



## **SOUTHEAST ALASKA POWER AGENCY**

### **Special Board Meeting AGENDA**

SEAPA Offices | Ketchikan, Alaska

**Monday, March 18, 2019 | 3:00 p.m. AKDT**

**For Telephonic Participation in Regular Session:  
Dial 1-800-315-6338 (Access Code: 73272#)**

1. Call to Order
  - A. Roll call
2. Approval of the Agenda
3. New Business:
  - A. Consideration and Review of Refunding Bond Resolution No. 2019-073
4. Old Business
  - A. Reservoir Management Discussions
5. Adjourn

**RESOLUTION NO. 2019-073**  
**of**  
**THE SOUTHEAST ALASKA POWER AGENCY**

**Authorizing the issuance of electric revenue refunding bonds of the Agency to refund for savings the Agency’s outstanding Electric Revenue Refunding Bonds, Series 2009; approving an amended and restated indenture, an escrow deposit agreement, and other documents to be executed, delivered, or distributed in connection therewith, and authorizing the sale of the refunding bonds to the Alaska Municipal Bond Bank on the terms and conditions provided in this resolution.**

**RECITALS**

**WHEREAS**, The Southeast Alaska Power Agency (the “Agency”) is authorized by AS 42.45.310(c)(4) to issue and sell revenue bonds in accordance with the provisions contained in AS 42.45.310, and to secure the payment of such bonds as provided in AS 42.45.310; and

**WHEREAS**, as authorized by Resolution No. 2008-22, adopted by the Agency’s Board of Directors (the “Board”), on December 22, 2008, and pursuant to an Indenture of Trust dated as of February 1, 2009 (the “Original Indenture”), between the Agency and Wells Fargo Bank, National Association, as trustee (the “Trustee”), the Agency issued its Electric Revenue Refunding Bonds, Series 2009, in the initial aggregate principal amount of \$16,495,000 (the “2009 Bonds”); and

**WHEREAS**, as authorized by Resolution No. 2015-058, adopted by the Board on March 26, 2015, and pursuant to a First Supplemental Indenture of Trust, dated as of May 1, 2015 (the “2015 Supplemental Indenture”), between the Agency and the Trustee, the Agency issued its Electric Revenue Improvement and Refunding Bonds, Series 2015, in the initial aggregate principal amount of \$10,295,000 (the “2015 Bonds”), a portion of which refunded the 2009 Bonds maturing in 2028; and

**WHEREAS**, the 2009 Bonds that remain outstanding include the following:

Maturity Year (June 1)	Amount	Interest Rate
2021	\$ 2,605,000	4.50%
2024	2,985,000	5.125

; and

**WHEREAS**, the Original Indenture provides that the Agency may call these outstanding 2009 Bonds for redemption, in whole or in part, on June 1, 2019, or any date thereafter, at a redemption price equal to 100% of the principal amount (or portions thereof) to be redeemed, plus accrued interest to the date of redemption; and

**WHEREAS**, pursuant to Section 2.14 of the Original Indenture, the Agency reserves the right to issue Additional Bonds (as defined in the Original Indenture) to refund outstanding 2009 Bonds upon the satisfaction of certain conditions found therein; and

**WHEREAS**, the Board finds that those conditions can be met and that it is in the best interest of the Agency, its members, and their ratepayers to achieve debt service savings by issuing a series of Additional Bonds (as further described herein, the “2019 Bond”) in an amount sufficient, together with other money available therefor, to refund the outstanding 2009 Bonds (the “Refunded Bonds”) and to pay the costs of bond issuance, and to sell the 2019 Bond to the Alaska Municipal Bond Bank (the “Bond Bank”) pursuant to a loan agreement to be entered into by the Agency and the Bond Bank; and

**WHEREAS**, the Bond Bank proposes to issue a series of its general obligation bonds (the “Bond Bank Bonds”), proceeds of which would provide funds to be loaned to the Agency pursuant to a loan agreement in substantially the form provided to the Agency (the “Loan Agreement”); and

**WHEREAS**, the 2015 Supplemental Indenture provided for certain amendments to the Original Indenture that could become effective, without the consent of the owners of the 2015 Bonds, when no 2009 Bonds remain Outstanding, and the Agency wishes to authorize all of those springing amendments, to become effective upon the issuance of the 2019 Bond and the defeasance of the Refunded Bonds; and

**WHEREAS**, the Board has received, and the Agency has on file forms of the following documents (collectively, the “Bond Documents”):

- a. Amended and Restated Indenture of Trust; and
- b. Escrow Deposit Agreement with the Trustee providing for the defeasance and redemption of the Refunded Bonds (“Escrow Agreement”); and
- c. The Loan Agreement; and

**WHEREAS**, the Board desires to approve, authorize and take or direct to be taken those actions that are necessary, appropriate or useful to complete the transactions set forth in or contemplated by the Bond Documents; and

**WHEREAS**, the Board has determined that it is in the best interests of the Agency to secure the 2019 Bond as provided in the Amended and Restated Indenture and to sell the 2019 Bond to the Bond Bank on the terms and conditions set forth in this resolution and in the Loan Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SOUTHEAST ALASKA POWER AGENCY, as follows:**

**Section 1. Findings.** It is hereby determined that:

(a) The defeasance and refunding of the Refunded Bonds will result in debt service savings to the Agency’s members; and

(b) Issuance of the 2019 Bond to accomplish the defeasance and refunding of the Refunded Bonds is authorized by the Act and permitted under the Original Indenture, as amended by the 2015 Supplemental Indenture; and

(c) The issuance of the 2019 Bond for the refunding purpose described herein and its sale to the Bond Bank, on the terms and conditions set forth in this resolution and in the Bond Documents, are in the best interests of the Agency and its members; and

(d) Authorizing the springing amendments provided for in the 2015 Supplemental Indenture is in the best interests of the Agency and its members, including but not limited to reconveyance of the deed of trust that secured the 2009 Bonds and the 2015 Bonds.

**Section 2. 2019 Bond Authorized to be Issued and Sold to the Bond Bank.** To refund the Refunded Bonds and pay the costs of issuance and refunding, the Agency authorizes the issuance and sale to the Bond Bank of the 2019 Bond, in a principal amount not to exceed \$5,590,000. The Chairman and Chief Executive Officer or the designee of each (each, an “Authorized Representative”) are authorized to complete the sale of the 2019 Bond to the Bond Bank on terms and conditions consistent with this resolution and the Original Indenture. Following the sale of the Bond Bank Bonds, the terms of the 2019 Bond, including date, principal amount, principal installment payment schedule, interest rates, and prepayment provisions will be set forth in the final Loan Agreement and in the Amended and Restated Indenture.

An Authorized Representative is authorized and directed to cause the 2019 Bond to be executed and delivered as authorized by this resolution. The 2019 Bond will be issued as a fully registered bond without coupons with such rights of exchange and transfer and in the form specified in the Amended and Restated Indenture. Authorized Representatives are authorized and directed to execute the 2019 Bond, by facsimile or manual signatures, for and on behalf of the Agency as provided in the Amended and Restated Indenture. The 2019 Bond will contain a recital that it is issued pursuant to the Act, and that recital will be conclusive evidence of the validity of the 2019 Bond and of the regularity of its issuance.

**Section 3. Limited Obligations.** The obligations of the Agency with respect to the 2019 Bond are payable solely from the Revenues (as defined in the Amended and Restated Indenture) received by the Agency under the Long-Term Power Sales Agreement between the Agency and its members and other amounts specifically pledged therefor under the Amended and Restated Indenture and will not constitute a general obligation or a pledge of the full faith and credit of the Agency. The obligation of the Agency to pay the 2019 Bond will not constitute a debt of the State of Alaska or any other political subdivision of the State of Alaska or of the members of the Agency. Neither the full faith and credit nor the taxing power of the State of Alaska or of any instrumentality or political subdivision thereof or any member of the Agency is pledged to the payment of the 2019 Bond.

**Section 4. The Refunded Bonds.** The Agency hereby authorizes the defeasance and refunding of the Refunded Bonds, as provided in the Amended and Restated Indenture and Escrow Agreement. An Authorized Representative is individually authorized and directed to execute and deliver the Escrow Agreement on behalf of the Agency. The Trustee is authorized and directed to carry out the defeasance and refunding of the Refunded Bonds as provided in the Escrow Agreement by, among other things, (a) the deposit of a portion of the proceeds of the 2019 Bond with the Trustee, together with any other money deposited with the Trustee for such purposes, sufficient to pay the principal of the Refunded Bonds and interest thereon on the redemption date specified in the Escrow Agreement; and (b) the irrevocable call for redemption on that redemption date of the Refunded Bonds at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date.

**Section 5. Approval of Bond Documents.** The Bond Documents are hereby approved in substantially the form presented at the March 18, 2019 Special Meeting of the Agency, and an Authorized Representative is individually authorized and directed to execute and deliver the Bond Documents on behalf of the Agency, with such changes therein, consistent with this resolution, as may

be approved by the Authorized Representative executing the Bond Documents, and the execution of the Bond Documents by an Authorized Representative constitutes conclusive evidence of the Agency's approval of those changes.

**Section 6. Appointment of Trustee.** Wells Fargo Bank, National Association, is designated as trustee and paying agent for the 2019 Bond pursuant to the Amended and Restated Indenture and as refunding trustee pursuant to the Escrow Agreement. The Agency authorizes and directs the Trustee on behalf of the Agency to authenticate the 2019 Bond for delivery to the Bond Bank.

**Section 7. No Personal Liability.** No stipulation, obligation or agreement herein contained or contained in the Bond Documents shall be deemed to be a stipulation, obligation or agreement of any officer, director, agent or employee of the Agency in his or her individual capacity, and no such officer, director, agent or employee shall be personally liable on the 2019 Bond or be subject to personal liability or accountability by reason of the issuance thereof.

**Section 8. General Authority.** The Authorized Representatives and other appropriate officers and agents of the Agency are individually authorized and directed to do all such acts and things and to execute and deliver all such documents as may be necessary, desirable, appropriate, or expedient and in the best interest of the Agency to carry out and comply with the provisions of this resolution and the Bond Documents as executed and are further authorized and directed to take any and all further actions and execute and deliver any and all other documents, letters of representation, and certificates, including any documents or actions as may be necessary or desirable in connection with the issuance of the 2019 Bond, the defeasance of the Refunded Bonds, and other matters set forth contemplated by this resolution and the Bond Documents.

**Section 9. Actions Ratified and Confirmed.** All acts of the officers of the Agency that are in conformity with the purposes and intents of this resolution and in the furtherance of the issuance of the 2019 Bond, the execution, delivery and performance of the Bond Documents, and the irrevocable call for redemption and defeasance of the Refunded Bonds, are in all respects ratified and confirmed.

**Section 10. Severability of invalid Provisions.** If any one or more of the agreements or provisions herein contained are held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy or are for any reason whatsoever held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof or of the 2019 Bond or the Loan Agreement.

**Section 11. Repealing Clause.** All resolutions or parts thereof of the Agency in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**Section 12. Effective Date.** This resolution is effective immediately after its adoption.

Approved by the Board by a vote of its members, appointed by the City of Ketchikan d/b/a Ketchikan Public Utilities, the City and Borough of Wrangell d/b/a City of Wrangell Municipal Light and Power, and the Petersburg Borough d/b/a Petersburg Municipal Power and Light.

DATED and EFFECTIVE this 18th day of March 2019.

THE SOUTHEAST ALASKA POWER AGENCY

By \_\_\_\_\_  
Bob Sivertsen, Chairman

ATTEST:

\_\_\_\_\_  
Karl Amylon, Secretary

## CERTIFICATE

I, the undersigned Chief Executive Officer of the Southeast Alaska Power Agency (the “Agency”), hereby certify that:

1. I am the duly appointed, qualified and acting Chief Executive Officer of the Agency and am authorized to execute this certificate.
2. Attached hereto is a true and correct copy of Resolution No. 2019-073 of the Agency, adopted by the Agency’s Board of Directors at a Special Meeting of the Agency on March 18, 2019.
3. The Board of Directors meeting of March 18, 2019, was duly convened and held in all respects in accordance with law to the extent required by law, due and proper notice of such meeting was given; a quorum was present throughout such meeting and a legally sufficient number of members of the Board of Directors of the Agency voted in the proper manner for adoption of this resolution; and all of the requirements and proceedings incident to the proper passage of the resolution have been duly fulfilled, carried out, and otherwise observed.
4. Resolution No. 2019-073 has not been amended or repealed and is in full force and effect.

Dated as of March 18, 2019.

THE SOUTHEAST ALASKA POWER AGENCY

\_\_\_\_\_  
Trey Acteson, Chief Executive Officer

**AMENDED AND RESTATED INDENTURE OF TRUST**

by and between

**THE SOUTHEAST ALASKA POWER AGENCY**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

*as Trustee*

related to

**The Southeast Alaska Power Agency**

**Electric Revenue Improvement and Refunding Bonds, Series 2015**

**Electric Revenue Refunding Bonds, Series 2019**

Dated May \_\_, 2019

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**AMENDED AND RESTATED INDENTURE OF TRUST**

THIS AMENDED AND RESTATED INDENTURE OF TRUST, made and dated this May \_\_, 2019 (the “Indenture”), by and between The Southeast Alaska Power Agency, a joint action agency duly authorized and existing under the laws of the State of Alaska (the “Agency”), and Wells Fargo Bank, National Association, a national banking association duly organized under the laws of the United States and being duly qualified to accept and administer the trusts created hereby, as trustee (the “Trustee”), amends and restates an Indenture of Trust, dated as of February 1, 2009 (the “Original Indenture”), by and between the Agency and the Trustee, as amended and supplemented by a First Supplemental Indenture of Trust, dated as of May 1, 2015 (the “2015 Supplemental Indenture”), by and between the Agency and the Trustee; and

WITNESSETH:

WHEREAS, the Agency was formed under the authority of AS 42.45.300-.320, and its current members include the City of Ketchikan d/b/a Ketchikan Public Utilities, the City and Borough of Wrangell d/b/a City of Wrangell Light Department, and the Petersburg Borough, as successor in interest to the City of Petersburg, d/b/a Petersburg Municipal Power & Light (collectively, the “Purchasing Utilities”); and

WHEREAS, the Agency is authorized by AS 42.45.310(c)(4), to issue and sell revenue bonds in accordance with the provisions of AS 42.45.310, and to secure the payment of such bonds as provided in AS 42.45.310; and

WHEREAS, as authorized by Resolution No. 2008-22, adopted by the Agency’s Board of Directors (the “Board”) on December 22, 2008, and pursuant to the Original Indenture, the Agency issued its Electric Revenue Refunding Bonds, Series 2009, in the initial aggregate principal amount of \$16,495,000 (the “2009 Bonds”); and

WHEREAS, as authorized by Resolution No. 2015-058, adopted by the Board on March 26, 2015, and pursuant to the 2015 Supplemental Indenture, the Agency issued its Electric Revenue Improvement and Refunding Bonds, Series 2015, in the initial aggregate principal amount of \$10,295,000 (the “2015 Bonds”), a portion of which refunded the 2009 Bonds maturing in 2028; and

WHEREAS, the 2009 Bonds that remain outstanding include the following:

Maturity Year (June 1)	Amount	Interest Rate
2021	\$ 2,605,000	4.50%
2024	2,985,000	5.125

; and

WHEREAS, the Original Indenture provides that the Agency may call these outstanding 2009 Bonds for redemption, in whole or in part, on June 1, 2019, or any date thereafter, at a redemption price equal to 100% of the principal amount (or portions thereof) to be redeemed, plus accrued interest to the date of redemption; and

WHEREAS, pursuant to Section 2.14 of the Original Indenture, the Agency may issue Additional Bonds to refund Outstanding Bonds upon the satisfaction of certain conditions found therein; and

WHEREAS, pursuant to Section 10.1 of the Original Indenture, the Agency and the Trustee, without the consent of, or notice to, any of the Bondholders, may enter into a supplemental indenture with the Trustee (i) to provide for the issuance of Additional Bonds for such a refunding purpose, (ii) to provide for the issuance of a certificated Bond, and (iii) in the course of amending and restating the Original Indenture, as amended by the 2015 Supplemental Indenture, to cure ambiguities or formal defects or omissions and to make changes that do not materially adversely affect the rights of any Bondholders and do not involve a change described in Section 10.2 of the Original Indenture requiring consents of specific Bondholders; and

WHEREAS, by Resolution No. 2019-\_\_\_, adopted on March \_\_, 2019 (the “2019 Bond Resolution”), the Board has authorized the Agency (i) to issue to the Alaska Municipal Bond Bank (the “Bond Bank”) a revenue bond to evidence a loan to the Agency from the Bond Bank in an amount sufficient, together with other funds of the Agency, to refund the outstanding 2009 Bonds (the “Refunded Bonds”), and (ii) to enter into a supplemental indenture with the Trustee pursuant to which that revenue bond would be issued as an Additional Bond (as further described herein, the “2019 Bond”), on a parity of lien with the 2015 Bonds, as permitted under the Original Indenture, as amended by the 2015 Supplemental Indenture, and as provided herein; and

WHEREAS, the 2015 Supplemental Indenture provided for certain amendments to the Original Indenture that could become effective, without the consent of the owners of the 2015 Bonds, when no 2009 Bonds remain Outstanding; and

WHEREAS, as authorized by the 2019 Bond Resolution, all of the springing amendments provided for in the 2015 Supplemental Indenture are incorporated in this Indenture, as described in Section 12.1, and will become effective upon the issuance of the 2019 Bond and the defeasance of the Refunded Bonds; and

WHEREAS, all things necessary to make the 2019 Bond, when authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal limited obligation of the Agency according to the import thereof, have been done and performed;

NOW, THEREFORE, this Indenture of Trust amends and restates the Original Indenture and the 2015 Supplemental Indenture, and

IN ADDITION, WITNESSETH that to secure the payment of principal of, premium, if any, and interest on the 2019 Bond according to its true intent and meaning, and all other amounts due from time to time under this Indenture, including amounts due to the Trustee, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained in the Bonds, this Indenture, and the Bond Documents, and to declare the terms and conditions upon and subject to which all Bonds are and intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the 2019 Bond by the purchaser thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency has executed and delivered this Indenture and absolutely and irrevocably hereby pledges and assigns to the Trustee and to its successors in trust, as trustee for all Bondholders, on the basis set

forth herein, and its and their assigns, all right, title and interest of the Agency in and to the Trust Estate as defined in Article I;

TO HAVE AND TO HOLD unto the Trustee and its successors in trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) for the equal and proportionate benefit, security and protection of all Bonds, subject to the provisions of Section 4.11;

(b) for the enforcement of the payment of the principal of, premium, if any, and interest on the Bonds, and all other amounts due from time to time under this Indenture, including those due to the Trustee, when payable, according to the true intent and meaning thereof and of this Indenture; and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture and the other Bond Documents;

in each case, without preference priority or distinction, as to lien or otherwise except as provided in Section 4.11, of any one Bond over any other by reasons of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds have the same right, lien and privilege under this Indenture and are secured equally and proportionately by this Indenture, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of the Bonds, as though up to that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided however that, upon satisfaction of and in accordance with the provisions of Article XI, the rights assigned hereby shall cease, determine and be void to the extent described therein; otherwise, such rights shall be and remain in full force and effect;

PROVIDED, FURTHER, that the pledge of the right, title and interest of the Agency in and to the Trust Estate is given subject to the right of the Agency to issue or make Additional Bonds secured by the Trust Estate on a parity basis with the Bonds; and

IT IS DECLARED that all Bonds issued under and secured by this Indenture are to be issued, authenticated and delivered, and that all Revenues assigned or pledged hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture; and the Agency has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Bondholders, as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** Unless the context requires otherwise, the terms defined in this section shall, for all purposes of this Indenture and of any Indenture supplemental hereto and of any

certificate, opinion or other document mentioned herein, have the meanings specified herein, to be equally applicable to both the singular and plural forms of any of the terms defined:

“Acceleration Declaration” has the meaning given that term in Section 8.3.

