warranties of the Agency contained herein, all other representations, warranties and agreements to be contained in the documents and instruments to be delivered at Closing and the performance by the Agency of its obligations hereunder, both as of the date hereof and as of the date of Closing. The Underwriters' obligations under this Contract of Purchase are and shall be subject to the following further conditions:

(a) at the time of Closing: (1) the Agency Documents shall be in full force and effect as valid and binding agreements between or among the various parties thereto and the Agency Documents and the Official Statement shall have been duly authorized, executed and delivered by the respective parties thereto, in substantially the forms heretofore submitted to the Representative, and shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Representative, and there shall be in full force and effect such resolutions as, in the opinion of Bond Counsel, shall be necessary in connection with the transactions contemplated hereby; (2) each of the Participating Members shall have adopted a resolution (collectively, the "Participating Member Resolutions") authorizing the prepayment of the Capital Cost Recovery Payments; and (3) the representations and warranties of the Agency contained herein shall be true, correct and complete in all material respects on the date hereof and at the time of the Closing, as if made on the date of the Closing;

(b) at or prior to the Closing, the Representative shall receive the following documents, in each case satisfactory in form and substance to it and its counsel:

(1) the unqualified approving opinion of Bond Counsel, dated the date of Closing, addressed to the Agency, substantially in the form attached to the Official Statement as Appendix D, together with a letter from such counsel, dated the date of the Closing and addressed to the Representative and the Trustee, to the effect that the foregoing opinion addressed to the Agency may be relied upon by the Underwriters and the Trustee to the same extent as if such opinion were addressed to them;

(2) the supplemental opinion of Bond Counsel, in form and substance satisfactory to the Representative, dated the date of Closing and addressed to the Representative, to the effect that:

(i) the Series 2013 Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(ii) the Contract of Purchase has been duly executed and delivered by the Agency and is the valid and binding agreement of the Agency; and

(iii) the statements contained in the Official Statement under the captions "SECURITY AND SOURCES OF PAYMENT," "IMPOSITION AND COLLECTION OF SURCHARGES," "TAX MATTERS," and in APPENDIX B — "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," APPENDIX C — "SUMMARY OF PREPAYMENT AND COLLECTION AGREEMENT" and APPENDIX D — "PROPOSED FORM OF OPINION OF BOND COUNSEL," excluding any material that may be treated as included under such captions by cross-reference, insofar as such statements summarize certain provisions of the Indenture, the Series 2013 Bonds, the Prepayment and Collection Agreement and Bond Counsel's final legal opinion concerning certain federal tax matters relating to the Series 2013 Bonds, are accurate in all material respects;

(3) a letter of Orrick Herrington & Sutcliffe LLP, as disclosure counsel to the Agency, in form and substance satisfactory to the Representative dated the date of Closing and addressed to the Representative to the effect that as a matter of fact and not opinion, based upon examinations which they have made and meetings and telephone conferences with representatives of the Agency, its general counsel and its financial advisor, the Underwriters and others, which may be specified, and without having undertaken to determine independently the accuracy or completeness of the statements contained in the Preliminary Official Statement or the Official Statement, nothing has come to the attention of the attorneys in such firm rendering legal services in connection with such representation which caused them to believe that the Preliminary Official Statement as of the date of this Contract of Purchase or the Official Statement as of the date of Closing (other than financial, numerical, or statistical data, information relating to The Depository Trust Agreement and the book-entry only system and financial statements therein and incorporated therein by reference and the appendices thereto, as to which no opinion need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(4) an opinion of general counsel to the Agency, dated the date of Closing and addressed to the Agency and the Representative, to the effect that:

(i) the Agency is a public agency formed and existing pursuant to the Act and has all necessary power and authority to enter into and perform its duties under the Agency Documents, and the Agency Documents constitute the legal, valid and binding obligations of the Agency enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' remedies generally or the application of equitable principles when equitable remedies are sought;

