1. Adoption of the March 29, 2022 Proposed Meeting Agenda

2. DISCUSSION AGENDA:
   a. Strategic Initiatives
      i. Interim President and Chief Executive Officer’s Report -- (Justin Driscoll)
   b. Chief Operations Officer’s Report -- (Joseph Kessler)
   c. Chief Commercial Officer’s Report -- (Sarah Salati)
   d. Chief Financial Officer’s Report -- (Adam Barsky)
      i. Erie Canal Harbor Development Corporation Payment Acceleration -- Resolution (Adam Barsky)
   e. Finance & Risk Committee Report -- (Chair Tracy McKibben)
      i. Finance & Risk Committee Recommendations for Approval:
         1. Amendment and Restatement of the 2020 Revolving Credit and Note Purchase Agreements (Adam Barsky)
         2. Release of Funds in Support of the New York State Canal Corporation -- (Adam Barsky)
         3. High Voltage Circuit Breakers – On-Call Contract Awards -- (Andrew Boulais)
         4. Substation Transformers and Shunt Reactors - On-Call Contract Awards -- (Andrew Boulais)
         5. St. Lawrence Power Project - Robert Moses Power Dam Autotransformer 1 Replacement – Capital Expenditure Authorization Request -- (Andrew Boulais)

7. Disconnect Switches – On-Call Contract – Request for Waiver to Article 22 “STEEL COMPONENTS” -- (Andrew Boulais)

8. Overhead Conductor and Overhead Ground Wire – On-Call Contract Award - - (Andrew Boulais)

9. Contribution of Funds to the State Treasury -- (Adam Barsky)

f. Audit Committee Report -- (Chair Eugene Nicandri)

i. 2021 Financial Reports Pursuant to Section 2800 of the Public Authorities Law and Regulations of the Office of the State Comptroller -- Resolution (Adam Barsky)

g. Governance Committee Report -- (Chair Dennis Trainor)

i. Governance Committee Recommendations for Approval:

1. Procurement and Related Reports for New York Power Authority and Canal Corporation -- Resolution (John Canale)


4. Annual Review and Approval of Guidelines and Procedures for the Disposal of Real Property, Acquisition of Real Property, Annual Reports for the Disposal and Acquisition of Real Property, and Expenditure Authorization Procedures -- Resolution (Shirley Marine)

5. Annual Review and Approval of Certain Policies for New York Power Authority and Canal Corporation -- Resolution (Kristine Pizzo)

6. Annual Review and Approval of Guidelines for the Investment of Funds and 2021 Annual Report on Investment of Authority Funds -- Resolution (Adam Barsky)

7. 2021 Annual NYPA and Canal Board Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office -- Resolution (Dennis Trainor)
3. CONSENT AGENDA:

a. Commercial Operations
   i. Recharge New York Power – New, Extended and Modified Allocations -- Resolution -- (Keith Hayes)
   ii. Replacement Power Allocations -- Resolution (Keith Hayes)
   iii. Recomencement and Extension of Hydropower Contract with National Grid for the Benefit of Rural and Domestic Consumers and Notice of Public Hearing -- Resolution (Keith Hayes)
   iv. Transfer of RNY Power -- Resolution (Keith Hayes)

b. Financial Operations
   i. Release of Funds in Support of the Western New York Power Proceeds Allocation Act -- Resolution (Adam Barsky)
   ii. Release of Funds in Support of the Northern New York Power Proceeds Allocation Act -- Resolution (Adam Barsky)

c. Procurement (Services) Contracts
   i. Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions, and/or Additional Funding -- Resolution (John Canale)
   ii. Procurement (Services) Contract - Estimating Services On-Call Contract -- Resolution (Charles Collado)

d. Real Estate
   i. Clean Path NY Project - Acquisition of 40 Acres of Real Property, Town of Delhi, County of Delaware -- Resolution (Shirley Marine)
   ii. Smart Path Connect Project - Acquisition of 33 Acres of Real Property, Town of Chateaugay, County of Franklin -- Resolution (Shirley Marine)

e. Governance Matters
   i. Approval of the Minutes:
1. Minutes of the Joint Meeting of the New York Power Authority’s Trustees and Canal Corporation’s Board of Directors held on January 25, 2021

4. Motion to Conduct an Executive Session

5. Motion to Resume Meeting in Open Session

6. Next Meeting
President & CEO Report

Justin E. Driscoll
Interim President & Chief Executive Officer

March 29, 2022
## February 2022 – VISION2030 Scorecard
Progress toward VISION2030 goals and organizational health

<table>
<thead>
<tr>
<th>Operations</th>
<th>YTD Target</th>
<th>YTD Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Availability (%)</td>
<td>95.0%</td>
<td>97.7%</td>
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<tr>
<td>Transmission Asset Base ($M)</td>
<td>$1,291</td>
<td>$1,284</td>
</tr>
<tr>
<td>Greenhouse Gas Saved (Tons)</td>
<td>537</td>
<td>4,220</td>
</tr>
<tr>
<td>Workforce Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days Away, Restricted or Transferred (DART) Rate (#)</td>
<td>0.78</td>
<td>0.00</td>
</tr>
<tr>
<td>Workforce Engagement &amp; Development (#)</td>
<td>5,339</td>
<td>9,283</td>
</tr>
<tr>
<td>Financials</td>
<td></td>
<td></td>
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<tr>
<td>Days Liquidity On Hand (#)</td>
<td>200</td>
<td>226</td>
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<tr>
<td>Earnings Before Interest, Depreciation &amp; Amortization (EBIDA) ($M)</td>
<td>$95.6</td>
<td>$117.6</td>
</tr>
<tr>
<td>Key Public Milestones</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Gas Milestones (%)</td>
<td>90.0%</td>
<td>96.4%</td>
</tr>
<tr>
<td>Reimagine the Canals Priority Project Milestones (%)</td>
<td>90.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

*Values and analysis are reported on a one month delay

**Legend**
- Green circle: Meeting or exceeding target
- Purple circle: No update
- Orange triangle: Off target
- Gray: Informational, no target
- Red square: Significantly off target
AGILe Lab Partnership
Advanced Grid Innovation Laboratory for Energy (AGILe)

A world-class power systems laboratory to enable an affordable, reliable, low-carbon future by providing a close-to-real testing environment that facilitates stakeholders in solving grid related challenges.

AGILe Assets

<table>
<thead>
<tr>
<th>Modeling Tools</th>
<th>NYS Grid Models</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSS©E</td>
<td>HYPERSIM</td>
</tr>
<tr>
<td>RTDS Technologies</td>
<td>ePHASORSIM</td>
</tr>
<tr>
<td>HYPERSIM</td>
<td></td>
</tr>
<tr>
<td>EMTP</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Hardware</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real-Time Simulators</td>
</tr>
<tr>
<td>Amplifiers</td>
</tr>
<tr>
<td>Protection &amp; Control Devices</td>
</tr>
<tr>
<td>Communication Network Simulator</td>
</tr>
<tr>
<td>Cyber Intrusion Detection System</td>
</tr>
<tr>
<td>Precise Time and Networking Equipment</td>
</tr>
<tr>
<td>Computer Workstations</td>
</tr>
</tbody>
</table>
Advanced Grid Innovation Laboratory for Energy (AGILe)

Accomplishments

- Development of complete detailed grid models (down to 34kV) of all NY regions for real-time simulation
- Development of co-simulation capabilities between transmission grid and distribution systems
- Development of co-simulation capabilities between electricity grid and communications infrastructure
- Close collaboration with NYPA Cyber on the Cyber CoE development
- Over 15 ongoing projects taking place at AGILe funded by NYPA, DoE, and NYSERDA
Dragos Platform Deployment

- Partnership between IT Cyber Security, AGILE Lab, and OT for next generation network intrusion detection capability.
- This was tested in the AGILE Lab simulated Industrial Control System environment which later allowed for field implementation / operationalization.
- Purpose: Improve internal OT Network Threat Visibility/Response
- Benefits:
  - The AGILE Lab allowed testing without having to incur any operational outages or impacts.
  - Increased event correlation, collaboration, and response between Cyber Security and OT.
  - Transparent OT Asset and Vulnerability Management
  - Enhanced Asset Configuration/Misconfiguration detection which allow for actionable response and planned maintenance
  - Machine Learning / Threat Behavior Analytics
Chief Operating Officer’s Report

Joseph F. Kessler, P.E.
Executive Vice President & Chief Operating Officer

March 29, 2022
WPO Digital Engineering Lab

• Construction completed December 2021
• Space combines multiple Engineer Labs into one collaborative space:
  • IEC61850 Digital Substation
  • Niagara Control Simulator
  • LPGP Unit Controls
  • Sensor Deployment
  • Standard Substation Relaying
  • SCADA and Networking Simulation
NYS Dept of Environmental Conservation – Field Office

- Replaces the NYSDEC leased office space located in Louisville, NY
- Facility used for wildlife management
- Project performed through Design-Build delivery method
- Construction completed 2021
- Approx. 3,400 overall sq. ft. footprint
Chief Commercial Officer Report

Sarah Orban Salati
EVP & Chief Commercial Officer

March 29, 2022
Electricity Supply – Through February 2022

2022 Merchant Gross Margin Projections

- YTD Merchant Margin is $73M; $23M above Target $50M
- Full Year Expected Value is $284M; 6% above Target $267M

Economic Development

- 1,712 Megawatts
  - Power Allocated
- 426,109
  - Jobs Retained and Created
- $22 Billion
  - Capital Committed

As of 10/8/2021

<table>
<thead>
<tr>
<th>Projection</th>
<th>Target</th>
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</thead>
<tbody>
<tr>
<td>$334</td>
<td>$322</td>
</tr>
<tr>
<td>$267</td>
<td>$284</td>
</tr>
<tr>
<td>$201</td>
<td>$248</td>
</tr>
</tbody>
</table>

As of 2/25/2022

- Within Target: $267M
- Outside of Target: $248M
- Significantly Outside of Target Range: $284M
# Customer Business Lines: 2022 Targets

<table>
<thead>
<tr>
<th>Key Performance Indicator</th>
<th>2022 Full Year Targets</th>
<th>2021 Full Year Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clean Energy Solutions</td>
<td>$259M Capital Spend</td>
<td>$253M</td>
</tr>
<tr>
<td></td>
<td>$200M Capital Project Contracts Signed</td>
<td>$223M</td>
</tr>
<tr>
<td><strong>e-Mobility</strong></td>
<td>80 EVolve NY DCFC Charging Ports</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>$9M Customer Contracts Signed for DCFCs</td>
<td>$55M</td>
</tr>
<tr>
<td><strong>NY Energy Manager + DER + Flexibility</strong></td>
<td>30 MW Solar &amp; Storage Installed</td>
<td>33 MW Solar &amp; Storage</td>
</tr>
<tr>
<td></td>
<td>26,000 Cumulative MMBtus (Saved/Recommended)</td>
<td>20,500 MMBtus</td>
</tr>
</tbody>
</table>
Clean Energy Solutions: Energy Efficiency & Resiliency

Achieving critical CLCPA goals by helping customers reduce energy consumption through energy efficiency project installation

**Achievements**

- Strong long standing customer partnerships with HHC, OGS, NYC DOE, municipalities
- Over $3.5B projects at 7,100 facilities reducing >855,000 MT CO2e
- >275MW of supply side build avoided
- $260M+ first year bill savings
- Innovative technologies added to core efficiency and resiliency products

**Executive Order 88**

- Achieved over 22% reduction in Energy Use Intensity* by 2020 (2010 baseline) with committed projects
- 27 State Agencies (SUNY, DOCCS, CUNY, OGS, OMH, MTA are 80%)
- 205 completed; 158 committed projects (agency administered or through NYPA)

**BuildSmart NY 2025**

- Enhanced goal: 11 Tbtu reduction project level savings (2015 baseline)
- NYPA supporting 6.6 Tbtu of program goal; committed EO88 projects tracked in BS2025
- Over 50% of NYPA’s energy efficiency pipeline focused on BuildSmart 2025 agency participants

* Energy Use Intensity: kBTU/sqft
e-Mobility: EVolve NY and Customer Charging Infrastructure

Achieving critical CLCPA goals by helping decarbonize transportation sector which represents 40% of NYS GHG

Achievements

- EVolve NY: NYPA remains market animator; addressing “range anxiety” along key corridors
- Largest NYS public fast charging network
- Network utilization up 164% Y-o-Y
- $55M customer EV projects signed
- Key projects: NFTA, MTA, NYCDOT

2022 Focus

- 100th EVolve NY charger milestone (Auto Show)
- Increase urban charging hubs, electric school buses
- Publish transit bus master plan

Featured Project: NYCDOT

- Support NYC goal of electrifying 20% of 6000 public parking spaces
  - NYCDOT phase 1: 8 DCFC (complete)
  - NYCDOT phase 2: 20 DCFC

Key Risks:
- Supply chain disruptions here to stay into 2023
- EVolve NY eligibility for IIJA funds (NYSDOT)

Key Opportunities:
- State-wide coordination to develop cohesive transportation electrification strategy (incl. marketing)
- Incorporate lessons learned and data insights to continually improve
NY Energy Manager, DER Advisory & Grid Flex

Achieving critical CLCPA goals by helping customers reduce energy consumption and install renewables for 2040 carbon neutral grid

**Achievements**

- 270MW DER pipeline built since 2018
- Recommended 20,000 MMBtus of energy savings from energy analytics
- Released NY Energy Manager 3.0 for carbon tracking and BuildSmart NY 2025 metrics

**2022 Focus**

- Distributed energy resources as grid resources (buildings, solar & storage)
- Data-driven pathways to customer decarbonization

**Featured Project: SUNY Albany**

- Largest rooftop solar: 1.9 MW solar
- Long-term financial savings & sustainability benefits for campus
- Helps University reach carbon footprint reduction goal (40% by 2030)

**Key Risks:**

- Supply chain shortages & delays into 2023
- Incentives availability for projects’ viability

**Key Opportunities:**

- Build on success of all advisory services and digital tools for integrated offering
Q1 Highlights: Community & Customer Impacts

**Metrics for DE&I Support**

- Investment in Historically Disadvantaged Communities metric to be introduced
- NYSERDA/Climate Action Counsel to complete definition
- Addition to existing DE&I criteria: hydro allocation methodology; green jobs

**Energy Efficiency in Critical Facilities**

- NYPA remains a critical partner for hospitals during COVID
- Over $250M (26 HHC projects) in construction, approval or design phase
- Innovative technologies: alternate chiller refrigerants, elevator regeneration systems
# YTD ACTUALS (JANUARY-FEBRUARY 2022)

## In $ Thousands

<table>
<thead>
<tr>
<th>Description</th>
<th>2022 Budget ($)</th>
<th>2022 Current ($)</th>
<th>Variance ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Operating Income</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer Revenue</td>
<td>$356,759</td>
<td>$416,343</td>
<td>$59,584</td>
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<tr>
<td>Market-Based Power Sales</td>
<td>203,471</td>
<td>183,706</td>
<td>(19,765)</td>
</tr>
<tr>
<td>Non Utility Revenue</td>
<td>5,421</td>
<td>3,253</td>
<td>(2,168)</td>
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<tr>
<td>Ancillary Service Revenue</td>
<td>5,935</td>
<td>10,889</td>
<td>4,954</td>
</tr>
<tr>
<td>NTAC and Other</td>
<td>43,530</td>
<td>52,762</td>
<td>9,232</td>
</tr>
<tr>
<td><strong>Operating Revenue Total</strong></td>
<td>615,115</td>
<td>666,953</td>
<td>51,838</td>
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<tr>
<td>Operating Expense</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Purchase Power</td>
<td>(208,192)</td>
<td>(236,914)</td>
<td>(28,723)</td>
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<tr>
<td>Ancillary Service Expense</td>
<td>(10,451)</td>
<td>(8,278)</td>
<td>2,173</td>
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<tr>
<td>Fuel Consumed</td>
<td>(101,412)</td>
<td>(82,326)</td>
<td>19,086</td>
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<td>Wheeling</td>
<td>(89,084)</td>
<td>(104,193)</td>
<td>(15,109)</td>
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<tr>
<td>Operations &amp; Maintenance</td>
<td>(96,686)</td>
<td>(94,269)</td>
<td>2,417</td>
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<tr>
<td>Other Expense</td>
<td>(12,773)</td>
<td>(17,587)</td>
<td>(4,813)</td>
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<tr>
<td>Monetized Funds Support*</td>
<td>(6,067)</td>
<td>(10,587)</td>
<td>(4,520)</td>
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<tr>
<td>Allocation to Capital</td>
<td>5,184</td>
<td>4,791</td>
<td>(394)</td>
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<td><strong>Operating Expense Total</strong></td>
<td>(519,479)</td>
<td>(549,363)</td>
<td>(29,883)</td>
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<tr>
<td>EBIDA Canals</td>
<td>(11,354)</td>
<td>(10,391)</td>
<td>962</td>
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<tr>
<td><strong>Non Operating</strong></td>
<td></td>
<td></td>
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<tr>
<td>Investment and Other Income</td>
<td>2,967</td>
<td>2,368</td>
<td>(599)</td>
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<tr>
<td>Mark to Market Adjustments</td>
<td>0</td>
<td>(140)</td>
<td>(140)</td>
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<tr>
<td><strong>FADS Total</strong></td>
<td>98,603</td>
<td>119,818</td>
<td>21,215</td>
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<tr>
<td>Interest &amp; Other Expenses</td>
<td>(18,274)</td>
<td>(21,596)</td>
<td>(3,323)</td>
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<tr>
<td>Depreciation</td>
<td>(53,519)</td>
<td>(53,119)</td>
<td>399</td>
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<td><strong>Interest and Other Expenses Total</strong></td>
<td>(68,825)</td>
<td>(72,488)</td>
<td>(3,662)</td>
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<tr>
<td><strong>NET INCOME</strong></td>
<td>$26,811</td>
<td>$45,102</td>
<td>$18,292</td>
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</table>

*Monetized Funds Support: Expected incremental expenses into the forecast.

**EBIDA:** Earnings Before Interest Depreciation & Amortization

**Funds Available for Debt Service (FADS):** EBIDA + Investment and Other Income + MTM Adjustments

**EBIDA Canals**

**Operating Expenses**

**Non-Operating**

**Non-Operating Net**

**Variance**

$18,292
## 2022 YEAR-END PROJECTION

### YEAR END PROJECTION (JANUARY - DECEMBER 2022)

<table>
<thead>
<tr>
<th>In $ Thousands</th>
<th>2022 Budget ($)</th>
<th>2022 Current ($)</th>
<th>Variance ($)</th>
</tr>
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<tbody>
<tr>
<td><strong>Net Operating Income</strong></td>
<td></td>
<td></td>
<td>Current vs Budget</td>
</tr>
<tr>
<td>Operating Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer Revenue</td>
<td>$1,927,647</td>
<td>$2,026,934</td>
<td>$99,287</td>
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<tr>
<td>Market-Based Power Sales</td>
<td>705,257</td>
<td>786,416</td>
<td>81,159</td>
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<tr>
<td>Non Utility Revenue</td>
<td>32,970</td>
<td>31,763</td>
<td>(1,207)</td>
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<tr>
<td>Ancillary Service Revenue</td>
<td>28,876</td>
<td>34,925</td>
<td>6,049</td>
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<tr>
<td>NTAC and Other</td>
<td>229,160</td>
<td>241,003</td>
<td>11,843</td>
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<tr>
<td><strong>Operating Revenue Total</strong></td>
<td>$2,923,910</td>
<td>$3,121,041</td>
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<tr>
<td>Operating Expense</td>
<td></td>
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<tr>
<td>Purchase Power</td>
<td>(816,051)</td>
<td>(945,038)</td>
<td>(128,987)</td>
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<tr>
<td>Ancillary Service Expense</td>
<td>(61,081)</td>
<td>(58,669)</td>
<td>2,412</td>
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<tr>
<td>Fuel Consumed</td>
<td>(272,271)</td>
<td>(294,536)</td>
<td>(22,265)</td>
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<td>Wheeling</td>
<td>(643,657)</td>
<td>(657,806)</td>
<td>(14,149)</td>
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<td>Operations &amp; Maintenance</td>
<td>(635,231)</td>
<td>(640,763)</td>
<td>(5,532)</td>
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<td>Other Expense</td>
<td>(76,481)</td>
<td>(78,111)</td>
<td>(1,630)</td>
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<td>Monetized Funds Support*</td>
<td>(7,293)</td>
<td>(16,214)</td>
<td>(8,920)</td>
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<tr>
<td>Allocation to Capital</td>
<td>50,579</td>
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<td><strong>Operating Expense Total</strong></td>
<td>(2,461,486)</td>
<td>(2,640,557)</td>
<td>(179,071)</td>
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<td><strong>EBIDA Canals</strong></td>
<td>(79,607)</td>
<td>(78,184)</td>
<td>1,423</td>
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<tr>
<td><strong>Non Operating</strong></td>
<td></td>
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<tr>
<td>Interest and Other Expenses</td>
<td></td>
<td></td>
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<tr>
<td>Investment and Other Income</td>
<td>18,041</td>
<td>17,442</td>
<td>(599)</td>
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<td>Market to Market Adjustments</td>
<td>0</td>
<td>(10,140)</td>
<td>(10,140)</td>
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<tr>
<td><strong>FADS Total</strong></td>
<td>480,466</td>
<td>487,786</td>
<td>7,321</td>
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<tr>
<td><strong>Interest and Other Expenses Total</strong></td>
<td>(400,635)</td>
<td>(414,297)</td>
<td>(13,662)</td>
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<tr>
<td><strong>NET INCOME</strong></td>
<td>$61,790</td>
<td>$54,963</td>
<td>$66,187</td>
</tr>
</tbody>
</table>

**Margins - Generation** $28,816
**Margins - Transmission** 6,533
**Margins - Non Utility** (1,207)

**Operating Expenses** (16,082)

**Non-Operating Net** (13,662)

*Monetized Funds Support: Expected incremental expenses into the forecast.

EBIDA: Earnings Before Interest Depreciation & Amortization

Funds Available for Debt Service (FADS): EBIDA + Investment and Other Income + MTM Adjustments
Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Erie Canal Harbor Development Corporation Payment Acceleration

SUMMARY

The Trustees are requested to authorize Authority staff to take all actions necessary to modify the Authority's current payment stream under the Niagara Relicensing Settlement Agreement ('Settlement Agreement') and the Settlement Agreement Amendment ('Settlement Agreement Amendment') to an equivalent (in present-value terms) lump sum accelerated payment of $27,098,818 to provide additional support necessary for the Canal Side Development Project funding.

BACKGROUND

Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the Empire State Development Corporation/Urban Development Corporation ('ESDC'), was created in 2005 to develop the City of Buffalo’s harbor waterfront. It is sponsoring a major economic development project known as the Canal Side Development Project ('Canal Project').

The Canal Project has been described as a ‘public/private investment consisting of 1,075,000 square feet of retail, cultural, residential, and office space on 23 development parcels within approximately 20 acres of land in downtown Buffalo.’ The Canal Project is revitalizing Buffalo’s inner harbor and restoring the area’s waterfront vitality through a combination of residential, commercial, open space and cultural elements.

Authority staff has been in discussions with ECHDC to explore additional sources of financial support for the Canal Project. Staff has identified a possible source of financial support for the Canal Project by way of a modification of the Authority’s payment schedule under the Settlement Agreement and Settlement Agreement Amendment.

Under the original terms of the Settlement Agreement, the Authority was providing ECHDC with $3.5 million per year for the 50-year term of the Niagara Project license to support economic development and revitalization within the vicinity of the Buffalo waterfront. On December 15, 2010, the Authority Trustees approved the Settlement Agreement Amendment resulting in a modified payment stream of $4.7 million for a 20-year term. To date, $72.1 million of the payments have been made and seven annual payments remain.

DISCUSSION

ESDC has pledged monies to finance the planned Canal Project, which is estimated to cost approximately $300 million. ECHDC recently identified up to 13 projects costing up to $189 million that can be facilitated, in part, by the Authority accelerating the remaining payments.

Authority staff has been in discussions with ECHDC to explore accelerated sources of financial support for the Canal Project. The Authority can disburse $27,098,818 in Settlement Agreement funds to address the stated funding need. The payment would derive from a revision to the Authority’s scheduled payments to ECHDC provided under its Settlement Agreement Amendment. In summary, the Authority would convert the
payment stream for the remaining 7 years to an equivalent (in present-value terms) lump sum payment of $27,098,818.

FISCAL INFORMATION

The conversion of the Settlement Agreement and Settlement Agreement Amendment’s payment stream to a one-time payment made at the equivalent dollar amount, net present value, will not have a significant impact on the Authority’s finances.

RECOMMENDATION

The Senior Vice President Clean Energy Solutions recommends that the Trustees authorize a conversion of the Authority’s payment schedule under the Niagara Project Relicensing Settlement Agreement and the Settlement Agreement Amendment to an equivalent (in present-value terms) lump sum payment of $27,098,818 to the Eric Canal Harbor Development Corporation.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the Authority hereby authorizes a modification of the Authority’s payment schedule under the Niagara Relicensing Settlement Agreement to an equivalent (in present-value terms) accelerated lump sum payment of $27,098,818 to the Eric Canal Harbor Development Corporation for the purpose of facilitating additional financial support for the Canal Side Development Project on the terms and conditions and for the purposes set forth in the foregoing report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
2e. Finance and Risk Committee Report: (Chair Tracy McKibben)

[Oral Report Only]
Date: March 29, 2022
To: THE BOARD OF TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Finance and Risk Committee Recommendations for Approvals

SUMMARY

The Finance and Risk Committee (the “Committee”) met on March 18, 2022 and considered and recommended the following resolutions which are now before the Board of Trustees (the “Board” or “Trustees”) for adoption.

ITEMS FOR ADOPTION

i. Amendment and Restatement of the 2020 Revolving Credit and Note Purchase Agreements

RESOLVED, that the Trustees approve the Amended and Restated 2022 Revolving Credit Agreement and Amended and Restated 2022 Note Purchase Agreement, the forms of which are attached hereto and as discussed in the report of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees, with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chairman or the Interim President and Chief Executive Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby, and be it further

RESOLVED, that the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

ii. Release of Funds in Support of the New York State Canal Corporation

RESOLVED, That the Trustees authorize the release of an additional up to $21.3 million in funding to the Canal Corporation to support operations of the Canal Corporation in calendar year 2022, as discussed in the report of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees, and be it further

RESOLVED, That the Trustees affirm the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503.2 of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented (Bond Resolution), that the amount of up to $21.3 million in funding as described in the foregoing report is not needed for any of the purposes specified in
Section 503(1)(a)-(c) of the Authority’s Bond Resolution, and that the release of such amount is feasible and advisable; and be it further

RESOLVED, That the Trustees affirm that as a condition to making the payments specified in the foregoing report, on the day of such payments, the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s Bond Resolution; and be it further

RESOLVED, That the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

### iii. High Voltage Circuit Breakers On-Call Contract Awards

RESOLVED, That the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of two, ten-year equipment contracts to Hitachi Energy USA, Inc. of Raleigh, North Carolina, and Siemens Energy Inc. of Orlando, Florida in the aggregate amount of $50,000,000, as recommended in the memorandum of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

<table>
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<td>Siemens Energy, Inc.</td>
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<td>Orlando, FL</td>
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### iv. Substation Transformers and Shunt Reactors On-Call Contract Awards

RESOLVED, That the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of two, ten-year equipment contracts to Hitachi Energy USA, Inc. of Cary, North Carolina, and Royal SMIT Transformers BV of Nijmegen, Netherlands in the aggregate amount of $110,000,000, as recommended in the memorandum of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees; and be it further

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.
Contractors

Hitachi Energy USA, Inc.
Cary, NC

Royal SMIT Transformers BV.
Nijmegen, Netherlands

Contract Approval

$110,000,000

RFP # Q21-7227AP

v. St. Lawrence Power Project Replacement of Robert Moses Power Dam Autotransformer 1 Capital Expenditure Authorization Request

RESOLVED, That the Trustees, pursuant to the Authority’s Capital Planning and Budgeting Procedures, approve capital expenditures in the amount of $13,044,000 for the Replacement of the Robert Moses Power Dam Autotransformer 1 Project, in accordance with, and as recommended in, the memorandum of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of this project.

vi. Architecture and Engineering Design Contracts Recommendation for Award

RESOLVED, That the Trustees authorize the Interim President and Chief Executive Officer, the Chief Operating Officer, and officers designated by the Interim President and Chief Executive Officer to execute agreements and other documents between the Authority, and the following firms;

• BKSK Architects LLP “BKSK”; New York, NY
• Cooper Robertson; New York, NY
• Interboro Partners LLC “Interboro”; Brooklyn, NY (WBE)
• OSD Outside LLC “OSD”; Brooklyn, NY
• Office for Visual Interaction, Inc. “OVI”; New York, NY (WBE)
• SBP Engineering PC “SBP”; New York, NY
• Starr Whitehouse Landscape Architects and Planners “Starr Whitehouse”; New York, NY
• SHoP Architects LLP “SHoP”; New York, NY
• Studio V Design & Planning “Studio V”; New York, NY (MBE/WBE)
• Wallace Roberts & Todd, LLC “WRT”; Philadelphia, PA
• Claire Weisz Architects (dba WXY Architecture + Urban Design) “WXY”; New York, NY (WBE)

Such agreements having such terms and conditions as the executing officer may approve, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel, to facilitate the
performance of Design Services in support of the Reimagine the Canals Program in alignment with the Authority’s VISION2030 strategy.

vii. Disconnect Switches On-Call Contract – Request for Waiver to Article 22 “STEEL COMPONENTS”

RESOLVED, That the Trustees approve waiver of the Authority’s Agreement Article 22 "STEEL COMPONENTS" that the purchasing of steel be produced or made in whole or substantial part in the United States or its territories or possessions, in compliance with Public Authorities Law §2603-a for manual and motor-operated disconnect switches, as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer;

RESOLVED, That the Authority will use Capital or Operating Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

Contractor

GE Grid Solutions, LLC

Atlanta, GA

RFP # Q21-7238JM

viii. Overhead Conductor and Overhead Ground Wire On-Call Contract Award

RESOLVED, That the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of a ten-year equipment contract to Midal Cables, Ltd. of Askar, Bahrain in the amount of $20,000,000, as recommended in the memorandum of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the projects.

ix. Contribution of funds to the State Treasury

RESOLVED, That the Trustees hereby authorize the release of funds from the Operating Fund to the State’s general fund in the amount of $17.5 million as authorized by Section 17 of Part JJJ of Chapter 59 of the Laws of 2021 as discussed in the memorandum of the Interim President and Chief Executive Officer submitted to the Finance and Risk Committee and reviewed by the Trustees; and be it further

RESOLVED, That the $17.5 million contribution to the State’s general fund described in the foregoing resolution is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s Bond Resolution, as amended and supplemented and that such release is deemed feasible and advisable; and be it further

RESOLVED, That as a condition to making the payments specified in the foregoing resolution, on the day of such payments, the Executive Vice President & Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s Bond Resolution; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the
Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

Justin E. Driscoll
Interim President and Chief Executive Officer
AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

between

POWER AUTHORITY OF THE STATE OF NEW YORK

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

dated as of April [___], 2022
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EXHIBIT E NOTICE OF CONTINUATION/CONVERSION
POWER AUTHORITY OF THE STATE OF NEW YORK
AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

This Amended and Restated Note Purchase Agreement (this “Agreement”) dated as of April [____], 2022, between the POWER AUTHORITY OF THE STATE OF NEW YORK (the “Authority”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, (together with its successors and assigns, the “Bank”).