“Accountant” or “accountant” means an independent individual or firm that is nationally-recognized as having expertise with respect to electric power projects comparable to the Projects at the time retained to carry out the duties and responsibilities required of certified public accountants licensed to practice in the State from time to time selected and approved by the Agency.

“Act” means, Alaska Statutes 42.45.300 through 42.45.320, as amended.

“Additional Bonds” means, collectively, the additional parity bonds, notes or other obligations of the Agency authorized to be issued or made pursuant to Section 2.14.

“Agency” means The Southeast Alaska Power Agency, a joint action agency formed pursuant to AS 42.45.300-.320 (formerly known as The Four Dam Pool Power Agency), and its legal successors and assigns and any surviving, resulting or transferee entity, which functions as a political subdivision in the acquisition and ownership of the Projects under the agreement required by AS 42.45.310.

“Aggregate Principal Amount” means the total principal amount of Bonds Outstanding from time to time.

“Annual Debt Service” means, with respect to any series of Bonds for any particular period, an amount equal to the sum of:

(a) the interest payable during such period on all Outstanding Bonds of that series, plus

(b) the principal payable during such period on all Outstanding Bonds of that series, whether by maturity or mandatory sinking fund redemption;

provided however, that with respect to any Variable Rate Bonds bearing interest at rates that cannot be ascertained for such period, it shall be assumed that such series of Variable Rate Bonds will bear interest at a rate per annum equal to the average of the Securities Industry and Financial Markets Association Municipal Swap Index (or, if such index is not available, its successor or a comparable high-grade market index comprised of tax-exempt variable rate demand obligations) for the ten years prior to the date of calculation plus 1.50%.

“Approving Opinion” means an opinion or opinions of Bond Counsel that an action being taken (i) is authorized by applicable law and this Indenture, and (ii) will not adversely affect the tax-exempt status of any Tax-Exempt Bonds.

“Attesting Officer” means the Secretary or Treasurer of the Board.

“Authorized Denomination” means, with respect to the 2015 Bonds, \$5,000 or any integral multiple thereof, and with respect to any other Bonds, the amount specified in the Supplemental Indenture authorizing the issue of such Bonds.

“Authorized Representative” means, (a) with respect to the Trustee, any trust officer thereof; and (b) with respect to the Agency, the Chair of its Board, its Chief Executive Officer, or any other person(s) designated by resolution of its Board as an authorized representative of the Agency.

“Bankruptcy Law” means Title 11 of the United States Code, as it is amended from time to time and any successor to or replacement of such Title and other applicable federal or state bankruptcy, insolvency or other similar law.

“Base Period” means any twelve consecutive months out of the most recent 24 months preceding the delivery of a series of Additional Bonds proposed to be issued.

“Board” means the board of directors in which the powers of the Agency are vested.

“Bond Bank” means the Alaska Municipal Bond Bank.

“Bond Counsel” means Stradling Yocca Carlson & Rauth, a Professional Corporation, or another attorney or firm of attorneys selected by the Agency and experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds.

“Bond Documents” means, collectively, this Indenture, the Bonds, the UCC Financing Statements and the other documents, instruments and agreements entered into by Agency and Trustee in connection with the Bonds.

“Bond Fund” means the Bond Fund created and established in Section 4.3.

“Bondholder,” “holder,” or “owner” means the Person who owns a Bond, provided that, pursuant to Section 2.9, the Person in whose name a Bond is registered in the Bond Register shall be regarded for all purposes as such owner.

“Bond Register” means the registration records of the Agency kept by the Trustee to evidence the registration and transfer of Bonds.

“Bond Reserve Fund” means the Bond Reserve Fund created and established in Section 4.4.

“Bond Reserve Requirement” means, with respect to the Bonds, an amount equal to the Tax Maximum for the Bonds calculated as of the date of issuance of each series of Bonds.

“Bonds” means the 2015 Bonds, the 2019 Bond, and any Additional Bonds issued pursuant to this Indenture.

“Book-Entry Bonds” means Bonds registered in the name of the Securities Depository as the registered owner thereof pursuant to the terms and provisions of Section 2.12.

“Business Day” means a day that is not (i) a Saturday, Sunday or legal holiday on which banking institutions in the State, the State of New York, or the state in which the Principal Office of the Trustee is located are authorized by law to close, (ii) a day on which the New York Stock Exchange is closed.

“Closing Date” means May \_\_, 2019, the date of the issuance and delivery of the 2019 Bond.

“Code” when used with reference to this Indenture means the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations, including temporary and proposed regulations, relating to such sections that are applicable to the Bonds or the use of the proceeds thereof.

“Conditional Redemption” means a redemption where the Agency has stated in the redemption notice to the Trustee that (a) the redemption is conditioned upon deposit of funds or (b) the Agency has retained the right to rescind the redemption, as further described in Section 5.5.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement by the Agency relating to the 2015 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Dated Date” means the date of original issuance and delivery of each series of Bonds.

“Deed of Trust” means the First Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of May 1, 2015, which the Trustee is authorized to reconvey to the Agency and release from the Trust Estate, as provided for by Section 6.1(a) of the 2015 Supplemental Indenture and authorized by Section 12.1(a).

“Default Declaration” has the meaning given that term in Section 9.1(g).

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

“Escrow Agent” means Wells Fargo Bank, National Association, in its capacity as Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means the Escrow Deposit Agreement, dated the Closing Date, between the Agency and the Escrow Agent, pursuant to which certain proceeds of the 2019 Bond and other funds of the Agency will be deposited and used to defease and redeem the Refunded Bonds.

“Event of Bankruptcy” means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceedings) by or against the Agency, as debtor, under Bankruptcy Law.

“Event of Default” means with respect to this Indenture, an Event of Default specified in Section 8.1.

“Facilities” means, collectively, all tangible real and personal property owned by the Agency whether now existing or hereafter constructed, installed or acquired.

“Firm Wholesale Power Rate” has the meaning set forth in the Power Sales Agreement.

“Fiscal Year” means the fiscal year of the Agency, initially the 12-month period ending on June 30 of each year.

“Fund” means (a) any of the funds established pursuant to this Indenture and held by the Trustee (other than the Rebate Fund) and all accounts created within such funds, and (b) any other Fund designated as such with respect to a series of Bonds.

“Government Obligations” means noncallable direct obligations of, or obligations the timely payment of the principal of and interest on which is fully guaranteed by, the United States of America.

“Immediate Notice” means notice by telephone, electronic mail, telex or telecopy to such address as the addressee shall have directed in writing, promptly followed by written notice by first class mail, postage prepaid; provided, however, that if any Person required to give an Immediate Notice shall not have been provided with the necessary information as to the telephone, electronic mail, telex or telecopy number of an addressee, Immediate Notice shall mean written notice by first class mail, postage prepaid.

“Indenture” means this Amended and Restated Indenture of Trust, between the Agency and the Trustee, as it may from time to time be amended or supplemented.

“Interest Account” means the Interest Account of the Bond Fund created and established in Section 4.3.

“Interest Payment Date” means (a) for the 2015 Bonds, each June 1 and December 1, commencing on December 1, 2015, (b) for the 2019 Bond, each \_\_\_\_ 1 and \_\_\_\_ 1, commencing on June 1, 2019, (c) for any Additional Bonds, the days designated in the Supplemental Indenture authorizing such Additional Bonds, (d) for Bonds subject to redemption in whole or in part on any date, the date fixed for such redemption, and (e) for all Bonds any date determined pursuant to Section 8.3.

“Issuance Costs” means the fees and expenses of issuance and sale of the Bonds permitted by the Act, including, but not limited to, the following:

(a) Expenses incurred by the Agency in connection with the issuance and sale of the Bonds and in connection with the preparation and execution of the Indenture and any amendments or supplements thereto, the fees and expenses of the Trustee in connection with the issuance of the Bonds, underwriting discount, credit enhancement fees, and legal, underwriting, consulting and accounting fees and expenses and printing, photocopying and engraving costs.

(b) Any sums required to reimburse the Agency for advances made by it for any of the above items.

“Loan Agreement” means the Loan Agreement dated as of April \_\_, 2019, between the Agency and the Bond Bank providing for the sale of the 2019 Bond to the Bond Bank.

“Maximum Annual Debt Service” means the greatest Annual Debt Service calculated on all Bonds Outstanding on the date of calculation.

“Moody’s” means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, for the purpose of the definition of Permitted Investments only, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Agency by notice to the Trustee.

“Net Proceeds” means the proceeds from insurance with respect to the Projects, less any costs reasonably expended by the Agency to receive such proceeds.

“Net Revenues” means, for any period, Revenues during such period, less Operation and Maintenance Expenses payable during such period. In calculating Net Revenues, the Agency shall not take into account any non-cash gains or losses with respect to any real or personal property, investment or agreement that it may be required to recognize under generally accepted accounting principles, such as unrealized mark-to-market gains and losses.

“Officer’s Certificate” means a certificate signed by the chair of the Board or the president or chief executive officer, or the chief financial officer, who is authorized to bind the Agency.

“Operation and Maintenance Expenses” means the expenses of owning, operating and maintaining the Projects in good repair, working order and condition as “expenses” are interpreted under generally accepted accounting principles applicable to utilities like the Agency and also include taxes, but exclude interest, amortization and depreciation expenses and costs of capital additions or capital replacements.

“Outstanding,” “Bonds outstanding” or “outstanding Bonds” when used with reference to Bonds means, as of any given date, all Bonds that have been duly authenticated and delivered under this Indenture, except:

- (a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;
- (b) Bonds for the payment or redemption of which cash or Government Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) in accordance with Article XI;
- (c) Bonds no longer deemed to be outstanding as provided in Section 11.1;
- (d) Bonds in lieu of which other Bonds have been authenticated under Section 2.8 or Section 2.9; and
- (e) For the purpose of all consents, approvals, waivers and notices required to be obtained or given hereunder, Bonds registered in the name of the Agency.

“Participant” means those broker-dealers, banks and other financial institutions reflected on the books of the Securities Depository.

“Permitted Investments” means, to the extent such are legal investments for the Agency under laws of the State and the Agency’s investment policy for money held hereunder and subject to Section 4.8(a):

- (a) Obligations of the United States or of an agency or instrumentality of the United States;
- (b) repurchase and reverse repurchase agreements secured by the Treasury of the United States or obligations of an agency or instrumentality of the United States;
- (c) certificates of deposit, banker’s acceptances, and other similar obligations of a bank domiciled in the United States that has on the date of purchase:

(1) outstanding debt rated Aa or AA or higher by at least one of the nationally recognized rating services, including dollar-denominated obligations issued by a United States branch of a foreign bank if the debt of the parent is rated A or higher; and

(2) a combined capital and surplus aggregating at least \$500,000,000;

(d) commercial paper and other short-term taxable instruments that maintain the highest rating by at least two nationally recognized rating services on the date of purchase;

(e) obligations of a corporation domiciled in the United States or obligations of a municipality if the obligations are rated on the date of purchase Aa or AA or higher by at least two nationally recognized rating services;

(f) certificates of deposit issued by a state or federally chartered financial institution that is a commercial or mutual bank, savings and loan association, or credit union, but only if and to the extent that the institution's accounts are insured through the appropriate federal insuring agency of the United States, unless the institution meets the requirements of (c) of this section;

(g) money market funds in which the securities of the fund consist of obligations listed above; and

(h) any other investment permitted under the Agency's investment policy, as amended from time to time in writing, that will not adversely affect the ratings of the Outstanding Bonds.

Provided that it is expressly understood that the definition of Permitted Investments shall be, and be deemed to be, expanded, or new definitions and related provisions may be added to this Indenture by a Supplemental Indenture, thus permitting investments with different characteristics from those permitted above that the Agency deems from time to time to be in the interest of the Agency to include as Permitted Investments if at the time of inclusion such inclusion will not, in and of itself, adversely affect the rating on the Outstanding Bonds.

"Person" or "person" means an individual, corporation, firm, association, partnership, limited liability company, trust or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"Power Sales Agreement" means the Long-Term Power Sales Agreement between the Purchasing Utilities and the Agency, effective February 24, 2009, as the same may be hereafter amended, supplemented or restated from time to time in accordance with its terms by agreement of the parties thereto.

"Principal Account" means the Principal Account of the Bond Fund created and established in Section 4.3.

"Principal Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, initially in the State of [Colorado] at the address specified in Section 12.3, or such additional offices as may be designated by the Trustee.

“Principal Payment Date” means (i) with respect to the 2015 Bonds, June 1 of each year until the 2015 Bonds are paid in full, whether at maturity or upon prior redemption, (ii) with respect to the 2019 Bond, \_\_\_\_\_ 1 of each year, commencing on \_\_\_\_\_ 1, 2020; and (iii) with respect to any Additional Bonds, the date specified in the Supplemental Indenture authorizing such Additional Bonds.

“Professional Utility Consultant” means the independent person(s) or firm(s) selected by the Agency and having a favorable reputation for skill and experience in such of the following as are relevant to the purposes for which they are retained: engineering and operations and the design of rates for hydroelectric systems of comparable size and character to the Projects.

“Projects” means the Swan Lake Hydroelectric Project and the Tyee Lake Hydroelectric Project, related auxiliary facilities and assets including, without limitation, all generation, transmission and substation facilities associated with each such project, either individually or collectively. “Projects” also includes the Swan-Tyee Intertie facilities and assets described in the Projects Asset List attached as Exhibit C hereto.

“Projects Assets” means all of the real and personal property, contracts, contract rights and other rights and interests that make up the Projects, whether now existing or hereafter created or acquired, including those described in the Projects Asset List attached as Exhibit C hereto.

“Prudent Utility Practice” means, at a particular time, those practices, methods, equipment and acts then engaged in or approved by a significant portion of the electric utility industry and commonly used in utility engineering and operations to design, construct, operate and maintain equipment similar to the Projects equipment consistent with good business practices, economy, reliability, safety and expedition, having due regard for applicable codes.

“Purchaser” means, with respect to the 2019 Bond, the Bond Bank, and with respect to any Additional Bonds, the initial purchaser of such Additional Bonds.

“Purchasing Utilities” means the City of Ketchikan d/b/a Ketchikan Public Utilities, the City and Borough of Wrangell d/b/a City of Wrangell Light Department, and the Petersburg Borough, as successor in interest to the City of Petersburg, d/b/a Petersburg Municipal Power & Light.

“R&R Fund” means the Renewal and Replacement Fund established in Section 4.6.

“R&R Fund Requirement” means, on the Closing Date, \$1,000,000, and thereafter, the amount, if any, designated by the Agency pursuant to Section 4.6(b).

“Rate Stabilization Fund” means the Rate Stabilization Fund authorized to be established in Section 4.7.

“Rating Agency” means each nationally recognized securities rating agency then maintaining a rating on the Bonds at the request of the Agency and currently, with respect to the 2015 Bonds, means S&P.

“Rebate Fund” means the Rebate Fund created in Section 4.5.

“Record Date” means with respect to the 2019 Bond, the date that is the fifteenth day of the month next preceding the month in which each Interest Payment Date occurs, whether or not a Business Day.

“Representation Letter” means the Blanket Agency Letter of Representations executed by the Agency and filed and accepted by the Securities Depository.

“Reserve Credit Facility” means any reserve insurance policy, line of credit, guaranty, surety bond or similar credit facility or credit enhancement device issued irrevocably by an institution that had when purchased and maintains a long-term credit rating of at least A-1 or A+ or equivalent from at least two nationally-recognized rating agencies, at least one of which ratings is A-1 by Moody’s or A+ by S&P, providing during its term for the immediate and full payment to the Trustee, up to a stated maximum amount, for the purpose of providing amounts necessary to be drawn from the Bond Reserve Fund or R&R Fund.