(ii) the Agency's execution and delivery of the Agency Documents and performance by the Agency of its obligations contained therein, and the Agency's execution and delivery of the Official Statement, will not and do not conflict with, or constitute a breach of or default under, the Agency's duties under the Agency Documents, or to the best of such counsel's knowledge, any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, to which the Agency is subject or by which it is bound, which conflict, breach or default could have a material adverse effect upon the Agency's ability to perform its obligations under the Agency Documents, including its obligation to impose the Surcharge, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Agency under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Indenture;

(iii) by official action of the Agency prior to the date hereof, the Agency has duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement and has duly authorized and approved the execution and delivery of, and the performance by the Agency of its obligations contained in, the Agency Documents and the consummation by it of all other transactions on its part contemplated by this Contract of Purchase;

(iv) to the best of such counsel's knowledge, except as may be required under Blue Sky or other securities laws of any state, as to which no opinion need be expressed, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the Agency required for the execution and delivery of the Agency Documents, the imposition of the Surcharge or the issuance of the Series 2013 Bonds or the consummation by the Agency of the other transactions contemplated by this Contract of Purchase;

(v) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or governmental agency, public board or body pending or for which service of process has been effected on the Agency or, to the best of such counsel's knowledge, threatened against the Agency affecting the existence of the Agency or challenging the title of any director of the Agency or the President of the Board of Directors of the Agency to their respective offices, or seeking to prohibit, restrain or enjoin the issuance of the Series 2013 Bonds, or the imposition of the Surcharge or in any way contesting or affecting the validity or enforceability of the Agency Documents or the Series 2013 Bonds or in any way contesting the powers of the Agency or its authority to enter into or perform its obligations under any of the foregoing, or contesting in any way the completeness, accuracy or fairness of the Official Statement, or in which a

final adverse decision could materially adversely affect the operations or financial condition of the Agency or the ability of the Agency to perform its obligations under the Agency Documents;

(vi) to the best of such counsel's knowledge, the Agency is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Agency is a party or is otherwise subject, which breach or default could have a material adverse effect upon the Agency's ability to perform its obligations under the Agency Documents, including its obligation to impose the Surcharge, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and which default or event of default could have a material adverse effect upon the Agency's ability to perform its obligations under the Agency Documents; and

(vii) the information contained in the Preliminary Official Statement under the captions "BAY AREA WATER SUPPLY AND CONSERVATION AGENCY," "WATER SUPPLY AGREEMENT" and "LITIGATION" as of the date of this Contract of Purchase was, and in the Official Statement under the captions "BAY AREA WATER SUPPLY AND CONSERVATION AGENCY," "WATER SUPPLY AGREEMENT" and "LITIGATION" is, true and correct in all material respects, and such information does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(5) an opinion of counsel to the Trustee dated the date of Closing and addressed to the Agency and the Representative, in form and substance satisfactory to Bond Counsel, the Representative and counsel to the Underwriters, to the effect that:

(i) the Trustee is a national banking association duly organized under and existing in good standing under and by virtue of the laws of the United States of America with full corporate power to undertake the trust of the Indenture and to execute and deliver the Indenture;

(ii) the Trustee has duly authorized, executed and delivered the Indenture, and by all proper corporate action has authorized the acceptance of the duties and the obligations of the Trustee under the Indenture;

(iii) assuming due authorization, execution and delivery by the Agency, the Indenture is the valid, legal and binding agreement of the Trustee, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(iv) no approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee is or will be required for the execution and delivery by the Trustee of the Indenture; and

(v) the Trustee has duly authenticated the Series 2013 Bonds;

(6) a certificate dated the date of Closing and signed by a duly authorized officer of San Francisco in form and substance satisfactory to Bond Counsel, the Representative and Underwriters' Counsel substantially to the effect that:

(i) the Prepayment and Collection Agreement constitutes the legal, valid and binding obligation of San Francisco enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' remedies generally or the application of equitable principles when equitable remedies are sought;

(ii) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or governmental agency, public board or body pending or, to the best of such counsel's knowledge, threatened against San Francisco seeking to prohibit, restrain or enjoin the collection of the Surcharge or in any way contesting or affecting the validity or enforceability of the Prepayment and Collection Agreement;