PRELIMINARY STATEMENTS

WHEREAS, the Bank and the Authority have previously entered into the Note Purchase Agreement dated as of April 22, 2020 (the “Original Agreement”); and

WHEREAS, the Bank and the Authority desire to amend and restate the Original Agreement in its entirety;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to amend and restate the Original Agreement, the Authority and the Bank hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS

As used herein:

“1933 Act” shall mean the Securities Act of 1933, as the same shall from time to time be supplemented or amended.

“Act” means the Power Authority Act of the State, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified.
“Alternate Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.50% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Rate is being used as an alternate rate of interest pursuant to Section 4.3 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 4.3(b) hereof), then the Alternate Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Rate as determined pursuant to the foregoing would be less than zero (0%), such rate shall be deemed to be zero (0%) for purposes of this Agreement.

“Alternate Rate Drawing” means a Drawing that bears interest at a rate based on the Alternate Rate.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Authority or its subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Factor” means 80%.

“Applicable Spread” means the rate per annum corresponding to the Level and to the Tax-Exempt Rate or the Taxable Rate, as applicable, specified in the applicable pricing matrix below associated with the Applicable Rating (as defined below) as specified below:

(i) For the period commencing on the Original Closing Date to but not including the Effective Date, the Applicable Spread shall be determined in accordance with the terms and provisions specified in the Original Agreement, as amended.

(ii) For the period beginning on Effective Date and at all times thereafter, each Applicable Spread for such period shall be determined in accordance with the pricing matrix set forth below:

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>MOODY’S RATING</th>
<th>S&amp;P RATING</th>
<th>FITCH RATING</th>
<th>TAX-EXEMPT APPLICABLE SPREAD</th>
<th>TAXABLE APPLICABLE SPREAD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Aa2 or above</td>
<td>AA or above</td>
<td>AA or above</td>
<td>0.65%</td>
<td>0.80%</td>
</tr>
<tr>
<td>Level 2</td>
<td>Aa3</td>
<td>AA-</td>
<td>AA-</td>
<td>0.75%</td>
<td>0.90%</td>
</tr>
</tbody>
</table>

-2-
Level 3  A1       A+      A+       0.85%     1.00%
Level 4  A2       A       A        1.00%     1.15%
Level 5  A3       A-      A-       1.05%     1.20%
Level 6  Baa1     BBB+    BBB+     1.25%     1.40%
Level 7  Baa2     BBB    BBB      1.50%     1.65%
Level 8  Baa3     BBB-    BBB-     1.70%     1.85%

The term “Applicable Rating” shall mean, with respect to any Rating Agency (which such Rating Agency assigns a long-term unenhanced credit rating to the Senior Debt at the request of the Authority), and at any given time, the lowest long-term unenhanced credit rating assigned by such Rating Agency to the Authority’s Senior Debt (without giving effect to any bond insurance policy or other credit enhancement securing any such Senior Debt). In the event of a split in the Applicable Ratings, each Applicable Spread shall be based upon the Level in which the lowest Applicable Rating appears (for the avoidance of doubt, Level 8 is the lowest Level, and Level 1 is the highest Level for purposes of the above pricing matrix). Any change in either Applicable Spread resulting from a change in an Applicable Rating shall be and become effective as of and on the date of the public announcement of the change in such Applicable Rating. References to the ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the applicable rating in connection with the adoption of a “global” rating scale, the rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Authority acknowledges that as of the Effective Date, each Applicable Spread is that specified above for Level 1 of paragraph (iii) above. Anything herein to the contrary notwithstanding, in the event that an Applicable Rating is suspended, withdrawn or otherwise unavailable from any Rating Agency for credit related reasons (and, for the avoidance of doubt, not as a result of the Authority withdrawing or terminating any such rating from any such Rating Agency) or reduced below “BBB-” (or its equivalent) by S&P, “Baa3” (or its equivalent) by Moody’s, or “BBB-” (or its equivalent) by Fitch or upon the occurrence and during the continuance of an Event of Default under the Credit Agreement, the applicable interest rate on the Direct Purchase Notes (and all Drawings thereunder) shall increase automatically to the Default Rate.

“Approved Fund” means any Fund that is administered or managed by (a) the Bank, (b) an Affiliate of the Bank or (c) an entity or an Affiliate of an entity that administers or manages the Bank.

“Assignee” has the meaning set forth in Section 15.6 hereof.
“Authorized Officer” means the Authority’s Chairman, Vice Chairman, President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, Treasurer, and Deputy Treasurer.

“Available Commitment” means the Commitment from time to time in effect, as such amount is adjusted from time to time as follows: (a) downward in an amount equal to (i) the principal amount of each Drawing, (ii) the principal amount of each “Loan” (as defined in the JPM Revolving Credit Agreement) made to the Authority pursuant to the JPM Revolving Credit Agreement, (iii) the principal amount of each Commercial Paper Note at any time issued and outstanding, (iv) the undrawn amount of each Letter of Credit issued by the Bank and (v) each LC Disbursement made by the Bank that have not yet been reimbursed; and (b) so long as this Agreement has not terminated, upward in an amount equal to (i) the principal amount of each Drawing that is repaid, (ii) the principal amount of each “Loan” that is repaid pursuant to the terms of the JPM Revolving Credit Agreement (as defined in the JPM Revolving Credit Agreement), (iii) the principal amount of each Commercial Paper Note which is paid at maturity, (iv) the undrawn amount of each expired Letter of Credit issued by the Bank and (v) each LC Disbursement made by the Bank that has been reimbursed; provided, that, after giving effect to any such adjustment the Available Commitment shall never exceed the Commitment from time to time in effect. Any adjustments pursuant to clause (a) or (b) above shall occur simultaneously with the event requiring such adjustment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 3.14.

“Bank Transferee” has the meaning set forth in Section 15.6 hereof.


“Base Rate” means, for any day, a rate per annum equal to the highest of (i) the sum of 1.5% and the Prime Rate for such day, (ii) the sum of 2.0% and the Federal Funds Rate for such day and (iii) 7.5%.

“Benchmark” means, initially, with respect to any (i) RFR Drawing, the Daily Simple SOFR or (ii) Term Benchmark Drawing, the Term SOFR Rate; provided that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then
“Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 3.12.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Bank for the applicable Benchmark Replacement Date:

1. the Adjusted Daily Simple SOFR;

2. the sum of: (a) the alternate benchmark rate that has been selected by the Bank as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Drawing or RFR Drawing, any technical, administrative or operational changes (including changes to the definition of “Alternate Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the
administration of such Benchmark exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such
Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder in accordance with Section 3.12 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder in accordance with Section 3.12.

“Borrowing” means a borrowing consisting of Drawings made under the Direct Purchase Notes on the same day by the Bank.

“Business Day” means a day other than a Saturday, Sunday or banking holiday in the State of New York.

“Change in Law” means the occurrence, after the Original Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case relating to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).
“Code” means the Internal Revenue Code of 1986, as amended, and when reference is made to a particular section thereof, the applicable Treasury Regulations from time to time promulgated or proposed thereunder.

“Commercial Paper Notes” has the meaning set forth in the JPM Revolving Credit Agreement.

“Commercial Paper Note Resolution” means the resolution adopted by the Authority on June 28, 1994, entitled “Resolution Authorizing Commercial Paper Notes”, as amended and restated by the resolution adopted by the Authority on November 25, 1997, as amended and restated in its entirety by the resolution adopted by the Authority on March 30, 2021, and as subsequently amended and supplemented.

“Commitment” means an amount equal the commitment of the Bank to purchase the Direct Purchase Notes and to make Drawings under the Direct Purchase Notes and hereunder and to issue Letters of Credit pursuant to Section 3.7 hereof, as such amount may be terminated and/or reduced pursuant to Sections 3.9, 3.14(b) or 12 hereof. The Authority and the Bank agree that as of the Effective Date the Commitment of the Bank is in an amount equal to $250,000,000.

“Commitment Period” means the period from the Original Closing Date through the Termination Date.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Authority.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any condition or event that constitutes an Event of Default or that, with the giving of notice or lapse of time or both, would constitute an Event of Default.
“Default Rate” means, for any day, a rate of interest per annum equal to (i) from and including the date such Event of Default occurs to and including the next succeeding Interest Payment Date, the sum of the applicable Tax-Exempt Rate and/or Taxable Rate and three percent (3.00%) and (ii) thereafter, the sum of the Base Rate in effect on such day plus three percent (3.00%); provided that, subject to Section 3.8 hereof, at no time shall the Default Rate exceed the Maximum Rate.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Authority files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when a Holder or any former Holder notifies the Authority that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Authority of such notification from such Holder or such former Holder, as applicable, the Authority shall deliver to such Holder or such former Holder, as applicable, a ruling or determination letter issued to or on behalf of the Authority by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Authority shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Authority, or upon any review or audit of the Authority or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the Authority shall receive notice from a Holder, a Holder representative, on behalf of the Bank, or any former Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or such former Holder the interest on the Tax-Exempt Direct Purchase Note (and Tax-Exempt Drawings thereunder) due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Authority has been afforded the reasonable opportunity, at its expense,
to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from a Holder, a Holder representative, on behalf of the Bank, or former Holder, the Authority shall promptly reimburse, such Holder or former Holder for any payments, including any taxes, interest, penalties or other charges, such Holder (or former Holder) shall be obligated to make as a result of the Determination of Taxability.

“Direct Purchase Notes” means the Tax-Exempt Note and the Taxable Note.

“Dollars”, “dollars” or “$” refers to lawful money of the United States of America.

“Drawing” means, with respect to each Direct Purchase Note, each installment of principal advanced by the Bank with respect to such Direct Purchase Note pursuant to the terms hereof, each Tax-Exempt Drawing and Taxable Drawing is sometimes referred to herein as a “Drawing.

“Drawing Date” shall mean each date on which a Drawing occurs.

“Effective Date” means April [__], 2022, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Section 7.1 hereof.

“Environmental Laws” means any applicable federal, state and local environmental, health and safety statutes and regulations, including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 66901 et seq.

“Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Event of Taxability” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Authority, or the failure to take any action by the Authority, or the making by the Authority of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale, making or delivery of the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing) which has the effect of causing interest paid or payable on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing to become includable, in whole or in part, in the gross income of a Holder or any former Holder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural Law, in either case, which has the effect of causing interest paid or payable on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing to become includable, in whole or in part, in the gross income of such Holder or such former Holder for federal income tax purposes with respect to the Tax-Exempt Direct Purchase Note or such Tax-Exempt Drawing.

“Excess Interest Amount” has the meaning set forth in Section 3.8 hereof.

“Existing Resolutions” means the 1998 Resolution, the Subordinate Resolution, the 2011 Revolving Credit Agreement Resolution, the 2012 Subordinate Notes Resolution, the 2017
Subordinate Notes Resolution, the 2019 Revolving Credit Agreement Resolution, the Note Purchase Agreement Resolution, the Commercial Paper Note Resolution and the Extendible Municipal Commercial Paper Note Resolution.

“Existing Termination Date” has the meaning set forth in Section 4.3 hereof.


“Federal Funds Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Letter” means the Second Amended and Restated Fee Letter dated April [__], 2022, between the Authority and the Bank, as such agreement may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.


“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR shall be 0.00%.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.
“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“hereunder”, “hereby”, “herein”, “hereto”, “hereof” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective work appears.

“Holder” means the Bank and each Bank Transferee or Non-Bank Transferee pursuant to Section 15.6 hereof so long as such Bank Transferee or Non-Bank Transferee is an owner of an interest in either Direct Purchase Note.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (b) all Guarantees by such Person of Indebtedness of others for which defenses to payment cannot be raised, (c) all capital lease obligations of such Person that have been or should be, in accordance with GAAP, recorded as capital leases, (d) all obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided, however, that “Indebtedness” shall not include indebtedness related to Separately Financed Projects.

“Interest Payment Date” means (a) with respect to any Alternate Rate Drawing and any RFR Drawing, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the borrowing of such Borrowing (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Termination Date and (b) with respect to any Term Benchmark Drawing, the last day of each Interest Period applicable to such Term Benchmark Drawing and, in the case of a Term Benchmark Drawing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Termination Date.

“Interest Period” means with respect to any Term Benchmark Drawing, the period commencing on the date of such Term Benchmark Drawing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Term Benchmark Drawing or Commitment), as the Authority may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding
Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 3.14(e) shall be available for specification in such Request for Drawing or Notice of Continuation/Conversion. For purposes hereof, the date of a Term Benchmark Drawing initially shall be the date on which such Term Benchmark Drawing is made and thereafter shall be the effective date of the most recent continuation or conversion of such Term Benchmark Drawing.

“Investor Letter” has the meaning set forth in Section 15.6 hereof.

“Issuance Date” shall mean each date on which a Letter of Credit is issued pursuant to Section 3.7 hereof.

“JPM Revolving Credit Agreement” means the Revolving Credit Agreement dated as of April 22, 2020, as amended and restated by the Amended and Restated Revolving Credit Agreement dated as of April [___], 2022, each between the Authority and the Bank, related to the Commercial Paper Notes, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Law” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“LC Disbursement” means a payment made by the Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Authority at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Authority and the Bank shall remain in full force and effect until the Bank shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

“Lending Office” means, with respect the office of the Bank specified on the signature page hereof, or such other office of the Bank as the Bank may from time to time specify to the Authority.
“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Agreement” has the meaning assigned to it in Section 3.14(b).

“Letter of Credit Commitment” means the commitment of the Bank to issue Letters of Credit hereunder. The initial amount of the Bank’s Letter of Credit Commitment is $150,000,000. The Letter of Credit Commitment may be modified from time to time by agreement between the Bank and the Authority.

“Material Adverse Effect” means material adverse effect on the (i) business, assets, operations or financial condition of the Authority taken as a whole, or (ii) ability of the Authority to perform its obligations under this Agreement.

“Maximum Federal Corporate Tax Rate” means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations is generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank as of such day).

“Maximum Rate” has the meaning set forth in Section 3.8 hereof.

“Moody’s” means Moody’s Investors Service and its successors.

“1998 Resolution” means the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented in accordance with its terms; provided, however, that no amendment or modification to the definition of “Trust Estate,” “Parity Debt”, “Subordinated Contract Obligation” or “Subordinated Indebtedness” therein (including any defined term incorporated by reference in such definition) shall be effective for purposes of this Agreement or with respect to the Direct Purchase Notes unless made with the consent of the Bank.

“Non-Bank Transferee” has the meaning set forth in Section 15.6 hereof.

“Note Counsel” means Hawkins, Delafield and Wood LLP, or any other firm or firms selected by the Authority whose opinion concerning bond matters is nationally recognized.

“Note Purchase Agreement Resolution” means the resolution of the Authority adopted on [______], 2022, authorizing the execution of this Agreement and the JPM Revolving Credit Agreement.

“Notice of Continuation/Conversion” means a notice in the form of Exhibit E attached hereto.

“NYFRB” means the Federal Reserve Bank of New York.
“NYFRB’s Website” means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for purposes of this Agreement.

“Obligations” has the meaning set forth in the 1998 Resolution.

“Original Closing Date” means April 22, 2020.

“Other Indebtedness” of any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the indebtedness secured thereby has been assumed, (e) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (f) all contingent obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided that obligations issued in accordance with Section 203 of the 1998 Resolution to finance Separately Financed Projects shall not be considered to be Other Indebtedness.

“Other Taxes” has the meaning set forth in Section 9.1(b) hereof.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent” means, with respect to the Bank, any Person controlling the Bank.

“Parity Debt” has the meaning set forth in the 1998 Resolution.

“Participant” has the meaning set forth in Section 15.6 hereof.

“Paying Agent/Registrar” means the firm serving from time to time as paying agent/registrar for the Direct Purchase Notes pursuant to the Paying Agent/Registrar Agreement
and any successor thereto. As of the Effective Date, the Paying Agent/Registrar is U.S. Bank National Association.

“Paying Agent/Registrar Agreement” means that certain Paying Agent and Registrar Agreement dated as of the date hereof, between the Authority and the Paying Agent/Registrar, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof, and any issuing and paying agent agreement entered into by the Authority in substitution therefor in accordance with the terms hereof and thereof.

“Person” means any individual, partnership, joint venture, firm, corporation or governmental entity.

“Prime Rate” means the rate of interest announced publicly by the Bank at its principal office in New York, New York, from time to time; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Rating Agencies” means Standard & Poor’s, Moody’s and Fitch.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Bank in its reasonable discretion.

“Reimbursement Obligations” means the obligations of the Authority to reimburse the Bank for all LC Disbursements.

“Request for Drawing” has the meaning set forth in Section 4.1 hereof.

“Relevant Governmental Body” means, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Drawing, the Adjusted Daily Simple SOFR, as applicable.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“RFR Drawing” means a Drawing that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Senior Debt” means the Revenue Bonds and any other Indebtedness of the Authority that has a priority in payment from the Trust Estate over the Note issued under the Revolving Credit Agreement and the Direct Purchase Notes; provided, that if no such senior obligations are outstanding, “Senior Debt” means any obligations of the Authority that are on a parity in payment from the Trust Estate with the Note issued under the Revolving Credit Agreement and the Direct Purchase Notes.

“Separately Financed Project” has the meaning set forth in the 1998 Resolution.

“Series 4 Notes” has the meaning given such term in Section 2.6(b).

“Series 2003A Revenue Bonds” means the Series 2003A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.


“Series 2011A Revenue Bonds” means the Series 2011A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.
“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.


“State” means the State of New York.

“Stated Expiration Date” means April 20, 2023, or such later date as may be agreed to between the parties pursuant to Section 4.3.

“Subordinated Contract Obligation” has the meaning set forth in the 1998 Resolution.

“Subordinated Indebtedness” has the meaning set forth in the 1998 Resolution.

“Subordinate Resolution” means the General Subordinate Resolution authorizing Subordinate Revenue Bonds adopted by the Authority on July 25, 2000, and as subsequently amended and supplemented and to the extent in effect.

“Tax-Exempt Drawing” means, with respect to the Tax-Exempt Direct Purchase Note, each installment of principal advanced by the Bank with respect to the Tax-Exempt Direct Purchase Note pursuant to the terms hereof.

“Tax-Exempt Note” means the Power Authority of the State of New York Tax-Exempt Direct Purchase Note, Series 2022 TE, in substantially the form attached hereto as Exhibit A-1, including all extensions, renewals and amendments thereto and restatements thereof.

“Tax-Exempt Rate” means a per annum rate of interest equal to the sum of (A) the Tax-Exempt Applicable Spread (as set forth in the definition of “Applicable Spread” herein) plus (B) the product of (x) the Applicable Factor multiplied by (y) the Adjusted Term SOFR Rate for the applicable Interest Period. The Tax-Exempt Rate shall be rounded upwards to the fourth decimal place.

“Taxable Date” means the date on which interest on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing is first includable in gross income of a Holder (including, without
limitation, any previous Holder) as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“Taxable Drawing” means, with respect to the Taxable Direct Purchase Note, each installment of principal advanced by the Bank with respect to the Taxable Direct Purchase Note pursuant to the terms hereof.

“Taxable Note” means the Power Authority of the State of New York Taxable Direct Purchase Note, Series 2022 T, in substantially the form attached hereto as Exhibit A-2, including all extensions, renewals and amendments thereto and restatements thereof.

“Taxable Period” has the meaning set forth in Section 3.11 hereof.

“Taxable Rate” means a per annum rate of interest equal to the sum of (A) the Taxable Applicable Spread (as set forth in the definition of “Applicable Spread” herein) plus (B) the Adjusted Term SOFR Rate for the applicable Interest Period. The Taxable Rate shall be rounded upwards to the fourth decimal place.

“Taxes” has the meaning set forth in Section 9.1(a) hereof.

“Term Benchmark” when used in reference to any Term Benchmark Drawing or Borrowing, refers to whether such Term Benchmark Drawing, or the Term Benchmark Drawings comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Drawing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), with respect to any Term Benchmark Drawing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Bank as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.
“Termination Date” means (a) the Stated Expiration Date or (b) such earlier date on which the Commitment shall be terminated in full as permitted herein.

“Trust Estate” has the meaning set forth in the 1998 Resolution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“2012 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 9, 2012 entitled “Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable)”, as amended in accordance with its terms.

“2017 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 7, 2016 entitled “Resolution Authorizing Subordinated Notes, Series 2016” (Federally Taxable)”, as amended in accordance with its terms.

“2019 Revolving Credit Agreement” means the 2019 Revolving Credit Agreement dated as of January 16, 2019, among the Authority, the banks listed on the signature pages thereto and JPMorgan Chase Bank, National Association, as Administrative Agent, as amended in accordance with its terms.

“2019 Revolving Credit Agreement Resolution” means the resolution of the Authority adopted on December 11, 2018, authorizing the execution of this Agreement.

SECTION 2. REPRESENTATIONS

The Authority represents, covenants and warrants that:

Section 2.1. Existence and Power. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State, created in 1931 by and validly existing under the Act. The Authority has the power to execute and deliver this Agreement and the Direct Purchase Notes and to incur and perform its obligations hereunder and under the Direct Purchase Notes.

Section 2.2. Authority, etc. The execution, delivery and performance by the Authority of this Agreement and the Direct Purchase Notes have been duly authorized by all necessary action of the Authority, including the Note Purchase Agreement Resolution. The Authority has heretofore delivered to the Bank a copy of the Note Purchase Agreement Resolution, certified as true and correct by the Corporate Secretary of the Authority, and the Note Purchase Agreement Resolution is in full force and effect. Assuming that this Agreement constitutes a legal, valid, and binding
obligation of, and is enforceable against, the Bank, this Agreement constitutes a legal, valid and
binding obligation of the Authority enforceable in accordance with its terms, and the Direct
Purchase Notes have been (or will be, as applicable) duly executed and delivered by the Authority
and will constitute legal, valid and binding obligations of the Authority enforceable in accordance
with their terms and the terms of the Note Purchase Agreement Resolution and this Agreement,
subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally, and
shall be entitled to the benefits of the Note Purchase Agreement Resolution, of this Agreement and
of the Act, subject to the pledge created by the 1998 Resolution, including Parity Debt as described
therein, which includes, without limitation, debt issued pursuant to the Note Purchase Agreement
Resolution and such liens as are permitted by Section 8.3 hereof. The making and performance by
the Authority of this Agreement and the Direct Purchase Notes will not violate any provision of
law or result in a breach of or constitute a default under or require any consent under any agreement
or instrument to which the Authority is a party or by which the Authority or its property may be
bound (including, without limitation, the Authority’s organizational documents and the JPM
Revolving Credit Agreement) or affected or result in the creation or imposition of any “security
interest” (as defined in Section 8.3 hereof) on any asset of the Authority except for the pledge
contemplated hereby. This Agreement and the Direct Purchase Notes, collectively, constitute a a
revolving credit facility for purposes of Section 11 of the Revolving Credit Agreement Resolution.

Section 2.3. Financial Condition. (a) The financial statements of the Authority for the
year ended December 31, 2020, with the opinion thereon of independent certified public
accountants, copies of which have been delivered to the Bank, are complete and correct in all
material respects and fairly present in all material respects the financial condition of the Authority
as at the dates of said financial statements and the results of its operations for the periods ending
on said dates. The Authority has no contingent obligations or liabilities, liabilities for taxes or
unusual forward or long-term commitments that are material in amount, except as disclosed by or
reserved against in said financial statements as of December 31, 2020, which would have a
Material Adverse Effect.

(b) Since December 31, 2020 and as of the date hereof, there has been no material adverse
change in the financial condition or in the results of operations of the Authority from that set forth
in said financial statements as of and for the period ended December 31, 2020 that would have a
Material Adverse Effect.

Section 2.4. Litigation. There are no suits or proceedings pending, or to the knowledge
of the Authority threatened, against or affecting the Authority, questioning the creation,
organization or existence of the Authority or the validity of this Agreement or the Direct Purchase
Notes or any of the bonds or notes herein referred to or that have a reasonable likelihood of adverse
determination and if adversely determined, would otherwise have a Material Adverse Effect or
material adverse effect on the rights available to the Bank hereunder, except as may be referenced
in an opinion referred to in Section 7.1(d) hereof.

Section 2.5. Government Approvals. No governmental approvals, licenses,
authorizations, consents, filings or registrations (other than the approval of the Comptroller of the
State of New York pursuant to the Act, which approval has been obtained and a copy thereof
furnished to the Bank) are required for the making and performance by the Authority of this Agreement and the issuance of the Direct Purchase Notes.

**Section 2.6. Obligations for Borrowed Money.**

(a) **Revenue Bonds.** Pursuant to the 1998 Resolution, the Authority has issued and is obligated to pay and there were outstanding on the date hereof, an aggregate of not more than $490,440,000 in principal amount of Revenue Bonds of the Authority. The Revenue Bonds constitute Obligations.

(b) **Commercial Paper Notes.** Pursuant to the Commercial Paper Note Resolution, the Authority is currently authorized to issue its Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $1,420,000,000. On [_______], 2022, no such Commercial Paper Notes, consisting of commercial paper notes designated as “Series 3B Notes” and commercial paper notes designated as “Series 4 Notes,” were outstanding. The Commercial Paper Notes are Subordinated Indebtedness. This Agreement shall constitute a Subordinated Contract Obligation. The obligations of the Authority to make payments under this Agreement shall constitute a Subordinated Contract Obligation within the meaning of the General Resolution and shall be deemed to be part of the Direct Purchase Notes.

(c) **Extendible Municipal Commercial Paper Notes.** Pursuant to the Extendible Municipal Commercial Paper Note Resolution, the Authority is currently authorized to issue its Extendible Municipal Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $200,000,000, with $5,000,000 of such Extendible Municipal Commercial Paper Notes outstanding on the date hereof. The Extendible Municipal Commercial Paper Notes constitute Subordinated Indebtedness.

(d) **Subordinated Notes, Series 2012 (Federally Taxable).** Pursuant to the 2012 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2012 in the principal amount of $25,160,000 on December 15, 2012, of which $19,575,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2012 are Subordinated Indebtedness.

(e) **Subordinated Notes, Series 2017 (Federally Taxable).** Pursuant to the 2017 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2017 in the principal amount of $25,200,000 on February 21, 2017, of which $23,860,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2017 are Subordinated Indebtedness.

(f) **Other.** No bonds, notes or other obligations for money borrowed by the Authority other than those described in this Section 2.6 are outstanding on the date hereof, except for (i) obligations for which moneys and/or obligations of the United States have been set aside or placed in trust for the payment or redemption thereof and which have thereby been fully defeased in accordance with their terms or (ii) obligations incurred to finance Separately Financed Projects as defined in the 1998 Resolution.
Section 2.7. Title and Liens. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority except for defects which would not reasonably be expected to have a Material Adverse Effect. There are no liens or encumbrances (a) on any properties of the Authority, the foreclosure of which would have a Material Adverse Effect, except as described in this Agreement; or (b) on the revenues of the Authority other than the pledge effected hereby and by and pursuant to the Existing Resolutions.