“Revenues” means all income (including investment income) and revenues related to the Projects including, but not limited to, amounts received pursuant to the Power Sales Agreement and withdrawals from the Rate Stabilization Fund. However, Revenues shall not include: (1) principal proceeds of Bonds or any other borrowings, or earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Bonds (until commingled with other earnings and revenues included in Revenues) or held in the Rebate Fund; (2) income and revenue that may not legally be pledged for revenue bond debt service; (3) federal or state grants allocated to capital projects; (4) payments under bond insurance or other credit enhancement policy or instrument; (5) insurance or condemnation proceeds used for the replacement of capital projects or equipment; or (6) deposits into the Rate Stabilization Fund.

“Revenue Fund” means the Revenue Fund created in Section 4.2.

“Rule 15c2-12” means Rule 15c2-12, as amended, promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

“SEC” means the Securities and Exchange Commission.

“Securities Depository” means DTC or any successor securities depository appointed pursuant to Section 2.12.

“S&P” means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and assigns.

“State” means the State of Alaska.

“Subordinate Debt” means obligations of the Agency issued in accordance with Article VI.

“Subordinate Debt Fund” means the Subordinate Debt Fund authorized in Section 6.1.

“Supplemental Indenture” means an amendment or supplemental to this Indenture that is authorized under Article X.

“Tax Certificate” means the Tax Certificate, by and between the Agency and the Trustee, and delivered by the Agency in connection with the initial issuance and delivery of the Tax-Exempt Bonds, as modified from time to time pursuant to its terms.

“Tax-Exempt Bonds” means the 2015 Bonds, the 2019 Bond, and any Additional Bonds the interest of which is exempt from the Bondholder’s gross income under federal law in the opinion of Bond Counsel.

“Tax Maximum” means the least of the greatest amount of Annual Debt Service required to be paid in any Fiscal Year on the Bonds; 125% of the average amount of Annual Debt Service required to be paid on the Bonds during all Fiscal Years or portions thereof in which the Bonds will be Outstanding, or, ten percent of the aggregate original stated principal amounts of each series of Bonds (provided, however, that with respect to any series of the Bonds that has more than a de minimis amount of original issue discount or premium, as defined in Section 1.148-1(b) of the Treasury Regulations, the issue price of such series of Bonds will be used in lieu of its principal amount). The Tax Maximum as of the date of issue of the 2019 Bond is equal to \$\_\_\_\_\_. The Tax Maximum will change upon an issuance of any Additional Bonds.

“Trust Estate” means:

- (a) Revenues; and
- (b) The Bond Fund, the Bond Reserve Fund, the Subordinate Debt Fund, the Revenue Fund, the Rate Stabilization Fund and the R&R Fund and accounts established thereunder and all investment earnings thereon and money, securities and obligations therein (subject to disbursements from any such Fund or account upon the conditions set forth in this Indenture); and
- (c) The Agency’s rights and interests in the Power Sales Agreement; and
- (d) All other Agency revenues related to the Projects, including without limitation, insurance and condemnation proceeds; in each case subject to disbursement in accordance with the provisions of this Indenture.

“Trustee” means Wells Fargo Bank, National Association, or any successor trustee under this Indenture.

“UCC” means Chapter 45.29, Alaska Statutes.

“Valuation Date” has the meaning given that term in Section 4.8(g).

“Variable Rate Bonds” means, as of any date of calculation, Bonds the terms of which on such date of calculation are such that interest thereon for any future period of time is expressed to be calculated at a rate that is not susceptible of a precise determination.

“Written Request” means, with reference to the Agency, a request in writing signed by an Authorized Representative.

“2009 Bonds” means the Agency’s Electric Revenue Refunding Bonds, Series 2009, dated February 24, 2009, issued in the original aggregate principal amount of \$16,495,000.

“2015 Bonds” means the Agency’s Electric Revenue Improvement and Refunding Bonds, Series 2015, dated May 6, 2015, issued in the original aggregate principal amount of \$\_\_\_\_\_.

“2019 Bond” means the Agency’s Electric Revenue Refunding Bond, Series 2019, authorized to be issued under this Indenture in the principal amount of \$\_\_\_\_\_.

“2019 Costs of Issuance Account” means the 2019 Costs of Issuance Account of the Bond Fund created and established in Section 4.3.

**Section 1.2 Rules of Construction.** Unless the context otherwise requires:

- (a) An accounting term not otherwise defined herein has the meaning assigned to it in accordance with generally accepted accounting principles;
- (b) References to Articles and Sections are to the Articles and Sections of this Indenture;
- (c) Words of the masculine gender are deemed and construed to include correlative words of the feminine and neuter genders;
- (d) Unless the context otherwise indicates, words importing the singular number include the plural and vice versa; and
- (e) Headings of Articles and Sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof, and shall not affect the meaning, construction or effect hereof.

**Section 1.3 Indenture to Constitute Contract.** In consideration of the purchase and acceptance of any or all of the Bonds by those who hold the same from time to time, and in consideration of the pledge, covenants and agreements herein set forth to be performed by or on behalf of the Agency, the provisions of this Indenture shall be part of the contract of the Agency with the owners of the Bonds, and shall be deemed to be and shall constitute contracts between the Agency, the Trustee and the owners from time to time of the Bonds. The pledge made in this Indenture and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Agency shall be for the equal benefit, protection and security of the owners of any and all of the Bonds. All of the Bonds shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or pursuant to this Indenture.

**Section 1.4 Indenture a “Security Agreement.”** This Indenture shall be deemed a “security agreement” for purposes of the UCC. Notwithstanding any provision of law that may relieve transfers by governments, their subdivisions or agencies from the application of UCC or any other provision of law that would make the UCC inapplicable to the Agency, the parties agree that this Indenture, the other Bond Documents, and the Trust Estate shall be bound by and subject to the UCC.

**ARTICLE II  
THE BONDS**

**Section 2.1 Authority for and Issuance of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

There has heretofore been issued, under the Original Indenture, as amended and supplemented by the 2015 Supplemental Indenture, a series of Additional Bonds designated the “Southeast Alaska Power Agency Electric Improvement and Refunding Bonds, Series 2015” (the “2015 Bonds”). Terms of the 2015 Bonds are set forth in Section 2.2.

There is hereby authorized to be issued under this Indenture a series of Additional Bonds designated “The Southeast Alaska Power Agency Electric Revenue Refunding Bond, Series 2019” (the “2019 Bond”). The 2019 Bond shall be dated the Dated Date and issuable as a fully registered bond, without coupons, as a single bond in the principal amount of \$\_\_\_\_\_, lettered and numbered R-1. Terms of the 2019 Bond are set forth in Section 2.3.

The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The Trustee agrees to provide to any Bondholder, upon the written request of such Bondholder, information regarding the Interest Payment Dates, optional redemption provisions and interest rate or rates applicable to such Bondholder’s Bonds.

**Section 2.2 Terms of the 2015 Bonds.**

The 2015 Bonds, issued as a series of Additional Bonds under the Original Indenture, as amended and supplemented by the 2015 Supplemental Indenture, remain outstanding under this Indenture, maturing on the following dates in the following amounts and bearing interest at the following rates per annum:

Maturity Date (June 1)	Principal Amount	Rate	CUSIP No. 84131Q
2025	\$ 965,000	5.250	BA5
2026	1,015,000	5.250	BB3
2027	1,065,000	5.250	BC1
2028	1,130,000	5.250	BD9
2029	1,110,000	5.250	BE7
2030	1,170,000	5.250	BF4
2033*	3,840,000	3.875	BJ6

\*Term Bond

Each 2015 Bond shall bear interest from its Dated Date until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions of the Indenture, whether upon maturity, redemption or otherwise. Interest shall be payable on each Interest Payment Date, except that if, as shown by the records of the Trustee, interest on such 2015 Bond shall be in default, any Bond issued in exchange for or upon the registration of transfer of such 2015 Bond shall bear interest from the date to which interest has been paid in full on such Bond or, if no interest has been paid on such Bond, from the Dated Date. Each 2015 Bond shall bear interest on overdue principal and, to the extent permitted by law, on overdue interest at the rates borne by such Bond from the date on which such principal or interest whether upon maturity, redemption or otherwise became due and payable. Interest on the 2015 Bonds shall be computed upon the basis of a year of 360 days consisting of twelve 30-day months.

Payment of interest on 2015 Bonds shall be paid by check mailed on the Interest Payment Date to the Person appearing on the Bond Register as the registered owner thereof as of the close of business of the Trustee on the Record Date at the address of such owner as it appears on the Bond Register. Payment of interest on any 2015 Bond shall be made to any owner of \$1,000,000 or more in Aggregate Principal Amount of 2015 Bonds as of the close of business of the Trustee on the Record Date by wire transfer to such owner on such Interest Payment Date upon written notice from such owner, received by Trustee not later than 15 days prior to such Record Date (any such written request shall remain in effect until rescinded in writing by such Bondholder), containing the wire transfer address within the continental United States to which such owner wishes to have such wire directed. Any applicable wire transfer fees shall be payable by the owner.

Payment of principal of 2015 Bonds shall be paid by check mailed on the Principal Payment Date to the Person appearing on the Bond Register as the registered owner thereof, in the manner provided above for the payment of interest.

**Section 2.3 Terms of the 2019 Bond.**

The 2019 Bond shall be issued in the principal amount of \$\_\_\_\_\_, payable in installments as set forth below, together with interest on such installments from the date hereof or the most recent date to which interest has been paid or duly provided for, at the interest rates set forth below, on \_\_\_\_\_, 20\_\_, and on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 thereafter until payment of the principal sum has been made or duly provided for.

Principal Installment Payment Year (_____ 1)	Principal Installment Amount	Interest Rate
2020		
2021		
2022		
2023		
2024		

The 2019 Bond shall bear interest on overdue principal and, to the extent permitted by law, on overdue premium, if any, and interest at the rates borne by the 2019 Bond from the date on which such principal, premium or interest whether upon maturity, redemption or otherwise became due and payable. Interest on the 2019 Bond shall be computed on the basis of a year of 360 days consisting of twelve 30-day months.

Payment of interest on the 2019 Bond shall be by check mailed on the Interest payment Date to the Person appearing on the Bond Register as the registered owner thereof as of the close of business of the Trustee on the Record Date at the address of such owner as it appears on the Bond Register. Payment of interest on the 2019 Bond shall be made to any owner of \$1,000,000 or more in Aggregate Principal Amount of the 2019 Bond as of the close of business of the Trustee on the Record Date by wire transfer to such owner on such Interest Payment Date upon written notice from such owner, received by Trustee not later than 15 days prior to such Record Date (any such request shall remain in effect until rescinded in writing by such Bondholder), containing the wire transfer address within the continental United States to which such owner wishes to have such wire directs. Any applicable wire transfer fees shall be payable by the owner.

Payment of principal on the 2019 Bond shall be by check mailed on the Principal Payment Date to the Person appearing on the Bond Register as the registered owner thereof, in the manner provided above for the payment of interest.

Notwithstanding the foregoing, for so long as the Bond Bank is the owner of the 2019 Bond, payments of principal of and interest on the 2019 Bond will be made to the Bond Bank in accordance with the Loan Agreement.

**Section 2.4 Execution; Limited Obligations.** The Bonds shall be executed in the name and on behalf of the Agency by the manual or facsimile signature of the Chair of its Board and attested by the manual or facsimile signature of the Attesting Officer of the Agency. If an officer who has signed any of the Bonds ceases to be such officer of the Agency before those Bonds have been authenticated by the Trustee or delivered or sold, such Bonds with the signatures thereto affixed may, nevertheless, be authenticated by the Trustee, and delivered, and may be sold by the Agency, as though the person or persons who signed such Bonds had remained in office.

Subject to Section 4.11, all Bonds issued under this Indenture and at any time outstanding shall in all respects be equally and ratably secured hereby, without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of the Bonds, so that all Bonds at any time issued and outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture, and shall all be equally and ratably secured hereby.

The Bonds and all payments to be made by the Agency thereon are limited obligations payable solely from the Trust Estate. The Bonds shall constitute a valid claim of the respective owners thereof against the Trust Estate, which is pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Bonds are not general obligations of the Agency, and under no circumstances shall the Bonds be payable from, nor shall the holders thereof have any rightful claims to, any income, revenues, funds or assets other than those pledged hereunder as security for the payment of the Bonds.

**Section 2.5 Authentication.** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond has been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee shall insert the authentication date on each Bond authenticated hereunder. The certificate of authentication of the Trustee on any Bond shall be deemed to have been executed by it if signed by an authorized agent of the Trustee, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds issued hereunder.

**Section 2.6 Form of 2019 Bond.** The 2019 Bond shall be in substantially the form set forth in Exhibit B hereto with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee and the Agency.

**Section 2.7 Delivery of 2019 Bond.** Upon the execution and delivery of this Indenture, the Agency shall execute and deliver to the Trustee and the Trustee shall authenticate and, upon request of the Agency, deliver the 2019 Bond to the order of the Purchaser.

Prior to the delivery by the Trustee of the 2019 Bond to the order of the Purchaser, there shall be filed with or delivered to the Trustee:

(a) A copy, duly certified by an Authorized Representative of the Agency, of the 2019 Bond Resolution;

(b) An original executed counterpart of this Indenture, the Escrow Agreement, and the Tax Certificate;

(c) A request and authorization to the Trustee on behalf of the Agency and signed by an Authorized Representative of the Agency to authenticate and deliver the 2019 Bond to the Purchaser upon payment to or to the order of the Trustee, but for the account of the Agency, of the proceeds from the sale of the 2019 Bond;

(d) An opinion or opinions of Bond Counsel addressed to the Agency and the Trustee, to the effect that this Indenture, the Escrow Agreement, and the 2019 Bond have each been validly authorized, are binding and enforceable against the Agency, subject to bankruptcy and equitable principles, that the issuance of the 2019 Bond has been duly authorized and that interest on the 2019 Bond is not included in gross income for federal income tax purposes under the Code and is exempt from income taxation by the State of Alaska;

(e) Request for Reconveyance, UCC terminations and such other notices and closing certificates as the Trustee may reasonably require; and

(f) Such other closing documents and opinions of counsel as the Trustee may reasonably require.

**Section 2.8 Mutilated, Lost, Stolen, or Destroyed Bonds.** If any temporary or definitive Bond is mutilated, lost, stolen or destroyed, the Agency may execute and the Trustee may authenticate a new Bond of like form, tenor, date, maturity and denomination as that mutilated, lost, stolen or destroyed and bearing a number not contemporaneously outstanding; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen, or destroyed Bond, there shall be first furnished to the Agency and the Trustee evidence of such loss, theft or destruction satisfactory to the Agency, and the Trustee, together with indemnity satisfactory to them. If any such Bond has matured or been called for redemption, instead of issuing a duplicate Bond the Agency may pay the same without surrender thereof. The Agency and the Trustee may charge the owner of such Bond for their reasonable fees and expenses in this connection.

All duplicate Bonds issued and authenticated pursuant to this Section shall constitute original contractual obligations of the Agency (whether or not lost, stolen or destroyed Bonds are at any time found by anyone) and shall be entitled to equal and proportionate rights and benefits hereunder as all other outstanding Bonds issued hereunder.

All Bonds shall be owned upon the express condition that the foregoing provisions, to the extent permitted by law, are exclusive with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bonds, and shall preclude any and all other rights or remedies.

**Section 2.9 Transfer and Exchange of Bonds; Persons Treated as Owners.**

(a) Upon surrender for registration of transfer of any Bond at the Principal Office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the Bondholder or such Bondholder's attorney duly authorized in writing, the Agency shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of like date and tenor in Authorized Denominations of the same maturity for the Aggregate Principal Amount that the registered owner is entitled to receive bearing numbers not contemporaneously outstanding. Bonds may be exchanged at such times at such Principal Office of the Trustee upon surrender thereof together with an assignment duly executed by the registered owner thereof or such owner's attorney in such form and with guarantee of signature as shall be satisfactory to the Trustee for an equal Aggregate Principal Amount of Bonds of like date, maturity and tenor as the Bonds surrendered for exchange in any other Authorized Denomination bearing numbers not contemporaneously outstanding. The execution by the Agency of any Bond of any Authorized Denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond.

(b) No service charge shall be imposed upon the owner for any exchange or transfer of Bonds in the ordinary course. The Agency and the Trustee may, however, require payment by the Person requesting an exchange or transfer of Bonds of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto, except in the case of the issuance of a Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption in part.

(c) Bonds delivered upon any registration of transfer or exchange as provided herein or as provided in Section 2.9 shall be valid limited obligations of the Agency, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture, and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered.

(d) The Agency and the Trustee may treat the registered owner of any Bond as the absolute owner thereof for all purposes, whether or not such Bond is overdue, and shall not be bound by any notice to the contrary. All payments of or on account of the principal of and premium, if any, and interest on any such Bond as herein provided shall be made only to or upon the written order of the registered owner thereof or such owner's legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(e) The Trustee shall not be required to transfer or exchange such Bond after the mailing of notice calling such Bond for redemption.

**Section 2.10 Required Information in Bond Form.** On each date on which the Trustee authenticates and delivers a Bond, it shall complete the information required to be inserted by the Bond form and shall keep a record of such information.

**Section 2.11 Cancellation.** Any Bond surrendered for the purpose of payment, or retirement, or for exchange or transfer, or for replacement shall be canceled upon surrender thereof to the Trustee. If the Agency acquires any of the Bonds, the Agency must deliver such Bonds to the Trustee for cancellation, and the Trustee will cancel the same. Canceled Bonds may be destroyed by

the Trustee unless written instructions to the contrary are received from the Agency. Upon the date of final maturity or redemption of all Bonds, the Trustee will destroy any inventory of unissued certificates.