(iii) Surcharges collected by San Francisco pursuant to the Prepayment and Collection Agreement do not constitute "Revenues" (as such term defined in the Amended and Restated Indenture, dated as of August 1, 2002 (as subsequently amended or supplemented, the "SFPUC Indenture"), by and between the Public Utilities Commission of the City and County of San Francisco and U.S. Bank, N.A.); and

(iv) the information contained in the Preliminary Official Statement under the caption "THE SAN FRANCISCO REGIONAL WATER SYSTEM" as of its date was, and in the Official Statement under the caption "THE SAN FRANCISCO REGIONAL WATER SYSTEM" is, true and correct in all material respects;

(v) During the period between the Closing and the date which is 25 days following the End of the Underwriting Period if an event occurs, of which San Francisco has knowledge, which might or would cause the information contained in the Official Statement under the caption "THE SAN FRANCISCO REGIONAL WATER SYSTEM," as then supplemented or amended, to no longer be true and accurate in all material respects, San Francisco will notify the Agency and the Representative, and if in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, San Francisco will cooperate with the Agency and the Representative in the preparation of an amendment or supplement to the Official Statement in a form and in a manner approved by the Representative, provided that all expenses thereby incurred will be paid for by the Agency;

(7) an opinion of counsel to San Francisco dated the date of Closing and addressed to the Agency and the Representative, in form and substance satisfactory to Bond Counsel, the Representative and counsel to the Underwriters, to the effect that:

(i) the Prepayment and Collection Agreement constitutes the legal, valid and binding obligation of San Francisco enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' remedies generally or the application of equitable principles when equitable remedies are sought, or except as rights of indemnity may be limited by principles of public policy;

(ii) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or governmental agency, public board or body pending or, to the best of such counsel's knowledge, threatened against San Francisco seeking to prohibit, restrain or enjoin the collection of the Surcharge or in any way contesting or affecting the validity or enforceability of the Prepayment and Collection Agreement; and

(iii) Surcharges collected by San Francisco pursuant to the Prepayment and Collection Agreement do not constitute "Revenues" (as such term is defined in the SFPUC Indenture);

(8) a certificate from each of California Water Service Company, City of Hayward, City of Palo Alto, City of Redwood City, City of Mountain View, City of Sunnyvale and Alameda County Water District (each a "Major Participating Member") addressed to the Agency and the Representative, in form and substance satisfactory to Bond Counsel, the Representative and counsel to the Underwriters, to the effect that: (i) the information contained in the Preliminary Official Statement in Appendix A relating to each Major Participating Member and its water supply as of its date was, and in the Official Statement in Appendix A relating to each Major Participating Member and its water supply is, true and correct in all material respects, and such information does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (ii) payment of the Surcharge by the Major Participating Member will constitute an operation and maintenance expense of the Major Participating Member payable from the revenues of the Major Participating Member's water enterprise prior to the payment of obligations payable from the net revenues of the Major Participating Member's water enterprise;

(9) the letter of Stradling Yocca Carlson & Rauth, a Professional Corporation, counsel to the Underwriters, dated the date of Closing and addressed to the Underwriters to the effect that, as a matter of fact and not opinion, based upon examinations which they have made and meetings and telephone conferences with Bond Counsel, representatives of the Agency, its general counsel and its financial advisor, the Underwriters and others, which may be specified, and without having undertaken to determine independently the accuracy or completeness of the statements contained in the Preliminary Official Statement and Official Statement, nothing has come to the attention of the attorneys in such firm rendering legal services in connection with such representation which caused them to believe that the Preliminary Official Statement as of its date and the Official Statement as of the date of Closing (other than financial, numerical, or statistical data, information relating to The Depository Trust Agreement and the book-entry only system and financial statements therein and incorporated therein by reference and the appendices thereto, as to which no opinion need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and that the Continuing Disclosure Certificate complies with the provisions of Rule 15c2-12;

(10) a certificate, dated the date of Closing, signed by a duly authorized official of the Agency satisfactory in form and substance to the Representative and counsel to the Underwriters, to the effect that the representations and warranties made by the Agency in this Contract of Purchase are true and correct as of the date of Closing;