Section 2.8. Security for the Direct Purchase Notes and Drawings. Each Direct Purchase Note (and all Drawings thereunder) is an obligation of the Authority payable from the Trust Estate and is Subordinated Indebtedness. Each Direct Purchase Note (and all Drawings thereunder) is secured by pledges of the Trust Estate as provided in Section 10 hereof. As of the date hereof, each Direct Purchase Note (and all Drawings thereunder) is subordinate only to (i) the debt secured by the pledge created by the 1998 Resolution, including Parity Debt as described therein, and (ii) debt permitted by Section 8.3 hereof; the lien securing the Direct Purchase Notes (and all Drawings thereunder) is on a parity with the pledges made to holders of obligations issued under the Commercial Paper Note Resolution, Extendible Municipal Commercial Paper Note Resolution, the Subordinate Resolution, the 2012 Subordinated Notes Resolution, the 2017 Subordinated Notes Resolution and any subsequent resolutions of the Authority (other than those permitted under Section 8.3 hereof) authorizing the issuance of debt.

Section 2.9. ERISA. Any employee pension benefit plan or a plan qualifying under Section 401 (a) of the Internal Revenue Code of 1986, as amended, maintained by the Authority is currently exempt from the requirements of Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

Section 2.10. Compliance with Laws and Agreements. The Authority (i) is in compliance with all laws, ordinances, governmental rules and regulations the noncompliance with which could reasonably be expected to result in a Material Adverse Effect, (ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, could reasonably be expected to result in a Material Adverse Effect and (iii) is in compliance with all indentures, agreements and other instruments binding upon its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing. Without limiting the generality of the foregoing, except as would not result or be reasonably expected to result in a Material Adverse Effect: (a) each of the properties of the Authority and all operations at such properties are in compliance with all applicable Environmental Laws and (b) there is no violation of any Environmental Law with respect to such properties or the businesses operated by the Authority.

Section 2.11. Federal Power Act. The Authority is not subject to regulation under Section 204 of the Federal Power Act of 1935 in connection with the issuance of the Direct Purchase Notes under this Agreement.

Section 2.12. Sovereign Immunity. The Authority is not authorized to assert a defense based on sovereign or governmental immunity in any action or proceeding to enforce the
obligations of the Authority hereunder or under either Direct Purchase Note (or any Drawing thereunder) and, to the extent permitted by law, specifically waives the right to claim any such defense.

Section 2.13. Margin Stock. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of either Direct Purchase Note or any Drawing will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any other manner which would involve a violation of any of the regulations of the Board of Governors of the Federal Reserve System. The Authority is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 2.14. Complete and Correct Information. All information, reports and other papers and data with respect to the Authority furnished to the Bank or their counsel by the Authority in connection with the negotiation of this Agreement were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects.

Section 2.15. Tax-Exempt Status. With respect to the Tax-Exempt Direct Purchase Note and the Tax-Exempt Drawings, the Authority has not taken any action or omitted to take any action which action or inaction would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 2.16. Incorporation by Reference. The representations and warranties made by the Authority in the Commercial Paper Note Resolution are hereby incorporated herein by reference and made for the benefit of the Bank.

Section 2.17. Anti-Corruption Laws and Sanctions. The Authority and, to its knowledge, its officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions except where such non-compliance would not result in a Material Adverse Effect. No Borrowing, use of proceeds or, to the knowledge of the Authority, other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions. The Authority is not a Sanctioned Person.

SECTION 3. NOTE PURCHASES.

Section 3.1. Purchase and Sale of Notes. (a) From the Original Closing Date through the Termination Date, and upon and subject to the terms and conditions and on the basis of the representations, warranties and agreements contained in the Original Agreement and herein, the Bank agreed to purchase the Direct Purchase Notes by making Drawings under the Direct Purchase Notes requested by Authority from time to time in an aggregate principal amount at any one time outstanding not to exceed the Commitment, and the Authority agreed to sell and deliver to the Bank on the Original Closing Date, the Direct Purchase Notes, each in an original maximum stated principal amount up to the Commitment, in accordance with and under the terms and conditions of the Note Purchase Agreement Resolution. Each Direct Purchase Note (and all Drawings
thereunder) is authorized pursuant to the Act and the Note Purchase Agreement Resolution, and is to be issued only for the purposes authorized under the Note Purchase Agreement Resolution. Each Direct Purchase Note is issued under the Note Purchase Agreement Resolution and, pursuant to the Note Purchase Agreement Resolution, the principal of and interest on the Direct Purchase Notes are payable from and secured by a lien on and pledge of the sources pledged under the terms of the Note Purchase Agreement Resolution and Section 10 hereof, including the Trust Estate. The outstanding principal amount of each Direct Purchase Note will be equal to 100% of the outstanding Drawings under such Direct Purchase Note. The aggregate principal amount of each Direct Purchase Note may be repaid and reborrowed pursuant to the terms hereof. The Direct Purchase Notes shall not be issued and Drawings shall not be made such that the principal amount of all Drawings under the Direct Purchase Notes shall exceed the Commitment; provided, however, that notwithstanding anything herein to the contrary, the Bank shall have no obligation to make a Drawing if the sum of such Drawing plus the aggregate principal amount of the outstanding Drawings plus the aggregate principal amount of Loans outstanding under the JPM Revolving Credit Agreement would exceed the Commitment then in effect. On any date, the aggregate principal amount of all Drawings made on such date shall not exceed the amount of the Available Commitment before giving effect to such Drawings. If the principal amount of all Drawings are paid in full on or before the Termination Date (i.e., there are no outstanding Drawings under such the Direct Purchase Notes) but the Direct Purchase Notes have not been redeemed, the Direct Purchase Notes will be deemed to not be retired and will be deemed to remain outstanding unless and until (i) on the Termination Date, no Drawings are outstanding or (ii) the Direct Purchase Notes are redeemed in full.

(b) Pursuant to and subject to the terms of this Agreement, each Drawing shall be made in an amount equal to the principal amount of such requested Drawing with no accrued interest and the Bank shall pay the principal amount of such Drawing to the Authority on the related Drawing Date upon satisfaction of the conditions precedent to such Drawing in Section 7.2 hereof.

(c) Notwithstanding anything herein to the contrary, in no event shall, at any time, the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes, plus (ii) the aggregate outstanding principal amount of all Loans as defined in the JPM Revolving Credit Agreement, plus (iii) the aggregate outstanding principal amount of all Drawings plus (iv) the aggregate LC Exposure exceed the Commitment from time to time in effect.

(d) The Direct Purchase Notes shall (i) be dated the Effective Date, (ii) be payable from and secured by the Trust Estate in the manner described in Section 10 hereof, (iii) mature no event later than the Stated Expiration Date, with principal thereof and interest thereon payable as specified in this Agreement, and (iv) bear interest as set forth herein. Interest on the Direct Purchase Notes (and all Drawings thereunder) shall be calculated on the basis of a year of 360 days and actual days elapsed.

(e) At such date and time as shall have been mutually agreed upon by the Authority and the Bank, the certificates, opinions and other documents required by Section 7.1 below shall be executed and delivered (all of the foregoing actions are herein referred to collectively as the “Closing”). Assuming the Closing is completed in accordance with the provisions of this Agreement then, subject to the provisions of this Agreement and the conditions set forth in Section
7.2 hereof, the Bank shall make each Drawing under the Direct Purchase Note and pay the principal amount therefor specified in Section 3.1(b) hereof on each Drawing Date.

(f) Notwithstanding anything herein to the contrary, (i) the Bank shall maintain in accordance with its usual practices an account or accounts evidencing the indebtedness resulting from each Drawing under each Direct Purchase Note made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder and (ii) in any legal action or proceeding in respect of this Agreement or the Direct Purchase Notes, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded. The Bank’s accounts shall record the amount of each Drawing made under each Direct Purchase Note and the Interest Period applicable thereto.

(g) The Authority shall, without duplication, (i) make a principal payment on the related Direct Purchase Note on each date on which the Authority is required to make a principal payment on a Drawing in an amount equal to the principal payment due on such date and (ii) pay interest on the related Direct Purchase Note on each date on which the Authority is required to make an interest payment with to a Drawing in an amount equal to the interest payment due on such date. Since the Direct Purchase Notes evidence and secure the Authority’s obligations to repay the Drawings, the payment of the principal of and interest on the related Direct Purchase Note shall constitute payment of the principal of and interest on the related Drawing and the payment of the principal of and interest on the related Drawings shall constitute the payment of and principal and interest on the related Direct Purchase Note, and the failure to make any payment on any Drawing when due shall be a failure to make a payment on the related Direct Purchase Note when due and the failure to make any payment on the related Direct Purchase Note when due shall be a failure to make a payment on such Drawing when due.

Section 3.2. Interest Rate  (a) For the period commencing on the Original Closing Date to but not including the Effective Date, the Drawings shall bear interest in accordance with the terms and provisions specified in the Original Agreement. From and after the Effective Date, subject to adjustment as set forth herein, (i) the Tax-Exempt Direct Purchase Note and all Tax-Exempt Term Benchmark Drawings thereunder shall bear interest at a rate per annum equal to the lesser of (A) the applicable Maximum Rate and (B) the Tax-Exempt Rate in effect for the applicable Interest Period and (ii) the Taxable Direct Purchase Note and all Taxable Term Benchmark Drawings thereunder shall bear interest at a rate per annum equal to the lesser of (A) the applicable Maximum Rate and (B) the Taxable Rate in effect for the applicable Interest Period. A Term Benchmark Drawing may be continued in whole or in part for successive Interest Periods upon the Authority’s irrevocable request to the Bank in the form of Exhibit E hereto with blanks appropriately completed. The Bank must receive the Notice of Continuation/Conversion not later than 10:00 a.m. on the Business Day which is three (3) Business Days prior to the last day of the then current Interest Period. Upon the Bank’s timely receipt of a duly completed and executed Notice of Continuation/Conversion, the note described therein shall be continued as a Term Benchmark Drawing with the Interest Period specified therein, or, if no Interest Period is specified therein, then the applicable Term Benchmark Drawing shall be continued in the same Interest Period as applied to such Term Benchmark Drawing in the previous Interest Period.
(b) Any principal of, and to the extent permitted by applicable law, any interest on the Direct Purchase Notes and any Drawing and any other sum payable hereunder, which is not paid when due shall bear interest, from the date due and payable until paid, payable by the Authority on demand, at a rate per annum equal to the lesser of (i) the Default Rate and (ii) subject to Section 3.8 hereof, the Maximum Rate.

(c) Upon the occurrence of an Event of Default, the Direct Purchase Notes, the Drawings and all other Obligations payable hereunder shall bear interest, payable by the Authority on demand at a rate per annum equal to the lesser of (i) the Default Rate and (ii) subject to Section 3.8 hereof, the Maximum Rate.

(d) The Bank shall promptly notify the Authority and the Paying Agent/Registrar of the interest rate applicable to any Drawings upon determination of such interest rate; provided, however, that the failure by the Bank to provide notice of the applicable interest rate shall not relieve the Authority of its obligation to make payment of amounts as and when due hereunder. Each determination by the Bank of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

Section 3.3. Fees. The Authority hereby agrees to pay and perform its obligations provided for in the Fee Letter, including the payment of a commitment fee and all other fees and expenses and the other payments provided for therein in the amounts, at the times and on the dates set forth therein. The terms and provisions of the Fee Letter are incorporated herein by reference as if fully set forth herein. Any reference herein or in the Fee Letter to fees and/or other amounts or obligations payable hereunder shall include, without limitation, all fees and other amounts or obligations (including without limitation fees and expenses) payable pursuant to the Fee Letter, and any reference to this Agreement shall be deemed to include a reference to the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement between the Authority and the Bank and all obligations under the Fee Letter shall be construed as obligations hereunder.

Section 3.4. Capital or Liquidity Requirements Adjustment. If, due to a Change in Law, the Bank reasonably determines that it is required to increase the amount of capital or liquidity maintained by the Bank (or its Parent) based upon the existence of its Commitment to lend under this Agreement or based upon either Direct Purchase Note, the Bank shall promptly notify the Authority of an adjustment of its commitment fees payable hereunder or other payments required to be made hereunder that will, in the reasonable determination of the Bank, adequately compensate the Bank (or its Parent) in light of such required increase in capital and/or liquidity, as applicable. In determining the amount of such adjustment, the Bank may use any reasonable allocation, averaging and attribution methods and may make reasonable assumptions regarding such matters as cost of capital, and any such determination made by the Bank shall, in the absence of manifest error, be conclusive and binding. The adjustment of the commitment fees or other payments pursuant to this Section 3.4 shall be applicable from the effective date of the change causing such adjustment or other payments. Such Bank shall notify the Authority of any such change promptly and in any event not more than 180 days after the occurrence thereof and, as soon as practicable thereafter, of the amount of the adjustment to the commitment fees or other payments resulting therefrom, which shall be set forth in a certificate delivered by the Bank to the Authority; provided, however, that notwithstanding any other provisions of this Section, the Authority shall
have no liability for any such compensation to the extent incurred more than 180 days prior to the date such certificate is delivered to the Authority with respect thereto (any such date with respect to a certificate delivered under this Section or Section 3.5, a “Cut-Off Date”), except where such compensation applies retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after receipt thereof. It is expressly understood that each reference in this Section 3.4 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.4; provided that the amount of any payment required under this Section 3.4 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section 3.4 (a) for any required increase unless the Authority shall have received at least thirty (30) days’ prior notice from the Bank of the Change in Law giving rise to such required increase or (b) if the Authority shall prepay the Drawings, Direct Purchase Notes and Reimbursement Obligations in full and terminate the Commitment prior to the date on which any adjustment required to be paid pursuant to this Section 3.4 is due and payable.

Section 3.5. Increased Costs. If, due to a Change in Law, provided that the Bank making a claim under this Section 3.5 based on such requirement, in its reasonable discretion, determines that it is required to comply with such requirement, there shall be any increase in the cost to the Bank of committing to make drawings under either or both Direct Purchase Notes or issuing or maintaining any Letter of Credit, then the Authority shall from time to time pay to the Bank such additional amounts sufficient to compensate the Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Authority by the Bank, shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding any other provisions of this Section, the Authority shall have no liability for any such increased costs to the extent incurred prior to the Cut-Off Date, except where such increased costs apply retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after receipt thereof. It is expressly understood that each reference in this Section 3.5 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.5; provided that the amount of any payment required under this Section 3.5 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section 3.5 (a) for any increased costs incurred unless the Authority shall have received at least thirty (30) days’ prior notice from the Bank of the Change in Law giving rise to such increased costs or (b) if the Authority shall prepay the Drawings, Direct Purchase Notes and Reimbursement Obligations in full and terminate the Commitment prior to the date on which any increased costs incurred pursuant to this Section 3.5 are due and payable.

Section 3.6. Use of Proceeds; Further Representations. (a) The proceeds of Drawings under the Direct Purchase Notes shall be used for the payment of any capital expenditures, operating expenses or any other lawful corporate purpose of the Authority.

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(b) Each Borrowing hereunder by the Authority and issuance of a Letter of Credit shall be deemed to constitute (and shall constitute) a representation and warranty by the Authority as of the date such Borrowing or issuance, as applicable, is made only that:

(i) the proceeds of such Borrowing are being used solely and exclusively for the purposes set forth in Section 3.6(a);

(ii) no Event of Default has occurred and is continuing; and

(iii) the Authority is in compliance with all terms and conditions of the Direct Purchase Notes, the Commercial Paper Note Resolution, the 2019 Revolving Credit Agreement Resolution, the Note Purchase Agreement Resolution, the 1998 Resolution (as the same may have been duly supplemented from time to time), the Subordinate Resolution (as the same may have been duly supplemented from time to time and to the extent in effect) and any issuing and paying agency agreement relating to the Direct Purchase Notes.

The Authority will not request any Borrowing or the issuance of any Letter of Credit, and the Authority shall not use, and shall ensure that its directors, officers, employees and agents shall not knowingly use, the proceeds of any Borrowing or any LC Disbursement (A) in violation of any Anti-Corruption Laws or (B) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 3.7. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Authority may request the Bank to issue Letters of Credit as the applicant thereof for the support of its obligations, in a form reasonably acceptable to the Bank, at any time and from time to time during the Commitment Period.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Authority shall, no less than three (3) Business Days in advance of the requested date of issuance, amendment or extension, telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Bank) to the Bank a letter of credit application, in each case, as required by the Bank and using the Bank’s standard form (each, a “Letter of Credit Agreement”) requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the Authority may, at the sole discretion of the Bank, be required to enter into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance,
amendment or extension of each Letter of Credit the Authority shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) (x) the aggregate undrawn amount of all outstanding Letters of Credit issued by the Bank at such time plus (y) the aggregate amount of all LC Disbursements made by the Bank that have not yet been reimbursed by or on behalf of the Authority at such time shall not exceed the Letter of Credit Commitment, (2) the LC Exposure shall not exceed the total Letter of Credit Commitment. The Authority may, at any time and from time to time, reduce the Letter of Credit Commitment with the consent of the Bank; provided that the Authority shall not reduce the Letter of Credit Commitment if, after giving effect of such reduction, the conditions set forth in clauses (i) and (ii) above shall not be satisfied.

The Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Bank from issuing such Letter of Credit, or any Law applicable to the Bank shall prohibit, or require that the Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that the Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, one year after such extension) and (ii) the date that is five Business Days prior to the Termination Date.

(d) Reimbursement. If the Bank shall make any LC Disbursement in respect of a Letter of Credit, the Authority shall reimburse such LC Disbursement by paying to the Bank an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the date that such LC Disbursement is made, if the Authority shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Authority prior to such time on such date, then not later than 12:00 noon, New York City time, on the Business Day immediately following the day that the Authority receives such notice, if such notice is not received prior to such time on the day of receipt.

(e) Obligations Absolute. The Authority’s obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent
or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Authority’s obligations hereunder. The Bank shall have no liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Bank; provided that the foregoing shall not be construed to excuse the Bank from liability to the Authority to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Authority to the extent permitted by applicable law) suffered by the Authority that are caused by the Bank’s failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Bank (as finally determined by a court of competent jurisdiction), the Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Bank shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The Bank shall promptly after such examination notify the Authority by telephone (confirmed by telecopy or electronic mail) of such demand for payment if the Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Authority of its obligation to reimburse the Bank with respect to any such LC Disbursement.

(g) Interim Interest. If the Bank shall make any LC Disbursement, then, unless the Authority shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest at the Default Rate, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is paid in full and such interest shall be due and payable on demand therefor.

(h) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Authority receives notice from the Bank demanding the deposit of cash collateral pursuant to this paragraph, the Authority shall deposit in an account or accounts with the Bank, in the name of the Bank and for the benefit of the Bank (the “Collateral Account”), an
amount in cash equal to 105% of the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Authority described in Section 12.4. Such deposit shall be held by the Bank as collateral for the payment and performance of the obligations of the Authority under this Agreement. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Authority shall immediately deposit into the Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon.

The Bank shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Bank and at the Authority’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Bank to reimburse the Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Authority for the LC Exposure at such time or, if the maturity of the Drawings has been accelerated, be applied to satisfy other obligations of the Authority hereunder. If the Authority is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Authority within three Business Days after all Events of Default have been cured or waived.

Section 3.8. Excess Interest. If the amount of interest payable hereunder or in respect of any Direct Purchase Note or any Drawing on any date such interest is due and payable hereunder or under any Direct Purchase Note, any Drawing or any Reimbursement Obligation, calculated in accordance with the provisions of Section 3.2, exceeds the amount of interest that would be payable on such date had interest been calculated at the maximum rate of interest on such amount permitted by applicable law (the “Maximum Rate”), then interest on such amount payable on such date shall be calculated and payable on the basis of the Maximum Rate. Any interest that would have been due and payable hereunder or in respect of any Direct Purchase Note, any Drawing or any Reimbursement Obligation but for the operation of the preceding sentence shall be payable as provided in the next sentence and shall constitute the “Excess Interest Amount.” At any time that there is any accrued and unpaid Excess Interest Amount, the amount payable hereunder or in respect of any Direct Purchase Note, any Drawing or any Reimbursement Obligation shall bear interest at the Maximum Rate, rather than the interest rate determined in accordance with Section 3.2, until payment by the Authority of the entire Excess Interest Amount. Upon the repayment of the Direct Purchase Notes and all Drawings and all Reimbursement Obligations, the Authority, if and to the extent permitted by applicable law, shall pay to the Bank a fee equal to the total amount of the accrued and unpaid Excess Interest Amount.

Section 3.9. Terminations and Reductions; Termination Fee. (a) On and after the date thirty (30) days following the Effective Date, the Authority shall have the right to terminate or reduce the Commitment upon at least five Business Days’ prior written notice to the Bank of such
termination or reduction and payment of any termination fee required to be paid pursuant to the Fee Letter. Any partial reduction shall be in the total amount of $25,000,000 or an integral multiple of $1,000,000 in excess thereof. Once terminated or reduced, the Commitment may not be reinstated. The Authority agrees that any termination of this Agreement as a result of the provision of any credit or liquidity facility or any other bank agreement in substitution for this Agreement will require, as a condition thereto, that the Authority or the issuer of such facility will provide funds on the date of such termination or provision in an amount sufficient to pay in full at the time of termination all obligations due and owing to the Bank hereunder and under the Direct Purchase Notes.

(b) The Commitment shall terminate on the Termination Date.

(c) If the Commitment is terminated in its entirety, all accrued commitment fees shall be payable on the effective date of such termination. If the amount of the Commitment is reduced, the commitment fee that has accrued on the amount by which the Commitment has been reduced shall be payable on the effective date of such reduction together with any amounts required to be paid pursuant to the terms of the Fee Letter, at the times and in the manner set forth therein.

Section 3.10. **Funding Indemnity.** (a) With respect to Drawings that are not RFR Drawings, in the event of (i) the payment of any principal of any Term Benchmark Drawing other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Drawings), (ii) the conversion of any Term Benchmark Drawing other than on the last day of the Interest Period applicable thereto or (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Drawing on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 3.2 or 4.1 hereof) and is revoked in accordance therewith), then, in any such event, the Authority shall compensate the Bank for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that the Bank is entitled to receive pursuant to this Section shall be delivered to the Authority and shall be conclusive absent manifest error. The Authority shall pay the Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Drawings, in the event of (i) the payment of any principal of any RFR Drawing other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Drawings) or (ii) the failure to borrow or prepay any RFR Drawing on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 3.2 or 4.1 hereof and is revoked in accordance therewith), then, in any such event, the Authority shall compensate the Bank for the loss, cost and expense attributable to such event. A certificate of the Bank setting forth any amount or amounts that the Bank is entitled to receive pursuant to this Section shall be delivered to the Authority and shall be conclusive absent manifest error. The Authority shall pay the Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 3.11. **Taxability.** (a) In the event a Taxable Date occurs, the Tax-Exempt Direct Purchase Note (and all Tax-Exempt Drawings thereunder) shall bear interest at the Taxable Rate on and after the Taxable Date. In addition to the foregoing (but not in duplication thereof), in the
event a Taxable Date occurs, the Authority hereby agrees to pay to the Bank or any Holder on demand therefor, (1) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank or any Holder, as applicable, on the Tax-Exempt Direct Purchase Note and Tax-Exempt Drawing(s) during the period for which interest on the Tax-Exempt Direct Purchase Note and Tax-Exempt Drawing(s) thereunder is includable in the gross income of the Bank or any Holder, if the Tax-Exempt Direct Purchase Note and/or Tax-Exempt Drawings thereunder had borne interest at the Taxable Rate, beginning on the Taxable Date (the “Taxable Period”), and (B) the amount of interest actually paid to the Bank or any Holder, as applicable, during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by the Bank or any Holder, as applicable, as a result of interest on the Tax-Exempt Direct Purchase Note and/or any Tax-Exempt Drawings thereunder becoming includable in the gross income of the Bank or any Holder, as applicable, together with any and all reasonable attorneys’ fees, court costs, or other out-of-pocket costs incurred by the Bank or any Holder, as applicable, in connection therewith; provided, that at no time shall the interest rate exceed the applicable Maximum Rate.

(b) The obligations of the Authority under this Section 3.11 shall survive the termination of this Agreement.

Section 3.12. Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.12, if:

(i) the Bank determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Drawing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Bank determines (which determination shall be conclusive absent manifest error) that (A) prior to the commencement of any Interest Period for a Term Benchmark Drawing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to the Bank of making or maintaining Term Benchmark Drawings for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to the Bank of making or maintaining such RFR Drawing;

then the Bank shall give notice thereof to the Authority by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Bank notifies the Authority that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Authority delivers a new Request for Drawing in accordance with the terms of Section 4.1 hereof or a new Notice of Continuation/Conversion in accordance with the terms of Section 3.2 hereof, any Request for Drawing or Notice of Continuation/Conversion, as applicable, that requests the conversion of any Term Benchmark Drawing to, or continuation of any Term Benchmark Drawing as, a Term Benchmark Drawing and any Request for Drawing that requests
a Term Benchmark Drawing shall instead be deemed to be a Request for Drawing or Notice of Continuation/Conversion, as applicable, an Alternate Rate Drawing. Furthermore, if any Term Benchmark Drawing or RFR Drawing is outstanding on the date of the Authority’s receipt of the notice from the Bank referred to in this Section 3.12(a) with respect to a Relevant Rate applicable to such Term Benchmark Drawing or RFR Drawing, then until (x) the Bank notifies the Authority that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Authority delivers a new Request for Drawing in accordance with the terms of Section 4.1 hereof or a new Notice of Continuation/Conversion in accordance with the terms of Section 3.2 hereof (1) any Term Benchmark Drawing shall on the last day of the Interest Period applicable to such Term Benchmark Drawing (or the next succeeding Business Day if such day is not a Business Day), be converted by the Bank to, and shall constitute, an Alternate Rate Drawing, on such day, and (2) any RFR Drawing shall on and from such day be converted by the Bank to, and shall constitute an Alternate Rate Drawing.

(b) Notwithstanding anything to the contrary herein, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Authority without any amendment to, or further action or consent of any other party to, this Agreement.

(c) Notwithstanding anything to the contrary herein, the Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(d) The Bank will promptly notify the Authority of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Bank pursuant to this Section 3.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement, except, in each case, as expressly required pursuant to this Section 3.12.
(e) Notwithstanding anything to the contrary herein at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Bank may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Bank may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Authority’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Authority may revoke any request for a Term Benchmark Drawing or RFR Drawing of, conversion to or continuation of Term Benchmark Drawing to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Authority will be deemed to have converted any request for a Term Benchmark Drawing into a request for a Term Benchmark Drawing of or conversion to (A) an RFR Drawing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an Alternate Rate Drawing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Rate. Furthermore, if any Term Benchmark Drawing or RFR Drawing is outstanding on the date of the Authority’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Drawing or RFR Drawing, then until such time as a Benchmark Replacement is implemented pursuant to this Section 3.12, (1) any Term Benchmark Drawing shall on the last day of the Interest Period applicable to such Term Benchmark Drawing (or the next succeeding Business Day if such day is not a Business Day), be converted by the Bank to, and shall constitute, (x) an RFR Drawing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an Alternate Rate Drawing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Drawing shall on and from such day be converted by the Bank to, and shall constitute an Alternate Rate Drawing

Section 3.13. Interest Rates; Benchmark Notification. The interest rate on a Term Benchmark Drawing or RFR Drawing denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 3.12(b) provides a mechanism for determining an alternative rate of interest. The Bank does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement,
or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Bank and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Authority. The Bank may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Authority or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 3.14. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

Section 4. PROCEDURES.

Section 4.1. Notices, etc. In order to request a Drawing, the Authority shall deliver a Request for Drawing, properly completed, to the Bank in the form of Exhibit B hereto, and deliver or cause to be delivered to the Bank the other documents required by Section 7.2 hereof, not later than 12:00 noon on a Business Day that is at least three (3) Business Days prior to the proposed Drawing Date. In addition to the other elements set forth in Exhibit A, each Request for Drawing shall specify: (1) the duration of the Interest Period with respect thereto, and that the last day of the proposed Interest Period will not be later than the Stated Expiration Date; (2) whether absent a different election by the Authority, at the end of the an Interest Period the Authority desires that the related Term Benchmark Drawing continue in the same Interest Period until otherwise directed by the Authority and (3) whether such Drawing shall be a Tax-Exempt Drawing under the Tax-Exempt Note or a Taxable Drawing under the Taxable Note. The Bank will, subject to the terms and conditions hereof, accept such delivery and pay or cause to be paid the principal amount of such Drawing under the related Direct Purchase Note by wire transfer in immediately available funds to the Authority as set forth in Section 4.2 hereof. Pursuant to Section 3.2 hereof, the Bank shall determine the initial Tax-Exempt Rate and Taxable Rate, as applicable, two (2) Business Days prior to the related Drawing Date.

Section 4.2. Availability. Not later than 2:00 P.M. (New York City time) on the date specified, the Bank shall pay to the Authority in immediately available funds (subject to provisions of Section 3 hereof) an amount equal to the amount specified in any Request for Drawing delivered
by the Authority pursuant to Section 4.1 hereof. The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to each Direct Purchase Note (or on a supplemental schedule thereto) the principal amount of the related Direct Purchase Note and the amount of each payment or prepayment of the principal of the related Direct Purchase Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note. The Bank shall make the proceeds of Drawings available to the Authority by depositing such proceeds in an account of the Authority maintained with the Bank at its office in New York City designated by the Authority, in immediately available funds in an account designated by the Authority, or in any other manner reasonably requested by the Authority in its Request for Drawing.