**Section 2.12 Book-Entry Bonds.** The 2015 Bonds were issued as Book-Entry Bonds. The 2019 Bond will not be issued as a Book-Entry Bond. Unless otherwise provided in the Supplemental Indenture authorizing their issuance, Additional Bonds will be issued as Book-Entry Bonds in accordance with the provisions of this Indenture.

Book-Entry Bonds will be initially issued in the form of a separate single fully registered Bond for each maturity of each series. Upon initial issuance, the ownership of such Bond shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC, and except as provided in this Section 2.12, all outstanding Book-Entry Bonds will be registered in the Bond Register in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the Bond Register in the name of the Securities Depository, or its nominee, the Trustee and the Agency shall have no responsibility or obligation to any Participant or to any person on behalf of whom such a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Trustee and the Agency shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Securities Depository, its nominee or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other Person, other than a Bondholder, as shown in the Bond Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other Person, other than a Bondholder, as shown in the Bond Register, of any amount with respect to principal of, premium, if any, or interest on, the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the Agency and the Trustee shall be entitled to treat and consider the Person in whose name each Bond is registered in the Bond Register as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the Bond Register as provided in this Indenture and all such payments shall be valid and effective to fully satisfy and discharge the Agency's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than a Bondholder, as shown in the Bond Register, shall receive a Bond certificate evidencing the obligation of the Agency to make payments of principal, premium, if any, and interest pursuant to this Indenture.

The Bondholders have no right to a depository for the Bonds. The Agency may remove the Securities Depository for any reason at any time. In such event, the Agency shall, with prior written notice to Trustee, (i) appoint a successor Securities Depository, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, notify the Securities Depository and Participants of the appointment of such successor Securities Depository and transfer one or more separate Bond certificates to such successor Securities Depository or (ii) notify the Securities Depository of the availability through the Securities Depository of Bond certificates and transfer one or more separate Bond certificates to Participants having Bonds credited to their Securities Depository accounts.

The Agency shall execute the Representation Letter in connection with the issuance of the Bonds. Such Representation Letter is for the purpose of effectuating the system of Book-Entry-Only Bonds only and shall not be deemed to amend, supersede or supplement the terms of this Indenture which are intended to be complete without reference to the Representation Letter. In the event of any conflict between the terms of the Representation Letter and the terms of this Indenture, the terms of this Indenture shall control. The Securities Depository may exercise the rights of a Bondholder hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

**Section 2.13 Payments and Notices to Securities Depository.** Notwithstanding any other provision of this Indenture to the contrary, so long as any Bonds are registered in the name of the Securities Depository or its nominee, all payments with respect to principal of, premium, if any, and interest on the Bonds and all notices with respect to the Bonds shall be made and given, respectively, in the manner provided in the Representation Letter.

**Section 2.14 Additional Bonds.** The Agency may issue Additional Bonds to provide funds for any purpose relating to the Projects that is authorized by law. Additional Bonds may have a lien on the Trust Estate, or any portion thereof, that is on parity with (but in no event superior to) the holders of the 2015 Bonds and 2019 Bond, and shall be payable from the Bond Fund pursuant to Section 4.3. Additional Bonds may be issued or made when the Trustee has received the following:

(a) A copy certified by the Attesting Officer of the Agency of the bond resolution authorizing (1) the execution and delivery of any amendment to the Bond Documents required by the issuance of such Additional Bonds, (2) the execution and delivery of a Supplemental Indenture providing for, among other things, the date, rate or rates of interest on, interest payments dates, maturity dates and redemption provisions of such Additional Bonds, and (3) the issuance, sale, execution and delivery of the Additional Bonds;

(b) An original executed counterpart of the Supplemental Indenture;

(c) An opinion or opinions of Bond Counsel, as appropriate, addressed to the Agency and the Trustee, to the effect that issuance of the Additional Bonds is permitted under this Indenture, the Supplemental Indenture and the Additional Bonds have each been validly authorized, are binding and enforceable against the Agency, subject to bankruptcy and equitable principles, the issuance of the Additional Bonds has been duly authorized, interest on the Additional Bonds (if they are Tax-Exempt Bonds) is not included in gross income for federal income tax purposes under the Code and is exempt from income taxation by the State of Alaska, and issuance of the Additional Bonds will not adversely affect the income tax status of interest on Outstanding Bonds;

(d) (1) A certificate of the Agency, signed by its Authorized Representative, that (i) no Event of Default under this Indenture has occurred and is continuing, (ii) at the time of the issuance of the Additional Bonds there is no deficiency in any of the Funds, (iii) upon issuance of the Additional Bonds amounts will be deposited in the Funds hereunder adequate for the necessary balances therein, with the Additional Bonds treated as Outstanding, and (2) either (i) a certificate of the Agency, signed by its Authorized Representative, that the Net Revenues in the Base Period are not less than 120% of the Maximum Annual Debt Service on all Bonds. Net Revenues may be adjusted to include the additional revenue that would have been received if any rate change adopted prior to the delivery of the Additional Bonds, but subsequent to the beginning of the Base Period, had been in force during the Base Period; or (ii) A certificate from a Professional Utility Consultant that certifies: (A) taking into consideration such adjustments and other factors as he or she, in his or her

discretion deems appropriate, that the issuance of the Additional Bonds then proposed to be issued will not result in the Agency's inability to comply with the covenants set forth in Section 7.12 of this Indenture; and (B) if such Additional Bonds are being issued to pay costs incurred for additional, improvements, betterments and extensions to the Facilities, that the plan for such additional improvements, betterments and extensions is consistent with Prudent Utility Practice and will not materially adversely interfere with the operations of the Agency.

(e) A request and authorization of the Agency, signed by its Authorized Representative, to the Trustee to authenticate and deliver the Additional Bonds to such person or persons named therein after confirmation of payment to the Trustee for the account of the Agency of a specified sum with directions as to the disposition of such sum; if such Additional Bonds are in the form of a line of credit, term loan or other obligation, the Agency shall request the Trustee to execute and deliver appropriate agreements with the provider of the obligation in lieu of the requirement to authenticate and deliver the Additional Bonds.

Without limiting any other use of the proceeds of Additional Bonds issued hereunder, the Agency may issue Additional Bonds to refund Outstanding Bonds, notwithstanding the requirements in subsection 2.14(d)(2), if, for any Fiscal Year, the Annual Debt Service on the refunding Bonds will not exceed the Annual Debt Service for the refunded Bonds by more than \$5,000.

**Section 2.15 Proof of Ownership.** Any request, direction, consent or other instrument required by this Indenture to be signed and executed by Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such request, direction, consent or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Trustee and the Agency, with regard to any action taken by them, or either of them, under such request or other instrument:

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

(b) The ownership of Bonds and the amounts and registration numbers of such Bonds and the date of holding the same shall be proved by the Bond Register.

Any action taken or suffered by the Trustee pursuant to any provision of this Indenture, upon the request or with the assent of any person who at the time is the owner of any Bond or Bonds, shall be conclusive and binding upon all future owners of the same Bond or Bonds.

In determining whether the owners of the required principal amount of Bonds outstanding have taken any action under this Indenture, Bonds owned by the Agency shall be disregarded and deemed not to be outstanding, except that for the purpose of determining whether the Trustee shall be protected in relying on any such action, only such Bonds that the Trustee knows are so owned shall be so disregarded. 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.

**ARTICLE III**  
**APPLICATION OF 2019 BOND PROCEEDS AND PLAN OF REFUNDING**

**Section 3.1 Application of 2019 Bond Proceeds.** On the Closing Date, the Trustee shall apply the proceeds from the sale of the 2019 Bond as follows:

(a) \$\_\_\_\_\_ shall be delivered to the Escrow Agent to be applied as provided in the Escrow Agreement; and

(b) \$\_\_\_\_\_ shall be deposited in the 2019 Costs of Issuance Account and applied as provided in Section 4.3(c).

**Section 3.2 Application of Other Indenture Funds.** On the Closing Date, the Trustee shall deliver to the Escrow Agent the following amounts held under the Original Indenture, to be applied as provided in the Escrow Agreement:

(a) \$\_\_\_\_\_ from the Interest Account;

(b) \$\_\_\_\_\_ from the Principal Account; and

(c) \$\_\_\_\_\_ from the Bond Reserve Fund.

**Section 3.3 Defeasance and Redemption of Refunded Bonds.**

All funds delivered to the Escrow Agent as described above, together with funds provided by the Agency, if any, shall be used immediately upon receipt to defease the Refunded Bonds in accordance with the Original Indenture. The Refunded Bonds shall be defeased by the use of money under the Escrow Agreement held as cash and to purchase certain Government Obligations of the type described in Section 11.3 of the Original Indenture, bearing such interest and maturing as to principal and interest in such amounts and at such times that, together with any necessary beginning cash balance, will provide for the payment of: (i) interest on the Refunded Bonds due and payable on June 1, 2019, and (ii) the redemption price of the Refunded Bonds (100% of the principal amount thereof) on June 1, 2019.

The Agency hereby calls the Refunded Bonds for redemption on June 1, 2019, in accordance with the optional redemption provisions of the Original Indenture. The defeasance of the Refunded Bonds and call for redemption of the Refunded Bonds shall be irrevocable after the final establishment of the escrow under the Escrow Agreement.

**ARTICLE IV**  
**REVENUES AND FUNDS**

**Section 4.1 Creation of Funds.**

(a) Funds held by the Trustee. The following Funds shall be created and established with the Trustee as needed to comply with the provisions of this Indenture:

(1) The Bond Fund;

(2) The Bond Reserve Fund; and

(3) If required, the Rebate Fund.

(b) Funds held by the Agency. The Agency shall establish and maintain so long as any of the Bonds are Outstanding two separate funds to be known as the “Revenue Fund” and the “R&R Fund” to be used and funded in accordance with this Indenture and may establish and maintain a “Rate Stabilization Fund” and a “Subordinate Debt Fund” to be used and funded in accordance with this Indenture.

#### **Section 4.2 Revenue Fund.**

(a) Establishment of Fund. The Agency hereby establishes and agrees to maintain so long as any of the Bonds are Outstanding a separate fund to be known as the “Revenue Fund.”

(b) Deposits into Revenue Fund. The Agency shall deposit into the Revenue Fund all Revenues as promptly as practical after receipt thereof. Prior to disbursement in accordance with the provisions of this Indenture, the Agency shall hold all Revenues and all money in the Revenue Fund in trust for the Bondholders.

(c) Use of Money in the Revenue Fund. The Agency shall, so long as any Bonds remain Outstanding, use Revenues in the Revenue Fund solely for the following purposes in the following order of priority:

(1) At any time, for the payment of Operation and Maintenance Expenses that are then due or overdue;

(2) On or prior to each Interest Payment Date, to the Trustee for deposit into the Interest Account, an amount that, together with any funds on deposit therein, is sufficient to pay the interest due on that Interest Payment Date;

(3) On or prior to each Principal Payment Date, to the Trustee for deposit into the Principal Account, an amount that, together with any funds on deposit therein, is sufficient to pay the principal due on that Principal Payment Date;

(4) At least two Business Days preceding the first day of each month, to the Trustee, (a) for deposit into the Bond Reserve Fund, any amount needed to meet the Bond Reserve Requirement, and (b) for deposit into the Rebate Fund, any amount required to be deposited therein under Section 4.5;

(5) On the Business Day preceding the first day of each month, to the Agency-held R&R Fund, amounts necessary to meet the R&R Fund Requirement;

(6) On the Business Day preceding the first day of each month, to the Agency-held Subordinate Debt Fund, amounts required to pay Subordinate Debt due in such month; and

(7) Each month after all transfers required above, the Agency may expend Revenues for any lawful purpose including deposits into the Agency held Rate Stabilization Fund.

### **Section 4.3 Bond Fund.**

(a) Establishment of Fund and Subaccounts. The Agency hereby establishes with the Trustee and directs it to maintain so long as any of the Bonds are Outstanding a separate fund to be known as the “Bond Fund - The Southeast Alaska Power Agency.” The Trustee shall also establish separate accounts within the Bond Fund to be known as the “Interest Account,” the “Principal Account,” and the “2019 Bond Costs of Issuance Account.”

(b) Deposits into Accounts of the Bond Fund. There shall be deposited, as and when received, (i) all money received from the Revenue Fund pursuant to Section 4.2(c)(2) and (3), (ii) all money received from the R&R Fund pursuant to Section 4.6(c), (iii) all money transferred from the Bond Reserve Fund to the Interest Account or Principal Account, as needed, pursuant to Section 4.4, and (iv) all other money received by the Trustee when accompanied by directions that such money is to be paid into the Bond Fund, including condemnation awards, insurance proceeds or sale proceeds for purposes of redeeming Bonds. There shall also be retained in the accounts of the Bond Fund interest and other income received on investments of Bond Fund money to the extent provided in Section 4.8.

(c) 2019 Costs of Issuance Account. Money on deposit in the 2019 Costs of Issuance Account shall be paid to the Agency following receipt by the Trustee of a written request for payment of Issuance Costs from the Agency in the form attached hereto as Exhibit A within 90 days after the Closing Date. Any amounts remaining in the 2019 Costs of Issuance Account on the 90<sup>th</sup> day after the Closing Date shall be transferred to the Interest Account to pay interest on the 2019 Bond, and the 2019 Costs of Issuance Account shall be closed.

### **Section 4.4 Bond Reserve Fund.**

(a) Establishment of Fund. The Agency hereby establishes with the Trustee and directs it to maintain so long as any Bonds are Outstanding a separate fund to be known as the “Bond Reserve Fund - The Southeast Alaska Power Agency”).

(b) Deposits into the Bond Reserve Fund. Except as otherwise expressly provided in this Section, the Bond Reserve Fund shall be maintained at all times at not less than the Bond Reserve Requirement. Any deficiency created in the Bond Reserve Fund by reason of a withdrawal under subsection (c)(1) of this Section shall be made up from Revenues available under Section 4.2(c)(4)(a) in twelve approximately equal monthly installments, first, to reinstate each Reserve Credit Facility, pro rata, and second, to make up any remaining deficiency. As of each Valuation Date, any Deficiency created in the Bond Reserve Fund by reason of a reduction in the fair market value of the investments in the Bond Reserve Fund shall be made up from Revenues available under Section 4.2(c)(4)(a) in six approximately equal monthly installments.

(c) Use of Money in the Bond Reserve Fund. Money on deposit in the Bond Reserve Fund shall be applied as follows:

(1) On the date of each required payment from the Bond Fund, money in the Bond Reserve Fund shall be applied to cure any deficiency in the Bond Fund with respect to payments of principal of and interest on the Bonds when due and payable, first, by the withdrawal of cash, second, from the proceeds of the sale of investments, and third, from pro rata draws on each Reserve Credit Facility;

(2) Upon delivery of an Officer's Certificate of the Agency delivered to the Trustee, any amount in the Bond Reserve Fund in excess of the Bond Reserve Requirement on any Valuation Date shall be (A) transferred to the Bond Fund and credited against the payments next becoming due (in direct order) in respect of the principal of and premium, if any, or interest on the Bonds, or (B) applied as may be specified in an Officer's Certificate of the Agency if such Certificate is accompanied by an Approving Opinion.

(3) During the 12-month period preceding the final maturity date of the Bonds, money held in the Bond Reserve Fund may be credited against the payments otherwise due under this Indenture in respect of principal of, premium, if any, and interest on the Bonds and may be transferred to the Bond Fund for the payment of such principal, premium and interest; provided, however, that no such credit shall be given and no such transfer shall be made if and to the extent that, immediately prior to such crediting and transfer, the amount on deposit in the Bond Reserve Fund is not at least equal to the Bond Reserve Requirement, less the amounts previously transferred to the Bond Fund during such 12-month period pursuant to this subparagraph (3).

(d) Reserve Credit Facilities. The Agency may satisfy the Bond Reserve Requirement with a Reserve Credit Facility or substitute a Reserve Credit Facility for funds on deposit in the Bond Reserve Fund, provided that:

(1) The Reserve Credit Facility (including any replacement Reserve Credit Facility, if provided by a different issuer) has an initial term of not less than three years and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year;

(2) The Trustee is authorized and has the duty and right to draw on the Reserve Credit Facility to satisfy the purposes for which the Bond Reserve Fund was established; and

(3) The Trustee receives an Approving Opinion to the effect that all of the requirements set forth above have been satisfied and that the substitution of the Reserve Credit Facility will not, in and of itself, adversely affect the tax exempt status of the Tax-Exempt Bonds.

Upon such substitution, funds on deposit in the Bond Reserve Fund that, when added to the face amount of the Reserve Credit Facility, exceed the Bond Reserve Requirement shall be applied as provided in subsection (c)(2) above. Thereafter, the amount available under the Reserve Credit Facility shall be credited to the Bond Reserve Fund in satisfaction of the Bond Reserve Requirement. If a Reserve Credit Facility is not extended, renewed or replaced at least six months prior to its scheduled expiration or termination date, the Trustee shall, not later than 30 days prior to such date, draw on the Reserve Credit Facility in the full amount thereof.

(e) Any deficiency created in the Bond Reserve Fund by reason of the failure of a Reserve Credit Facility to meet the requirements set forth in the definition of "Reserve Credit Facility" shall be made up from Revenues available under Section 4.2(c)(4)(a) in six approximately equal monthly installments or by providing a replacement Reserve Credit Facility within six months.

**Section 4.5 Rebate Fund.** The Agency hereby establishes with the Trustee and directs it to maintain so long as any of the Tax-Exempt Bonds are Outstanding a separate fund to be known as the "Rebate Fund — The Southeast Alaska Power Agency." There shall be deposited into the Rebate Fund amounts paid by the Agency as required to comply with Section 148(f) of the Code. The

Rebate Fund is a trust fund, but amounts therein do not constitute part of the Trust Estate. Money in the Rebate Fund shall be paid at the direction of the Agency to the United States in the amounts and at the times required by the Code. Upon payment of all amounts due to the United States pursuant to Section 148 of the Code, any money remaining in the Rebate Fund shall be paid by the Trustee to the Agency. The Trustee shall not be responsible for the calculation of rebate, reviewing such calculations, or enforcing the obligations of the Agency with respect to the payment of any rebate amount.