(11) a certificate, dated the date of Closing, signed by a duly authorized officer of the Trustee and satisfactory in form and substance to Bond Counsel, the Representative and counsel to the Underwriters, to the effect that:

(i) the Trustee is duly organized and existing as a national banking association in good standing under and by virtue of the laws of the United States of America having the full power and authority to enter into and perform its duties under the Indenture and to authenticate and deliver the Series 2013 Bonds thereunder;

(ii) the Trustee is duly authorized to enter into the Indenture and to authenticate and deliver each series of the Series 2013 Bonds to the Underwriters pursuant to the terms of the Indenture, and has duly executed and delivered the Indenture, and assuming due authorization and execution by the other parties thereto, the Indenture is legal, valid and binding upon the Trustee, and enforceable against the Trustee in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the rights of creditors generally, and by the availability of equitable remedies;

(iii) The Series 2013 Bonds have been authenticated by the Trustee and delivered to the Representative, upon instructions from the Agency pursuant to the terms of the Indenture, and the Trustee will hold the Series 2013 Bonds as FAST Agent for The Depository Trust Company, for the account of the Underwriters;

(iv) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is or will be required for the authentication and delivery of the Series 2013 Bonds or the consummation by the Trustee of its obligations under the Indenture;

(v) the execution and delivery by the Trustee of the Indenture and compliance with the terms thereof and authentication and delivery of the Series 2013 Bonds will not and does not conflict with, or result in a violation or breach of, or constitute a default under, any material agreement or material instrument to which the Trustee is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties, or (except with respect to the lien of the Indenture) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Trustee; and

(vi) to the knowledge of the Trustee, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board or body pending or threatened against or affecting the existence of the Trustee or seeking to prohibit, restrain or enjoin the Trustee's authentication and delivery of the Series 2013 Bonds, or in any way contesting or affecting the validity or enforceability of the Indenture against the Trustee or contesting the powers of the Trustee or its authority to enter into and perform its obligations under any of the foregoing, wherein an unfavorable decision, ruling or finding would, in any way, adversely affect the validity of the Indenture against the Trustee, or any agreement or instrument to which the Trustee is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby;

(12) two executed copies of each of the Agency Documents;



(13) two copies of the Preliminary Official Statement and two copies of the Official Statement executed on behalf of the Agency by an authorized representative of the Agency;

(14) two certified copies of the general resolution of the Trustee authorizing the execution and delivery of certain documents by certain officers of the Trustee, which resolution authorizes the issuance of the Series 2013 Bonds and the execution and delivery of the Indenture;

(15) two copies of resolutions adopted by the Agency and certified by the Agency Secretary authorizing or ratifying the execution and delivery of the Agency Documents and the approval of the Official Statement;

(16) a Rule 15c2-12 certificate of the Agency, in form and substance satisfactory to the Representative;

(17) evidence satisfactory to the Representative that the ratings set forth in the Preliminary Official Statement have been assigned to the Series 2013 Bonds by the applicable rating agencies;

(18) tax certificates of the Agency and SFPUC satisfactory in form and substance to Bond Counsel, the Representative and counsel to the Underwriters, together with an issue price certificate in substantially the form attached as Exhibit B hereto;

(19) a certified copy of each of the Participating Member Resolutions;

(20) such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel and counsel for the Underwriters may reasonably request to evidence compliance by the Agency with legal requirements, the truth and accuracy, as of the time of Closing, of the representations contained herein and in the Official Statement and the due performance or satisfaction by the Agency at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

If the conditions to the Underwriters' obligations contained in this Contract of Purchase are not satisfied or waived or if the Underwriters' obligations shall be terminated for any reason permitted by this Contract of Purchase, this Contract of Purchase shall terminate and the Underwriters and the Agency shall have no further obligation hereunder except as provided in Section 8.