Section 4.3. Extension of Commitment and Termination Date. The Commitment of the Bank may be extended beyond the then-scheduled Stated Expiration Date (the “Existing Termination Date”), subject to the provisions of this Section 4.3. The Authority may request an extension of the Commitment of the Bank by written notice to the Bank at any time on or after the date that is no more than 120 days prior to the Existing Termination Date and no less than 60 days prior to the Existing Termination Date. If the Bank agrees, in its individual and sole discretion, to renew its Commitment, it will notify the Authority of its decision to do so no later than 30 days following the receipt of the Authority’s request; provided that if the Bank does not respond to the Authority during such 30-day period, the Bank will be deemed to have declined to extend its Commitment. The Bank’s Commitment shall be renewed for the additional period requested by the Authority and approved by the Bank. The Authority and the Bank shall use their best efforts to complete the documentation necessary so to extend the Termination Date.

SECTION 5. PREPAYMENTS AND REPAYMENTS.

Section 5.1. Payment. (a) Each Direct Purchase Note shall only bear interest based on the principal amount of all outstanding Drawings thereunder. Accrued but unpaid interest on the Direct Purchase Notes (including the Drawings thereunder) shall be due and payable by the Authority on the applicable Interest Payment Date. Interest due and payable by the Authority on the Direct Purchase Notes (including the Drawings thereunder) shall be equal to the amount accrued to but excluding the related payment date. If the payment date for the principal of or interest on the Direct Purchase Notes is a day other than a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended period of time shall be included in the computation of interest; provided, however, the payment of interest on the Direct Purchase Notes on such extended date shall have the same force and effect as if made on the original payment date. Notwithstanding anything herein to the contrary, Reimbursement Obligations shall be evidenced and secured by the Taxable Note but shall be payable as set forth herein and in the Taxable Note not in the manner applicable to Taxable Drawings.

(b) All outstanding principal of the Direct Purchase Notes (including the Drawings thereunder), together with all accrued interest thereon, shall be due and payable by the Authority on the Termination Date.
(c) (i) Subject to Section 3.10, the Authority may prepay any Drawing at par, in whole or in part, on any Business Day provided at least three (3) Business Days’ prior written notice is given by the Authority to the Bank and the Paying Agent/Registrar. Each such notice shall specify the date and amount of such prepayment and the Drawing to be prepaid. Each such notice of optional prepayment shall be irrevocable and shall bind the Authority to make such prepayment in accordance with such notice. Any prepayment of a Drawing shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof, or the entire principal amount of the particular Drawing then outstanding.

(ii) If on any date the sum of (1) the aggregate principal amount of outstanding Loans (as defined in the JPM Revolving Credit Agreement), (2) the aggregate outstanding principal amount of all Drawings, (3) the aggregate principal amount of outstanding Commercial Paper Notes and (4) the LC Exposure exceeds the amount of the Commitment then in effect, the Authority shall immediately prepay one or more Loans (as defined in the JPM Revolving Credit Agreement), Drawings or Reimbursement Obligations in an amount equal to such excess.

(iii) All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due and payable at such time pursuant to this Agreement.

(d) The Direct Purchase Notes shall be delivered by the Authority to the Bank on the Effective Date.

Section 5.2. Notation of Partial Prepayment. The amount of any partial prepayment of Drawings shall be recorded on the related Direct Purchase Note by the Bank promptly upon receipt of such prepayment, it being understood, however, that if the Bank fails to make such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note.

SECTION 6. PAYMENTS, ETC.

Section 6.1. Payments. All payments of principal and interest under this Agreement or the Direct Purchase Notes shall be made in lawful money of the United States of America and in immediately available funds to the Bank at JPMorgan Chase Bank, National Association, JPM-Delaware Loan Operations, 500 Stanton Christiana Road, Floor 1, Newark, DE 19713-2105 using the following wire instructions: ABA#: 021000021, Reference: New York Power Authority, Account Number: 9008113381H0110. If any principal of or interest on any Drawing or any Direct Purchase Note or other amount payable by the Authority hereunder falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding Business Day at such place and, in the case of such an extension as to principal, interest shall be payable in respect of such extension. The amount of any principal payment of Drawings shall be recorded on the related Direct Purchase Note by the Bank immediately upon receipt of such payment, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note. All payments received by the Bank after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Authority shall come
due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

SECTION 7. CONDITIONS.

Section 7.1. Closing. The obligation of the Bank to make the Commitment available to the Authority and to issue Letters of Credit hereunder is subject to the receipt by the Bank of the following on the date hereof, each dated the date hereof:

(a) Reserved.

(b) Agreement. (i) Counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, the Bank shall have received in form satisfactory to it telegraphic, telex or other written confirmation from such party of execution of a counterpart hereof by such party); and (ii) an executed copy of the JPM Revolving Credit Agreement and the Fee Letter.

(c) Signatures. A certificate of an officer of the Authority setting forth the name and signature of each officer of the Authority authorized to sign this Agreement and the Direct Purchase Notes and to borrow and effect all other transactions hereunder. The Bank may conclusively rely on each such certification until it receives notice in writing to the contrary.

(d) Opinions of Counsel. Favorable written opinions from either the Executive Vice President and General Counsel, Deputy General Counsel, or an Assistant General Counsel of the Authority, or independent counsel to the Authority, in substantially the forms of Exhibits C-1 and C-2 hereto;

(e) Proof of Corporate Action. Certified copies of all corporate action taken by the Authority to authorize the execution, delivery and performance of this Agreement and the Direct Purchase Notes, a conformed copy of any registration, consent or approval by any governmental officer, agency or commission required to be obtained in connection with the issuance of the Direct Purchase Notes and a copy of the certificate delivered to The Bank of New York Mellon, as “Trustee” under and as defined in the 1998 Resolution, designating the Direct Purchase Notes and Drawings as “Subordinated Indebtedness” and all payment obligations hereunder as “Subordinated Contract Obligations” within the meaning of the 1998 Resolution.

(f) Financial Statements. A copy of the financial statements referred to in Section 2.3 hereof.

(g) Officer’s Certificate. A certificate of the Treasurer or Deputy Treasurer of the Authority to the effect that (i) the representations and warranties of the Authority in Section 2 of this Agreement are true and correct on and as of the date hereof, (ii) no Event of Default has occurred and is continuing, (iii) the copies of the Commercial Paper Note
Resolution, the 1998 Resolution, the 2012 Subordinated Notes Resolution, the 2019
Revolving Credit Agreement Resolution and the Note Purchase Agreement Resolution
heretofore provided to the Bank by the Authority are true and correct copies of such
resolutions as currently in effect.

(h) **Rating Confirmation.** A copy of the Moody’s confirmation received
pursuant to Section 501(G) of the Commercial Paper Note Resolution.

**Section 7.2. Certain Conditions to Bank’s Purchase of Notes.** The Bank has entered into
this Agreement in reliance upon the representations and warranties of the Authority contained
herein and to be contained in the documents and instruments to be delivered at the Closing and at
each Drawing and Letter of Credit issuance, and upon the performance by the Authority of its
obligations hereunder, as of the date hereof and as of the Effective Date, each Drawing Date and
each Issuance Date. Accordingly, any obligation of the Bank under this Agreement to purchase,
to accept delivery of and to pay for the Direct Purchase Notes or to make any Drawing thereunder
and to issue, amend or extend any Letter of Credit shall be subject to performance by the Authority
of its obligations to be performed hereunder and the delivery of the documents and instruments
required to be delivered hereby at or prior to each Drawing, and shall also be subject to the
following additional conditions:

(a) delivery to the Bank of a Request for Drawing executed by an Authorized
Officer in accordance with Section 4.1 hereof;

(b) [Reserved];

(c) as of the Drawing Date and/or Issuance Date, as applicable, this Agreement
and the Note Purchase Agreement Resolution shall be in full force and effect in accordance with
their respective terms and shall not have been amended, modified or supplemented in any manner
which will adversely affect (i) the ability of the Authority to accept the Drawing or perform its
obligations under the Direct Purchase Notes or under this Agreement or (ii) the security for the
Direct Purchase Notes;

(d) as of the Drawing Date and/or Issuance Date, as applicable, all official action
of the Authority relating to this Agreement, the Direct Purchase Notes, the requested Letter of
Credit, if applicable, and the Note Purchase Agreement Resolution shall have been taken and shall
be in full force and effect in accordance with their respective terms and shall not have been
amended, modified or supplemented in any material adverse respect;

(e) each Drawing requested to be made by the Bank shall be a minimum principal
amount of $1,000,000 or an integral multiple of $100,000 in excess thereof. The Authority shall
not request that the Bank make more than four (4) Drawings in each calendar month;

(f) the Bank will have no obligation to make any Drawing under any Direct
Purchase Note or issue any Letter of Credit if, because of a Change in Law, such request for
Drawing or Letter of Credit made by the Authority would be illegal. In such event, the Authority
will have no liability whatsoever with respect to such request for purchase of Letter of Credit
issuance and the Bank will have no liability for its failure to so purchase if such failure is due to a Change in Law;

(g) as of the Drawing Date and/or Issuance Date, as applicable, no Default or Event of Default shall have occurred and be continuing;

(h) with respect to Tax-Exempt Drawings only, an opinion of Note Counsel, addressed to the Bank, dated the Drawing Date, in the form approved by the Bank, and to the effect that the interest with respect to the Tax-Exempt Direct Purchase Note and such Tax-Exempt Drawing are excludable from gross income for federal income tax purposes;

(i) (i) the amount of the requested Drawing shall not exceed the Available Commitment; and (ii) the amount of the requested Letter of Credit shall not exceed the Available Commitment or the Letter of Credit Commitment;

(j) (i) the Drawing Date shall occur on or prior to the Termination Date and the obligation of the Bank to make Drawings shall not have otherwise terminated in accordance with the terms hereof; and (ii) the Issuance Date shall occur on or prior to the date that is five Business Days prior to the Termination Date and the obligation of the Bank to issue Letter of Credit shall not have otherwise terminated in accordance with the terms hereof;

(k) with respect to Tax-Exempt Drawings only, delivery to the Bank of a copy of the properly completed Form 8038-G filed with the Internal Revenue Service relating to the such Drawing.

The submission by an Authorized Officer of a Request for Drawing in connection with each Drawing shall be deemed to be a representation and warranty by the Authority on each respective Drawing Date only that the conditions specified in this Section 7.2 have been satisfied on and as of such date. If the Authority is unable to satisfy the conditions to the obligations of the Bank with respect to a Drawing, the Bank shall not be obligated with respect to such Drawing.

SECTION 8. PARTICULAR COVENANTS OF AUTHORITY.

From the date hereof and until the termination of the Bank’s Commitment, the payment in full of the Direct Purchase Notes (and all Drawings thereunder) and all Reimbursement Obligations and the performance of all other obligations of the Authority under this Agreement, the Authority agrees that:

Section 8.1. Financial Statements, etc. The Authority shall deliver to the Bank:

(a) As soon as available and in any event within 105 days after the end of each semi-annual fiscal period ending June 30 and December 31, the financial statements of the Authority prepared in conformity with generally accepted accounting principles and on a basis consistent with the financial statements referred to in Section 2.3 hereof as at the last day of such period. Financial statements for each fiscal period ending December 31 shall be accompanied by an opinion as to such financial statements of independent certified
accountants of recognized standing. Financial statements for each fiscal period ending June 30 that are not accompanied by such an opinion shall be certified (subject to normal year-end adjustments) as to fairness of presentation, generally accepted accounting principles and consistency, insofar as each of the foregoing relates to accounting matters, by the Executive Vice President and Chief Financial Officer or Vice President and Controller of the Authority.

(b) Concurrently with any delivery of financial statements under clause (a) above relating to a fiscal period ending December 31, a certificate of the Treasurer or Deputy Treasurer of the Authority certifying as to whether there shall have occurred and be continuing an Event of Default or any event that with notice or the lapse of time or both would become an Event of Default, specifying the details thereof and what action the Authority proposes to take with respect thereto.

(c) Copies of any other published reports of financial condition, receipts and expenditures prepared or issued by the Authority for general distribution to investors or lenders.

(d) From time to time, with reasonable promptness, such information regarding the business, affairs and financial condition of the Authority as the Bank may reasonably request.

The Authority shall be deemed to have complied with the requirements to provide the information set forth in this Section 8.1 to the extent such information (x)(i) has been posted on the Authority’s website (www.nypa.gov) or (ii) has been duly filed with the Electronic Municipal Market Access service of the Municipal Securities Rulemaking Board and is publicly available and (y) the Authority shall have given the Bank notice thereof within the time periods set forth above.

The Authority shall notify the Bank of any withdrawal or reduction by any Rating Agency of its rating of any outstanding Indebtedness of the Authority.

Section 8.2. Taxes and Charges. The Authority shall pay and discharge any taxes, assessments and governmental charges or levies that may be imposed upon it or upon its revenues, or upon any property belonging to it, prior to the date on which penalties attach thereto; provided that the Authority shall not be required by this paragraph to pay any such tax, assessment, charge, or levy (a) the payment of which is being contested in good faith and by proper proceedings or (b) the failure to make payment would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

Section 8.3. Security Interests. Without the prior written consent of the Bank, the Authority shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or other encumbrance upon any of its revenues, property or assets, now owned or hereafter acquired, securing any indebtedness or obligation having priority in payment over the Direct Purchase Notes or any Drawing (all such security being herein called “security interests”), except (i)(a) security interests created under the
1998 Resolution to secure Obligations and Parity Debt or (b) security interests upon the assets, revenues, rates, charges, rents, proceeds from the sale of, proceeds of insurance and other income and receipts derived from the ownership or operation of Separately Financed Projects as defined under the 1998 Resolution, (ii) security interests created pursuant to the 2007 Revolving Credit Agreement Resolution, (iii) security interests in the form of a covenant or authorization to pay any obligation of the Authority out of the proceeds of bonds or notes deposited in any fund or account established pursuant to any existing or future resolution of the Authority authorizing the issuance of its obligations and (iv) security interests that are incidental to and incurred in the ordinary course of the Authority’s business or the ownership of its property and assets, which (x) are not incurred in connection with the borrowing of money and (y) do not materially detract from the operation of its business or the value of its property or assets or materially impair the use thereof.

Section 8.4. Default, etc. As soon as reasonably possible and in any event within five Business Days after the Authority has knowledge of the occurrence of an Event of Default or an event that with the giving of notice or lapse of time or both, would constitute an Event of Default, the Authority shall notify the Bank if any Event of Default, or any event that with notice or lapse of time or both would become such an Event of Default, shall have occurred, specifying what action the Authority proposes to take with respect thereto.

Section 8.5. Commercial Paper Note Resolution, 1998 Resolution and this Agreement. The Authority shall not repeal or modify the Commercial Paper Note Resolution or the 1998 Resolution, or take any action impairing any authority, right or benefit conferred by the Commercial Paper Note Resolution or the 1998 Resolution, or this Agreement; provided, however, that the Authority may supplement or amend the Commercial Paper Note Resolution, or the 1998 Resolution, in accordance with its terms. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes exceed the Available Commitment from time to time in effect. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes exceed the Commitment from time to time in effect. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes plus (ii) the aggregate outstanding principal amount of all Loans (as defined in the JPM Revolving Credit Agreement), plus (iii) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Notes, plus (iv) the aggregate LC Exposure, exceed the Commitment from time to time in effect.

Section 8.6. Litigation; Other Events. The Authority shall give to the Bank notice in writing by April 6 of each year of all litigation against or threatened against the Authority and of all proceedings before any governmental or regulatory agency to which the Authority is a party, except litigation or proceedings (a) described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof or (b) that do not have a reasonable likelihood of adverse determination or if adversely determined, would not have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. As to the litigation and
proceedings described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof, the Authority shall give to the Bank notice in writing by April 6 of each year of any changes in the circumstances of such litigation or proceedings that would have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. In addition, the Authority shall give to the Bank notice of the commencement of any such litigation and the occurrence of any other event that is reasonably expected to result in a Material Adverse Effect.

**Section 8.7. Further Assurances.** The Authority shall (1) perform and comply with each of the covenants and provisions contained in this Agreement, in the Existing Resolutions and in any other resolution or agreement securing or providing for the issuance of obligations of the Authority for borrowed money and (2) take all action and do all things that it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Agreement and in order to provide for and to assure payment of the Direct Purchase Notes and Drawings at maturity including, but not limited to, as necessary for the foregoing purposes, directing the payment to it from time to time of any funds held under an Existing Resolution and available in accordance with the terms thereof to be paid to the Authority upon its direction.

**Section 8.8. Compliance with Laws, Etc.** The Authority shall comply in all material respects with all applicable laws, rules, regulations and orders (such compliance to include, without limitation, compliance with all environmental laws and all laws relating to hazardous waste and the payment before the same become delinquent of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith), non-compliance with which would have a Material Adverse Effect.

**Section 8.9. Maintenance of Insurance.** The Authority shall maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is required by law or is deemed by the Authority to be prudent.

**Section 8.10. Reserved.**

**Section 8.11. 1998 Resolution and Subordinate Resolution.** The Authority agrees that the Bank shall be a third-party beneficiary to Sections 503, 604, 605 and 606 of the 1998 Resolution and Sections 501, 603, 605(3) and 1003 of the Subordinate Resolution (collectively, the “Resolution Provisions”). The Authority further agrees not to amend or modify the Resolution Provisions, and agrees that no amendment or modification of the Resolution Provisions shall be effective, without the prior written consent of the Bank, and the Bank shall be entitled to enforce the Resolution Provisions. It is understood and agreed that the Bank shall not be a third-party beneficiary in respect of any other provisions of the 1998 Resolution or the Subordinate Resolution and shall not be entitled to take any action under the 1998 Resolution or the Subordinate Resolution to enforce any of the provisions thereof other than the Resolution Provisions.

**Section 8.12. Reserved.**
Section 8.13. Tax-Exempt Status. With respect to the Tax-Exempt Direct Purchase Note and all Tax-Exempt Drawings, the Authority shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 8.14. Resolutions or Agreements. The Authority shall not create or suffer to exist any default or Event of Default under the Existing Resolutions or under any other resolution or agreement securing or providing for the issuance of Other Indebtedness of the Authority in excess of $25,000,000 the effect of which is to accelerate or permit the acceleration of the maturity of the obligations thereby secured or issued.

Section 8.15. Payment of Fee Letter. The Authority shall pay any and all amounts owed under the Fee Letter when due and payable.

Section 8.16. Ratings Downgrade. The Authority shall not allow any Rating Agency then rating the Authority’s short-term debt obligations (if any) to lower such ratings to (a) in the case of Moody’s, below MIG-3 or P-3, (b) in the case of Standard & Poor’s, below SP-2 or A-3, and (c) in the case of Fitch, below F-3.

Section 8.17. Invalidity of Subordinate Revenue Bond. No court of competent jurisdiction shall adjudge in a final and non-appealable judgment any Subordinate Revenue Bond to be invalid, illegal or unenforceable against the Authority, and the Authority shall not deny in writing that it has any liability under any Subordinate Revenue Bond.

Section 8.18. Judgments for Payment of Money; Enforcement Proceedings. The Authority shall not permit or suffer to exist any judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority or enforcement proceedings commenced by any creditor upon such judgment or order and continue for period of 60 consecutive days during which the enforcement of such judgment has not been effectively stayed (including by reason of a pending appeal or otherwise), dismissed, satisfied or bonded.

Section 8.19. Separately Financed Projects Reporting. The Authority shall provide notice to the Bank of the incurrence of any obligation under Section 203 of the 1998 Resolution to finance a Separately Financed Project within 10 business days of the incurrence thereof. Such notice shall include a description of the date of incurrence of such obligations, the principal amount, maturity and amortization, interest rate, if fixed, or method of computation thereof, if variable (and any default rates), and a description of such Separately Financed Project and the revenues and other security pledged to secure such obligations.

Section 8.20. Limitation Notes. The Authority will not request any Drawing under either Direct Purchase Note the proceeds of which are used to pay or repay any Indebtedness of the Authority which is known by the Authority to be owned by the Bank, which is known by the Authority to have been purchased by the Bank into its inventory as a dealer or remarketing agent, without the prior written consent of the Bank.
Section 9. Taxes.

Section 9.1. Taxes. (a) Any and all payments by the Authority hereunder or under the Direct Purchase Notes shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding, in the case of the Bank, taxes or withholdings (a) imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which the Bank is organized or any political subdivision thereof and, in the case of the Bank, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction of the Bank’s Lending Office or any political subdivision thereof or (b) imposed by Section 1471 through Section 1474 of the Internal Revenue Code of 1986, as amended (including any official interpretations thereof (collectively “FATCA”) on any “withholdable payment” payable to the Bank as a result of the failure of such Person to satisfy the applicable requirements as set forth in FATCA after December 31, 2012 (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Authority shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under the Direct Purchase Notes to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Authority agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the Direct Purchase Notes or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Direct Purchase Notes (hereinafter referred to as “Other Taxes”).

(c) The Authority will indemnify the Bank for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 9) paid by the Bank and any liability including interest, expenses and penalties (other than penalties that have been incurred by the Bank because of such person’s willful misconduct or gross negligence) arising therefrom or with respect thereto, based on a claim for such Taxes or Other Taxes made by the applicable taxing authority, provided, however, that prior to such payment by the Bank, the Authority shall be notified by the Bank of the imposition of such Taxes and may contest, if the Authority so chooses, the imposition of such Taxes, provided further that the Bank may pay such Taxes or Other Taxes if such payment would not preclude the Authority’s ability to contest such imposition. This indemnification shall be made within 30 days from the date the Bank makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes, the Authority will furnish to the Bank, at its address referred to on the signature page hereof, the original or a certified copy of a receipt evidencing payment thereof.
(e) The Bank shall use its best efforts (consistent with its internal policy and legal regulatory restrictions) to change the jurisdiction of its Lending Office if such change would eliminate or reduce any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of the Bank, be otherwise disadvantageous to the Bank.

(f) Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section 9 shall survive the payment in full of principal and interest hereunder and under the Direct Purchase Notes.

SECTION 10. SECURITY FOR THE DIRECT PURCHASE NOTES.

Each Direct Purchase Note (and all Drawings thereunder) is and shall continue to be an obligation of the Authority payable from the Trust Estate and Subordinated Indebtedness. The Trust Estate is hereby pledged by the Authority for the payment of each Direct Purchase Note (and all Drawings thereunder), which pledge is subordinate in the manner set forth in the 1998 Resolution. The foregoing pledges shall be valid and binding from and after the date of execution and delivery hereof and the Trust Estate shall immediately be subject to the lien of such pledges without any physical delivery thereof or further act, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. This Agreement is a Subordinated Contract Obligation (within the meaning of the 1998 Resolution).

SECTION 11. PLEDGE OF STATE.

The Authority, as agent for the State, does hereby pledge to and agree with the holders the Direct Purchase Notes that the State will not limit or alter the rights vested in the Authority by the Act, until the obligations of the Authority under the Direct Purchase Notes are fully met and discharged, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of interests in the Direct Purchase Notes.

SECTION 12. DEFAULTS.

If any of the following events or conditions shall occur and be continuing (each of the events or conditions described herein referred to as an “Event of Default”):

Section 12.1. Payment. The Authority shall fail to pay any installment of principal or interest on any Direct Purchase Note, any Drawing or any Reimbursement Obligation when due and payable and such failure shall continue for five Business Days;

Section 12.2. JPM Revolving Credit Agreement; the 2019 Revolving Credit Agreement. Any “event of default” under the JPM Revolving Credit Agreement or the 2019 Revolving Credit Agreement (as defined respectively therein) shall have occurred;
Section 12.3. Other Indebtedness. The Authority shall default in the payment when due (including any applicable grace period) of any Indebtedness of the Authority (other than Indebtedness outstanding under this Agreement) in excess of $25,000,000; provided that this Section 12.3 shall not apply if such default is remedied or waived by the holders of such Indebtedness prior to the Bank taking any action pursuant to the last paragraph of this Section 12;

Section 12.4. Bankruptcy; Moratorium. (A) The Authority shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of the Authority for all or a substantial part of the assets of the Authority, (ii) commence a voluntary case or other proceeding or file a petition seeking reorganization, liquidation, composition of indebtedness or any arrangement with creditors under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or of the State of New York, or (iii) make a general assignment for the benefit of creditors; (B) the Authority shall impose or declare a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on any obligations of the Authority that are on a parity with the Direct Purchase Notes and the Drawings or that have a priority in payment over the Direct Purchase Notes and the Drawings, or (C) any Governmental Authority having appropriate jurisdiction over the Authority shall make a finding or ruling or other determination or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Direct Purchase Notes or on all Indebtedness of the Authority;

Section 12.5. Judgments. Any final, non-appealable judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority and enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such judgment shall not have been satisfied or bonded within 60 days of the date thereof;

Section 12.6. Ratings. The lowering or withdrawal by all Rating Agencies then rating the applicable obligations of the rating on any obligations of the Authority that are on a parity with the Direct Purchase Notes issued under this Agreement or that have a priority in payment over the Direct Purchase Notes issued under this Agreement to (a) in the case of Moody’s, below Baa3, and (b) in the case of Standard & Poor’s and Fitch, below BBB-;

Section 12.7. Invalidity. This Agreement, any Direct Purchase Note, or any Commercial Paper Note shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable against the Authority and such judgment shall be final and non-appealable, or the Authority shall deny in writing that it has any liability hereunder or thereunder;

Section 12.8. Representations. Any representation or warranty made by the Authority in Section 2 or Section 3.6 hereof, or in any document furnished by the Authority hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

Section 12.9. Covenants. The Authority shall default (other than as otherwise provided in Sections 12.1 through 12.7 hereof) in the performance of any agreement or covenant herein and
such default shall continue unremedied for 30 days after written notice to the Authority from the Bank.

If any Event of Default shall occur and be continuing, the Bank may take, in addition to the remedies specified in the immediately succeeding paragraph, one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) by written notice to the Authority terminate the Commitment;

(ii) by written notice to the Authority, declare the outstanding amount of the principal of and interest on the Direct Purchase Notes (and all Drawings thereunder) and any and any and all other Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under this Agreement and the Direct Purchase Notes (and all Drawings thereunder) or to enforce performance or observance of any obligation, agreement or covenant of the Authority under this Agreement and the Direct Purchase Notes, whether for specific performance of any agreement or covenant of the Authority or in aid of the execution of any power granted to the Bank in this Agreement and the Direct Purchase Notes;

(ii) cure any Event of Default or event of nonperformance hereunder or under this Agreement and the Direct Purchase Notes; provided, however, that the Bank shall have no obligation to effect such a cure;

(iii) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement and the Direct Purchase Notes and as otherwise available at law and at equity; and

(iv) require that the Authority provide cash collateral as required in Section 3.7(h) hereof/

Section 13.  RESERVED.

Section 14.  NOTICES, ETC.

Section 14.1.  Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.2), all notices and other communications provided for herein to the Authority or the Bank shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number specified for such Person on the signature pages hereof.
Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient); provided, however, notices and other communications to the Authority delivered by telecopier shall be deemed to have been given only upon the sender’s receipt of an acknowledgement from the intended recipient. Notices delivered through electronic communications, to the extent provided in Section 14.2, shall be effective as provided in such Section 14.2.

Section 14.2. Electronic Communications. Notices and other communications to the Bank hereunder may be furnished by e-mail to the Bank’s email address specified on the signature pages hereof pursuant to procedures approved by the Bank. The Bank or the Authority may, in its discretion, agree to accept notices and other communications to it hereunder by e-mail communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Notices and other communications sent to an e-mail address of the Authority or, unless the Bank otherwise prescribes, to an e-mail address of the Bank shall be deemed received only upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 14.3. Change of Address, Etc. Each of the Authority and the Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice to the Authority and the Bank.

Section 14.4. Recordings. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

SECTION 15. MISCELLANEOUS

Section 15.1. Waivers, etc. No failure on the part of the Bank to exercise, and no delay in exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 15.2. Expenses; Indemnification. The Authority agrees to pay, whether or not the Direct Purchase Notes are issued or any Drawing made under any Direct Purchase Note or hereunder or any Letter of Credit is issued or LC Disbursement made, (a) the reasonable legal fees
and disbursements of outside counsel retained by the Bank in connection with the formulation, execution and delivery of this Agreement and the Fee Letter, any waiver or consent hereunder or under the Fee Letter or any amendment hereof or of the Fee Letter (including any extension of the Commitment and the Existing Termination Date, pursuant to Section 4.3 hereof) or any event or condition that constitutes an Event of Default, or, with the giving of notice or lapse of time or both, would constitute such an Event of Default; (b) the reasonable legal fees and disbursements of the outside counsel of the Bank; (c) all taxes, if any, upon any documents or transactions pursuant to this Agreement or the Fee Letter; and (d) costs of collection and enforcement (including reasonable counsel fees and disbursements) if an Event of Default occurs.