#### **Section 4.6 R&R Fund.**

(a) Establishment of Fund. The Agency hereby establishes and covenants to maintain so long as any of the Bonds are Outstanding a separate fund to be known as the “R&R Fund — The Southeast Alaska Power Agency.”

(b) Deposits into R&R Fund. Except as otherwise expressly provided in this Section, the R&R Fund shall be maintained at all times at not less than the R&R Fund Requirement. Any deficiency created in the R&R Fund by reason of a withdrawal shall be made up from Revenues available under Section 4.2(c)(5) in twelve approximately equal monthly installments. The Agency at any time by written notice of an Authorized Representative to the Trustee may adjust the R&R Fund Requirement, provided that the R&R Fund Requirement may never be less than \$1,000,000. Prior to disbursement in accordance with the provisions of this Indenture, the Agency shall hold all money in the R&R Fund in trust for the Bondholders.

(c) Use of Money in the R&R Fund. Amounts in the R&R fund are intended to be used for renewal and replacements of capital projects and any other lawful purpose of the Agency including, without limitation, to pay debt service in the event of a deficiency in the Bond Fund or Bond Reserve Fund.

(d) Reserve Credit Facilities. The Agency may satisfy the R&R Fund Requirement with a surety or letter of credit or line of credit that, if credited to the Bond Reserve Fund, would meet the definition of “Reserve Credit Facility” and satisfy the requirements set forth in Section 4.4(d). Any deficiency created in the R&R Fund by reason of the failure of a Reserve Credit Facility to meet the requirements set forth in the definition of “Reserve Credit Facility” shall be made up from Revenues available under Section 4.2(c)(5) in six approximately equal monthly installments or by providing a replacement Reserve Credit Facility within six months.

**Section 4.7 Rate Stabilization Fund.** The Agency may establish and hold a Rate Stabilization Fund and may at any time, from time to time, as determined by the Agency, deposit Revenues available under Section 4.2(c)(7) in the Rate Stabilization Fund. The Agency may at any time, from time to time, as determined by the Agency, withdraw any or all of the money from the Rate Stabilization Fund for deposit into the Revenue Fund under Section 4.2(b) to be disbursed from the Revenue Fund in accordance with Section 4.2(c). If a deposit into or withdrawal from the Rate Stabilization Fund is made within 60 days after the end of a Fiscal Year, the Agency may specify that such deposit or withdrawal is to be allocated to the prior Fiscal Year rather than to the Fiscal Year in which such deposit or withdrawal is made.

#### **Section 4.8 Investment of Funds; Valuation of Funds.**

(a) Subject to the limitations provided in this Section, applicable law, and any limitations on the investment of funds contained in the investment policy of the Agency as it is established from time to time, upon the oral direction of the Agency (confirmed in writing), money on deposit in the Bond Fund, the Bond Reserve Fund, and the Rebate Fund shall be invested in Permitted Investments (i) with respect to the Bond Fund, maturing in the amounts and at the times necessary to provide funds to make the payments to which such money is applicable, (ii) with respect to the Bond Reserve Fund maturing within five years of the date of purchase, and (iii) with respect to the Rebate Fund maturing in the amounts and at the times necessary to provide funds to make payments to the United States of America from the Rebate Fund at the times estimated by the Agency. The Trustee shall sell and reduce to cash a sufficient portion of such investments whenever the cash balance in a Fund or the Rebate Fund is insufficient for the purposes thereof. The Trustee may trade through or from its own bond department or trust investments department, or its parents or affiliates bond department or trust investments department in the purchase and sale of securities for such investment; provided, however, that in no case shall any investment be otherwise than in accordance with the investment limitations contained herein and in the Tax Certificate. The Trustee shall not be liable or responsible for any loss resulting from any such investments. The Trustee shall be entitled to assume, without independent investigation and absent receipt of written notice to the contrary, that all investments are legal investments for the Agency, and that any investment which at the time of purchase is a Permitted Investment remains a Permitted Investment thereafter.

(b) The value of any investments in any Fund shall be calculated as follows, subject to any conditions or limitations in the Tax Certificate:

(1) For investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(2) For investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) For certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) For any investment not specified above: the value thereof established by prior agreement between the Agency and the Trustee.

With respect to investments described in (1) and (2) above, the Trustee may utilize and rely upon generally recognized automated pricing or quotation services in performing valuations, and it shall not be liable for the errors or omissions of any such service or of any government securities dealer providing information hereunder.

(c) Any money in any Fund may be commingled with money in any other Fund for investment purposes. Money in the Rebate Fund shall not be commingled with any other money.

Any investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Fund or the Rebate Fund from which the investment was made. Any loss resulting from such investments shall be charged to such Fund or the Rebate Fund, as the case may be.

(d) Any interest or other gain from any investment or reinvestment thereof in any Fund or the Rebate Fund shall remain in the respective Fund where earned; provided, however, that from time to time, the Agency will transfer money pursuant to Section 4.5 to comply with any rebate needs as required pursuant to the Tax Certificate.

(e) The Trustee shall furnish the Agency with monthly reports of all money invested and all Permitted Investments held by the Trustee pursuant to this Indenture.

(f) The Agency acknowledges that regulations of the Comptroller of the Currency grant the Agency the right to receive brokerage confirmations of security transactions as they occur. The Agency specifically waives such notification and will receive monthly reports as provided in paragraph (e) above.

(g) The Trustee shall determine the market value of the assets in each of the Funds established hereunder on, or on a date not earlier than three days prior to (i) June 1 of each year and (ii) the date of issuance for a Series of Additional Bonds (each a "Valuation Date"). As soon as practicable after each such Valuation Date, the Trustee shall furnish to the Agency a report of the status of each Fund as of such date. The Trustee shall also advise the Agency at such time of the amount then available in the Bond Fund as a credit against the Agency's obligations to make any deposits to the Bond Fund prior to the next Valuation Date. In computing the value of assets in any Fund, investments shall be valued at the fair market value thereof and shall include accrued but unpaid interest on each investment, and all investments (valued as aforesaid) and accrued interest thereon shall be deemed a part of such funds. All Permitted Investments that mature within six months of any Valuation Date or are payable upon demand shall be valued at par plus any accrued and unpaid interest.

**Section 4.9 Additional Funds and Accounts.** In addition to the funds and accounts specifically authorized under this Article, the Trustee is authorized to create and maintain such other funds and accounts as it may deem necessary for proper administration hereunder.

**Section 4.10 Repayment to the Agency from Amounts Remaining in Any Funds.** Any amounts remaining in any Funds (a) after all of the Outstanding Bonds are deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee, and (c) of all other amounts required to be paid under this Indenture are paid, shall be paid to the Agency as provided in this Indenture to the extent that such amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds and payment of any rebate amount as required to comply with Section 148(f) of the Code.

**Section 4.11 Trust Estate to Be Held for All Bondholders.** Until applied as herein provided and except where money has been deposited with or paid to the Trustee pursuant to Section 5.4 or an instrument restricting the application of such money to particular Bonds, the money and investments held in all Funds (other than amounts required to be on deposit in the Rebate Fund, and in accounts of the Bond Reserve Fund created to secure a specific Series of Bonds) established hereunder and the proceeds of any remedies exercised under Article VIII shall be held in trust pursuant to the terms of this Indenture for the equal and proportionate benefit of the holders of the

Outstanding Bonds except that, with respect to the holders of the Outstanding Bonds: (a) on and after the date on which the interest or premium on or principal of any particular Bond or Bonds is due and payable from the Bond Fund or, with respect to which a call for redemption has been given and funds for such redemption have been deposited with the Trustee, the unexpended balance of the amount deposited or reserved in the Bond Fund for the making of such payments shall, to the extent necessary therefore, be held solely for the benefit of the Bondholder or Bondholders entitled thereto; and (b) any special redemption fund established in connection with the defeasance of any Bonds in accordance with Article XI shall be held for the benefit of the holders of Bonds being defeased.

**ARTICLE V  
REDEMPTION OF BONDS**

**Section 5.1 2015 Bonds.** The 2015 Bonds are subject to redemption prior to maturity in the amounts, at the times and in the manner provided in this Article V.

(a) Optional Redemption of 2015 Bonds. Except as set forth in Section 5.4, the 2015 Bonds maturing on or after June 1, 2025, are subject to redemption prior to maturity at the option of the Agency in whole or in part on any date on or after December 1, 2024 (in such amounts and maturities as may be specified by the Agency or, if the Agency fails to specify such maturities, in inverse order of maturity, and by lot within a maturity), at a redemption price equal to 100% of the principal amount of the 2015 Bonds (or portions thereof) to be redeemed, plus accrued interest to the date of redemption.

(b) Mandatory Sinking Fund Redemption of 2015 Bonds. The 2015 Bonds maturing on June 1 in 2033 (the “Term Bonds”) are subject to mandatory sinking fund redemption prior to their stated maturity in part by lot on the dates and in the principal amounts set forth below, at a redemption price equal to 100% of the principal amount to be redeemed plus accrued and unpaid interest to the date fixed for redemption.

2033 Term Bonds

Redemption Date (June 1)	Sinking Fund Requirements
2031	\$ 1,230,000
2032	1,280,000
2033*	1,330,000

\*Stated Maturity

On or before the 30th day prior to each such sinking fund redemption date, the Trustee shall proceed to call the principal amount of the 2015 Bonds indicated above for redemption on the next June 1, and give notice of such call. At its option, to be exercised by delivery of an Officer’s Certificate of the Agency to the Trustee not more than 60 days nor less than 45 days preceding the applicable sinking fund redemption date, the Agency may (i) deliver to the Trustee for cancellation 2015 Bonds of the applicable maturity date subject to redemption pursuant to the terms of this section that have been purchased by the Agency (or by Trustee on behalf of the Agency) pursuant to Section 5.9, to be applied as a credit against such sinking fund redemption obligations, and/or (ii) receive credit in respect of its sinking fund redemption obligations for 2015 Bonds purchased by the Agency (or by Trustee on behalf of the Agency) pursuant to Section 5.9, which prior to such date have been cancelled and not theretofore applied as a credit against such sinking fund redemption

obligations. Each 2015 Bond of the applicable maturity date so delivered or previously redeemed by operation of such sinking fund redemption schedule on such date shall be accordingly reduced.

**Section 5.2 2019 Bond.** Principal installments of the 2019 Bond are subject to prepayment in the amounts, at the times and in the manner provided in this Article V.

Principal installments of the 2019 Bond are not subject to prepayment at the option of the Agency.

**Section 5.3 Additional Bonds.** Provisions for the optional or mandatory sinking fund redemption of Additional Bonds may be set forth in the Supplemental Indenture providing for their issuance.

**Section 5.4 Extraordinary Redemption from Insurance or Condemnation Proceeds.** The Bonds may be redeemed in whole or in part on any date, at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption, upon receipt by the Trustee of an Approving Opinion and written notice from the Agency stating that any of the following events has occurred:

(1) All of the Projects or a portion thereof is damaged, destroyed, condemned or taken by eminent domain to such extent that, in the opinion of the Agency contained in a certificate provided to the Trustee, which certificate may be conclusively relied upon by the Trustee,

(i) it is not practicable or desirable to rebuild, repair or restore the Projects or such portion thereof following such damage, destruction or condemnation, or

(ii) the cost of restoration of the Projects or such portion thereof would substantially exceed the Net Proceeds of insurance carried thereon, condemnation proceeds and any other funds available to the Agency to pay such costs; or

(2) The continued operation of such Projects is enjoined or prevented or is otherwise prohibited by, or conflicts with, any order, decree, rule or regulation of any court or federal, state or local regulatory body, administrative agency or other governmental body.

**Section 5.5 Notice of Redemption.**

(a) Notice of Redemption (Book-entry Bonds). So long as the Bonds are Book-Entry Bonds, the Agency shall notify the Trustee of any early redemption not less than 30 days prior to the date fixed for redemption, the Trustee shall notify the Securities Depository of any early redemption not less than 20 but no more than 60 days prior to the date fixed for redemption, and shall provide such information in connection therewith as required by the Representation Letter.

(b) Notice of Redemption (Non-Book-Entry Bonds). For Bonds other than Book-Entry Bonds, the Agency shall notify the Trustee of any intended redemption not less than 45 days prior to the redemption date and, unless waived by any Owner of the Bonds to be redeemed, official notice of any redemption of Bonds shall be given by the Trustee on behalf of the Agency by mailing a copy of an official redemption notice by first class mail postage prepaid at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in

writing by such owner to the Trustee. All such official notices of redemption shall be dated and shall state:

- (1) The redemption date,
- (2) The redemption price,
- (3) If less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts of the Bonds to be redeemed),
- (4) That on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (5) The place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Principal Office of the Trustee, and
- (6) The assigned CUSIP numbers, if any.

In addition to the notice to Owners in accordance with the paragraph above, further notice of any redemption of Bonds hereunder shall be given by the Trustee to such other addresses and/or such other services, as the Agency may designate in writing with respect to the Bonds, but failure by the Trustee to give such notice shall not affect the sufficiency of the proceedings from redemption.

Neither failure to receive any notice nor any defect in such notice so given shall affect the sufficiency of the proceedings for the redemption of such Bonds. Each check or other transfer of funds issued by the Trustee for the purpose of redeeming Bonds shall bear, to the extent practicable, the CUSIP number, if any, identifying, by maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure of the Trustee to give notice to a Bondholder or any defect in such notice shall not affect the validity of the redemption of with respect to the Bondholders to whom notice was mailed.

(c) Conditional Redemption. In the case of any optional redemption under Article V, (A) the notice may state (1) that it is conditioned upon the deposit of money, in an amount equal to the amount necessary to effect the redemption, with the Trustee on or prior to the redemption date or (2) that the Agency retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a “Conditional Redemption”), (B) such notice and optional redemption shall be of no effect if such money is not so deposited or if the notice is rescinded as described in this subsection, and (C) any Conditional Redemption may be rescinded in whole or in part at any time on or prior to the redemption date if the Agency delivers an Officer’s Certificate to the Trustee instructing the Trustee to rescind the redemption notice. The Trustee shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the Agency to make funds available in part or in whole on or prior to the redemption date shall not constitute an Event of Default, and the Trustee shall give Immediate Notice to the Securities

Depository or the affected Bondholders that the redemption did not occur and that the Bonds called for redemption and not so paid remain Outstanding.

**Section 5.6 Selection of Bonds for Redemption.** Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of like series and maturity or any given portion thereof, the Trustee shall select the Bonds to be redeemed, from all Bonds of such series and maturity subject to redemption or such given portion thereof not previously called for redemption, by lot in any manner that the Trustee in its sole discretion deems appropriate and fair.

**Section 5.7 No Partial Redemption After Default.** Anything in this Indenture to the contrary notwithstanding, if there has occurred and is continuing an Event of Default hereunder of which an officer of the Trustee has actual knowledge, there shall be no redemption of less than all of the Bonds at the time outstanding.

**Section 5.8 Effect of Redemption.** Notice of redemption having been duly given as aforesaid and, with respect to a Conditional Redemption only, not having been rescinded, the Bonds (or portions thereof) so called for redemption shall become due and payable at the redemption price specified in such notice and interest accrued thereon to date fixed for redemption. Interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Bondholders shall have no rights in respect thereof except to receive payment of said redemption price and accrued interest. All Bonds redeemed pursuant to the provisions of this Article, if any, shall be canceled upon surrender thereof and delivered to or upon the order of the Agency.

**Section 5.9 Purchase.** At the direction of the Agency, in writing, the Trustee shall apply money in the Bond Fund held for redemption or payment of Bonds, in excess of any amount set aside for payment of Bonds theretofore matured or called for redemption and unpaid interest in all cases where such Bonds have not been presented for payment, to the purchase on the open market of Outstanding Bonds subject to redemption or payment from such money as herein provided, and upon such purchase those Bonds will be canceled and the amount of such redemption or principal payment thereupon reduced by the principal amount of the Bonds so purchased and canceled, provided that no credit shall be given for such Bonds so purchased within the 45 days next preceding the redemption or payment date. Subject to the above limitations, the Trustee shall, if directed by the Agency in writing, purchase Bonds on the open market for cancellation at such times, for such prices (not to exceed the redemption price to redeem such bonds pursuant to Article V), in such amounts, and in such manner (whether after advertisement for tenders or otherwise) as so directed by the Agency and as may be possible with the amount of money available in the Bond Fund.

## **ARTICLE VI SUBORDINATE DEBT**

**Section 6.1 Subordinate Debt.** The Agency may issue obligations other than Additional Bonds payable from the Trust Estate only if the following conditions and requirements are met and complied with at the time of issuance:

- (a) No default then exists under this Indenture or any parity debt instrument; and

(b) The Subordinate Debt may be secured by a pledge of and shall be payable solely from Revenues available under Section 4.2(c)(6), that is subordinated to the lien on the Trust Estate granted to the Bondholders; and

(c) Any additional covenants and security provided to the provider of the Subordinate Debt shall be automatically deemed provided to the Trustee on a *pari passu* basis, without any filing being required; and

(d) Payments of principal of, premium, if any, and interest on the Subordinate Debt shall be made only from amounts in the Subordinate Debt Fund, and the Agency shall create a Subordinate Debt Fund to pay any Subordinate Debt that shall be funded in accordance with Section 4.2; and

(e) The Subordinate Debt shall not be subject to acceleration prior to the acceleration of the Bonds.

