

Board Policy Committee Meeting – October 10, 2012

ATTACHMENTS TO AGENDA ITEM #5A:

Potential Bond Issuance to Prepay Capital Debt Owed to SFPUC

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Board Policy Committee Meeting – October 10, 2012

AGENDA ITEM #5A:

ATTACHMENT 1

Draft Revenue Bond Indenture

REVENUE BOND INDENTURE

by and between

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

_____,
as Trustee

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)

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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 _____, 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 Executive Director or any other person authorized by the Chair, Vice Chair or Executive Director 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 and are consistent with the Agency’s investment policies, 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 _____, dated _____, 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.

Surplus Fund

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

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 _____, 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 Executive Director of the Agency and attested by the facsimile or manual signature of the

Executive Director or Secretary 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 or attested any of the Bonds shall cease to be such officer or officers of the Agency before the Bonds so signed or attested 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 and attested the same had continued to be such officers of the Agency, and also any Bond may be signed and attested 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, 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.

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 held uninvested and the Trustee shall thereupon request investment instructions from the Agency for such moneys.

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 Surcharges for each Bond Year 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 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 Net Revenues, Interest Subsidy Payments 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) _____, 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.

If, by reason of the judgment of any court, the Trustee or any successor Trustee is rendered unable to perform its duties hereunder, and if no successor Trustee be then appointed, all such duties and all of the rights and powers of the Trustee hereunder shall be assumed by and vest in the Treasurer of the Agency in trust for the benefit of the Bondowners.

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, subject to

the provisions of Section 11.10 hereof. 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 302, San Mateo, CA 94402, Attention: Executive Director (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: _____
Executive Director

_____,
as Trustee

By: _____
Authorized Officer

Board Policy Committee Meeting – October 10, 2012

AGENDA ITEM #5A:

ATTACHMENT 2

Draft First Supplemental Revenue Bond Indenture

FIRST SUPPLEMENTAL
REVENUE BOND INDENTURE

by and between the
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

_____,
as Trustee

Dated as of January 1, 2013

(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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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)

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 _____, 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>
-------------	-----------------------------	--------------------------

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.

On and after _____ 1, ____ the Series 2013B Bonds maturing on or after October 1, ____ will be subject to redemption in accordance with Section 12.03(C) and will no longer be subject to redemption pursuant to this Section 12.03(B).

(C) Par Call Optional Redemption — Series 2013B Bonds. The Series 2013B 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 2013B Bonds or portions thereof to be redeemed plus accrued interest to the date of redemption. Upon the optional redemption of any Series 2013B Bonds in part, the Agency shall specify the maturities of the Series 2013B Bonds to be redeemed and the sinking account payments to be modified.

(D) 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
_____	_____

*

* 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
_____	_____

*

* Maturity

(E) 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:

<u>Date</u>	<u>Amount</u>
-------------	---------------

*

* 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:

<u>Date</u>	<u>Amount</u>
-------------	---------------

*

* Maturity

(F) 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. Whenever provision is made in this First Supplement for the redemption of less than all of the Series 2013 Bonds of any subseries and any maturity (and interest rate), the Trustee shall select the Series 2013 Bonds to be redeemed, from all Series 2013 Bonds of the respective subseries and 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 2013 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) or (C). 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: _____
Executive Director

_____,
as Trustee

By: _____
Authorized Officer

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

_____, 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 Chair of the Agency and attested by the Executive Director of the Agency.

BAY AREA WATER SUPPLY AND
CONSERVATION AGENCY

By: _____
Chair

Attested:

By: _____
Executive Director

[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:

_____,
as Trustee

By: _____
Authorized Officer

Board Policy Committee Meeting – October 10, 2012

AGENDA ITEM #5A:

ATTACHMENT 3

Draft Continuing Disclosure Certificate

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 _____, 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:

[TO COME]

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 the City Attorney of the City and County of San Francisco (the “City Attorney”) or 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 the Agency Attorney or 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 _____