The Authority agrees to indemnify the Bank and hold the Bank harmless from and against any and all liabilities, losses, damages, and all reasonable costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Bank in connection with any investigative, administrative or judicial proceeding (whether or not the Bank shall be designated a party thereto) to the extent relating to or arising out of this Agreement, the Fee Letter or any actual or proposed use of proceeds of Direct Purchase Notes or any Drawing thereunder or any LC Disbursement; provided that no Bank shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

To the extent permitted by law, the Authority assumes all risks of the acts or omissions of the Paying Agent/Registrar with respect to the use of Drawings under the Direct Purchase Notes pursuant hereto and the use of LC Disbursements; provided that this assumption with respect to the Bank is not intended to and shall not preclude the Authority from pursuing such rights and remedies as it may have against the Paying Agent/Registrar under any other agreements. Neither the Bank nor its officers or directors shall be liable or responsible for (a) the use of the proceeds of the Direct Purchase Notes or the Drawings or LC Disbursements or for any acts or omissions of the Paying Agent/Registrar, (b) the validity, sufficiency, or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents shall, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (c) payments by the Bank against presentation of requests for drawings which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement, or (d) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Authority shall have a claim against the Bank to the extent of any direct, as opposed to consequential damages, but only to the extent caused by the gross negligence or willful failure of the Bank in failing to make a Drawing required to be made by the Bank hereunder after compliance by the Authority with all conditions precedent to such Drawing, unless the making of such Drawing was not otherwise permitted by law.

Section 15.3. Governing Law. This Agreement and the Direct Purchase Notes shall be governed by and construed in accordance with the law of the State of New York without regard to the conflict of laws principles of the State of New York.

Section 15.4. Waiver of Trial by Jury. To the fullest extent permitted by the law, the Authority and the Bank hereby waive trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on
contract, tort or any other theory). The Authority further agrees that, in the event of litigation, it will not personally or through its agents or attorneys seek to repudiate the validity of this Section 15.4, and it acknowledges that it freely and voluntarily entered into this agreement to waive trial by jury in order to induce the Bank to enter into this Agreement.

Section 15.5. Amendments, etc. No amendment or waiver of any provision of this Agreement or the Direct Purchase Notes, nor consent to any departure by the Authority therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 15.6. Successors and Assigns.

(a) Successors and Assigns Generally. This Agreement is a continuing obligation and shall be binding upon the Authority and the Bank, their respective successors, transferees and assigns and shall inure to the benefit of the Authority, the Bank and the Holders and their respective permitted successors, transferees and assigns. The Authority may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank may not at any time assign to one or more assignees all or a portion of its obligation to make Drawings under the Direct Purchase Notes and under this Agreement or issue Letters of Credit or make LC Disbursements without the consent of the Authority (such consent not to be unreasonably withheld, conditioned or delayed) unless such assignment is to an Affiliate of the Bank or an Approved Fund; provided that the Authority shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Bank within ten (10) Business Days after having received notice thereof. Each Holder may, in its sole discretion and in accordance with applicable law, from time to time assign, sell or transfer in whole or in part, its interest in the Notes, this Agreement and the other Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. The Authority agrees that each Holder shall be entitled to the benefits of Sections 3.4, 3.5, 3.11, 9.1 and 15.2 hereof to the same extent as if it were the Bank hereunder; provided, however, that a Holder shall not be entitled to receive any greater payment under this Agreement than the Bank would have been entitled to receive with respect thereto, unless the transfer to such Holder is made with the Authority’s prior written consent.

(b) Sales and Transfers by Holder to a Bank Transferee. Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of its interest in the Notes to a Person that is (i) an Affiliate of the Bank or (ii) a trust or other custodial arrangement established by the Bank or an Affiliate of the Bank, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the 1933 Act, or “institutional accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “Bank Transferee”), it being the express intent of the parties that no offering document is intended to be prepared in connection with the Direct Purchase Notes. From and after the date of such sale or transfer, JPMorgan Chase Bank, National Association (and its successors) shall continue to have all of the rights of the Bank hereunder and
under the other Related Documents as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) the Authority and the Paying Agent/Registrar shall be required to deal only with the Bank with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the Authority.

(c) Sales and Transfers by Holder to a Non-Bank Transferee. Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees but each of which constitutes a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act or an “institutional accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (each a “Non-Bank Transferee”) all or a portion of its interest in the Direct Purchase Notes if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the Authority, the Paying Agent/Registrar and the Bank (if different than the Holder) by such selling Holder and Non-Bank Transferee, and (B) the Non-Bank Transferee shall have delivered to the Authority, the Paying Agent/Registrar and the selling Holder, an investment letter in substantially the form attached as Exhibit D to this Agreement (the “Investor Letter”).

From and after the date the Authority, the Paying Agent/Registrar and the selling Holder have received written notice and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall have the rights and obligations of a Holder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and any reference to the transferring Holder hereunder and under the other Related Documents shall thereafter refer to such transferring Holder and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring Holder (other than the Bank) no longer owns any interest in the Direct Purchase Notes, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) Participations. Each Holder shall have the right to grant participations in all or a portion of such Holder’s interest in the Direct Purchase Notes, this Agreement and the other Related Documents to one or more other banking institutions; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder and (ii) the Authority and the Paying Agent/Registrar shall be required to deal only with the Bank, with respect to any matters under this Agreement, the Direct Purchase Notes and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the Authority. The Authority agrees that each participant shall be entitled to the benefits of Sections 3.01, 3.02 and 8.04 hereof to the same extent as if it were the Bank hereunder; provided, however, that a participant shall not be entitled to receive any greater payment under this Agreement than the Bank would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Authority’s prior written consent; and provided, further, that the Bank shall provide the Authority with prior written notice of any such participation and the identity of the applicable participant.
(e) **Certain Pledges.** Without the consent of the Authority, the Bank may at any time pledge or assign a security interest in all or any portion of its rights and interests under this Agreement, the Direct Purchase Notes and the other Related Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or the United States Treasury or to any state or local governmental entity or with respect to public deposit; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

**Section 15.7. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. The words “execution,” “signed,” “signature,” and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 15.8. Reliance.** The Bank acknowledges that it has, independently, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Authority and its own decision to enter into this Agreement and extend credit hereunder.

**Section 15.9. No Personal Liability.** No trustee, officer or employee of the Authority shall be held personally liable on the Direct Purchase Notes or in connection with any claim based thereon or on this Agreement.

**Section 15.10. Defeasance.** If the Commitment shall have terminated and the Authority shall pay or cause to be paid, or there shall otherwise be paid to the Bank, the entire principal of and interest on all Direct Purchase Notes (and all Drawings thereunder) and all other amounts owing to the Bank hereunder or under the Direct Purchase Notes (and all Drawings thereunder), then the pledge created under this Agreement and all covenants, agreements and other obligations of the Authority hereunder to the holder of the Direct Purchase Notes shall thereupon cease, terminate and become void and be discharged and satisfied, and thereupon all of the moneys and properties of the Authority then subject to such pledge shall be forever free and clear of such pledge and at the option of the Authority, expressed in writing, this Agreement shall be of no further force or effect.

**Section 15.11. Severability.** Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the
remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 15.12. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or the Direct Purchase Notes), the Authority acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Bank, are arm’s-length commercial transactions between the Authority, on the one hand, and the Bank, on the other hand, (B) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby; (ii) (A) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (whether financial, municipal or otherwise), agent or fiduciary, pursuant to Section 15B of the Securities Exchange Act of 1934 or otherwise, for the Authority or any other Person, and has no fiduciary duty to the Authority or any other Person and (B) the Bank have no obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (iii) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and the Bank have no obligation to disclose any of such interests to the Authority. To the fullest extent permitted by law, the Authority hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 15.13. USA PATRIOT Act. The Bank hereby notifies the Authority that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act. The Authority shall, promptly following a request by the Bank, provide all documentation and other information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

Section 15.14. Survival. The provisions of Section 3.4, Section 3.5, Section 9 and Section 15.2 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Direct Purchase Notes (and all Drawings thereunder) and the Reimbursement Obligations, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

Section 15.15. Amendment and Restatement. This Agreement shall become effective on the Effective Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. From and after the Closing Date, all references made to the Original Agreement in any instrument or document shall, without more, be deemed to refer to this Agreement. Reference to this specific Agreement need not be made in any agreement, document, instrument, letter, certificate, the Original Agreement itself, or any communication issued or made pursuant to or
with respect to the Original Agreement. This Agreement is entered into in substitution for, and not in satisfaction of, the rights and obligations of the parties hereto with respect to their obligations under the Original Agreement, and does not and is not intended to constitute a novation or an accord and satisfaction of any of the rights and obligations of the parties hereto with respect to the Original Agreement or the indebtedness, the obligations and liabilities of the Authority evidenced by or provided for under the Original Agreement. The parties hereto agree that this Agreement does not extinguish or discharge the obligations of the Authority or the Bank under the Original Agreement.

[Signature Pages to Follow]
POWER AUTHORITY OF THE STATE OF NEW YORK

By: __________________________________
Name: ______________________________
Title: ______________________________

Address: 123 Main Street
White Plains, NY 10601
Telephone: (914) 287-3048
Facsimile: (914) 681-6995
Attn: Treasurer

With a copy to:

Address: 123 Main Street
White Plains, NY 10601
Attn: General Counsel
Telephone: (914) 390-8000
Facsimile: (914) 390-8040
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ____________________________________
   Name:  Heather X. Talbott
   Its:    Executive Director

Address: 383 Madison Avenue, 3rd Floor
Mail Code NY1-M165
New York, NY 10179
Telephone:  (212) 270-4875
Facsimile:  (917) 464-2427
Attn:    Heather Talbott
Executive Director, Public Finance - Credit Origination
Email: heather.x.talbott@jpmorgan.com

With a copy to:

JPM-Delaware Loan Operations
Address:  500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn:    Brandon Allen
Telephone:  (302) 634-9588
Facsimile:  (302) 634-4733
Email: 12012443628@tls.Ldsprod.com;
pfg_servicing@jpmorgan.com
EXHIBIT A-1
FORM OF TAX-EXEMPT DIRECT PURCHASE NOTE

POWER AUTHORITY OF THE STATE OF NEW YORK

TAX-EXEMPT DIRECT PURCHASE NOTE, SERIES 2022 TE

Principal Amount: $250,000,000

Dated: April [___], 2022

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Note Purchase Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all unpaid Tax-Exempt Drawings (as defined in the Note Purchase Agreement) made by the Bank to the Authority hereunder, such payment of principal to be made in full by the Authority on the Termination Date (as defined in the Note Purchase Agreement), and promises to pay interest on the unpaid principal amount of this Note and all Tax-Exempt Drawings hereunder until this Note shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the applicable Tax-Exempt Rate (as defined in the Note Purchase Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Note Purchase Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Note Purchase Agreement) in effect from time to time. Each change in the Base Rate resulting from a change in the Prime Rate of the Bank or the Federal Funds Rate (as such terms are defined in the Note Purchase Agreement) shall become effective for purposes hereof on the day on which such change in such Prime Rate or the Federal Funds Rate becomes effective. The interest rate specified above may be adjusted pursuant to Sections 3.2, 3.8, 3.11 and 3.12 of the Note Purchase Agreement. Interest shall be computed on the basis of a year having the number of days specified in Section 3.1 of the Note Purchase Agreement, and actual days elapsed, and shall be paid on each Interest Payment Date.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the principal amount of Tax-Exempt Drawings under this Note and the amount of each payment or prepayment of the principal of Tax-Exempt Drawings under this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note Purchase Agreement with respect to this Note or any Tax-Exempt Drawing.

This Note is issued under a resolution of the Authority adopted [_______], 2022 (as amended, modified or restated from time to time, the “Resolution”) and under the Power Authority of the State of New York Amended and Restated Note Purchase Agreement, dated as of April
In [___], 2022 (as amended, modified or restated from time to time pursuant to the terms thereof, the
“Note Purchase Agreement”), between the Authority and JPMorgan Chase Bank, National
Association. This Note is and shall continue to be an obligation of the Authority payable from the
Trust Estate (as defined in the 1998 Resolution referred to in said Note Purchase Agreement) and,
is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution).
The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is
subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits
of the Note Purchase Agreement Resolution and said Note Purchase Agreement.

Upon the occurrence of any Event of Default specified in said Note Purchase Agreement,
the principal of this Note and all Tax-Exempt Drawings hereunder and accrued interest thereon
may be declared due and payable in the manner, upon the conditions and with the effect provided
in said Note Purchase Agreement, and upon any such declaration, the principal of and interest on
all Tax-Exempt Drawings then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of Tax-Exempt Drawings under this
Note and any Tax-Exempt Drawing before maturity upon the terms provided in said Note Purchase
Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public
Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent
for the State of New York, does hereby pledge to and agree with the holder(s) of the interests in
this Note that the State of New York will not limit or alter the rights vested in the Authority by
said Act, as amended, until the obligations of the Authority under this Note shall have been fully
met and discharged or adequate provision shall have been made by law for the protection of the
holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of
its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note
or in connection with any claim based hereon or on the Note Purchase Agreement Resolution or
on said Note Purchase Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the
Note Purchase Agreement Resolution to exist, to have happened and to have been performed
precedent to and in the issuance of this Note, exist, have happened and have been performed
and that the issuance of this Note, together with all other indebtedness of the Authority, is within every
debt and other limit prescribed by the laws of the State of New York.
IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the [____] day of [____], 2022.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ________________________________
   Name: ______________________________
   Title: ______________________________

Attest:

_______________________________________
   Title: ________________________________
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EXHIBIT A-2
FORM OF TAXABLE DIRECT PURCHASE NOTE

POWER AUTHORITY OF THE STATE OF NEW YORK

TAXABLE DIRECT PURCHASE NOTE, SERIES 2022 T

Principal Amount: $250,000,000

Dated: [______], 2022

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Note Purchase Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all unpaid Reimbursement Obligations and Taxable Drawings (each as defined in the Note Purchase Agreement) made by the Bank to the Authority hereunder made pursuant to the Agreement, such payment of principal to be made in full by the Authority on the Termination Date (as that term is defined in the Note Purchase Agreement), and promises to pay interest on the unpaid principal amount of this Note and all Taxable Drawings hereunder until this Note shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the applicable Taxable Rate (as defined in the Note Purchase Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Note Purchase Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Note Purchase Agreement) in effect from time to time; provided, that with respect to unpaid Reimbursement Obligations, the Authority promises to pay interest on the unpaid principal amount of Reimbursement Obligation at a rate per annum equal at all times to the Default Rate in effect from time to time. Each change in the Base Rate resulting from a change in the Prime Rate of the Bank or the Federal Funds Rate (as such terms are defined in the Note Purchase Agreement) shall become effective for purposes hereof on the day on which such change in such Prime Rate or the Federal Funds Rate becomes effective. The interest rate specified above may be adjusted pursuant to Sections 3.2, 3.8 and 3.11 of the Note Purchase Agreement. Interest shall be computed on the basis of a year having the number of days specified in Section 3.1 of the Note Purchase Agreement, and actual days elapsed, and shall be paid on each Interest Payment Date.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the principal amount of Taxable Drawings under this Note and the amount of each payment or prepayment of the principal of Taxable Drawings under this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note Purchase Agreement with respect to this Note or any Taxable Drawing.
This Note is issued under a resolution of the Authority adopted [______], 2022 (as amended, modified or restated from time to time, the “Resolution”) and under the Power Authority of the State of New York Amended and Restated Note Purchase Agreement, dated as of April [______], 2022 (as amended, modified or restated from time to time pursuant to the terms thereof, the “Note Purchase Agreement”), between the Authority and JPMorgan Chase Bank, National Association. This Note is and shall continue to be an obligation of the Authority payable from the Trust Estate (as defined in the 1998 Resolution referred to in said Note Purchase Agreement) and, is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution). The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits of the Note Purchase Agreement Resolution and said Note Purchase Agreement.

Upon the occurrence of any Event of Default specified in said Note Purchase Agreement, the principal of this Note, all Taxable Drawings hereunder and accrued interest thereon may be declared due and payable in the manner, upon the conditions and with the effect provided in said Note Purchase Agreement, and upon any such declaration, the principal of and interest on all Taxable Drawings then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of Taxable Drawings under this Note and any Taxable Drawing before maturity upon the terms provided in said Note Purchase Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent for the State of New York, does hereby pledge to and agree with the holder(s) of the interests in this Note that the State of New York will not limit or alter the rights vested in the Authority by said Act, as amended, until the obligations of the Authority under this Note shall have been fully met and discharged or adequate provision shall have been made by law for the protection of the holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note or in connection with any claim based hereon or on the Note Purchase Agreement Resolution or on said Note Purchase Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the Note Purchase Agreement Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issuance of this Note, together with all other indebtedness of the Authority, is within every debt and other limit prescribed by the laws of the State of New York.
IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the [___] day of [____], 2022.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________
   Name: ______________________________
   Title: ______________________________

Attest:

   ______________________________
   Title: ______________________________
## Principal Amount

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JPM-Delaware Loan Operations  
Address:  500 Stanton Christiana Road, Floor 1  
Newark, DE 19713-2105  
Attn:  Marcus Smith  
Telephone:  (302) 634-9627  
Facsimile:  (302) 634-4733  
Email:  120l2443628@tls.Ldsprod.com;  
pfg_servicing@jpmorgan.com

The Bank of New York Mellon
________
Attention: __________
Telephone: __________
Telecopy: __________
E-Mail: __________

Re: Power Authority of the State of New York
Direct Purchase Notes, Series 2022 TE and Series 2022 T (the “Direct Purchase Notes”)

Date: __________

Ladies and Gentlemen:

The Power Authority of the State of New York (the “Authority”) refers to the Amended and Restated Note Purchase Agreement dated as of April [___], 2022 (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the “Agreement”), between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 4.1 of the Agreement, that the Bank make a Term Benchmark Drawing under the Agreement, and in that connection sets forth below the following information relating to such Term Benchmark Drawing (the “Proposed Drawing”):

1. The Business Day of the Proposed Drawing is __________, 20__ (the “Drawing Date”), which is at least three Business Days after the date hereof.
2. The principal amount of the Proposed Drawing to be made is $______________, which is not greater than the Available Commitment as of the Drawing Date set forth in 1 above.

3. With respect to the interest rate of the Proposed Drawing:

   (A) The Interest Period selected for a Term Benchmark Drawing is [one], [three] or [six] months.

   [(B) At the end of the Interest Period elected by the Authority in (A) the Authority desires that the related Proposed Drawing continue in the same Interest Period until otherwise directed by the Authority].

   (C) The Proposed Drawing shall be a [Tax-Exempt][Taxable] Drawing under the [Tax-Exempt][Taxable] Note.

4. The aggregate amount of the Proposed Drawing shall be used solely for the purposes permitted in the Note Purchase Agreement Resolution and the Agreement. In accordance with Section 8.20 of the Agreement the aggregate amount of the Proposed Drawing shall not be used to refund any Indebtedness of the Authority owned by the Bank, which the Bank has purchased into its inventory as a dealer or remarketing agent, without the prior written consent of the Bank.

5. The maturity date shall be the Stated Expiration Date.

The submission of this Request for Drawing constitutes a representation and warranty only that each of the conditions specified in Section 3.6 of the Agreement have been satisfied on and as of the date hereof.
The Proposed Drawing shall be made by the Bank by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

[Insert wire instructions]

____________________
____________________
____________________

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ____________________________
Name: __________________________
Title: __________________________

JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

As General Counsel of the Power Authority of the State of New York (herein called the “Authority”) and in accordance with Section 7.1(d) of the Amended and Restated Note Purchase Agreement dated as of April [____], 2022, between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (herein called the “Note Purchase Agreement”), I hereby advise that in my opinion:

1. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, created by and validly existing under the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”). The Authority has the power to execute and deliver the Note Purchase Agreement and the Direct Purchase Notes issued pursuant to the Note Purchase Agreement (the “Notes”) and to incur and perform its obligations under the Note Purchase Agreement and under the Notes.

2. The execution and delivery of the Note Purchase Agreement and the issuance of the Notes do not and will not violate any provision of any agreement entered into pursuant to the Existing Resolutions (as defined in the Note Purchase Agreement) or, to my knowledge after inquiry, under any other agreement or instrument to which the Authority or its property is bound, or result in the creation or imposition of any “security interest” (as defined in the Note Purchase Agreement) on any asset of the Authority except for the pledge contemplated by the Note Purchase Agreement.

3. The Notes do not constitute an obligation, debt or liability of the State of New York, and the Authority has no power of taxation or power to pledge the credit of the State of New York.

4. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, (a) questioning the creation, organization or existence of the Authority or the validity of the Note Purchase Agreement, the Existing Resolutions or the Notes or any of the bonds or notes referred to in the Note Purchase Agreement or the Existing Resolutions or (b) that have a reasonable likelihood of being adversely determined and, if adversely determined, would otherwise have a Material Adverse Effect (as defined in the Note Purchase Agreement) or material adverse effect upon the rights available to the Bank under the Note Purchase Agreement[, except as may be described in Appendix B hereto].
5. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority. As of the date first above written, there are no liens or encumbrances on any properties of the Authority the foreclosure of which would have a Material Adverse Effect, except as described in the Note Purchase Agreement. As of the date first above written, there are no liens or encumbrances on the revenues of the Authority other than the pledge effected by and pursuant to the Note Purchase Agreement and the pledges effected by and pursuant to the Existing Resolutions.

I am admitted to the bar of the State of New York. I express no opinion as to the laws of any jurisdiction other than the laws of the State of New York, and my opinion is limited to and applies only insofar as such laws may be concerned.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This letter is furnished by the Authority solely for your benefit in connection with the provisions of the Note Purchase Agreement and may not be relied upon by any other person, without the Authority’s express written consent.

The terms used in this opinion have the meanings ascribed to such terms in the Note Purchase Agreement.

_______________________________________
Justin E. Driscoll
General Counsel
JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

In connection with the execution and delivery of the Amended and Restated Note Purchase Agreement dated as of April [___], 2022 (the “Note Purchase Agreement”), between the Power Authority of the State of New York (the “Authority”) and JPMorgan Chase Bank, National Association, we have examined an executed copy of the Note Purchase Agreement.

We have assumed but have not independently verified that the signatures on the Note Purchase Agreement were genuine. We have further assumed for purposes of the opinions expressed below that the Note Purchase Agreement has been duly authorized, executed and delivered by each party thereto, other than the Authority, and that such Note Purchase Agreement is a valid and binding obligation of, and enforceable against, each party thereto, other than the Authority.

Based on the foregoing, we are of the opinion that:

1. The Note Purchase Agreement has been duly authorized, executed and delivered by the Authority, is in full force and effect, creates the valid pledge described in Section 10 of the Note Purchase Agreement, is a legal, valid and binding obligation of the Authority, and is enforceable against the Authority in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and no other authorization for the Note Purchase Agreement is required.

2. The Direct Purchase Notes issued pursuant to the Note Purchase Agreement have been duly authorized, executed and delivered by the Authority and issued in accordance with law, including the Act, and in accordance with the Note Purchase Agreement. Each Direct Purchase Note is a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with their terms and the terms of the Note Purchase Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and each Note will be entitled to the benefits of the Note Purchase Agreement and of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, and constitute Subordinated Indebtedness under the 1998 Resolution.

3. The execution and delivery by the Authority of the Note Purchase Agreement and the issuance on the date hereof of the Direct Purchase Notes pursuant to the Note Purchase Agreement...
do not and will not violate any applicable Federal or New York law or regulation in effect on the date hereof.

4. No registration with, consent of, or approval by any government officer, agency or commission is necessary for the making and performance of the Note Purchase Agreement and the issuance and payment of the Direct Purchase Notes other than the approval of the Comptroller of the State of New York, which approval has been obtained and, to our knowledge after inquiry, is in full force and effect.

No attorney-client relationship has existed between the Bank and our firm in connection with the foregoing matters, and no such relationship shall exist by virtue of this letter.

This letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This letter is issued as of the date hereof, and we assume no obligation to update, revise or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any other reason whatsoever.

The terms used in this opinion have the meanings ascribed to such terms in the Note Purchase Agreement.

Very truly yours,
April [__], 2022

Power Authority of the State of New York
Albany, New York

Re: Power Authority of the State of New York
Direct Purchase Notes, Series 2022 TE and Series 2022 T

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of above-referenced note (the “Direct Purchase Notes”), dated the date hereof. The Direct Purchase Notes were issued pursuant to that certain resolution of the Power Authority of the State of New York (the “Authority”) adopted on [_______], 2022 (as amended and supplemented from time to time, the “Note Purchase Agreement Resolution”), authorizing the execution of the Amended and Restated Note Purchase Agreement dated as of April [___], 2022, between the Authority and the JPMorgan Chase Bank, National Association (the “Bank,” the “undersigned,” “us” or “we,” as applicable). The Bank is purchasing the Direct Purchase Notes pursuant to the Note Purchase Agreement. We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Direct Purchase Notes have not been registered pursuant to the Securities Act of 1933, as amended (the “1933 Act”), the securities laws of any state nor has the Note Purchase Agreement Resolution been qualified pursuant to the Trust Agreement Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Direct Purchase Notes (i) are not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, and (ii) will not be listed on any securities exchange.

2. We have not offered, offered to sell, offered for sale or sold any interest in the Direct Purchase Notes by means of any form of general solicitation or general advertising, we are not an underwriter of the Direct Purchase Notes within the meaning of Section 2(11) of the 1933 Act, and we are not selling or offering to sell the Direct Purchase Notes in a primary offering by, or on behalf of, the Authority.

3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations and taxable obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Direct Purchase Notes.
4. The Bank is either a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, or an “institutional accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act, and is able to bear the economic risks of such investment.

5. The Bank understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Direct Purchase Notes. The Bank has made its own inquiry and analysis with respect to the Authority, the Direct Purchase Notes and the security therefor, and other material factors affecting the security for and payment of the Direct Purchase Notes.

6. The Bank acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Authority, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the Direct Purchase Notes and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Direct Purchase Notes.

7. The Direct Purchase Notes are being acquired by the Bank for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Bank reserves the right to sell, transfer or redistribute the Direct Purchase Notes and interests therein, but agrees that any such sale, transfer or distribution by the Bank shall be to a Person:

   (a) that is an affiliate of the Bank;

   (b) that is a trust or other custodial arrangement established by the Bank or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or institutional accredited investors;

   (c) that is a secured party, custodian or other entity in connection with a pledge by the Bank to secure public deposits or other obligations of the Bank or one of its affiliates to state or local governmental entities; or

   (d) that the Bank reasonably believes to be a qualified institutional buyer or institutional accredited investor and who executes an investor letter substantially in the form of this letter.
Very truly yours,

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ______________________________
    Name: Heather X. Talbott
    Its: Executive Director

[Signature Page to NYPA Investor Letter]
EXHIBIT E

NOTICE OF CONTINUATION/CONVERSION

JPM-Delaware Loan Operations
Address: 500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn: Marcus Smith
Telephone: (302) 634-9627
Facsimile: (302) 634-4733
Email: 120l2443628@tls.Ldsprod.com;
pfg_servicing@jpmorgan.com

The Bank of New York Mellon
________________________
________________________
Attention: __________________
Telephone: ________________
Telecopy: ________________
E-Mail: ________________

Power Authority of the State of New York
Direct Purchase Notes, Series 2022 TE and Series 2022 T
(the “Direct Purchase Notes”)

Date: ____________

Ladies and Gentlemen:

The Power Authority of the State of New York (the “Authority”) refers to the Amended and Restated Note Purchase Agreement dated as of April [____], 2022 (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the “Agreement”), between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (the terms defined therein being used herein as therein defined) and hereby gives the Bank notice irrevocably, pursuant to Section 3.2(a) of the Agreement, of the continuation of the interest rate on the [Tax-Exempt][Taxable] Drawing(s) specified herein, that:

1. The Business Day of the proposed continuation is ____________, 20__ (the “Conversion/Continuation Date”), which is at least three Business Days following the date hereof.

2. The aggregate amount of the [Tax-Exempt][Taxable] Drawing(s) to be continued is $______________.

[Signature Page to NYPA Investor Letter]
3. The [Tax-Exempt][Taxable] Drawing(s) is/are to be continued in the same Interest Period.

4. [If applicable:]

   (i) The duration of the Interest Period for the [Tax-Exempt][Taxable] Drawing(s) to be continued shall be [one] [three] [six] months.

   (ii) The last day of the proposed Interest Period for the [Tax-Exempt][Taxable] Drawing(s) to be continued will be __________, 20__ which is not later than the Stated Expiration Date in effect on the Conversion/Continuation Date.

The undersigned hereby certifies that on the date hereof and on the proposed conversion/continuation date, before and after giving effect thereto and to the application of the proceeds therefrom no Default or Event of Default shall have occurred and be continuing as of such date.
IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Continuation/Conversion as of the _____ day of ______________, ____.

POWER AUTHORITY OF THE STATE OF NEW YORK

By:__________________________________
   Name: ______________________________
   Title: _______________________________
AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

between

POWER AUTHORITY OF THE STATE OF NEW YORK

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

dated as of April 1, 2022
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POWER AUTHORITY OF THE STATE OF NEW YORK
AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

This Amended and Restated Revolving Credit Agreement (this “Agreement”) dated as of [______], 2022, between the POWER AUTHORITY OF THE STATE OF NEW YORK (the “Authority”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, (together with its successors and assigns, the “Bank”).