Nothing in this Section 6.1 shall be deemed to prohibit the Agency from entering into lease-purchase agreements, conditional sales agreements or similar purchase money security instruments that are for the acquisition of equipment or facilities not essential to the operation of the Projects, are in amounts not exceeding a total outstanding amount of \$250,000, and are payable solely from Revenues available under Section 4.2(c)(7).

In connection with the issuance of any Additional Bonds or Subordinate Debt, the Trustee may execute, or consent to the execution of, any documents or instruments requested by the Agency that are necessary or appropriate to allow the issuance or creation of the Additional Bonds Subordinate Debt, including but not limited to, any intercreditor agreement between the Trustee and the holder or holders of Additional Bonds or Subordinate Debt, or the trustee for the same.

## **ARTICLE VII GENERAL COVENANTS**

**Section 7.1 Payment of Principal, Premium, if any, and Interest.** Subject to the limited source of payment hereinafter referred to, the Agency covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture, on the dates and in the manner provided herein and in said Bonds The principal of, and interest and premium, if any, on the Bonds are payable solely from the Trust Estate, which Trust Estate is hereby specifically assigned and pledged to the payment of the Bonds in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Agency except the money pledged under this Indenture (other than the Rebate Fund).

**Section 7.2 Performance of Covenants; Legal Authorization.** The Agency covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, and in any and every Bond executed, authenticated and delivered hereunder. The Agency represents that it is duly authorized under the Constitution and laws of the State to issue the Bonds authorized hereby, to execute this Indenture and to pledge the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the owners thereof as shown on the Bond Register are and will be valid and enforceable obligations of the Agency according to the import thereof.

**Section 7.3 Revenues and Assignment of Revenues.** The Agency will not assign the Revenues other than the assignment thereof under this Indenture, or as allowed in connection with Additional Bonds or Subordinate Debt issued or made hereunder.

**Section 7.4 Recording and Filing.** The Agency covenants that, solely from additional amounts payable as provided hereunder, it will, if necessary, cause this Indenture and all supplements hereto, and all related financing statements, to be recorded and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the owners of the Bonds and the rights of the Trustee hereunder.

**Section 7.5 Books and Records.** The Agency covenants that so long as any Bonds are outstanding and unpaid, it will keep, or cause to be kept, proper books of record and account, including such records as are required by the Tax Certificate. Such books shall at all times be open for any lawful purpose to the inspection of such accountants or other agencies as the Trustee may from time to time designate.

**Section 7.6 Bond Register.** The Trustee shall keep on file at its Principal Office the Bond Register relating to the Bonds indicating the names and addresses of the owners of the Bonds and the serial numbers of such Bonds held by each of such owners. At reasonable times and under reasonable regulations established by the Trustee, the Bond Register may be inspected and copied by the Trustee, the Agency, the Purchaser, or the authorized representative of any owner or owners of 15% or more in Aggregate Principal Amount of the Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 7.7 Tax Covenant.** The Agency and the Trustee (but, with respect to the Trustee only as to those actions specifically directed by the Agency to be taken) each hereby covenant for the benefit of each owner of the Tax-Exempt Bonds that they will not take any action or omit to take any action or permit an action to be taken with respect to the Tax-Exempt Bonds, the proceeds thereof, or any other funds of the Agency or the Trustee if such action or omission (i) would cause the interest on the Tax-Exempt Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the Tax-Exempt Bonds to lose its exclusion from state taxable income under present state law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Tax-Exempt Bonds until the date on which all obligations of the Agency in fulfilling the above covenant under the Code have been met.

**Section 7.8 Limitations on Indebtedness.** The Agency agrees, so long as any Bonds are outstanding, that it will not incur any debt obligations secured by the Trust Estate, or any portion thereof, that are superior to or on parity with the Bonds, other than Additional Bonds on a parity therewith, issued or made pursuant to Section 2.14.

**Section 7.9 Enforcement of Agency's Obligations.** So long as no Event of Default hereunder has occurred and is continuing, the Agency may exercise all its rights under the Bond Documents and any other lease, agreement or contract, or supplement or amendment thereto; provided, however, that, except as permitted hereby or by the Bond Documents, the Agency shall not amend any of the same so as to affect adversely the Agency's ability to perform its covenants under this Indenture or change the payments or term of the Bond Documents or the security interest thereby and hereby created.

**Section 7.10 Covenants of Corporate Existence.** The Agency agrees, so long as any Bonds are outstanding, that it will comply with the following covenants:

(a) Except as otherwise expressly provided herein, to maintain its existence as a joint action agency formed under the authority of AS 42.45.300 – 42.45.320 duly qualified to do business in the State during the term of this Indenture.

(b) Pursuant to the requirements of AS 42.45.310(e), the Agency will not take any action that would limit or alter the rights and powers vested in the Purchasing Utilities or the Agency and will not in any way impair the rights and remedies of the Bondholders until the Bonds, together with the interest on them or with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of the Bondholder or other obligations are fully met and discharged.

**Section 7.11 Insurance.**

(a) The Agency shall cause the Projects to be at all times insured against such risks and in such amounts, with such deductible provisions, or provide for a source of self-insurance, as is consistent with Prudent Utility Practice.

(b) Each insurance policy required by this Section shall be issued or written by a financially responsible insurer (or insurers), or by an insurance fund established by the United States of America, the State, or an agency or instrumentality thereof, (ii) shall be in such form and with such provisions (including, without limitation and where applicable, loss payable clauses payable to the Trustee, waiver of subrogation clauses, provisions relieving the insurer of liability to the extent of minor claims and the designation of the named insured) as are generally considered standard provisions for the type of insurance involved, and (iii) shall prohibit cancellation or substantial modification by the insurer without at least thirty days' prior written notice to the Trustee. Without limiting the generality of the foregoing, all insurance policies, and other arrangements to the extent feasible, carried pursuant to this Section 7.11 shall name the Trustee and the Agency as parties insured thereunder as the respective interest of each of such parties may appear, and loss thereunder shall be made payable and shall be applied as provided in this Indenture. The Agency shall provide to the Trustee copies of certificates from an insurance agent or consultant indicating that the insurance required by this section has been obtained within 30 days after the end of each Fiscal Year after the date hereof. Copies of all insurance policies shall be made available to the Trustee upon request. The Trustee shall not be responsible for the sufficiency or adequacy of any such insurance policies or for determining that such policies comply with the requirements of this section. The Trustee shall not be required to hold or maintain insurance policies.

**Section 7.12 Rates and Charges.**

(a) The Agency shall establish, maintain and collect Firm Wholesale Power Rates from the Purchasing Utilities consistent with the Power Sales Agreement and sufficient in each Fiscal Year:

(1) to produce Net Revenues in such Fiscal Year equal to at least 120% of the Annual Debt Service on all Bonds for such Fiscal Year; and

(2) If Net Revenues in such Fiscal Year are not equal to at least 120% of the Annual Debt Service on all Bonds for such Fiscal Year, that event will not constitute an Event of Default under Section 8.1(c) if (i) Net Revenues in such Fiscal Year were equal to at least 100% of the Annual Debt Service on all Bonds for such Fiscal Year and (ii) within 90 days after the end of such Fiscal Year (A) the Agency retains a Professional Utility Consultant to review the adequacy of the Agency's rates and charges and take such steps, if any, as recommended by the Professional Utility Consultant and (B) in the first full Fiscal Year after such steps are taken, Net Revenues are equal to at least 120% of the Annual Debt Service on all Bonds for that Fiscal Year.

(b) Within 180 days after the end of each Fiscal Year, the Agency shall certify to the Trustee in writing the Revenues, Operation and Maintenance Expenses, Annual Debt Service on all Bonds, deposits to and withdrawals from the Rate Stabilization Fund, and all deposits into the Bond Reserve Fund, the R&R Fund, the Subordinate Debt Fund, and the Rebate Fund required under this Indenture for such Fiscal Year.

**Section 7.13 Continuing Disclosure.** The Agency has executed the Continuing Disclosure Agreement and hereby covenants and agrees to comply with the continuing disclosure requirements promulgated under SEC Rule 15c2-12, as it may from time to time hereafter be amended or supplemented. Notwithstanding any other provision of this Indenture, failure of the Agency to comply with the requirements of SEC Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default; however, the Trustee, at the written request of the Holders of at least 25% Aggregate Principal Amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause (based on an opinion of counsel of recognized standing concerning federal securities law) the Agency to comply with its obligations pursuant to this Section 7.13. **[Does anything need to be added here relating to the 2019 Bond, or will that be dealt with solely in the Loan Agreement?]**

**Section 7.14 Sale, Transfer, Disposition or Assignment of Assets.**

(a) As long as the Bonds are outstanding, the Agency shall not voluntarily sell, assign or transfer all or substantially all of its interest in the Projects.

(b) Subject to any conditions or limitations in the Tax Certificate, the Agency may sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part of the Projects or any real or personal property comprising a part of the Projects (each, as used below, a "transfer") if no Event of Default then exists, and only consistent with Prudent Utility Practice and with one or more of the following:

(1) The Agency in its discretion may without restriction carry out transfers of Projects Assets with a total fair market value of not in excess of \$100,000 in any Fiscal Year; or

(2) The Agency in its discretion may carry out transfers of Projects Assets with a total fair market value of between \$100,001 and \$750,000 in any Fiscal Year upon a certificate provided to the Trustee to the effect that the facilities or property transferred are not material to the operation of the Projects, or shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Projects or are no longer necessary, material or useful to the

operation of the Projects, provided that the proceeds of any such transfer shall be applied to the cost of replacement facilities or property or shall be deposited in the Bond Fund and applied to the redemption of Bonds; or

(3) The Agency in its discretion may carry out transfers of Projects Assets with a total fair market value of more than \$750,000 in any Fiscal Year upon a certificate of an Independent Engineering Consultant provided to the Trustee to the effect that the facilities or property transferred are not material to the operation of the Projects, or have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Projects or are no longer necessary, material or useful to the operation of the Projects, provided that the proceeds of any such transfer must be applied to the cost of replacement facilities or property or deposited in the Bond Fund and applied to the redemption of Bonds.

**Section 7.15 Permitted Operating Contracts.** The Agency may lease all or any part of the Projects or contract for the performance by others of operations or professional services utilizing the Projects, or any part thereof, for any lawful purposes, provided that: the provisions of each such contract shall be consistent with the provisions of this Indenture and Tax Certificate.

**Section 7.16 Maintenance of Facilities; Management.** The Agency shall (and will cause the Purchasing Utilities to) at all times maintain, preserve and keep each of the Facilities in good repair, working order and condition in accordance with Prudent Utility Practice, and undertake such regular maintenance as is necessary, consistent with Prudent Utility Practice. The Agency shall at all time cause the Facilities to be operated in an efficient manner at a reasonable cost. These covenants are subject to any additional conditions or limitations that may be in the Tax Certificate.

**Section 7.17 Required Repairs.** The Agency shall make all necessary and proper additions, betterments, renewals and repairs to each of the Facilities consistent with Prudent Utility Practice.

**Section 7.18 Enforcement of Power Sales Agreement.** The Agency shall diligently pursue all available remedies against any Purchasing Utility that fails to make any payment under the Power Sales Agreement when due, and shall diligently enforce other provisions of the Power Sales Agreement. The Agency will not consent to a termination or assignment of the Power Sales Agreement without the consent of the Owners of not less than a majority in Aggregate Principal Amount of Bonds then outstanding. The Agency may consent to an exception to the Full Requirements covenant in Section 3.c of the Power Sales Agreement (both as defined and set forth in the Power Sales Agreement) without the consent of, or notice to, any Owners of Bonds, so long as such exception, in the reasonable good faith judgment of the Agency, will not materially adversely affect the finances or operations of the Agency.

**Section 7.19 Damage, Destruction and Condemnation.** Subject to the provisions of Section 5.4, in the event of damage to or destruction or condemnation of the Projects or any portion thereof; the Agency shall apply the Net Proceeds from insurance, condemnation proceeds and other related sources to rebuild, repair and restore the affected portion of the Projects.

**ARTICLE VIII**  
**EVENTS OF DEFAULT; REMEDIES**

**Section 8.1 Events of Default.** Each of the following events is hereby declared an “Event of Default” under this Indenture:

(a) Default in the payment of any installment of interest payable on any of the Bonds when it becomes due and payable, and continuance of such default for a period of five (5) Business Days; or

(b) Default in the payment of the principal of or the premium, if any, payable on any of the Bonds when it becomes due and payable, either at maturity, by proceedings for redemption or upon acceleration; or

(c) Subject to the provisions of Section 8.2, default in the performance, or breach, or any covenant, warranty or representations of the Agency contained in this Indenture (other than a default under subsections (a) and (b) of this Section); or

(d) (1) an Event of Bankruptcy of the Agency; (2) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Agency or of any substantial portion of its property; or (3) the ordering of the winding up or liquidation of the affairs of the Agency; or

**Section 8.2 Notice and Opportunity to Cure Certain Defaults.** No default under Section 8.1(c) shall constitute an Event of Default until written notice of such default has been given to the Agency by the Trustee and the Agency has had 90 days after receipt of such notice to correct such default or cause such default to be corrected, and fails to do so. However, if the default is such that it cannot be corrected within such 90-day period, it shall not constitute an Event of Default if corrective action is instituted by the Agency within such period and diligently pursued (as determined by the Trustee) until the default is corrected.

**Section 8.3 Acceleration.** Upon the occurrence of an Event of Default described in Section 8.1(a) or (b) (of which the Trustee shall be deemed to have notice pursuant to the provisions of Section 9.1(g)), and the written request of the owners of not less than 50% in Aggregate Principal Amount of the Bonds then outstanding hereunder (exclusive of any Bonds the registered owner of which is the Agency), and upon being indemnified to its satisfaction as provided in Section 9.1(1), the Trustee shall, by notice in writing delivered to the Agency (an “Acceleration Declaration”), declare the entire principal amount of the Bonds then outstanding hereunder and the interest accrued thereon immediately due and payable, and the entire principal and interest shall thereupon become and be immediately due and payable, subject, however, to the provisions of Section 8.10 with respect to waivers of Events of Default. The Trustee shall give notice thereof by first class mail, postage prepaid, to all owners of outstanding Bonds; provided, however, that the giving of such notice shall not be considered a precondition to the Trustee declaring the entire principal amount of the Bonds then outstanding and the interest accrued thereon immediately due and payable. The Bonds shall cease to accrue interest on the date of the Acceleration Declaration whether or not they are paid on such date.

**Section 8.4 Remedies; Rights of Bondholders.** Upon the occurrence and continuance of any Event of Default hereunder, and upon being indemnified to its satisfaction as provided in

Section 9.1(1), the Trustee may, and with the written request of the owners of not less than 50% in Aggregate Principal Amount of the Bonds then outstanding hereunder (exclusive of any Bonds the registered owner of which is the Agency) the Trustee shall:

(a) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the owners under, and require the Agency to carry out any agreements with or for the benefit of the owners of Bonds and to perform its or their duties under the Act and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of this Indenture; or

(b) Bring suit upon the Bonds or the Indenture; or

(c) By action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the owners of Bonds, including any material change in the basic nature of the Agency, but any such judgment against the Agency shall be enforceable only against the Trust Estate and no recovery of any judgment by the Trustee shall in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the owners of the Bonds, but such lien, rights, powers and remedies of the Trustee and of the Bondholders shall continue unimpaired as before; or

(d) Have a receiver appointed as a matter of right, without regard to the sufficiency of the Projects or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take possession and control of the Projects and shall collect and receive all of the rents, issues, and profits thereof; or

(e) Revoke the Agency's license to collect the Firm Wholesale Power Rate, suspend the Agency's use of the Revenue Fund, Rate Stabilization Fund, Subordinate Debt Fund and R&R Fund, and direct the Purchasing Utilities to transfer those payments directly to the Trustee; or

(f) Demand specific performance of, retain or terminate the Power Sales Agreement (which rights are held by the Trustee as assignee of the Power Sales Agreement and consented to by each of the Purchasing Utilities as provided in Section 11(b) of the Power Sales Agreement); or

(g) Subject to the provisions of Section 8.3 applicable to an Event of Default under Section 8.1(a) or (b), accelerate all outstanding amounts on the Bonds made by the Agency and cause the Agency to pay in immediately available funds, an amount sufficient to repay the Bonds in full, together with interest; or

(h) Compel specific performance by the Agency of its obligations under the Bond Documents; or

(i) Appoint a manager or managers for the Projects; or

(j) Without being required to give any notice except as provided herein, pursue all remedies of a secured creditor under applicable laws of the State against the Agency; or

(k) Institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any violation or attempted violation of any of the provisions hereof, or to recover monetary damages caused by such violation or attempted violation; or

- (1) Exercise, any, some or all other remedies available by law or in equity.

Provided, however, that the Trustee shall have the right to decline to comply with any such request or direction if the Trustee shall be advised by counsel (who may be its own counsel) that the action so requested may not lawfully be taken or the Trustee in good faith shall determine that such action would be unjustly prejudicial to the owners of Bonds not parties to such request.

Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers of the Trust Estate, and of the rents, revenues, income, product and profits thereof, pending such proceedings, but, notwithstanding the appointment of any receiver, trustee or other custodian, the Trustee shall be entitled to the possession and control of any cash, securities or other instruments at the time held by, or payable or deliverable under the provisions of this Indenture to, the Trustee.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the owners of Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the owners of Bonds now or hereafter existing at law or in equity or by statute; provided, however, that any conditions set forth herein to the taking of any remedy to enforce the provisions of this Indenture and the Bonds shall also be conditions to seeking any remedies under any of the foregoing pursuant to this Section 8.4.