6. The Underwriters shall have the right to cancel their obligations to purchase the Series 2013 Bonds if, between the date hereof and the Closing regardless of whether any of the following statements of fact were in existence or known of on the date of this Contract of Purchase:

(a) the marketability of the Series 2013 Bonds or the market price thereof, in the opinion of the Representative, has been materially adversely affected by an amendment to the Constitution of the United States or by any legislation in or by the Congress of the United States or by the State of California, or the amendment of legislation pending as of the date of this Contract of Purchase in the Congress of the United States, or the recommendation to Congress or endorsement for passage (by press release, other form of notice or otherwise) of legislation by the President of the

United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or the proposal for consideration of legislation by either such Committee or by any member thereof, or the presentment of legislation by the staff of either such Committee, or by the staff of the Joint Committee on taxation of the Congress of the United States, or the favorable reporting for passage of legislation to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or any decision of any federal or state court or any ruling or regulation (final, temporary or proposed) or official statement on behalf of the United States Treasury Department, the Internal Revenue Service or other federal or state authority affecting the federal or state tax status of the Agency, or the interest on bonds or notes (including the Series 2013A Bonds); or

(b) there shall exist any event which in the reasonable opinion of the Representative either: (i) makes untrue or incorrect in any material respect any statement or information contained in the Official Statement; or (ii) is not reflected in the Official Statement but should be reflected therein to make the statements and information contained therein not misleading in any material respect; or

(c) there shall have occurred any new outbreak of hostilities or other national or international calamity or crisis or the escalation of any such outbreak, calamity or crisis, the effect of such outbreak, calamity, crisis or escalation on the financial markets of the United States being such as would make it impracticable, in the reasonable opinion of the Representative, for the Underwriters to sell the Series 2013 Bonds; or

(d) there shall be in force a general suspension of trading on the New York Stock Exchange or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on the New York Stock Exchange, whether by virtue of a determination by that Exchange or by orders of the Securities and Exchange Commission or any other governmental authority; or

(e) a general banking moratorium shall have been declared by either Federal, State of California or State of New York authorities having jurisdiction and be in force; or

(f) there shall be established any new restrictions on transactions in securities materially affecting the free market for securities (including the imposition of any limitations on interest rates) or the extension of credit by, or the charge to the net capital requirements of, underwriters established by the New York Stock Exchange, the Securities and Exchange Commission, any other Federal or state agency or the Congress of the United States, or by Executive Order; or

(g) an adverse event has occurred affecting the financial condition or operation of, the Agency which, in the opinion of the Representative, requires or has required a supplement or amendment to the Official Statement; or

(h) the ratings of the Series 2013 Bonds shall have been downgraded or withdrawn by a national rating service referred to in Section 5(b)(17) hereof, which, in the Representative's opinion, materially adversely affects the market price of the Series 2013 Bonds; or

(i) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State or any court of the United States shall be rendered which, in the reasonable opinion of the Representative, materially adversely affects the market price of the Series 2013 Bonds; or

(j) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the authentication, delivery, offering or sale of obligations of the general character of the Series 2013 Bonds, or the authentication, delivery, offering or sale of the Series 2013 Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of, or that obligations of the general character of the Series 2013 Bonds, or the Series 2013 Bonds, are not exempt from registration under, any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, or that the Indenture needs to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect; or

(k) the commencement of any action, suit or proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or, to the best knowledge of the Agency after due investigation, threatened: (i) in any way questioning the corporate existence of the Agency or the titles of the officers of the Agency to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the authentication or delivery of any of the Series 2013 Bonds, or in any way contesting or affecting the validity of the Series 2013 Bonds, the Agency Documents, the Water Supply Agreement or the consummation of the transactions contemplated thereby or contesting the powers of the Agency to enter into the Agency Documents or to impose the Surcharge; (iii) which, except as described in the Official Statement, may result in any material adverse change to the financial condition of the Agency or to its ability to pay debt service on the Series 2013 Bonds when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, which, in the reasonable judgment of the Representative, materially adversely affects the market price of the Series 2013 Bonds.

7. Between the Closing and the date 25 days after the End of the Underwriting Period: (a) the Agency will not adopt any amendment of or supplement to the Official Statement to which the Representative shall object in writing or which shall be disapproved by counsel for the Underwriters; and (b) if any event relating to or affecting the Agency shall occur as a result of which it is necessary, in the opinion of counsel for the Underwriters, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of the circumstances existing at the time it is delivered to an initial purchaser of the Series 2013 Bonds, the Agency will forthwith prepare and furnish to the Underwriters a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to counsel for the Underwriters) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to an initial purchaser of the Series 2013 Bonds, not misleading. For the purposes of this

section the Agency will furnish such information with respect to itself as the Underwriters may from time to time request.