PRELIMINARY STATEMENTS

WHEREAS, the Bank and the Authority have previously entered into the Revolving Credit Agreement dated as of April 22, 2020 (the “Original Agreement”); and

WHEREAS, the Bank and the Authority desire to amend and restate the Original Agreement in its entirety;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to amend and restate the Original Agreement, the Authority and the Bank hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS

As used herein:

“Act” means the Power Authority Act of the State, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended.

“Adjusted Base Rate” means, for any day with respect to each Loan, a rate per annum equal to (i) for the period from and including the date such Loan is made to but not including the Term Loan Date, the Base Rate and (ii) for the period from and including the Term Loan Date, the Base Rate plus 1.0%; provided, further, that at no time shall the Adjusted Base Rate be less than the highest rate of interest borne by any outstanding Commercial Paper Note.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Authority or its subsidiaries from time to time concerning or relating to bribery or corruption.

“Assignee” has the meaning set forth in Section 15.6 hereof.

“Authorized Officer” means the Authority’s Chairman, Vice Chairman, President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, Treasurer, and Deputy Treasurer.

“Available Commitment” means, and in no event shall it exceed, $250,000,000, such initial amount adjusted from time to time as follows: (a) downward in an amount equal to (i) the principal
amount of each Loan, (ii) the principal amount of each Drawing pursuant to the Note Purchase Agreement, (ii) the undrawn amount of each Letter of Credit issued by the Bank pursuant to the Note Purchase Agreement and (v) each LC Disbursement made by the Bank pursuant to the Note Purchase Agreement that have not yet been reimbursed; (b) upward in an amount equal to (i) the principal amount of each Loan that is repaid pursuant to the terms of Section 5.1 hereof, (ii) the principal amount of each Drawing repaid pursuant to the Note Purchase Agreement, (ii) the undrawn amount of each expired Letter of Credit issued by the Bank and (iv) each LC Disbursement made by the Bank that has been reimbursed; and (c) downward by an amount that bears the same proportion to the Available Commitment immediately prior to such reduction as the amount of any reduction in the Commitment bears to the Commitment immediately prior to such reduction; provided, that, after giving effect to any such adjustment the Available Commitment shall never exceed $250,000,000. Any adjustments pursuant to clause (a), (b) or (c) above shall occur simultaneously with the event requiring such adjustment.


“Base Rate” means, for any day, a rate per annum equal to the highest of (i) the sum of 1.5% and the Prime Rate for such day, (ii) the sum of 2.0% and the Federal Funds Rate for such day and (iii) 7.5%.

“Borrowing” means a borrowing consisting of Loans made on the same day by the Bank.

“Business Day” means a day other than a Saturday, Sunday or banking holiday in the State of New York.

“Change in Law” means the occurrence, after the Original Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case relating to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Commercial Paper Notes” means a designated portion of those notes issued pursuant to the Commercial Paper Note Resolution, such portion initially being those notes designated as “Series 4 Notes” and “Series 3B Notes,” subject to changes in series and subseries designations as provided in this definition. The Authority may change the series and subseries designation of
notes issued pursuant to the Commercial Paper Note Resolution constituting Commercial Paper Notes for purposes of the Agreement from time to time, by delivering (A) a certificate signed by an authorized officer of the Authority and acknowledged and agreed to in writing by the Bank and (B) written confirmation from each Rating Agency then rating the newly designated series of Commercial Paper Notes that the newly designated series of Commercial Paper Notes have been rated at least “P-1” (or its equivalent) by Moody’s, “A-1” (or its equivalent) by S&P and/or “F1” (or its equivalent) by Fitch, as applicable; provided, however, that the maximum aggregate outstanding principal amount of notes constituting Commercial Paper Notes for purposes of the Agreement at any time shall not exceed $250,000,000.

“Commercial Paper Note Resolution” means the resolution adopted by the Authority on June 28, 1994, entitled “Resolution Authorizing Commercial Paper Notes”, as amended and restated by the resolution adopted by the Authority on November 25, 1997, as amended and restated in its entirety by the resolution adopted by the Authority on March 30, 2021, and as subsequently amended and supplemented.

“Commitment” means an amount equal to the commitment of the Bank to make Loans to the Authority, as such amount may be terminated and/or reduced pursuant to Section 3.9 or 12 hereof. The Authority and the Bank agree that as of the Effective Date the Commitment of the Bank is in an amount equal to $250,000,000.

“Dealer” has the meaning specified in the Commercial Paper Note Resolution.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default Rate” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.00%); provided, that at no time shall the Default Rate be less than the highest rate of interest borne by any outstanding Commercial Paper Note.

“Direct Purchase Notes” means the Power Authority of the State of New York Tax-Exempt Direct Purchase Note, Series 2022 TE and the Power Authority of the State of New York Taxable Direct Purchase Note, Series 2022 T, issued pursuant to the JPM Note Purchase Agreement.

“Drawing” has the meaning set forth in the JPM Note Purchase Agreement.

“Effective Date” means April [__], 2022, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Section 7.1 hereof.
“Environmental Laws” means any applicable federal, state and local environmental, health and safety statutes and regulations, including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.

“Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Excess Interest Amount” has the meaning set forth in Section 3.8 hereof.

“Existing Resolutions” means the 1998 Resolution, the Subordinate Resolution, the 2011 Revolving Credit Agreement Resolution, the 2012 Subordinate Notes Resolution, the 2017 Subordinate Notes Resolution, the 2019 Revolving Credit Agreement Resolution, the Revolving Credit Agreement Resolution, the Commercial Paper Note Resolution and the Extendible Municipal Commercial Paper Note Resolution.

“Existing Termination Date” has the meaning set forth in Section 4.3 hereof.


“Federal Funds Rate” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depositary institutions, as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“Fee Letter” means the Second Amended and Restated Fee Letter dated April [___], 2022, between the Authority and the Bank, as such agreement may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.


“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any
Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“hereunder”, “hereby”, “herein”, “hereto”, “hereof” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective work appears.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (b) all Guarantees by such Person of Indebtedness of others for which defenses to payment cannot be raised, (c) all capital lease obligations of such Person that have been or should be, in accordance with GAAP, recorded as capital leases, (d) all obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided, however, that “Indebtedness” shall not include indebtedness related to Separately Financed Projects.

“Issuing and Paying Agent” has the meaning specified in the Commercial Paper Note Resolution.

“JPM Note Purchase Agreement” means the Note Purchase Agreement dated as April 22, 2020, as amended and restated by the Amended and Restated Revolving Credit Agreement dated as of April 1, 2022, each between the Authority and the Bank, related to the Direct Purchase Notes, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Law” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“Lending Office” means, with respect the office of the Bank specified on the signature page hereof, or such other office of the Bank as the Bank may from time to time specify to the Authority.

“Loan” means each loan made hereunder.

“Material Adverse Effect” means material adverse effect on the (i) business, assets, operations or financial condition of the Authority taken as a whole, or (ii) ability of the Authority to perform its obligations under this Agreement.
“Maximum Rate” has the meaning set forth in Section 3.8 hereof.

“Moody’s” means Moody’s Investors Service and its successors.

“1998 Resolution” means the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented in accordance with its terms; provided, however, that no amendment or modification to the definition of “Trust Estate,” “Parity Debt”, “Subordinated Contract Obligation” or “Subordinated Indebtedness” therein (including any defined term incorporated by reference in such definition) shall be effective for purposes of this Agreement or with respect to the Note unless made with the consent of the Bank.

“Non-Terminating Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Note” shall have the meaning as defined in Section 3.1 hereof.

“Notice of Borrowing” has the meaning set forth in Section 4.1 hereof.

“Obligations” has the meaning set forth in the 1998 Resolution.

“Other Indebtedness” of any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the indebtedness secured thereby has been assumed, (e) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (f) all contingent obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided that obligations issued in accordance with Section 203 of the 1998 Resolution to finance Separately Financed Projects shall not be considered to be Other Indebtedness.

“Other Taxes” has the meaning set forth in Section 9.1(b) hereof.

“Parent” means, with respect to the Bank, any Person controlling the Bank.

“Parity Debt” has the meaning set forth in the 1998 Resolution.

“Participant” has the meaning set forth in Section 15.6 hereof.

“Person” means any individual, partnership, joint venture, firm, corporation or governmental entity.
“Prime Rate” means the rate of interest announced publicly by the Bank at its principal office in New York, New York, from time to time; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Rating Agencies” means Standard & Poor’s, Moody’s and Fitch.

“Revolving Credit Agreement Resolution” means the resolution of the Authority adopted on [______], 2022, authorizing the execution of this Agreement and the JPM Note Purchase Agreement.


“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Separately Financed Project” has the meaning set forth in the 1998 Resolution.

“Series 4 Notes” has the meaning given such term in Section 2.6(b).

“Series 2003A Revenue Bonds” means the Series 2003A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.


“Series 2011A Revenue Bonds” means the Series 2011A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.
“Specified Representations” means the representations and warranties of the Authority set forth in Section 2 except for those set forth in Sections 2.4 and 2.6.


“State” means the State of New York.

“Stated Expiration Date” means April [20], 2023, or such later date as may be agreed to between the parties pursuant to Section 4.3.

“Subordinated Contract Obligation” has the meaning set forth in the 1998 Resolution.

“Subordinated Indebtedness” has the meaning set forth in the 1998 Resolution.

“Subordinate Resolution” means the General Subordinate Resolution authorizing Subordinate Revenue Bonds adopted by the Authority on July 25, 2000 and as subsequently amended and supplemented and to the extent in effect.

“Taxes” has the meaning set forth in Section 9.1(a) hereof.

“Termination Date” means (a) the Stated Expiration Date or (b) such earlier date on which the Commitment shall be terminated in full as permitted herein.

“Terminating Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Term Loan Date” means, with respect to each Loan, the earlier of (a) the first Business Day that is 90 days after the date such Loan is made and (b) the Termination Date.

“Term Loan End Date” means, with respect to each Loan, the earliest to occur of (i) the Stated Expiration Date, and (ii) the date on which the Bank has declared or directed the Note to become immediately due and payable pursuant to Section 12 hereof.

“Term Loan Payment Date” means, with respect to each Loan, (a) the related Term Loan Date and the corresponding date in every third month occurring thereafter which occurs prior to the Term Loan End Date, and (b) the Term Loan End Date.

“Trust Estate” has the meaning set forth in the 1998 Resolution.

“2012 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 9, 2012 entitled “Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable)”, as amended in accordance with its terms.

“2017 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 7, 2016 entitled “Resolution Authorizing Subordinated Notes, Series 2016” (Federally Taxable)”, as amended in accordance with its terms.
"2019 Revolving Credit Agreement" means the 2019 Revolving Credit Agreement dated as of January 16, 2019, among the Authority, the banks listed on the signature pages thereto and JPMorgan Chase Bank, National Association, as Administrative Agent, as amended in accordance with its terms.

"2019 Revolving Credit Agreement Resolution" means the resolution of the Authority adopted on December 11, 2018, authorizing the execution of this Agreement.

SECTION 2. REPRESENTATIONS

The Authority represents, covenants and warrants that:

Section 2.1. Existence and Power. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State, created in 1931 by and validly existing under the Act. The Authority has the power to execute and deliver this Agreement and the Note and to incur and perform its obligations hereunder and under the Note.

Section 2.2. Authority, etc. The execution, delivery and performance by the Authority of this Agreement and the Note have been duly authorized by all necessary action of the Authority, including the Revolving Credit Agreement Resolution. The Authority has heretofore delivered to the Bank a copy of the Revolving Credit Agreement Resolution, certified as true and correct by the Corporate Secretary of the Authority, and the Revolving Credit Agreement Resolution is in full force and effect. Assuming that this Agreement constitutes a legal, valid, and binding obligation of, and is enforceable against, the Bank, this Agreement constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, and the Note has been duly executed and delivered by the Authority and, upon the making of any Loan hereunder in accordance herewith, will constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms and the terms of the Revolving Credit Agreement Resolution and this Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally, and shall be entitled to the benefits of the Revolving Credit Agreement Resolution, of this Agreement and of the Act, subject to the pledge created by the 1998 Resolution, including Parity Debt as described therein, which includes, without limitation, debt issued pursuant to the Revolving Credit Agreement Resolution and such liens as are permitted by Section 8.3 hereof. The making and performance by the Authority of this Agreement and the Note will not violate any provision of law or result in a breach of or constitute a default under or require any consent under any agreement or instrument to which the Authority is a party or by which the Authority or its property may be bound (including, without limitation, the Authority’s organizational documents and the JPM Note Purchase Agreement) or affected or result in the creation or imposition of any “security interest” (as defined in Section 8.3 hereof) on any asset of the Authority except for the pledge contemplated hereby. This Agreement and the Note, collectively, constitute a a revolving credit facility for purposes of Section 11 of the Revolving Credit Agreement Resolution.

Section 2.3. Financial Condition. (a) The financial statements of the Authority for the year ended December 31, 2020, with the opinion thereon of independent certified public accountants, copies of which have been delivered to the Bank, are complete and correct in all
material respects and fairly present in all material respects the financial condition of the Authority as at the dates of said financial statements and the results of its operations for the periods ending on said dates. The Authority has no contingent obligations or liabilities, liabilities for taxes or unusual forward or long-term commitments that are material in amount, except as disclosed by or reserved against in said financial statements as of December 31, 2020, which would have a Material Adverse Effect.

(b) Since December 31, 2020, and as of the date hereof, there has been no material adverse change in the financial condition or in the results of operations of the Authority from that set forth in said financial statements as of and for the period ended December 31, 2020, that would have a Material Adverse Effect.

Section 2.4. Litigation. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, questioning the creation, organization or existence of the Authority or the validity of this Agreement or the Note or any of the bonds or notes herein referred to or that have a reasonable likelihood of adverse determination and if adversely determined, would otherwise have a Material Adverse Effect or material adverse effect on the rights available to the Bank hereunder, except as may be referenced in an opinion referred to in Section 7.1(d) hereof.

Section 2.5. Government Approvals. No governmental approvals, licenses, authorizations, consents, filings or registrations (other than the approval of the Comptroller of the State of New York pursuant to the Act, which approval has been obtained and a copy thereof furnished to the Bank) are required for the making and performance by the Authority of this Agreement and the issuance of the Note.

Section 2.6. Obligations for Borrowed Money.

(a) Revenue Bonds. Pursuant to the 1998 Resolution, the Authority has issued and is obligated to pay and there were outstanding on the date hereof, an aggregate of not more than $490,440,000 in principal amount of Revenue Bonds of the Authority. The Revenue Bonds constitute Obligations.

(b) Commercial Paper Notes. Pursuant to the Commercial Paper Note Resolution, the Authority is currently authorized to issue its Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $1,420,000,000. On April [__], 2022, no such Commercial Paper Notes, consisting of commercial paper notes designated as “Series 3B Notes” and commercial paper notes designated as “Series 4 Notes,” were outstanding. The Commercial Paper Notes, the Series 3B Notes and the Series 4 Notes are Subordinated Indebtedness. This Agreement shall constitute a Subordinated Contract Obligation. The obligations of the Authority to make payments under this Agreement shall constitute a Subordinated Contract Obligation within the meaning of the General Resolution and shall be deemed to be part of the Series 3B Notes and Series 4 Notes.

(c) Extendible Municipal Commercial Paper Notes. Pursuant to the Extendible Municipal Commercial Paper Note Resolution, the Authority is currently authorized to issue its
Extendible Municipal Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $200,000,000, with $5,000,000 of such Extendible Municipal Commercial Paper Notes outstanding on the date hereof. The Extendible Municipal Commercial Paper Notes constitute Subordinated Indebtedness.

(d) Subordinated Notes, Series 2012 (Federally Taxable). Pursuant to the 2012 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2012 in the principal amount of $25,160,000 on December 15, 2012, of which $19,575,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2012 are Subordinated Indebtedness.

(e) Subordinated Notes, Series 2017 (Federally Taxable). Pursuant to the 2017 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2017 in the principal amount of $25,200,000 on February 21, 2017, of which $23,860,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2017 are Subordinated Indebtedness.

(f) Other. No bonds, notes or other obligations for money borrowed by the Authority other than those described in this Section 2.6 are outstanding on the date hereof, except for (i) obligations for which moneys and/or obligations of the United States have been set aside or placed in trust for the payment or redemption thereof and which have thereby been fully defeased in accordance with their terms or (ii) obligations incurred to finance Separately Financed Projects as defined in the 1998 Resolution.

Section 2.7. Title and Liens. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority except for defects which would not reasonably be expected to have a Material Adverse Effect. There are no liens or encumbrances (a) on any properties of the Authority, the foreclosure of which would have a Material Adverse Effect, except as described in this Agreement; or (b) on the revenues of the Authority other than the pledge effected hereby and by and pursuant to the Existing Resolutions.

Section 2.8. Security for the Note. The Note is an obligation of the Authority payable from the Trust Estate and is Subordinated Indebtedness. The Note is secured by pledges of the Trust Estate as provided in Section 10 hereof. As of the date hereof, the Note is subordinate only to (i) the debt secured by the pledge created by the 1998 Resolution, including Parity Debt as described therein, and (ii) debt permitted by Section 8.3 hereof; the lien securing the Note is on a parity with the pledges made to holders of obligations issued under the Commercial Paper Note Resolution, Extendible Municipal Commercial Paper Note Resolution, the Subordinate Resolution, the 2012 Subordinated Notes Resolution, the 2017 Subordinated Notes Resolution and any subsequent resolutions of the Authority (other than those permitted under Section 8.3 hereof) authorizing the issuance of debt.

Section 2.9. ERISA. Any employee pension benefit plan or a plan qualifying under Section 401 (a) of the Internal Revenue Code of 1986, as amended, maintained by the Authority
is currently exempt from the requirements of Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

Section 2.10. Compliance with Laws and Agreements. The Authority (i) is in compliance with all laws, ordinances, governmental rules and regulations the noncompliance with which could reasonably be expected to result in a Material Adverse Effect, (ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, could reasonably be expected to result in a Material Adverse Effect and (iii) is in compliance with all indentures, agreements and other instruments binding upon its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing. Without limiting the generality of the foregoing, except as would not result or be reasonably expected to result in a Material Adverse Effect: (a) each of the properties of the Authority and all operations at such properties are in compliance with all applicable Environmental Laws and (b) there is no violation of any Environmental Law with respect to such properties or the businesses operated by the Authority.

Section 2.11. Federal Power Act. The Authority is not subject to regulation under Section 204 of the Federal Power Act of 1935 in connection with the issuance of the Note or incurring of the Loans under this Agreement.

Section 2.12. Sovereign Immunity. The Authority is not authorized to assert a defense based on sovereign or governmental immunity in any action or proceeding to enforce the obligations of the Authority hereunder or under the Commercial Paper Note Resolution and, to the extent permitted by law, specifically waives the right to claim any such defense.

Section 2.13. Margin Stock. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Loans or the Note will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any other manner which would involve a violation of any of the regulations of the Board of Governors of the Federal Reserve System. The Authority is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 2.14. Complete and Correct Information. All information, reports and other papers and data with respect to the Authority furnished to the Bank or their counsel by the Authority in connection with the negotiation of this Agreement were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects.

Section 2.15. Tax-Exempt Status. With respect to the Commercial Paper Notes the interest on which is intended to be excluded from gross income for Federal income tax purposes, the Authority has not taken any action or omitted to take any action which action or inaction would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.
Section 2.16. Incorporation by Reference. The representations and warranties made by the Authority in the Commercial Paper Note Resolution are hereby incorporated herein by reference and made for the benefit of the Bank.

Section 2.17. Anti-Corruption Laws and Sanctions. The Authority and, to its knowledge, its officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions except where such non-compliance would not result in a Material Adverse Effect. No Borrowing, use of proceeds or, to the knowledge of the Authority, other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions. The Authority is not a Sanctioned Person.

SECTION 3. REVOLVING CREDIT.

The Authority hereby requests the Bank, and the Bank hereby agrees, on the terms of this Agreement, to make Loans to the Authority under this Section 3 from time to time from the Original Closing Date to and including the Business Day immediately preceding the Termination Date, at such time (on a Business Day) and in amounts as the Authority shall request such that the aggregate principal amount of Loans at any one time outstanding shall not exceed the Commitment at such time; provided, however, that notwithstanding anything herein to the contrary, the Bank shall have no obligation to make a Loan if the sum of such Loan plus the aggregate principal amount of the outstanding Loans plus the aggregate principal amount of Drawings outstanding under the Direct Purchase Notes would exceed the Commitment then in effect. Within the limits of the Available Commitment, the Authority may borrow, repay, prepay and reborrow under this Section 3 from the Original Closing Date to and including the Business Day immediately preceding the Termination Date. Each Borrowing from the Bank shall be in a minimum amount of $100,000 or any greater multiple of $1,000 in excess thereof. The Authority shall have the right to terminate or reduce the Commitment in accordance with Section 3.9 hereof. The following provisions shall apply to the Loans:

Section 3.1. Note. Each Loan and the indebtedness of the Authority resulting from each Loan made by the Bank shall be evidenced by, and repaid with interest in accordance with, a promissory note to the order of the Bank (the “Note”), in substantially the form of Exhibit A hereto, [dated the date hereof, which is being delivered to the Bank simultaneously with the delivery of this Agreement].

All Loans shall be repaid in accordance with the terms of the Note. The Note is an obligation of the Authority payable from the Trust Estate in the manner set forth in the 1998 Resolution and constitutes Subordinated Indebtedness. Upon demand by the Authority on any Business Day from the Original Closing Date to the later of the Termination Date or the date of payment in full of the Note, the Bank will use its best efforts furnish to the Authority, within one Business Day after its receipt of such demand, a written certificate setting forth any information the Authority may request with respect to the amount and date of any Loan and any payment or prepayment of the Note and the then outstanding principal amount of the Note, or, within three Business Days after receipt of such demand, a copy of the Note certified by the Bank to be true and correct copies, as specified by the Authority in such demand. Upon the termination of the Commitment, whether on or before the Termination Date, and final payment of the then
outstanding principal and interest on the Note and any other amounts payable hereunder or under the Note, the Note shall be surrendered by the Bank to the Authority and cancelled at the principal office of the Authority or at such other time and place as may be mutually agreed upon.

The Authority shall, without duplication, (i) make a principal payment on the Note on each date on which the Authority is required to make a principal payment on a Loan in an amount equal to the principal payment due on such date and (ii) pay interest on the Note on each date on which the Authority is required to make an interest payment with to a Loan in an amount equal to the interest payment due on such date. Since the Note evidences and secures the Authority’s obligations to repay each Loan, the payment of the principal of and interest on the Note shall constitute payment of the principal of and interest on the related Loan and the payment of the principal of and interest on the Loans shall constitute the payment of and principal and interest on the Note, and the failure to make any payment on any Loan when due shall be a failure to make a payment on the Note when due and the failure to make any payment on the Note when due shall be a failure to make a payment on such Loan when due.

Notwithstanding anything herein to the contrary, (i) the Bank shall maintain in accordance with its usual practices an account or accounts evidencing the indebtedness resulting from each Loan and the Note made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder and (ii) in any legal action or proceeding in respect of this Agreement of the Note, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded.

Section 3.2. Interest. The Authority agrees to pay interest on the unpaid principal amount of each Loan made hereunder for the period commencing on the date of such Loan until such Loan shall be paid in full, at a rate per annum equal to the Adjusted Base Rate or as otherwise provided in the Note. The foregoing rate of interest may be adjusted pursuant to Section 3.8 hereof. Interest shall be computed in accordance with, and shall be due and payable on, the dates specified in the Note.

All computations of interest shall be made by the Bank on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Bank of interest hereunder shall be conclusive and binding on the Authority for all purposes, absent manifest error. Any amount that is not paid when due hereunder or under the Note (whether at stated maturity, by acceleration, default or otherwise) shall bear interest, from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times to the Default Rate in effect from time to time.

Section 3.3. Fees. The Authority hereby agrees to pay and perform its obligations provided for in the Fee Letter, including the payment of a commitment fee and all other fees and expenses and the other payments provided for therein in the amounts, at the times and on the dates set forth therein. The terms and provisions of the Fee Letter are incorporated herein by reference as if fully set forth herein. Any reference herein or in the Fee Letter to fees and/or other amounts or obligations payable hereunder shall include, without limitation, all fees and other amounts or obligations (including without limitation fees and expenses) payable pursuant to the Fee Letter,
Section 3.4. Capital or Liquidity Requirements Adjustment. If, due to a Change in Law, the Bank reasonably determines that it is required to increase the amount of capital or liquidity maintained by the Bank (or its Parent) based upon the existence of its Commitment to lend under this Agreement or based upon the Loans, the Bank shall promptly notify the Authority of an adjustment of its commitment fees payable hereunder or other payments required to be made hereunder that will, in the reasonable determination of the Bank, adequately compensate the Bank (or its Parent) in light of such required increase in capital and/or liquidity, as applicable. In determining the amount of such adjustment, the Bank may use any reasonable allocation, averaging and attribution methods and may make reasonable assumptions regarding such matters as cost of capital, and any such determination made by the Bank shall, in the absence of manifest error, be conclusive and binding. The adjustment of the commitment fees or other payments pursuant to this Section 3.4 shall be applicable from the effective date of the change causing such adjustment or other payments. The Bank shall notify the Authority of any such change promptly and in any event not more than 180 days after the occurrence thereof and, as soon as practicable thereafter, of the amount of the adjustment to the commitment fees or other payments resulting therefrom, which shall be set forth in a certificate delivered by the Bank to the Authority; provided, however, that notwithstanding any other provisions of this Section, the Authority shall have no liability for any such compensation to the extent incurred more than 180 days prior to the date such certificate is delivered to the Authority with respect thereto (any such date with respect to a certificate delivered under this Section or Section 3.5, a “Cut-Off Date”), except where such compensation applies retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after the end of the applicable Increased Capital Notice Period (defined below). It is expressly understood that each reference in this Section 3.4 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.4; provided that the amount of any payment required under this Section 3.4 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to pay such adjusted commitment fees or other payments if, within the thirty (30) day period (such period, an “Increased Capital Notice Period”) beginning on the date the Authority receives written notice from the Bank of the Change in Law giving rise to such adjusted commitment fees or other payments, the Authority shall prepay the Loans, the Note and Direct Purchase Notes in full and terminate the Bank’s Commitment.”

Section 3.5. Increased Costs. If, due to a Change in Law, provided that the Bank making a claim under this Section 3.5 based on such requirement, in its reasonable discretion, determines that it is required to comply with such requirement, there shall be any increase in the cost to the Bank of committing to make Loans pursuant to Section 4.1 hereof, then the Authority shall from time to time pay to the Bank such additional amounts sufficient to compensate the Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Authority by the Bank, shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding any other provisions of this Section, the Authority shall have no liability for any such increased
costs to the extent incurred prior to the Cut-Off Date, except where such increased costs apply retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after the end of the applicable Increased Costs Notice Period (defined below). It is expressly understood that each reference in this Section 3.5 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.5; provided that the amount of any payment required under this Section 3.5 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to pay such increased costs if, within the thirty (30) day period (such period, an “Increased Costs Notice Period”) beginning on the date the Authority receives written notice from the Bank of the Change in Law giving rise to such increased costs, the Authority shall prepay the Loans, the Note and Direct Purchase Notes in full and terminate the Bank’s Commitment.

Section 3.6. Use of Proceeds; Further Representations. (a) The proceeds of the Loans shall be used for the payment of the principal of and interest on the Commercial Paper Notes (other than Commercial Paper Notes issued in violation of clause (i) of the last paragraph of Section 12 hereof).

(b) Each Borrowing hereunder by the Authority shall be deemed to constitute (and shall constitute) a representation and warranty by the Authority as of the date such Loan is made that:

(i) the Specified Representations are true and correct in all material respects as of the date of such Loan as if made on and as of such date, provided, however, that if the Authority notifies the Bank in the Notice of Borrowing that it is unable to reaffirm the Specified Representations, then (A) such representations and warranties shall be deemed not to have been made, (B) any Loans comprising the Borrowing that is the subject of such Notice of Borrowing, and, unless the Authority notifies the Bank that it is able to make the Specified Representations, any Loans made subsequently, shall be repaid not later than the Term Loan Date, and (C) the Bank shall be entitled to give the direction and make the declaration described in clause (i) of the last paragraph of Section 12 hereof, which direction shall be effective unless and until the Authority has notified the Bank that it is able to make the Specified Representations, whereupon the Bank shall rescind such direction;

(ii) the proceeds of such Loan are being used solely and exclusively for the purposes set forth in Section 3.6(a);

(iii) no Terminating Event of Default has occurred and is continuing;

(iv) the Authority is and will remain in compliance with any direction previously given by the Bank not to issue further Commercial Paper Notes as provided in clause (i) of the last paragraph of Section 12 hereof; and

(v) the Authority is in compliance with all terms and conditions of the Commercial Paper Notes, the Commercial Paper Note Resolution, the 2019 Revolving
Credit Agreement Resolution, the Revolving Credit Agreement Resolution, the 1998 Resolution (as the same may have been duly supplemented from time to time), the Subordinate Resolution (as the same may have been duly supplemented from time to time and to the extent in effect) and any issuing and paying agency agreement relating to the Commercial Paper Notes.

The Authority will not request any Borrowing, and the Authority shall not use, and shall ensure that its directors, officers, employees and agents shall not knowingly use, the proceeds of any Borrowing (A) in violation of any Anti-Corruption Laws or (B) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 3.7.  Reserved.