No delay or omission of the Trustee or any owner of Bonds to exercise any right or power accruing upon any default or Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every such right and power given by this Article VIII to the Trustee and the owners of Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the owners of Bonds, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

**Section 8.5 Direction of Proceedings by Bondholders.** The owners of not less than a majority in Aggregate Principal Amount of Bonds then outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, including enforcement of the rights of the Agency or the appointment of a receiver or any other proceedings hereunder, provided the Trustee shall have the right to decline to comply with any such direction if it shall in good faith determine that such direction is not in accordance with the provisions of law or of this Indenture, or that the proceedings so directed might involve it in personal liability for which it has not been indemnified to its satisfaction.

**Section 8.6 Application of Money.** Subject to the provisions of the Tax Certificate, all Revenues, condemnation or insurance proceeds, or other money received by the Trustee or any receiver pursuant to any right given or action taken under any provisions of this Indenture shall (after payment of the costs and expenses of the proceedings resulting in the collection of such money and the expenses, liabilities and advances, including reasonable attorneys' fees incurred or made by the

Trustee, it being understood that such payment shall not be made from money held for the benefit of the Bondholders for redemption or payment of the Bond pursuant to Article XI) be deposited in the Bond Fund and all money so deposited during the continuance of an Event of Default (other than money for the payment of Bonds that have previously matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default), together with all money in the Funds maintained by the Trustee under Articles IV, shall be applied as follows:

(a) Unless the Trustee has delivered an Acceleration Declaration to the Agency pursuant to Section 8.3 (which Acceleration Declaration has not been rescinded) all such money shall be applied:

FIRST: To the payment of amounts, if any, payable to the United States Treasury pursuant to the Tax Certificate;

SECOND: To the payment to the Persons entitled thereto of all installments of interest then due on the outstanding Bonds, with interest on overdue installments, if lawful, at the rate per annum borne by the Bonds in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination or privilege;

THIRD: To the payment to the Persons entitled thereto of the unpaid principal of any of the outstanding Bonds which shall have become due, with interest on such Bonds at their rate from the respective dates upon which they became due, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the Persons entitled thereto without any discrimination or privilege; and

(b) If the Trustee has delivered an Acceleration Declaration to the Agency pursuant to Section 8.3, all such money shall be applied:

FIRST: To the payment of amounts, if any, payable to the United States Treasury pursuant to the Tax Certificate;

SECOND: To the payment of the principal and interest then due and unpaid upon the Bonds, with interest on overdue interest and principal, as aforesaid, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege; and

(c) If the Trustee has delivered an Acceleration Declaration to the Agency pursuant to Section 8.3 and if such Acceleration Declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of paragraph (b) of this Section 8.6, which shall be applicable if the principal of all the Bonds later becomes due or be declared due and payable, the money shall be applied in accordance with the provisions of paragraph (a) of this Section 8.6.

Whenever money is to be applied pursuant to the provisions of this Section, such money will be applied at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such money, it shall, except as in accordance with Section 8.3, fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable in Trustee's judgment) upon which such application is to commence and upon such date interest on the amounts of principal and interest to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such money and of the fixing of any such date. The Trustee shall not be required to make payment to the owner of any unpaid Bond until that Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 8.7 Remedies Vested in Trustee.** All rights of action including the right to file proof of claims under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any owners of the Bonds, and any recovery of judgment shall be for the equal benefit of the owners of the then outstanding Bonds, subject to the provisions of this Indenture.

**Section 8.8 Rights and Remedies of Bondholders.** No owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default shall have become an Event of Default and the owners of not less than 50% in Aggregate Principal Amount of Bonds then outstanding shall have made written request to the Trustee and shall have offered the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and unless also such Bondholders have offered to the Trustee indemnity as provided in Section 9.1(1), and unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request, offer of indemnity and consent are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by any action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the owners of all Bonds outstanding. Nothing in this Indenture contained shall, however, (i) affect or impair the right of any owner to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof or (ii) affect or impair the obligation of the Agency to pay the principal of and interest on each of the Bonds issued hereunder to the respective owners thereof at the time and place, from the source and in the manner in said Bonds expressed.

**Section 8.9 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every case the Agency and the Trustee shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder

with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.10 Waiver of Events of Default.** The Trustee may, in its discretion, and without any action on the part of the Bondholders, waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of principal, and shall do so upon being indemnified to its satisfaction and upon the written request of the owners of (i) at least a majority in Aggregate Principal Amount of all the Bonds outstanding in respect of which default in the payment of principal and/or interest exists, or (ii) at least a majority in Aggregate Principal Amount of all the Bonds outstanding in the case of any other Event of Default; provided, however that there shall not be waived without the consent of the Bondholders affected thereby (A) any Event of Default in the payment of the principal of any outstanding Bonds when due whether by mandatory redemption through the Bond Fund, at the dates of maturity specified therein or otherwise, (B) any default in the payment when due of the interest on any such Bonds.

In case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Agency, the Trustee and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

**Section 8.11 Agency's Rights of Possession and Use of its Property.** So long as the Agency is in full compliance with the terms and provisions, the Agency shall be suffered and permitted to possess, use and enjoy its property and appurtenances thereto free of claims of the Trustee.

**Section 8.12 Waiver of Redemption; Effect of Sale of Trust Estate.** The Agency, to the extent permitted by law, shall not claim any rights under any stay, valuation, exemption or extension law, and hereby waives any right of redemption it may have in respect of any sale or other disposition of the Agency's property (to the extent any rights or claims in and to any such property constitute a portion of the Trust Estate) pursuant to the rights and remedies granted under this Article. Upon the institution of any foreclosure proceedings or upon any sale or other disposition of the Agency's property to satisfy amounts owing hereunder, the principal of all Bonds then Outstanding hereunder, if not previously due and payable, shall without notice become immediately due and payable.

**Section 8.13 Notice of Default.** Upon obtaining knowledge of any default hereunder, the Trustee will promptly give written notice thereof to the Agency, setting forth the nature of such default. The foregoing notwithstanding, the giving of such notice shall not be considered a precondition to the Trustee declaring the entire principal amount of the Bonds then Outstanding and the interest accrued thereon immediately due and payable.

**Section 8.14 Preservation of FERC Rights.** Notwithstanding any provision contained herein, in the event of any default hereunder, Trustee, and its successors and assigns, has the right but not the obligation to perform any and all acts required by an order of the Federal Energy Regulatory Commission or its successor affecting the leased portion of the encumbered property securing the Bonds and obligations of the Agency without the prior approval of the Agency.

## **ARTICLE IX TRUSTEE**

**Section 9.1 Acceptance of the Trusts.** The Agency appoints Wells Fargo Bank, National Association as Trustee. The Trustee hereby accepts and agrees to execute the trusts imposed upon it by this Indenture, but only upon the terms and conditions set forth herein, to all of which the Agency agrees and the respective owners of the Bonds agree by their acceptance of delivery of any of the Bonds. The Trustee, prior to the occurrence of an Event of Default hereunder and after the curing of all events of default hereunder which may have occurred, agrees to undertake to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee. If an Event of Default hereunder has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent person would exercise in the circumstances in the conduct of such person's own affairs. The Trustee agrees to perform such trusts upon and subject to the following express terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, affiliates, or receivers and shall not be responsible for the misconduct or negligence of any such attorneys, agents, affiliates, or receivers appointed in the exercise of due care. The Trustee shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Trustee may act upon the opinion or advice of an attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Agency, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except with respect to the certificate of the Trustee endorsed on the Bonds), or for any statement or information in any official statement or other offering material prepared or distributed with respect to the Bonds, or for the investment of money as herein permitted (except that no investment shall be made except in compliance with Section 4.8), or for the recording or re-recording, filing or re-filing of this Indenture, or any supplement or amendment thereto, or the filing of financing statements, or for the validity of the execution by the Agency of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof. The Trustee may (but shall be under no duty to) require of the Agency full information and advice as to the performance of the covenants, conditions and agreements herein. The Trustee shall have no obligation to perform any of the duties of the Agency.

(c) The Trustee shall not be accountable for the use or application by the Agency of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture.

(d) The Trustee shall be protected in acting upon any notice, order, requisition, request, consent, certificate, order, report, plan, opinion (including an opinion of counsel), affidavit, letter, telegram or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee

pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Agency by an Authorized Representative of the Agency as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which by said subsection it is deemed to have notice, may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Authorized Representative of the Agency to the effect that a resolution in the form therein set forth has been adopted by the Agency as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its gross negligence or willful misconduct.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder, other than an Event of Default under subsection (a), or (b) of Section 8.1 unless the Trustee shall be specifically notified in writing of such default (a "Default Declaration")• by the Agency or by the owners of at least 50% in Aggregate Principal Amount of all Bonds then Outstanding, and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Office of the Trustee, and in the absence of such Default Declaration so delivered the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the property of the Agency.

(i) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property pledged hereunder, including all books, papers and records of the Agency pertaining to the property pledged hereunder and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises. No provision of this Indenture shall require the Trustee to expend, advance, or risk its own funds or incur any financial liability in the performance of its duties or in the exercise of any of its rights or powers if it shall have the reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed reasonably necessary for the purpose of establishing the right of the Agency to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

(l) Before taking any action under this Article other than an acceleration when required pursuant to Section 8.3, or effecting optional or mandatory redemptions, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, without limitation, reasonable attorney's fees and any liability arising from any present or future federal, state or local law, statute, ordinance, rule or regulation, including without limitation, those relating to the protection of the environment or Hazardous Substances, except liability that is adjudicated to have resulted from its gross negligence or willful default in connection with any action so taken.

(m) All money received by the Trustee shall, until used or applied or invested as provided in this Indenture, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law or by this Indenture. The Trustee shall not be under any liability for interest on any money received hereunder except such as may be agreed upon.

**Section 9.2 Compensation and Expenses of Trustee.** The Trustee shall be entitled to payment and/or reimbursement for reasonable fees and for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by it in connection with such services. Upon an Event of Default hereunder, but only upon such an Event of Default, the Trustee shall have a right of payment prior to payment on account of principal of, or premium, if any, or interest on any Bond for the foregoing advances, fees, costs and expenses incurred, provided, however, that in no event shall the Trustee have any such prior right of payment or claim therefor against (i) money or obligations deposited with or paid to the Trustee for the redemption or payment of Bonds that are deemed to have been paid in accordance with Article XI, and (ii) amounts on deposit in the Rebate Fund, and (iii) other funds held in trust by the Trustee for the benefit of the Holders of particular Bonds.

**Section 9.3 Notice to Bondholders.** If an Event of Default occurs of which the Trustee is by subsection (g) of Section 9.1 required to take notice or if notice of default is given as provided in said subsection (g), then the Trustee shall give written notice thereof by first class mail, postage prepaid to the registered owners of all then Outstanding Bonds.

**Section 9.4 Good Faith Reliance.** The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, electronic mail, telex or facsimile transmission, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or upon the written opinion of any attorney, engineer, accountant or other expert believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any

statements contained or matters referred to in any such instrument, but may accept and rely, upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an owner of Bonds or to take any action at such person's request unless satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

**Section 9.5 Dealings in Bonds.** The Trustee and its affiliates may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder, and may join in any action that any owner may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Agency, and may act as depository, trustee or agent for any committee or body of owners of Bonds or other obligations of the Agency as freely as if it did not act in any capacity hereunder.

**Section 9.6 Intervention by Trustee.** In any judicial proceeding to which the Agency is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 9.1(1), shall do so if requested in writing by the owners of at least 50% in Aggregate Principal Amount of all Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

**Section 9.7 Successor Trustee by Merger or Consolidation.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, provided such corporation or association is otherwise eligible under Section 9.8, shall be and become successor Trustee hereunder, vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor under this Indenture without the execution .or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 9.8 Trustee Required Eligibility.** There shall at all times be a Trustee hereunder which shall (i) be a commercial bank or trust company organized under the laws of the United States of America or any state, authorized to exercise corporate trust powers in the State, subject to supervision or examination by federal or state authorities and (ii) have a reported combined capital and surplus of not less than \$40,000,000. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner provided in Section 9.9(a). No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment under Section 9.13.

**Section 9.9 Resignation of Trustee; Removal of the Trustee.**

(a) Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts created by this Indenture by executing an instrument in writing resigning such trusts and specifying the date when such resignation shall take effect, and filing the same with the Agency not less than 45 days before the date specified in such instrument when such resignation shall take effect, and by giving notice of such resignation by first class mail, postage prepaid, not less than 20 days prior to such resignation date, to each registered owner of Bonds then outstanding, as shown by the Bond Register.

(b) Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Agency and signed by the owners of not less than a majority in Aggregate Principal Amount of Bonds then outstanding. So long as no Event of Default has occurred and is continuing under this Indenture, the Trustee may be removed at any time by an instrument in writing signed by the Agency and delivered to the Trustee. The foregoing notwithstanding, the Trustee may not be removed by the Agency unless written notice of the delivery of such instrument or instruments signed by the Agency is mailed to the owners of all Bonds outstanding under this Indenture, which notice indicates the Trustee will be removed and replaced by the successor trustee named in such notice, such removal and replacement to become effective on the 90th day next succeeding the date of such notice. Such notice shall be mailed by first class mail postage prepaid to the owners of all such Bonds then outstanding at the address of such owners then shown on the Bond Register. The Trustee shall continue to act as Trustee hereunder and have the right to proceed to cure any gross negligence, willful misconduct or failure to unwillingness to perform its duties (any of which shall be deemed to constitute "cause"), for a period of two (2) weeks. If the Trustee has not taken steps to effect a cure within such time, the Trustee's functions hereunder will be terminated immediately upon appointment of a successor trustee by the Agency.

Notwithstanding anything herein to the contrary, Trustee shall be entitled to all unpaid fees and expenses earned or incurred through the effective date of any termination under this Section 9.10.

No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment under Section 9.13.

**Section 9.10 Appointment of Successor Trustee by the Bondholders; Temporary Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the process of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, then a vacancy shall forthwith and as a result thereof exist in the office of Trustee and a successor may be appointed, with the approval of the Agency, by the owners of a majority in Aggregate Principal Amount of Bonds then outstanding by filing with the Agency an instrument or concurrent instruments in writing signed by such owners' or by their attorneys in fact duly authorized; provided, nevertheless, that in case of such vacancy the Agency by an instrument executed and signed by an Authorized Representative of the Agency, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; provided further, that if no permanent successor Trustee shall have been appointed by the Bondholders within the six calendar months next succeeding the month during which the Agency appoints such a temporary Trustee, such temporary Trustee shall without any further action on the part of the Agency or the Bondholders become the permanent successor Trustee. After any appointment by the Agency as provided herein, the Agency shall cause notice of such appointment to be given and each Rating Agency and to be given by first class mail, postage prepaid, to all owners of Bonds. The foregoing notwithstanding, any such temporary Trustee so appointed by the Agency shall immediately and without further act be superseded by any successor Trustee so appointed by such Bondholders, with the consent of the Agency, as provided above within the six calendar months next succeeding the month during which such temporary Trustee is appointed.

**Section 9.11 Judicial Appointment of Successor Trustee.** In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing

provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation is to take effect, the resigning Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. All costs, fees and expenses related to such application to any court shall be paid by the Agency. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within six calendar months after a vacancy shall have occurred in the office of Trustee, any owner of Bonds may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

**Section 9.12 Concerning Any Successor Trustees.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Agency an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Agency or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder and execute and deliver an instrument transferring to such successor Trustee all estates, properties, rights, powers and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Agency be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Agency. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed and/or recorded by the successor Trustee in each recording office, if any, where this Indenture shall have been filed and/or recorded.

**Section 9.13 Successor Trustee as Trustee of Funds, Paying Agent and Registrar.** In the event of a change in the office of Trustee, the predecessor Trustee that has resigned or been removed shall cease to be Trustee of the Funds, the Rebate Fund and any other funds provided hereunder and shall cease to be the registrar and paying agent for principal of, premium, if any, and interest on the Bonds, and the successor Trustee shall become such Trustee, registrar and paying agent.

## **ARTICLE X SUPPLEMENTAL INDENTURES**

**Section 10.1 Supplemental Indentures Not Requiring Consent of Bondholders.** Subject to the limitation set forth in Section 10.2 with respect to this Section, the Agency and the Trustee may, without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders and the Trustee, or either of them;

- (c) To assign and pledge under or subject to this Indenture additional revenues, properties or collateral;
- (d) To evidence the appointment of a separate Trustee or the succession of a new Trustee hereunder;
- (e) To permit the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;
- (f) To permit continued compliance with the Tax Certificate;
- (g) To provide for certificated Bonds;
- (h) To provide for the refunding or advance refunding of any Bonds, including the right to establish and administer an escrow fund and to take related action in connection therewith;
- (i) To secure or maintain ratings from any Rating Agency in the highest short-term or commercial paper debt rating category and the highest long-term debt rating categories of such Rating Agency that are available for the Bonds, which changes will not restrict, limit or reduce the obligation of the Agency to pay the principal of and premium, if any, and interest on the Bonds as provided in this Indenture or otherwise adversely affect the owners of the Bonds under this Indenture;
- (j) To appoint a successor Securities Depository;
- (k) To allow the Agency to issue or make Additional Bonds pursuant to Section 2.14, as variable rate or fixed rate obligations;
- (l) To allow the Agency to issue or make Subordinate Debt pursuant to Section 6.1; and
- (m) To make any change that does not materially adversely affect the rights of any Bondholders and does not involve a change described in Section 10.2 requiring consents of specific Bondholders.

The Trustee shall not be obligated to enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture.