8. Whether or not the transactions contemplated by this Contract of Purchase are consummated, all expenses and costs of the Agency incident to the performance of its obligations in connection with the authorization, execution and sale of the Series 2013 Bonds to the Underwriters, including, without limitation, the cost of printing or reproducing the Series 2013 Bonds, the Agency Documents, the Preliminary Official Statement and the Official Statement and all ancillary papers, in reasonable quantities, credit rating agency fees, the costs of obtaining CUSIP numbers for the Series 2013 Bonds, the fees of the Trustee, the fees and costs of Bond Counsel, Disclosure Counsel and the Financial Advisor, and related services, shall be paid from the proceeds of the Series 2013 Bonds, and to the extent or in the event not so paid shall be paid by the Agency. Additionally, unless the Agency and the Underwriters otherwise agree, the Agency shall pay for all incidental expenses (including, but not limited to, transportation, lodging and meals of Agency personnel and advisors) incurred by or on behalf of the Agency in connection with the transaction contemplated by this Contract of Purchase.

The Underwriters shall pay (included in the expense component of the spread) the costs of qualifying the Series 2013 Bonds for sale in various states chosen by the Underwriters, all advertising expenses in connection with the public offering of the Series 2013 Bonds, and all other expenses incurred by it in connection with the public offering and distribution of the Series 2013 Bonds, excluding the fees and disbursements of their counsel, which shall be a cost of issuance of the Agency. To the extent not otherwise reimbursed in full by the Agency pursuant to this Section 8, the Agency acknowledges that a portion of the Underwriters' discount is intended to reimburse the Underwriters for incidental expenses (including, but not limited to, transportation, lodging and meals of Agency and Underwriter personnel) incurred by the Underwriters (on their own behalf and/or on behalf of Underwriter personnel and Agency personnel and advisors, as applicable) in connection with the execution of the transaction contemplated by this Contract of Purchase.

9. Any notice or other communication to be given to the Underwriters may be given by delivering the same to Goldman, Sachs & Co., 555 California Street, 45th Floor, San Francisco, California 94104-1502, Attention: Ian Parker, Managing Director. Any notice or communication to be given the Agency under this Contract of Purchase may be given by delivering the same to Bay Area Water Supply and Conservation Agency, 155 Bovet Road, Suite 650, San Mateo, California 94402, Attention: Chief Executive Officer and General Manager. The approval of the Underwriters when required hereunder or the determination of satisfaction as to any document referred to herein shall be in writing signed by the Representative and delivered to the Agency.

10. This Contract of Purchase is made solely for the benefit of the Agency and the Underwriters (including the successors or assigns thereof) and no other person shall acquire or have any right hereunder or by virtue hereof. All representations, warranties and agreements of the Agency in this Contract of Purchase shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriters and shall survive the issuance of and payment for the Series 2013 Bonds. Neither party may assign this Contract of Purchase without the written consent of the other party.

11. This Contract of Purchase may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

12. This Contract of Purchase constitutes the entire agreement among the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Contract of Purchase shall only be amended, supplemented or modified in a writing signed by both of the parties hereto.

13. This Contract of Purchase shall be governed by the laws of the State of California without reference to conflict of law principles.

GOLDMAN, SACHS & CO., as  
Representative

By: \_\_\_\_\_  
(Goldman, Sachs & Co.)

Accepted and Agreed to:

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By: \_\_\_\_\_  
Its: Chief Executive Officer and General Manager

## EXHIBIT A

### Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A

<u>October 1</u>	<u>Amount</u>	<u>Coupon</u>	<u>Yield</u>	<u>Price</u>
\$		%	%	%

### Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable)

<u>October 1</u>	<u>Amount</u>	<u>Coupon</u>	<u>Yield</u>	<u>Price</u>
\$		%	%	%

## **EXHIBIT B**

### **Issue Price Certificate**

[TO COME]