Section 3.8.  Excess Interest.  If the amount of interest payable in respect of any Loan on any date such interest is due and payable hereunder, calculated in accordance with the provisions of Section 3.2, exceeds the amount of interest that would be payable on such date had interest been calculated at the maximum rate of interest on such Loan permitted by applicable law (the “Maximum Rate”), then interest on such Loan payable on such date shall be calculated and payable on the basis of the Maximum Rate. Any interest that would have been due and payable on a Loan but for the operation of the preceding sentence shall be payable as provided in the next sentence and shall constitute the “Excess Interest Amount.” At any time that there is any accrued and unpaid Excess Interest Amount, the Loan shall bear interest at the Maximum Rate, rather than the interest rate determined in accordance with Section 3.2, until payment by the Authority of the entire Excess Interest Amount. Upon the repayment of all Loans made hereunder, the Authority, if and to the extent permitted by applicable law, shall pay to the Bank a fee equal to the total amount of the accrued and unpaid Excess Interest Amount.

Section 3.9.  Terminations and Reductions; Termination Fee.  (a) On and after the date thirty (30) days following the Effective Date, the Authority shall have the right to terminate or reduce the Commitment upon at least five Business Days’ prior written notice to the Bank of such termination or reduction and payment of any termination fee required to be paid pursuant to the Fee Letter. Any partial reduction shall be in the total amount of $25,000,000 or an integral multiple of $1,000,000 in excess thereof. Once terminated or reduced, the Commitment may not be reinstated.

(b) The Commitment shall terminate on the Termination Date.

SECTION 4.  PROCEDURES.

Section 4.1.  Notices, etc.  Not later than 10:30 A.M. (New York City time) on the date of any proposed Loan, an Authorized Officer of the Authority shall give the Bank, at its office referred to in Section 14 hereof, telephonic notice specifying the amount of each Borrowing under Section 3 hereof. Such notices shall be confirmed in writing by an Authorized Officer of the Authority not later than 11:30 A.M. (New York City time) on the date of the Borrowing, in substantially the form of Exhibit B hereto (a “Notice of Borrowing”), which must be delivered by email to the email addresses of the Bank set forth on the signature pages hereof or such other email
address of the Bank as the Bank may from time to time specify to the Authority. An Authorized Officer of the Authority shall give the Bank, at its office specified below, telephonic notice, specifying the outstanding principal amount of such Loan not later than 10:00 A.M. (New York City time) two Business Days prior to the day of prepayment of all or any part of any outstanding Loan. Absent written evidence to the contrary, the Bank’s records with respect to any telephonic notice given under this Section 4.1 shall be conclusive and binding as to such telephonic notice.

Each Notice of Borrowing and notice of prepayment (and any related telephonic notice) shall be irrevocable and binding on the Authority.

Section 4.2. Availability. Not later than 2:00 P.M. (New York City time) on the date specified, the Bank shall pay to the Authority in immediately available funds (subject to provisions of Section 3 hereof) an amount equal to the amount specified in any Notice of Borrowing delivered by the Authority pursuant to Section 4.1 hereof. The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to the Bank’s Note (or on a supplemental schedule thereto) the amount of each Loan made by the Bank under this Agreement and the amount of each payment or prepayment of the principal of the Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note. The Bank shall make the proceeds of the Loans available to the Authority by depositing such proceeds in an account of the Authority maintained with the Bank at its office in New York City designated by the Authority, in immediately available funds in an account designated by the Authority, or in any other manner reasonably requested by the Authority in its Notice of Borrowing.

Section 4.3. Extension of Commitment and Termination Date. The Commitment of the Bank may be extended beyond the then-scheduled Stated Expiration Date (the “Existing Termination Date”), subject to the provisions of this Section 4.3. The Authority may request an extension of the Commitment of the Bank by written notice to the Bank at any time on or after the date that is no more than 120 days prior to the Existing Termination Date and no less than 60 days prior to the Existing Termination Date. If the Bank agrees, in its individual and sole discretion, to renew its Commitment, it will notify the Authority of its decision to do so no later than 30 days following the receipt of the Authority’s request; provided that if the Bank does not respond to the Authority during such 30-day period, the Bank will be deemed to have declined to extend its Commitment. The Bank’s Commitment shall be renewed for the additional period requested by the Authority and approved by the Bank. The Authority and the Bank shall use their best efforts to complete the documentation necessary so to extend the Termination Date.

SECTION 5. PREPAYMENTS.

Section 5.1. Prepayment. (i) The Authority shall have the right, at any time or from time to time without penalty or premium to make prepayments of principal of Loans provided that (a) the Authority shall give the Bank notice of each prepayment or selection as provided in Section 4.1 hereof, and (b) except for a prepayment that results in the prepayment of the full outstanding principal amount of any Loan, each prepayment shall be in an amount at least equal to $1,000,000 or greater multiples of $100,000. There shall be no prepayments of the Loans except as permitted
by this Section 5. Any amount of principal of a Loan prepaid under this Section 5.01(i) may be reborrowed in accordance with Section 3 hereof.

(ii) **Mandatory Prepayments.** If on any date the sum of (A) the aggregate principal amount of outstanding Loans, (B) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Notes and (C) the aggregate principal amount of outstanding Commercial Paper Notes (plus the amount of interest to accrue thereon to maturity) exceeds the amount of the Commitment, the Authority shall immediately prepay one or more of the Loans or one or more of the Drawings in an amount equal to such excess. Each such prepayment shall be accompanied by the payment of accrued interest to the date of such prepayment on the amount prepaid.

**Section 5.2. Notation of Partial Prepayment.** The amount of any partial prepayment shall be recorded on the Note by the Bank promptly upon receipt of such prepayment, it being understood, however, that if the Bank fails to make such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note.

**SECTION 6. PAYMENTS, ETC.**

**Section 6.1. Payments.** All payments of principal and interest under this Agreement or the Note shall be made in lawful money of the United States of America and in immediately available funds to the Bank at JPMorgan Chase Bank, National Association, JPM-Delaware Loan Operations, 500 Stanton Christiana Road, Floor 1, Newark, DE 19713-2105 using the following wire instructions: ABA#: 021000021, Reference: New York Power Authority, Account Number: 9008113381H0110. If any principal of or interest on the Note or other amount payable by the Authority hereunder falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding Business Day at such place and, in the case of such an extension as to principal, interest shall be payable in respect of such extension. The amount of any principal payment shall be recorded on the Note by the Bank immediately upon receipt of such payment, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note. All payments received by the Bank after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Authority shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
SECTION 7. CONDITIONS.

Section 7.1. Closing. The obligation of the Bank to make the Commitment available to the Authority is subject to the receipt by the Bank of the following on the date hereof, each dated the date hereof:

(a) [Note. The Note to the order of the Bank, duly executed by the Authority.]

(b) Agreement. (i) Counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, the Bank shall have received in form satisfactory to it telegraphic, telex or other written confirmation from such party of execution of a counterpart hereof by such party); and (ii) an executed copy of the JPM Note Purchase Agreement.

(c) Signatures. A certificate of an officer of the Authority setting forth the name and signature of each officer of the Authority authorized to sign this Agreement and the Note and to borrow and effect all other transactions hereunder. The Bank may conclusively rely on each such certification until it receives notice in writing to the contrary.

(d) Authority Counsel. Favorable written opinions from either the Executive Vice President and General Counsel, Deputy General Counsel, or an Assistant General Counsel of the Authority, or independent counsel to the Authority, in substantially the forms of Exhibits C-1 and C-2 hereto.

(e) Proof of Corporate Action. Certified copies of all corporate action taken by the Authority to authorize the execution, delivery and performance of this Agreement and the Note, a conformed copy of any registration, consent or approval by any governmental officer, agency or commission required to be obtained in connection with the issuance of the Note and a copy of the certificate delivered to The Bank of New York Mellon, as “Trustee” under and as defined in the 1998 Resolution, designating the Note as “Subordinated Indebtedness” and all payment obligations hereunder as “Subordinated Contract Obligations” within the meaning of the 1998 Resolution.

(f) Financial Statements. A copy of the financial statements referred to in Section 2.3 hereof.

(g) Officer’s Certificate. A certificate of the Treasurer or Deputy Treasurer of the Authority to the effect that (i) the representations and warranties of the Authority in Section 2 of this Agreement are true and correct on and as of the date hereof, (ii) no Terminating Event of Default or Non-Terminating Event of Default has occurred and is continuing, (iii) the copies of the Commercial Paper Note Resolution, the 1998 Resolution, the 2012 Subordinated Notes Resolution, the 2019 Revolving Credit Agreement Resolution and the Revolving Credit Agreement Resolution heretofore provided to the Bank by the Authority are true and correct copies of such resolutions as currently in effect.
(h) **Rating Confirmation.** A copy of the Moody’s confirmation received pursuant to Section 501(G) of the Commercial Paper Note Resolution.

**Section 7.2. Each Loan.** The obligation of the Bank to make each Loan to be made by it under Section 3 hereof is subject to the conditions precedent that (i) the Bank shall have received a Notice of Borrowing pursuant to and in accordance with the terms and conditions of Section 4.1 hereof, (ii) immediately after the making of such Loan, the aggregate outstanding principal amount of all Loans plus the aggregate outstanding principal amount of all Drawings under the Direct Purchase Notes shall not exceed the aggregate amount of the Commitment, and (iii) no Terminating Event of Default (as defined in Section 12 hereof) shall have occurred and be continuing. In addition, the Bank shall have no obligation to make a Loan the proceeds of which shall be used to pay the principal of or interest on any maturing Commercial Paper Note that was issued by the Authority or the Issuing and Paying Agent after receipt by the Issuing and Paying Agent and the Authority of any direction previously given by the Bank not to issue further Commercial Paper Notes as provided in clause (i) of the last paragraph of Section 12 hereof.

**Section 7.3. Condition to Initial Commercial Paper Note Issuance.** No Commercial Paper Note shall be issued unless on or prior the date of the initial issuance thereof, the Bank shall have received a copy of each rating confirmation (other than Moody’s) received pursuant to Section 501(G) of the Commercial Paper Note Resolution.

**SECTION 8. PARTICULAR COVENANTS OF AUTHORITY.**

From the date hereof and until the termination of the Bank’s Commitment, the payment in full of the Note and the performance of all other obligations of the Authority under this Agreement, the Authority agrees that:

**Section 8.1. Financial Statements, etc.** The Authority shall deliver to the Bank:

(a) As soon as available and in any event within 105 days after the end of each semi-annual fiscal period ending June 30 and December 31, the financial statements of the Authority prepared in conformity with generally accepted accounting principles and on a basis consistent with the financial statements referred to in Section 2.3 hereof as at the last day of such period. Financial statements for each fiscal period ending December 31 shall be accompanied by an opinion as to such financial statements of independent certified accountants of recognized standing. Financial statements for each fiscal period ending June 30 that are not accompanied by such an opinion shall be certified (subject to normal year-end adjustments) as to fairness of presentation, generally accepted accounting principles and consistency, insofar as each of the foregoing relates to accounting matters, by the Executive Vice President and Chief Financial Officer or Vice President and Controller of the Authority.

(b) Concurrently with any delivery of financial statements under clause (a) above relating to a fiscal period ending December 31, a certificate of the Treasurer or Deputy Treasurer of the Authority certifying as to whether there shall have occurred and be continuing an Event of Default or any event that with notice or the lapse of time or both
would become an Event of Default, specifying the details thereof and what action the Authority proposes to take with respect thereto.

(c) Copies of any other published reports of financial condition, receipts and expenditures prepared or issued by the Authority for general distribution to investors or lenders.

(d) From time to time, with reasonable promptness, such information regarding the business, affairs and financial condition of the Authority as the Bank may reasonably request.

The Authority shall be deemed to have complied with the requirements to provide the information set forth in this Section 8.1 to the extent such information (x)(i) has been posted on the Authority’s website (www.nypa.gov) or (ii) has been duly filed with the Electronic Municipal Market Access service of the Municipal Securities Rulemaking Board and is publicly available and (y) the Authority shall have given the Bank notice thereof within the time periods set forth above.

The Authority shall cause the Issuing and Paying Agent to deliver to the Bank monthly and as otherwise requested by the Bank a report of the par amounts, CUSIP numbers and maturity dates of outstanding Commercial Paper Notes. In the event the Issuing and Paying Agent fails to comply with such delivery requirement, and the Bank notifies the Authority of such non-compliance, the Authority shall use reasonable efforts to (a) obtain the foregoing information regarding outstanding Commercial Paper Notes and provide it to the Bank and (b) cause the Issuing and Paying Agent to cure its non-compliance. If the Issuing and Paying Agent shall fail to cure such non-compliance within 30 days after it receives notice thereof, the Authority shall, at the request of the Bank, arrange for a substitute Issuing and Paying Agent acceptable to the Bank.

The Authority shall notify the Bank of any withdrawal or reduction by any Rating Agency of its rating of any outstanding Indebtedness of the Authority.

Section 8.2. Taxes and Charges. The Authority shall pay and discharge any taxes, assessments and governmental charges or levies that may be imposed upon it or upon its revenues, or upon any property belonging to it, prior to the date on which penalties attach thereto; provided that the Authority shall not be required by this paragraph to pay any such tax, assessment, charge, or levy (a) the payment of which is being contested in good faith and by proper proceedings or (b) the failure to make payment would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

Section 8.3. Security Interests. Without the prior written consent of the Bank, the Authority shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or other encumbrance upon any of its revenues, property or assets, now owned or hereafter acquired, securing any indebtedness or obligation having priority in payment over the Note (all such security being herein called “security interests”), except (i)(a) security interests created under the 1998 Resolution to secure Obligations and Parity Debt or (b) security interests upon the assets, revenues, rates, charges, rents, proceeds
from the sale of, proceeds of insurance and other income and receipts derived from the ownership or operation of Separately Financed Projects as defined under the 1998 Resolution, (ii) security interests in the form of a covenant or authorization to pay any obligation of the Authority out of the proceeds of bonds or notes deposited in any fund or account established pursuant to any existing or future resolution of the Authority authorizing the issuance of its obligations and (iii) security interests that are incidental to and incurred in the ordinary course of the Authority’s business or the ownership of its property and assets, which (x) are not incurred in connection with the borrowing of money and (y) do not materially detract from the operation of its business or the value of its property or assets or materially impair the use thereof.

Section 8.4. Default, etc. As soon as reasonably possible and in any event within five Business Days after the Authority has knowledge of the occurrence of an Event of Default or an event that with the giving of notice or lapse of time or both, would constitute an Event of Default, the Authority shall notify the Bank if any Event of Default, or any event that with notice or lapse of time or both would become such an Event of Default, shall have occurred, specifying what action the Authority proposes to take with respect thereto.

Section 8.5. Commercial Paper Note Resolution, 1998 Resolution and this Agreement. The Authority shall not repeal or modify the Commercial Paper Note Resolution or the 1998 Resolution, or take any action impairing any authority, right or benefit conferred by the Commercial Paper Note Resolution or the 1998 Resolution, or this Agreement; provided, however, that the Authority may supplement or amend the Commercial Paper Note Resolution, or the 1998 Resolution, in accordance with its terms. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) exceed the Available Commitment from time to time in effect. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) plus (ii) the aggregate outstanding principal amount of all Loans, plus (iii) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Note plus (iv) the aggregate LC Exposure (as defined in the JPM Note Purchase Agreement), exceed the Commitment from time to time in effect.

Section 8.6. Litigation; Other Events. The Authority shall give to the Bank notice in writing by April 6 of each year of all litigation against or threatened against the Authority and of all proceedings before any governmental or regulatory agency to which the Authority is a party, except litigation or proceedings (a) described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof or (b) that do not have a reasonable likelihood of adverse determination or if adversely determined, would not have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. As to the litigation and proceedings described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof, the Authority shall give to the Bank notice in writing by April 6 of each year
of any changes in the circumstances of such litigation or proceedings that would have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. In addition, the Authority shall give to the Bank notice of the commencement of any such litigation and the occurrence of any other event that is reasonably expected to result in a Material Adverse Effect.

Section 8.7. Further Assurances. The Authority shall (1) perform and comply with each of the covenants and provisions contained in this Agreement, in the Existing Resolutions and in any other resolution or agreement securing or providing for the issuance of obligations of the Authority for borrowed money and (2) take all action and do all things that it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Agreement and in order to provide for and to assure payment of the Note at maturity including, but not limited to, as necessary for the foregoing purposes, directing the payment to it from time to time of any funds held under an Existing Resolution and available in accordance with the terms thereof to be paid to the Authority upon its direction.

Section 8.8. Compliance with Laws, Etc. The Authority shall comply in all material respects with all applicable laws, rules, regulations and orders (such compliance to include, without limitation, compliance with all environmental laws and all laws relating to hazardous waste and the payment before the same become delinquent of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith), non-compliance with which would have a Material Adverse Effect.

Section 8.9. Maintenance of Insurance. The Authority shall maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is required by law or is deemed by the Authority to be prudent.

Section 8.10. Copies of “No Issuance” Notices. The Authority shall provide the Bank with any notice delivered to the Authority or any issuing and paying agent appointed pursuant to the Commercial Paper Note Resolution relating to the Series 4 Notes or any other series of commercial paper notes (other than the Commercial Paper Notes), directing the Authority and such issuing and paying agent to cease issuing such notes.

Section 8.11. 1998 Resolution and Subordinate Resolution. The Authority agrees that the Bank shall be a third-party beneficiary to Sections 503, 604, 605 and 606 of the 1998 Resolution and Sections 501, 603, 605(3) and 1003 of the Subordinate Resolution (collectively, the “Resolution Provisions”). The Authority further agrees not to amend or modify the Resolution Provisions, and agrees that no amendment or modification of the Resolution Provisions shall be effective, without the prior written consent of the Bank, and the Bank shall be entitled to enforce the Resolution Provisions. It is understood and agreed that the Bank shall not be a third-party beneficiary in respect of any other provisions of the 1998 Resolution or the Subordinate Resolution and shall not be entitled to take any action under the 1998 Resolution or the Subordinate Resolution to enforce any of the provisions thereof other than the Resolution Provisions.

Section 8.12. Reserved.
Section 8.13. Tax-Exempt Status. With respect to the Commercial Paper Notes the interest on which is intended to be excluded from gross income for Federal income tax purposes, the Authority shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 8.14. Resolutions or Agreements. The Authority shall not create or suffer to exist any default or Event of Default under the Existing Resolutions or under any other resolution or agreement securing or providing for the issuance of Other Indebtedness of the Authority in excess of $25,000,000 the effect of which is to accelerate or permit the acceleration of the maturity of the obligations thereby secured or issued.

Section 8.15. Payment of Fee Letter. The Authority shall pay any and all amounts owed under the Fee Letter when due and payable.

Section 8.16. Ratings Downgrade. The Authority shall not allow any Rating Agency then rating the Authority’s short-term debt obligations (if any) to lower such ratings to (a) in the case of Moody’s, below MIG-3 or P-3, (b) in the case of Standard & Poor’s, below SP-2 or A-3, and (c) in the case of Fitch, below F-3.

Section 8.17. Invalidity of Subordinate Revenue Bond. No court of competent jurisdiction shall adjudge in a final and non-appealable judgment any Subordinate Revenue Bond to be invalid, illegal or unenforceable against the Authority, and the Authority shall not deny in writing that it has any liability under any Subordinate Revenue Bond.

Section 8.18. Judgments for Payment of Money; Enforcement Proceedings. The Authority shall not permit or suffer to exist any judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority or enforcement proceedings commenced by any creditor upon such judgment or order and continue for period of 60 consecutive days during which the enforcement of such judgment has not been effectively stayed (including by reason of a pending appeal or otherwise), dismissed, satisfied or bonded.

Section 8.19. Separately Financed Projects Reporting. The Authority shall provide notice to the Bank of the incurrence of any obligation under Section 203 of the 1998 Resolution to finance a Separately Financed Project within 10 business days of the incurrence thereof. Such notice shall include a description of the date of incurrence of such obligations, the principal amount, maturity and amortization, interest rate, if fixed, or method of computation thereof, if variable (and any default rates), and a description of such Separately Financed Project and the revenues and other security pledged to secure such obligations.

Section 8.20. JPM Note Purchase Agreement. The Authority shall cause the JPM Note Purchase Agreement to remain in full force and effect at all times during the term of this Agreement (except to the extent terminated by the Bank).
Section 8.21. Limitation Notes. The Authority will not issue any Commercial Paper Notes the proceeds of which are used to pay or repay the principal of or interest on Drawings under the Direct Purchase Notes without the prior written consent of the Bank.

Section 8.22. Maintenance of Issuing and Paying Agent. (i) The Authority will, at all times, maintain a reputable dealer of recognized national standing for the Commercial Paper Notes, and will notify the Bank as promptly as practicable of any appointment of a successor dealer (which successor dealer shall not be appointed without the prior written consent of the Bank, which response to such notice shall be prompt and which consent shall not be unreasonably withheld or delayed) for the Commercial Paper Notes before the date such appointment is to take effect. The Authority will, at all times, maintain a reputable Issuing and Paying Agent of recognized national standing for the Commercial Paper Notes.

(ii) The Authority shall use its best efforts to cause the Dealers and the Issuing and Paying Agent to market, issue, and deliver, as applicable, Commercial Paper Notes at the then current market rate, up to the maximum interest rate applicable thereto. If a Dealer fails to sell the Commercial Paper Notes for sixty (60) consecutive days, then the Authority, at the written request of the Bank and with mutual agreement of the Authority, shall replace the applicable Dealer with a Dealer reasonably satisfactory to the Bank.

Section 9. Taxes.

Section 9.1. Taxes. (a) Any and all payments by the Authority hereunder or under the Note shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding, in the case of the Bank, taxes or withholdings (a) imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which the Bank is organized or any political subdivision thereof and, in the case of the Bank, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction of the Bank’s Lending Office or any political subdivision thereof or (b) imposed by Section 1471 through Section 1474 of the Internal Revenue Code of 1986, as amended (including any official interpretations thereof (collectively “FATCA”) on any “withholdable payment” payable to the Bank as a result of the failure of such Person to satisfy the applicable requirements as set forth in FATCA after December 31, 2012 (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Authority shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under the Note to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Authority agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the Note or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Note (hereinafter referred to as “Other Taxes”).
(c) The Authority will indemnify the Bank for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 9) paid by the Bank and any liability including interest, expenses and penalties (other than penalties that have been incurred by the Bank because of such person’s willful misconduct or gross negligence) arising therefrom or with respect thereto, based on a claim for such Taxes or Other Taxes made by the applicable taxing authority, provided, however, that prior to such payment by the Bank, the Authority shall be notified by the Bank of the imposition of such Taxes and may contest, if the Authority so chooses, the imposition of such Taxes, provided further that the Bank may pay such Taxes or Other Taxes if such payment would not preclude the Authority’s ability to contest such imposition. This indemnification shall be made within 30 days from the date the Bank makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes, the Authority will furnish to the Bank, at its address referred to on the signature page hereof, the original or a certified copy of a receipt evidencing payment thereof.

(e) The Bank shall use its best efforts (consistent with its internal policy and legal regulatory restrictions) to change the jurisdiction of its Lending Office if such change would eliminate or reduce any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of the Bank, be otherwise disadvantageous to the Bank.

(f) Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section 9 shall survive the payment in full of principal and interest hereunder and under the Note.

SECTION 10. SECURITY FOR THE NOTE.

The Note is and shall continue to be an obligation of the Authority payable from the Trust Estate and Subordinated Indebtedness. The Trust Estate is hereby pledged for the payment of the Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. The foregoing pledges shall be valid and binding from and after the date of execution and delivery hereof and the Trust Estate shall immediately be subject to the lien of such pledges without any physical delivery thereof or further act, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. This Agreement is a Subordinated Contract Obligation (within the meaning of the 1998 Resolution).

SECTION 11. PLEDGE OF STATE.

The Authority, as agent for the State, does hereby pledge to and agree with the holders from time to time of the Note that the State will not limit or alter the rights vested in the Authority by the Act, until the obligations of the Authority under the Note are fully met and discharged, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of the Note.
SECTION 12. DEFAULTS.

If any of the following events or conditions shall occur and be continuing (each of the events or conditions described herein referred to as an “Event of Default”; each Event of Default set forth in Sections 12.1 through 12.7 hereof inclusive being herein referred to as a “Terminating Event of Default” and each Event of Default set forth in Sections 12.8, 12.9 and 12.10 hereof inclusive being referred to as a “Non-Terminating Event of Default”):

Section 12.1. Payment. The Authority shall fail to pay any installment of principal or interest on the Note when due and payable and such failure shall continue for five Business Days;

Section 12.2. Reserved.

Section 12.3. Other Indebtedness. The Authority shall default in the payment when due (including any applicable grace period) of any Indebtedness of the Authority (other than Indebtedness outstanding under this Agreement) in excess of $25,000,000; provided that this Section 12.3 shall not apply if such default is remedied or waived by the holders of such Indebtedness prior to the Bank taking any action pursuant to the last paragraph of this Section 12;

Section 12.4. Bankruptcy; Moratorium. (A) The Authority shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of the Authority for all or a substantial part of the assets of the Authority, (ii) commence a voluntary case or other proceeding or file a petition seeking reorganization, liquidation, composition of indebtedness or any arrangement with creditors under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or of the State of New York, or (iii) make a general assignment for the benefit of creditors; (B) the Authority shall impose or declare a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on any obligations of the Authority that are on a parity with the Note issued under this Agreement or that have a priority in payment over the Note issued under this Agreement, or (C) any Governmental Authority having appropriate jurisdiction over the Authority shall make a finding or ruling or other determination or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Commercial Paper Notes, the Note or on all Indebtedness of the Authority;

Section 12.5. Judgments. Any final, non-appealable judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority and enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such judgment shall not have been satisfied or bonded within 60 days of the date thereof;

Section 12.6. Ratings. The lowering or withdrawal by all Rating Agencies then rating the applicable obligations of the rating on any obligations of the Authority that are on a parity with the Note issued under this Agreement or that have a priority in payment over the Note issued under
this Agreement to (a) in the case of Moody’s, below Baa3, and (b) in the case of Standard & Poor’s and Fitch, below BBB-;

Section 12.7. Invalidity. This Agreement, the Note, or any Commercial Paper Note shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable against the Authority and such judgment shall be final and non-appealable, or the Authority shall deny in writing that it has any liability hereunder or thereunder;

Section 12.8. Representations. Any representation or warranty made by the Authority in Section 2 or Section 3.6 hereof, or in any document furnished by the Authority hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

Section 12.9. Covenants. The Authority shall default (other than as otherwise provided in Sections 12.1 through 12.7 hereof) in the performance of any agreement or covenant herein and such default shall continue unremedied for 30 days after written notice to the Authority from the Bank.

Section 12.10. JPM Note Purchase Agreement; the 2019 Revolving Credit Agreement. Any “event of default” under the JPM Note Purchase Agreement or the 2019 Revolving Credit Agreement (as defined respectively therein) shall have occurred;

THEREUPON, in any such case and subject to the remainder of this Section, the Bank may do any or all of the following: (i) in the case of any Event of Default, direct the Authority to cease issuing Commercial Paper Notes, whereupon the Authority shall immediately cease to issue any Commercial Paper Notes until such time (if any) as the Bank shall rescind such directions, and, after receiving such cessation direction, the Authority shall immediately provide telephonic notice effectuating such cessation, (ii) in the case of a Non-Terminating Event of Default, declare the obligation of the Bank to make Loans to be terminated 30 days after written notice to the Authority from the Bank of such Non-Terminating Event of Default provided that the obligations of the Bank to make Loans for the purpose of paying Commercial Paper Notes outstanding on the date of such written notice shall remain in effect to the extent and so long as necessary for the payment of such Commercial Paper Notes at their maturity dates and the Available Commitment shall immediately be reduced to the then outstanding principal amount of Commercial Paper Notes plus the amount of interest to accrue on such outstanding Commercial Paper Notes, and the Available Commitment shall be further reduced in a similar manner as and when such Commercial Paper Notes mature; (iii) in the case of a Terminating Event of Default, by notice to the Authority, declare the Note, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Note, all such interest thereon and all other amounts payable under this Agreement shall forthwith become immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority, and/or (v) in the case of any Non-Terminating Event of Default, 30 days after written notice to the Authority, declare the Note, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Note, all such interest thereon and all other amounts payable under this Agreement shall forthwith become immediately due and payable,
without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority; provided, however, that in the case of any Event of Default specified in Section 12.4 hereof (A) the obligation of the Bank to make Loans shall automatically be terminated and (B) the Note, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Authority. For purposes of clause (iii) of this paragraph, no Terminating Event of Default shall be deemed to have occurred solely as a result of the Authority’s failure to pay, prior to the regularly scheduled date for payment thereof, any portion of the principal or interest on the Note that has been accelerated pursuant to clause (iv) above solely as a result of the occurrence of a Non Terminating Event of Default, but the foregoing shall not otherwise limit, affect or impair the validity of such acceleration. The Bank shall provide The Bank of New York Mellon, as Issuing and Paying Agent under an Issuing and Paying Agency Agreement entered into by the Authority pursuant to the Commercial Paper Note Resolution, with written notice of the occurrence of an Event of Default and written notice rescinding such notice in the event that an Event of Default is determined by the Bank to be no longer in existence hereunder, and such notice shall be provided by the Bank to any other entity required to receive such notice pursuant to such Resolution; provided, however, that the failure to do so shall in no way affect the Bank’s obligations hereunder.