## **Section 10.2 Supplemental Indentures Requiring Consent of Bondholders.**

(a) In addition to supplemental indentures covered by Section 10.1 and subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than a majority in Aggregate Principal Amount of the Bonds outstanding hereunder at the time of the execution of such indenture or supplemental indenture shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Agency and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Agency for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this

Indenture or in any supplemental indenture; provided, however, that nothing contained in this Section or Section 10.1 shall permit, or be construed as permitting, a supplemental indenture to effect: (i) an extension of the maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the owners of such Bonds; (ii) a reduction in the amount or extension of the time of any payment required to be made to or from the Bond Fund; (iii) the creation of any lien prior to or on a parity with the lien of this Indenture on the Trust Estate described in the granting clauses of this Indenture, excluding Additional Bonds issued pursuant to Section 2.14, or the deprivation of any Bondholders of the lien created by this Indenture on such Trust Estate, without the consent of the owners of all the Bonds at the time outstanding; (iv) a reduction in the aforesaid Aggregate Principal Amount of Bonds the owners of which are required to consent to any such supplemental indenture, without the consent of the owners of all the Bonds at the time outstanding that would be affected by the action to be taken; or (v) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

(b) If at any time the Agency shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid to the registered owners of the Bonds at their addresses as the same shall appear on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. If the owners of the requisite principal amount of Bonds outstanding hereunder at the time of the execution of any such supplemental indenture have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Agency from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

## **ARTICLE XI DISCHARGE AND DEFEASANCE**

**Section 11.1 Discharge.** If the Agency shall pay or provide for the payment of the entire indebtedness on all Bonds and Subordinate Debt outstanding in any one or more of the following ways:

(a) By paying or causing to be paid the principal of (including premium, if any) and interest on all Bonds and Subordinate Debt outstanding, as and when the same become due and payable; or

(b) By delivering to the Trustee, for cancellation by it, all Bonds and Subordinate Debt outstanding; or

(c) By defeasing all Bonds or Subordinate Debt according to the provisions of Section 11.3;

then this Indenture and the estate and rights granted hereunder shall cease, determine and become null and void, and thereupon the Trustee shall, upon Written Request of the Agency, and upon receipt by the Trustee of an Officer's Certificate and an Approving Opinion, each stating that in the opinion of the signers all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, forthwith execute proper instruments acknowledging satisfaction of and discharging this Indenture and the lien hereof. In such event, the Trustee shall (a) cancel and discharge this Indenture and the pledge and assignment of the Trust Estate, (b) execute and deliver to the Agency such instruments in writing prepared by the Agency or its counsel and provided to the Trustee as shall be required to cancel and discharge this Indenture and the pledge and assignment of the Trust Estate, and (c) reconvey, assign and deliver to the Agency so much of the Trust Estate as may be in its possession or subject to its control (except for (1) money and Government Obligations held for the purpose of paying Bonds or Subordinate Debt and (2) money and investments held in the Rebate Fund for payment to the United States Government).

The satisfaction and discharge of this Indenture shall be without prejudice to the rights of the Trustee to charge and be reimbursed by the Agency for any fees and expenditures that it may thereafter incur in connection herewith.

**Section 11.2 Liability of Agency Not Discharged.** Upon the deposit with the Trustee, in trust, at or before maturity, of money or Government Obligations in the amount necessary to pay or redeem all outstanding Bonds and Subordinate Debt (whether upon or prior to maturity or the redemption date of such Bonds and Subordinate Debt) and compliance with the other payment requirements of Section 11.1, provided that if such Bonds and Subordinate Debt are to be redeemed prior to the maturity thereof; notice of such redemption shall have been given as provided in Article V, or provisions satisfactory to the Trustee have been made for the giving of such notice, and subject to the provisions of Section 11.4, this Indenture may be discharged in accordance with the provisions hereof but the liability of the Agency in respect of such Bonds and Subordinate Debt shall continue provided that the owners thereof shall thereafter be entitled to payment only out of the money or the Government Obligations deposited with the Trustee as aforesaid.

**Section 11.3 Defeasance.** Any Bond or Subordinate Debt will be deemed to have been paid within the meaning of Section 11.1 if the Agency:

(a) deposits with the Trustee, in trust, at or before maturity, money or Government Obligations that are not repayable or callable prior to the date the money therefrom is anticipated to be required in such amount as shall be determined (based upon a verification report delivered by a nationally recognized independent certified public accountant or firm of nationally recognized independent certified public accountants) will, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, and with any uninvested cash, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on such portion of the Bonds and Subordinate Debt at or before their respective maturity dates; and

(b) the Agency also pays or causes to be paid all other sums payable hereunder by the Agency with respect to such portion of the Bonds and Subordinate Debt, and,

(c) if such portion of the Bonds and Subordinate Debt is to be redeemed prior to the maturity thereof, notice of such redemption has been given as provided in Article V of this Indenture, or provisions satisfactory to the Trustee have been made for the giving of such notice.

The liability of the Agency in respect of such Bonds and Subordinate Debt or such portion thereof shall continue, but the owners thereof shall thereafter be entitled to payment (to the exclusion of all other holders of Bonds or Subordinate Debt) only out of the money or Government Obligations deposited with the Trustee as aforesaid.

**Section 11.4 When Refunding Is Not Permitted.** As a condition precedent to the prior refunding of any Bonds or Subordinate Debt outstanding hereunder, the Trustee shall receive an Approving Opinion to the effect that such prior refunding would not result in the loss of any exclusion of interest on the Bonds or Subordinate Debt from gross income for federal income tax purposes under Section 103(a) of the Code to which the interest on such Bonds and Subordinate Debt would otherwise be entitled.

## **ARTICLE XII MISCELLANEOUS**

**Section 12.1 Springing Amendments.** This Indenture provides for the issuance of the 2019 Bond to defease the Refunded Bonds, which are all of the remaining outstanding 2009 Bonds. Therefore, as provided in Section 6.1 of the 2015 Supplemental Indenture and authorized by the Agency in the 2019 Bond Resolution, the Agency and the Trustee agree to incorporate in this Indenture provisions amending the Original Indenture and the 2015 Supplemental Indenture for all of the purposes described and permitted in Section 6.1 of the 2015 Supplemental Indenture, as follows.

(a) This Indenture removes the Deed of Trust from the Trust Estate, and the Trustee agrees to reconvey the Deed of Trust to the Agency and release the lien of the Bonds on the Project Assets, as permitted by Section 6.1(a) of the 2015 Supplemental Indenture.

(b) Section 4.2(c) of this Indenture incorporates the provision described in Section 6.1(b) of the 2015 Supplemental Indenture, eliminating the requirement for monthly deposits into the Bond Fund to pay principal of, premium, if any, and interest on Bonds.

(c) Section 4.6 of this Indenture incorporates the provision described in Section 6.1(c) of the 2015 Supplemental Indenture permitting the Agency use a Reserve Credit Facility to satisfy the R&R Fund requirement.

(d) Section 7.12(a)(2) of this Indenture incorporates the provision described in Section 6.1(d) of the 2015 Supplemental Indenture, providing for review by a Professional Utility Consultant if Net Revenues fail to satisfy the rate covenant set forth therein.

(e) Section 8.3 of this Indenture modifies the provisions relating to acceleration as a remedy, as permitted by Section 6.1(e) of the 2015 Supplemental Indenture

(f) Section 7.18 of this Indenture incorporates the provision described in Section 6.1(f) of the 2015 Supplemental Indenture removing the requirement for Bondowner consent when the Agency wishes to grant an exemption from the Full Requirements covenant in the Power Sales Agreement.

(g) Section 8.2 of this Indenture provides for a 90-day cure period for certain Events of Default, as permitted by Section 6.1(g) of the 2015 Supplemental Indenture.

(h) Section 5.5(a) of this Indenture modifies the timing for notices for the redemption of Book-Entry Bonds, as permitted by Section 6.1(h) of the 2015 Supplemental Indenture.

(i) Section 5.5(c) of this Indenture modifies the provision for conditional redemption of Bonds, as permitted by Section 6.1(i) of the 2015 Supplemental Indenture.

**Section 12.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the Agency, the Trustee, and the owners of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Agency, the Trustee, and the owners of the Bonds as herein provided.

**Section 12.3 Notices.** Except as otherwise provided in this Indenture, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when in writing and either mailed by first class mail, postage prepaid, with proper address as indicated below or sent by facsimile (with written confirmation by first class mail, postage prepaid). Any of such parties may, by written notice given by such party to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

**To the Agency:**

THE SOUTHEAST ALASKA POWER AGENCY  
1900 First Avenue #318  
Ketchikan, AK 99901  
Attention: Chief Executive Officer

with a copy to:

Ascent Law Partners, LLP  
719 Second Avenue, Suite 1150  
Seattle, WA 98104  
Phone: (206) 535-8411  
Attention: Joel Paisner

**To the Trustee: [Denver?]**

[Wells Fargo Bank, National Association  
1300 S.W. 5th Avenue, 11th Floor  
MAC P6101-114  
Portland, Oregon 97201  
Attention: Corporate Trust Department  
Fax: (503) 886-3300  
Phone: (503) 886-1411]

**To Moody's:**

Moody's Investors Service  
Public Finance Department  
99 Church Street  
New York, NY 10007-2796  
Attention: Structured Finance Group

**To S&P:**

S&P Global Ratings  
55 Water Street  
New York, NY 10041

**Section 12.4 Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.5 Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the laws of the State.

**Section 12.6 Additional Notices to Rating Agencies.** The Trustee hereby agrees that if at any time (i) payment of principal of and interest on the Bonds is accelerated pursuant to the provisions of Section 8.3, (ii) the Agency shall redeem any portion of the Bonds outstanding hereunder prior to maturity, (iii) the Agency shall provide for the payment of any portion of the Bonds pursuant to Article XI, (iv) a successor Trustee is appointed hereunder, or (v) any amendment or supplement to the Indenture shall become effective, in each case, the Trustee shall give notice to each Rating Agency then maintaining a rating on the Bonds. Any additional information that the Rating Agency may reasonably request to maintain the rating on the Bonds shall be provided by the Agency or Trustee, as appropriate.

**Section 12.7 Unclaimed Money.** Any money deposited with the Trustee by the Agency in accordance with the terms and provisions of this Indenture to redeem or pay any Bond in accordance with the provisions of this Indenture, and remaining unclaimed by the registered owner of the Bond for six years after the date fixed for final maturity or redemption of all Bonds, as the case may be, shall be repaid by the Trustee to the Agency upon its Written Request therefore; and thereafter the registered owner of the Bond shall be entitled to look only to the Agency for payment thereof, provided, however, that the Trustee, before being required to make any such repayment, shall, at the expense of the Agency, mail to the registered owner thereof at its address, as the same shall last

appear on the Bond Register, a notice to the effect that said money has not been so applied and that after the date named in said notice any unclaimed balance of said money then remaining will be returned to the Agency.

**Section 12.8 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

**Section 12.9 Severability.** If any provision of this Indenture is held or deemed to be or is, in fact, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases, because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

IN WITNESS WHEREOF, the Agency and the Trustee have caused this Amended and Restated Indenture to be executed, as of the date first above written.

THE SOUTHEAST ALASKA POWER AGENCY

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
\_\_\_\_\_, Vice President

**EXHIBIT A**

Form of Requisition –2019 Costs of Issuance Account

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION, Trustee  
FROM: THE SOUTHEAST ALASKA POWER AGENCY  
RE: Electric Revenue Refunding Bond, Series 2019

This represents Requisition Certificate No. 1 in the total amount of \$\_\_\_\_\_ for payment of Issuance Costs related to the Electric Revenue Refunding Bond, Series 2019, as defined in the Amended and Restated Indenture of Trust, dated May\_\_, 2019 (the “Indenture”).

The payee(s), the amount of disbursement requested, and any other payment instructions are as follows:

<i>Description</i>	<i>Firm</i>	<i>Total</i>
Bond Counsel	Stradling Yocca Carlson & Rauth, P.C.	\$_____
Total		<u>          </u> <u>          </u> \$_____

THE SOUTHEAST ALASKA POWER AGENCY (the “Agency”) herby certifies that (1) the expenditure(s) for which money is requested hereby represent proper Issuance Costs and have not been included in a previous requisition certificate, and (2) none of the payments requested herein will result in a breach of the representations and agreement contained in Section 7.7 of the Indenture or in the Tax Certificate.

Dated this \_\_\_\_\_ day of May, 2019.

THE SOUTHEAST ALASKA POWER AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, Chief Executive Officer

**EXHIBIT B**

Form of 2019 Bond

No. R-1

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF ALASKA**

**The Southeast Alaska Power Agency  
Electric Revenue Refunding Bond, Series 2019**

INTEREST RATES: (See Below)

FINAL MATURITY DATE:

REGISTERED OWNER: ALASKA MUNICIPAL BOND BANK (the "Bond Bank")

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The Southeast Alaska Power Agency, a joint action agency formed under Alaska law (the "Agency"), for value received, acknowledges itself to owe and for value received hereby promises to pay (but only out of the Trust Estate) to the Registered Owner identified above, or registered assigns, the principal amount specified above, in installments payable as set forth below, together with interest on such installments from the date hereof or the most recent date to which interest has been paid or duly provided for, at the interest rates set forth below, on \_\_\_\_\_, 20\_\_, and on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 thereafter until payment of the principal sum has been made or duly provided for.

Principal Installment Payment Year (_____ 1)	Principal Installment Amount	Interest Rate
_____	_____	_____

This bond is issued under an Amended and Restated Indenture of Trust, dated May \_\_, 2019 (the "Indenture"), between the Agency and Wells Fargo Bank, National Association (the "Trustee"), as authorized by Resolution No. 2019-\_\_ of the Agency's Board of Directors, adopted on March \_\_, 2019 (the "2019 Bond Resolution"). Proceeds of this bond will be used to refund certain outstanding bonds of the Agency. Capitalized terms used in this bond and not otherwise defined have the meanings given them in the Indenture.

Installments of principal of and interest on this bond are payable by the Trustee in accordance with the Indenture; provided, however, so long as the Bond Bank is the Registered Owner of this

bond, payments of principal of and interest on this bond will be made to the Bond Bank in accordance with the Loan Agreement.

Principal installments of this bond are subject to prepayment as provided in the Indenture and Loan Agreement.

This bond is issued on a parity of lien with the Agency's outstanding Electric Revenue Improvement and Refunding Bonds, Series 2015 (the "2015 Bonds"), and under the Indenture the Agency has reserved the right to issue Additional Bonds on a parity of lien with the 2015 Bonds and this bond on the terms and conditions set forth therein. The 2015 Bonds, this bond, and any Additional Bonds are defined in the Indenture and herein as the "Bonds."

THE OBLIGATION OF THE ISSUER TO PAY THE BONDS DOES NOT CONSTITUTE A DEBT OF THE STATE OF ALASKA OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF ALASKA OR OF THE MEMBER UTILITIES OF THE ISSUER. THE BONDS ARE PAYABLE ONLY FROM THE TRUST ESTATE, INCLUDING REVENUES RECEIVED PURSUANT TO THE POWER SALES AGREEMENT AND AMOUNTS IN FUNDS HELD BY THE TRUSTEE PURSUANT TO THE INDENTURE. THE ISSUER IS NOT OBLIGATED TO PAY THE BONDS OR THE INTEREST ON THE BONDS EXCEPT FROM THE REVENUE PLEDGED FOR THE BONDS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF ANY MEMBER UTILITIES OF THE ISSUER, THE STATE OF ALASKA OR OF ANY INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF OTHER THAN THE ISSUER IS PLEDGED TO THE PAYMENT OF THE BONDS. THE ISSUER HAS NO TAXING POWER.

The Trust Estate is defined to include Revenues, the funds and accounts held by the Trustee (excluding the Rebate Fund), the Agency's rights and interests in the Power Sales Agreement, and other Agency revenues related to the Projects, including insurance and condemnation proceeds. The Bonds shall constitute a valid claim of the respective owners thereof against the Trust Estate, which is pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Bonds are not general obligations of the Agency, and under no circumstances shall the Bonds be payable from, nor shall the holders thereof have any rightful claims to, any income, revenues, funds or assets other than those pledged under the Indenture as security for the payment of the Bonds.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the registered Bondholders of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Agency thereunder, to all of the provisions of which Indenture the Holder of this bond, by acceptance hereof, assents and agrees.

Any transfer or exchange of this bond must be as provided in the Indenture. The Agency and the Trustee may treat the person in whose name this bond is registered as its absolute owner for all purposes, as provided in the Indenture.

The Owner of this bond shall have no right to institute any suit, action or proceeding at law or in equity, for enforcement of the Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy under or upon the Indenture, except as provided in the Indenture.

It is hereby certified that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State.

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 has been manually signed by the Trustee.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Alaska; that this bond and all other obligations of the Agency and are within every debt limitation and other limit prescribed by such Constitution and Statutes.

In witness whereof, The Southeast Alaska Power Agency has caused this bond to be executed in its name and on its behalf by the manual or facsimile signature of the Chair of its Board of Directors and attested by the manual or facsimile signature of its Secretary, all as of the above date.

**THE SOUTHEAST ALASKA POWER AGENCY**

\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_, Secretary

**THIS BOND SHALL NOT BE VALID UNLESS PROPERLY AUTHENTICATED BY THE TRUSTEE IN THE SPACE INDICATED BELOW.**

**CERTIFICATE OF AUTHENTICATION**

This is the Agency's Electric Revenue Refunding Bond, Series 2019, issued pursuant to the 2019 Bond Resolution described herein.

AUTHENTICATION DATE: May \_\_, 2019

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Registrar

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

## ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_ [name, address and tax i.d. number of transferee] the within-mentioned Registered Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the Trustee with full power of substitution in the premises.

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

NOTICE: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

NOTICE: The signatures to this Assignment must be guaranteed by a financial institution that is a member of the Securities Transfer Agents Medallion Program (“STAMP”), the Stock Exchange Medallion Program (“SEMP”) or the New York Stock Exchange, Inc. Medallion Securities Program (“MSP”).

Signature Guaranteed

(Bank, Trust Company or Brokerage Firm)

Authorized Officer

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM – tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the list above.

**EXHIBIT C**

**Projects Asset List**

[i.e., Exhibit B from Deed of Trust]