If any Event of Default shall occur and be continuing, the Bank may take, in addition to the remedies specified in the immediately succeeding paragraph, one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under this Agreement and the Note or to enforce performance or observance of any obligation, agreement or covenant of the Authority under this Agreement and the Note, whether for specific performance of any agreement or covenant of the Authority or in aid of the execution of any power granted to the Bank in this Agreement and the Note;

(ii) cure any Event of Default or event of nonperformance hereunder or under this Agreement and the Note; provided, however, that the Bank shall have no obligation to effect such a cure; and

(iii) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement and the Note and as otherwise available at law and at equity.

SECTION 13. RESERVED.

SECTION 14. NOTICES, ETC.

Section 14.1. Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.2), all notices and other communications provided for herein to the Authority or the Bank shall be in writing and
shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number specified for such Person on the signature pages hereof.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient); provided, however, notices and other communications to the Authority delivered by telecopier shall be deemed to have been given only upon the sender’s receipt of an acknowledgement from the intended recipient. Notices delivered through electronic communications, to the extent provided in Section 14.2, shall be effective as provided in such Section 14.2.

Section 14.2. Electronic Communications. Notices and other communications to the Bank hereunder may be furnished by e-mail to the Bank’s email address specified on the signature pages hereof pursuant to procedures approved by the Bank. The Bank or the Authority may, in its discretion, agree to accept notices and other communications to it hereunder by e-mail communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Notices and other communications sent to an e-mail address of the Authority or, unless the Bank otherwise prescribes, to an e-mail address of the Bank shall be deemed received only upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 14.3. Change of Address, Etc. Each of the Authority and the Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice to the Authority and the Bank.

Section 14.4. Recordings. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

Section 15. Miscellaneous

Section 15.1. Waivers, etc. No failure on the part of the Bank to exercise, and no delay in exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further
exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 15.2. Expenses; Indemnification. The Authority agrees to pay, whether or not any Loan is made hereunder, (a) the reasonable legal fees and disbursements of outside counsel retained by the Bank in connection with the formulation, execution and delivery of this Agreement and the Fee Letter, any waiver or consent hereunder or under the Fee Letter or any amendment hereof or of the Fee Letter (including any extension of the Commitment and the Existing Termination Date, pursuant to Section 4.3 hereof) or any event or condition that constitutes an Event of Default, or, with the giving of notice or lapse of time or both, would constitute such an Event of Default; (b) the reasonable legal fees and disbursements of the outside counsel of the Bank; (c) all taxes, if any, upon any documents or transactions pursuant to this Agreement or the Fee Letter; and (d) costs of collection and enforcement (including reasonable counsel fees and disbursements) if an Event of Default occurs.

The Authority agrees to indemnify the Bank and hold the Bank harmless from and against any and all liabilities, losses, damages, and all reasonable costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Bank in connection with any investigative, administrative or judicial proceeding (whether or not the Bank shall be designated a party thereto) to the extent relating to or arising out of this Agreement, the Fee Letter, the Commercial Paper Note Resolution or any actual or proposed use of proceeds of Loans hereunder; provided that no Bank shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

To the extent permitted by law, the Authority assumes all risks of the acts or omissions of the Issuing and Paying Agent with respect to the use of the Loans made pursuant thereto; provided that this assumption with respect to the Bank is not intended to and shall not preclude the Authority from pursuing such rights and remedies as it may have against the Issuing and Paying Agent under any other agreements. Neither the Bank nor its officers or directors shall be liable or responsible for (a) the use of the proceeds of the Note or any Loan, or for any acts or omissions of the Issuing and Paying Agent or the Dealer, (b) the validity, sufficiency, or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents shall, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (c) payments by the Bank against presentation of requests for Loans which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement, or (d) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Authority shall have a claim against the Bank to the extent of any direct, as opposed to consequential damages, but only to the extent caused by the gross negligence or willful failure of the Bank in failing to make a Loan required to be made by the Bank hereunder after compliance by the Authority with all conditions precedent to such Loan, unless the making of such Loan was not otherwise permitted by law.

Section 15.3. Governing Law. This Agreement and the Note shall be governed by and construed in accordance with the law of the State of New York without regard to the conflict of laws principles of the State of New York.
Section 15.4. Waiver of Trial by Jury. To the fullest extent permitted by the law, the Authority and the Bank hereby waive trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). The Authority further agrees that, in the event of litigation, it will not personally or through its agents or attorneys seek to repudiate the validity of this Section 15.4, and it acknowledges that it freely and voluntarily entered into this agreement to waive trial by jury in order to induce the Bank to enter into this Agreement.

Section 15.5. Amendments, etc. No amendment or waiver of any provision of this Agreement or the Note, nor consent to any departure by the Authority therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 15.6. Successors and Assigns. (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; except that the Authority may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank.

(b) The Bank may at any time grant to one or more banks or other institutions (each a “Participant”) participating interests in its Commitment or any or all of its Loans. In the event of any such grant by the Bank of a participating interest to a Participant, whether or not upon notice to the Authority, the Bank shall remain responsible for the performance of its obligations hereunder, and the Authority shall continue to deal solely and directly with the Bank in connection with the Bank’s rights and obligations under this Agreement. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the Authority hereunder including, without limitation, the right to approve any amendment, modification or waiver or any provision of this Agreement; provided that any such agreement may provide that the Bank will not agree to any amendment, waiver or modification of this Agreement described in clauses (b) through (d) of Section 15.5 hereof without the consent of the Participant. Subject to subsection (f) below, the Authority agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Section 3.4, Section 3.5 and Section 9 hereof with respect to its participating interest. An assignment or other transfer that is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) The Bank may at any time assign to one or more banks or other institutions (each an “Assignee”) all, or a proportionate part (equivalent to an initial Commitment of not less than $10,000,000, or a larger multiple of $1,000,000) of all, of its rights and obligations under this Agreement and the Note, and such Assignee shall assume such rights and obligations, pursuant to an Assignment and Assumption Agreement in substantially the form of Exhibit D hereto executed by such Assignee and the Bank, with (and subject to) the subscribed consent of the Authority, which consent shall not be unreasonably withheld, together with interests in the Note subject to such assignment, provided, however, that no such assignment shall be effected unless the senior securities of such bank or other institution, or securities secured by such bank’s or other institution’s letters of credit, are assigned (a) at least one long-term rating of at least A1 by...
Moody’s, A+ by Fitch, or A+ by Standard & Poor’s (so long as no two of the three of Moody’s, Fitch, and Standard & Poor’s have assigned long-term ratings below A2, A, and A, respectively), and (b) short-term ratings of at least P-1 by Moody’s, A-1 by Standard & Poor’s, and F1 by Fitch.

(d) Upon execution and delivery of such instrument and payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee, such Assignee shall be the Bank party to this Agreement and shall have all the rights and obligations of the Bank with a Commitment as set forth in such instrument of assumption, and the Bank shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (d), the Bank and the Authority shall make appropriate arrangements so that, if required, a new Note is issued to the Bank and Assignee and the old Note of the assigning Bank is returned to the Authority.

(e) The Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank, the Department of the Treasury or to any state or local governmental entity or with respect to public deposits. No such assignment shall release the Bank from its obligations hereunder.

(f) No Participant in the Bank’s rights shall be entitled to receive any greater payment under Section 3.4, Section 3.5 or Section 9 hereof than the Bank would have been entitled to receive with respect to the rights transferred, unless such transfer is made with the Authority’s prior written consent.

Section 15.7. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. The words “execution,” “signed,” “signature,” and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 15.8. Reliance. The Bank acknowledges that it has, independently, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Authority and its own decision to enter into this Agreement and extend credit hereunder.

Section 15.9. No Personal Liability. No trustee, officer or employee of the Authority shall be held personally liable on the Note or in connection with any claim based thereon or on the Commercial Paper Note Resolution, the Subordinate Resolution, or on this Agreement.
Section 15.10.  Defeasance.  If the Commitment shall have terminated and the Authority shall pay or cause to be paid, or there shall otherwise be paid to the Bank, the entire principal of and interest on the Note and all other amounts owing to the Bank hereunder or under the Note, then the pledge created under this Agreement and all covenants, agreements and other obligations of the Authority hereunder to the holder of the Note shall thereupon cease, terminate and become void and be discharged and satisfied, and thereupon all of the moneys and properties of the Authority then subject to such pledge shall be forever free and clear of such pledge and at the option of the Authority, expressed in writing, this Agreement shall be of no further force or effect.

Section 15.11.  Severability.  Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 15.12.  No Advisory or Fiduciary Relationship.  In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or the Note), the Authority acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Bank, are arm’s-length commercial transactions between the Authority, on the one hand, and the Bank, on the other hand, (B) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby; (ii) (A) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (whether financial, municipal or otherwise), agent or fiduciary, pursuant to Section 15B of the Securities Exchange Act of 1934 or otherwise, for the Authority or any other Person, and has no fiduciary duty to the Authority or any other Person and (B) the Bank have no obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (iii) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and the Bank have no obligation to disclose any of such interests to the Authority.  To the fullest extent permitted by law, the Authority hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 15.13.  USA PATRIOT Act.  The Bank hereby notifies the Authority that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Bank, provide all documentation and other information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.
Section 15.14. Survival. The provisions of Section 3.4, Section 3.5, Section 9 and Section 15.2 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

Section 15.15. Amendment and Restatement. This Agreement shall become effective on the Effective Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. From and after the Closing Date, all references made to the Original Agreement in any instrument or document shall, without more, be deemed to refer to this Agreement. Reference to this specific Agreement need not be made in any agreement, document, instrument, letter, certificate, the Original Agreement itself, or any communication issued or made pursuant to or with respect to the Original Agreement. This Agreement is entered into in substitution for, and not in satisfaction of, the rights and obligations of the parties hereto with respect to their obligations under the Original Agreement, and does not and is not intended to constitute a novation or an accord and satisfaction of any of the rights and obligations of the parties hereto with respect to the Original Agreement or the indebtedness, the obligations and liabilities of the Authority evidenced by or provided for under the Original Agreement. The parties hereto agree that this Agreement does not extinguish or discharge the obligations of the Authority or the Bank under the Original Agreement.

[Signature Pages to Follow]
POWER AUTHORITY OF THE STATE OF NEW YORK

By: ____________________________________
Name:   ________________________________
Title: __________________________________

Address: 123 Main Street
White Plains, NY 10601
Telephone:  (914) 287-3048
Facsimile: (914) 681-6995
Attn: Treasurer

With a copy to:

Address: 123 Main Street
White Plains, NY 10601
Attn: General Counsel
Telephone: (914) 390-8000
Facsimile: (914) 390-8040
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ____________________________________________________________
    Name:  Heather X. Talbott
    Its:    Executive Director

Address: 383 Madison Avenue, 3rd Floor
Mail Code NY1-M165
New York, NY 10179
Telephone: (212) 270-4875
Facsimile: (917) 464-2427
Attn:  Heather Talbott
Executive Director, Public Finance - Credit Origination
Email: heather.x.talbott@jpmorgan.com

With a copy to:

JPM-Delaware Loan Operations
Address: 500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn: Brandon Allen
Telephone: (302) 634-9588
Facsimile: (302) 634-4733
Email: 12012443628@tls.Ldsprod.com; pfg_servicing@jpmorgan.com
EXHIBIT A

POWER AUTHORITY OF THE STATE OF NEW YORK

PROMISSORY NOTE

Dated: [______], 2022

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Revolving Credit Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all loans (“Loans”) made by the Bank to the Authority pursuant to the Revolving Credit Agreement described below, such payment of principal of each such Loan to be made in full by the Authority on the Term Loan Date (as that term is defined in the Revolving Credit Agreement) applicable to such Loan, provided, however, that if on the Term Loan Date no Event of Default, as defined in the Revolving Credit Agreement, and no event or condition that, with the giving of notice or the lapse of time or both, would constitute an Event of Default, has occurred and is continuing, and such Loan is not then governed by the proviso clause of Section 3.6(b)(i) of the Revolving Credit Agreement, such payment of such Loan shall not be required on the Term Loan Date and shall instead be made by the Authority on each Term Loan Payment Date, provided that if there is no such numerically corresponding date in any such calendar month, the relevant installment shall be payable on the last day of such month; and provided further that all outstanding principal on such Loan shall be due and payable on the Term Loan End Date, and promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the Adjusted Base Rate (as defined in the Revolving Credit Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Revolving Credit Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Revolving Credit Agreement) in effect from time to time. Each change in the Base Rate resulting from a change in the Prime Rate of the Bank or the Federal Funds Rate (as such terms are defined in the Revolving Credit Agreement) shall become effective for purposes hereof on the day on which such change in such Prime Rate or the Federal Funds Rate becomes effective. The interest rate specified above may be adjusted pursuant to Section 3.8 of the Revolving Credit Agreement. Interest shall be computed on the basis of a year having the number of days specified in Section 3.2 of the Revolving Credit Agreement, and actual days elapsed, and shall be paid monthly in arrears (a) on the first Business Day (as defined in the Revolving Credit Agreement) of each month during the period from the date hereof to the Termination Date (as defined in the Revolving Credit Agreement) and (b) on the Termination Date.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the amount of each Loan made by the Bank
under the Revolving Credit Agreement and the amount of each payment or prepayment of the principal of this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Revolving Credit Agreement with respect to the Loans.

This Note is issued under a resolution of the Authority adopted [______], 2022 (as amended, supplemented, restated or otherwise modified from time to time, the “Resolution”) and under the Power Authority of the State of New York Amended and Restated Revolving Credit Agreement, dated as of [______], 2022 (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the “Revolving Credit Agreement”), between the Authority and JPMorgan Chase Bank, National Association This Note is and shall continue to be an obligation of the Authority payable from the Trust Estate (as defined in the 1998 Resolution referred to in said Revolving Credit Agreement) and, is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution). The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits of the Resolution and said Revolving Credit Agreement.

Upon the occurrence of any Event of Default specified in said Revolving Credit Agreement, the principal of this Note and accrued interest thereon may be declared due and payable in the manner, upon the conditions and with the effect provided in said Revolving Credit Agreement, and upon any such declaration, the principal of and interest on all Loans then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of this Note before maturity upon the terms provided in said Revolving Credit Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent for the State of New York, does hereby pledge to and agree with the holder of this Note that the State of New York will not limit or alter the rights vested in the Authority by said Act, as amended, until the obligations of the Authority under this Note shall have been fully met and discharged or adequate provision shall have been made by law for the protection of the holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note or in connection with any claim based hereon or on the Resolution or on said Revolving Credit Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issuance of this Note,
together with all other indebtedness of the Authority, is within every debt and other limit prescribed by the laws of the State of New York.

IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the [___] day of [____], 2022.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _______________________________
   Name: _____________________________
   Title: ______________________________

Attest:

_____________________________________
   Title: _______________________________
## Loans and Payments of Principal

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Re: Notice of Borrowing

Ladies and Gentlemen:

The Power Authority of the State of New York (the “Authority”), pursuant to the Amended and Restated Revolving Credit Agreement dated as of April 1, 2022 (as amended from time to time, the “Revolving Credit Agreement”) between the Authority, the lenders party thereto and JPMorgan Chase Bank, National Association (the “Bank”), hereby confirms the Authority’s telephonic notice given to you on ____________ of a borrowing under said Revolving Credit Agreement in the principal amount of $__________ to be made on ____________. The Bank shall make the proceeds of the Loan available to the Authority [specify manner].

THE AUTHORITY HEREBY CERTIFIES that all terms and conditions to the subject Borrowing have been complied with, including all representation and warranties required to be made or deemed made pursuant to the terms of the Revolving Credit Agreement [in the event the notice specified in the proviso clause of Section 3.6(b)(i) of the Revolving Credit Agreement is to be given: provided, however, that the Authority is unable to reaffirm the Specified Representations.]

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________
Name: ______________________________
Title: ______________________________
JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

As General Counsel of the Power Authority of the State of New York (herein called the “Authority”) and in accordance with Section 7.1(d) of the Amended and Restated Revolving Credit Agreement dated as of April 1, 2022 between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (herein called the “Revolving Credit Agreement”), I hereby advise that in my opinion:

1. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, created by and validly existing under the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”). The Authority has the power to execute and deliver the Revolving Credit Agreement and the note issued on the date hereof pursuant to the Revolving Credit Agreement (the “Note”) and to incur and perform its obligations under the Revolving Credit Agreement and under the Note.

2. The execution and delivery of the Revolving Credit Agreement and the issuance of the Note do not and will not violate any provision of any agreement entered into pursuant to the Existing Resolutions (as defined in the Revolving Credit Agreement) or, to my knowledge after inquiry, under any other agreement or instrument to which the Authority or its property is bound, or result in the creation or imposition of any “security interest” (as defined in the Revolving Credit Agreement) on any asset of the Authority except for the pledge contemplated by the Revolving Credit Agreement.

3. The Note does not constitute an obligation, debt or liability of the State of New York, and the Authority has no power of taxation or power to pledge the credit of the State of New York.

4. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, (a) questioning the creation, organization or existence of the Authority or the validity of the Revolving Credit Agreement, the Existing Resolutions or the Note or any of the bonds or notes referred to in the Revolving Credit Agreement or the Existing Resolutions or (b) that have a reasonable likelihood of being adversely determined and, if adversely determined, would otherwise have a Material Adverse Effect (as defined in the
Revolving Credit Agreement) or material adverse effect upon the rights available to the Bank under
the Revolving Credit Agreement[, except as may be described in Appendix B hereto].

5. The Authority (or the State of New York for the benefit of the Authority) has good
and legal title to each of the fixed properties and assets of the Authority. As of the date first above
written, there are no liens or encumbrances on any properties of the Authority the foreclosure of
which would have a Material Adverse Effect, except as described in the Revolving Credit
Agreement. As of the date first above written, there are no liens or encumbrances on the revenues
of the Authority other than the pledge effected by and pursuant to the Revolving Credit Agreement
and the pledges effected by and pursuant to the Existing Resolutions.

I am admitted to the bar of the State of New York. I express no opinion as to the laws of
any jurisdiction other than the laws of the State of New York, and my opinion is limited to and
applies only insofar as such laws may be concerned.

This opinion is limited to the matters stated herein and no opinion is implied or may be
inferred beyond the matters expressly stated herein.

This letter is furnished by the Authority solely for your benefit in connection with the
provisions of the Revolving Credit Agreement and may not be relied upon by any other person,
without the Authority’s express written consent.

The terms used in this opinion have the meanings ascribed to such terms in the Revolving
Credit Agreement.

_______________________________________
Justin E. Driscoll
General Counsel
APPENDIX B
TO
EXHIBIT C-1

[To be updated]
JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

In connection with the execution and delivery of the Amended and Restated Revolving Credit Agreement dated as of April 1, 2022 (the “Revolving Credit Agreement”), between the Power Authority of the State of New York (the “Authority”) and JPMorgan Chase Bank, National Association, we have examined an executed copy of the Revolving Credit Agreement.

We have assumed but have not independently verified that the signatures on the Revolving Credit Agreement were genuine. We have further assumed for purposes of the opinions expressed below that the Revolving Credit Agreement has been duly authorized, executed and delivered by each party thereto, other than the Authority, and that such Revolving Credit Agreement is a valid and binding obligation of, and enforceable against, each party thereto, other than the Authority.

Based on the foregoing, we are of the opinion that:

1. The Revolving Credit Agreement has been duly authorized, executed and delivered by the Authority, is in full force and effect, creates the valid pledge described in Section 10 of the Revolving Credit Agreement, is a legal, valid and binding obligation of the Authority, and is enforceable against the Authority in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and no other authorization for the Revolving Credit Agreement is required.

2. The promissory note (the “Note”) issued on the date hereof pursuant to the Revolving Credit Agreement has been duly authorized, executed and delivered by the Authority and issued in accordance with law, including the Act, and in accordance with the Revolving Credit Agreement. The Note is a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms and the terms of the Revolving Credit Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and the Note will be entitled to the benefits of the Revolving Credit Agreement and of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, and constitute Subordinated Indebtedness under the 1998 Resolution.

3. The execution and delivery by the Authority of the Revolving Credit Agreement and the issuance on the date hereof of the Note pursuant to the Revolving Credit Agreement do not and will not violate any applicable Federal or New York law or regulation in effect on the date hereof.
4. No registration with, consent of, or approval by any government officer, agency or commission is necessary for the making and performance of the Revolving Credit Agreement and the issuance and payment of the Note other than the approval of the Comptroller of the State of New York, which approval has been obtained and, to our knowledge after inquiry, is in full force and effect.

No attorney-client relationship has existed between the Bank and our firm in connection with the foregoing matters, and no such relationship shall exist by virtue of this letter.

This letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This letter is issued as of the date hereof, and we assume no obligation to update, revise or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any other reason whatsoever.

The terms used in this opinion have the meanings ascribed to such terms in the Revolving Credit Agreement.

Very truly yours,
EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

AGREEMENT dated as of __________, 201_ among [ASSIGNOR] (the “Assignor”), [ASSIGNEE] (the “Assignee”), POWER AUTHORITY OF THE STATE OF NEW YORK (the “Authority”).

WITNESSETH

WHEREAS, this Assignment and Assumption Agreement (the “Agreement”) relates to the Power Authority of the State of New York Amended and Restated Revolving Credit Agreement dated as of April 1, 2022, among the Authority and the Assignor (as amended, restated, supplemented or otherwise modified from time to time, the “Revolving Credit Agreement”);

WHEREAS, as provided under the Revolving Credit Agreement, the Assignor has a Commitment to make Loans to the Authority in an aggregate principal amount at any time outstanding not to exceed $_________; and

WHEREAS, Loans made to the Authority by the Assignor under the Revolving Credit Agreement in the aggregate principal amount of $_________ are outstanding at the date hereof; and

WHEREAS, the Assignor proposes to assign to the Assignee all of the rights of the Assignor under the Revolving Credit Agreement in respect of a portion of its Commitment thereunder in an amount equal to $________ (the “Assigned Amount”), together with a corresponding portion of its outstanding Loans, and the Assignee proposes to accept assignment of such rights and assume the corresponding obligations from the Assignor on such terms;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Revolving Credit Agreement.

Section 2. Assignment. The Assignor hereby assigns and sells to the Assignee all of the rights of the Assignor under the Revolving Credit Agreement to the extent of the Assigned Amount, and the Assignee hereby accepts such assignment from the Assignor and assumes all of the obligations of the Assignor under the Revolving Credit Agreement to the extent of the Assigned Amount, including the purchase from the Assignor of the corresponding portion of the principal amount of the Loans made by the Assignor outstanding at the date hereof. Upon the execution and delivery hereof by the Assignor, the Assignee and the Authority and the payment of the amounts specified in Section 3 required to be paid on the date hereof and the payment of the amounts specified in Section 15.6(c) of the Revolving Credit Agreement (i) the Assignee shall, as of the date hereof, succeed to the rights and be obligated to perform the obligations of the Bank under the Revolving Credit Agreement with a Commitment in an amount equal to the Assigned Amount,
and (ii) the Commitment of the Assignor shall, as of the date hereof, be reduced by a like amount and the Assignor released from its obligations under the Revolving Credit Agreement to the extent such obligations have been assumed by the Assignee. The assignment provided for herein shall be without recourse to the Assignor.

Section 3. Payments. As consideration for the assignment and sale contemplated in Section 2 hereof, the Assignee shall pay to the Assignor on the date hereof in Federal funds an amount equal to $________. It is understood that commitment and/or facility fees accrued to the date hereof are for the account of the Assignor and such fees accruing from and including the date hereof are for the account of the Assignee. Each of the Assignor and the Assignee hereby agrees that if it receives any amount under the Revolving Credit Agreement that is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party’s interest therein and shall promptly pay the same to such other party.

Section 4. Consent of the Authority. This Agreement is conditioned upon the consent of the Authority pursuant to Section 15.6 of the Revolving Credit Agreement. The execution of this Agreement by the Authority is evidence of this consent. Pursuant to Section 15.6 of the Revolving Credit Agreement, the Authority agrees to execute and deliver a Note payable to the order of the Assignee to evidence the assignment and assumption provided for herein.

Section 5. Non-Reliance on Assignor. The Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition, or statements of the Authority, or the validity and enforceability of the obligations of the Authority in respect of the Revolving Credit Agreement or the Note. The Assignee acknowledges that it has, independently and without reliance on the Assignor, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of the Authority.

Section 6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 7. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[ASSIGNOR]

By: ______________________________
Name: ____________________________
Title: ____________________________

[ASSIGNEE]

By: ______________________________
Name: ____________________________
Title: ____________________________

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________
Name: ____________________________
Title: ____________________________
AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

between

POWER AUTHORITY OF THE STATE OF NEW YORK

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

dated as of April 22[, 2022]
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EXHIBIT E NOTICE OF CONTINUATION/CONVERSION
This Amended and Restated Note Purchase Agreement (this “Agreement”) dated as of April 22, 2022, between the POWER AUTHORITY OF THE STATE OF NEW YORK (the “Authority”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, (together with its successors and assigns, the “Bank”).

PRELIMINARY STATEMENTS

WHEREAS, the Bank and the Authority have previously entered into the Note Purchase Agreement dated as of April 22, 2020 (the “Original Agreement”); and

WHEREAS, the Bank and the Authority desire to amend and restate the Original Agreement in its entirety;

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, the parties foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to amend and restate the Original Agreement, the Authority and the Bank hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS

As used herein:

“1933 Act” shall mean the Securities Act of 1933, as the same shall from time to time be supplemented or amended.

“Act” means the Power Authority Act of the State, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with
the Person specified.

“Alternate Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.50% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Rate is being used as an alternate rate of interest pursuant to Section 4.3 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 4.3(b) hereof), then the Alternate Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Rate as determined pursuant to the foregoing would be less than zero (0%), such rate shall be deemed to be zero (0%) for purposes of this Agreement.

“Alternate Rate Drawing” means a Drawing that bears interest at a rate based on the Alternate Rate.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Authority or its subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Factor” means 80%.

“Applicable Spread” means initially 175 basis points (1.75%), provided, however, that in the event of any change in any Rating by Moody’s or S&P, or by Fitch if Fitch is then providing a Rating, the Applicable Spread shall be the number of basis points associated with such new Rating as set forth in the following schedule: the rate per annum corresponding to the Level and to the Tax-Exempt Rate or the Taxable Rate, as applicable, specified in the applicable pricing matrix below associated with the Applicable Rating (as defined below) as specified below:

(i) For the period commencing on the Original Closing Date to but not including the Effective Date, the Applicable Spread shall be determined in accordance with the terms and provisions specified in the Original Agreement, as amended.

(ii) For the period beginning on Effective Date and at all times thereafter, each Applicable Spread for such period shall be determined in accordance with the pricing matrix set forth below:
<table>
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<th>LEVEL</th>
<th>MOODY’S RATING</th>
<th>S&amp;P RATING</th>
<th>FITCH RATING</th>
<th>TAX-EXEMPT APPLICABLE SPREAD</th>
<th>TAXABLE APPLICABLE SPREAD</th>
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</thead>
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<tr>
<td>Level 1</td>
<td>Aa2 or above</td>
<td>AA or above</td>
<td>AA or above</td>
<td>1.75%</td>
<td>0.65%</td>
</tr>
<tr>
<td>Level 2</td>
<td>Aa3</td>
<td>AA-</td>
<td>AA-</td>
<td>1.85%</td>
<td>0.75%</td>
</tr>
<tr>
<td>Level 3</td>
<td>A1</td>
<td>A+</td>
<td>A+</td>
<td>0.85%</td>
<td>1.95%</td>
</tr>
<tr>
<td>Level 4</td>
<td>A2</td>
<td>A</td>
<td>A</td>
<td>2.10%</td>
<td>1.00%</td>
</tr>
<tr>
<td>Level 5</td>
<td>A3</td>
<td>A-</td>
<td>A-</td>
<td>2.15%</td>
<td>1.05%</td>
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<tr>
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<td>BBB+</td>
<td>BBB+</td>
<td>2.35%</td>
<td>1.25%</td>
</tr>
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<td>Baa2</td>
<td>BBB</td>
<td>BBB</td>
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The term “Applicable Rating” shall mean, with respect to any Rating Agency (which such Rating Agency assigns a long-term unenhanced credit rating to the Senior Debt at the request of the Authority), and at any given time, the lowest long-term unenhanced credit rating assigned by such Rating Agency to the Authority’s Senior Debt (without giving effect to any bond insurance policy or other credit enhancement securing any such Senior Debt). The in the event of a split in the Applicable Ratings, each Applicable Spread shall be based upon the Level in which the lowest Applicable Rating appears (for the avoidance of doubt, Level 8 is the lowest Level, and Level 1 is the highest Level for purposes of the above pricing matrix). Any change in the either Applicable Spread resulting from a change in an Applicable Rating shall be and become effective as of and on the date of the public announcement of the change in such Applicable Rating. References to the ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the applicable rating in connection with the adoption of a “global” rating scale, the rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Authority acknowledges that as of the of the Effective Date, each Applicable Spread is that specified above for Level 1 of paragraph (iii) above. Anything herein to the contrary notwithstanding, in the event that an Applicable Rating is suspended, withdrawn or otherwise unavailable from any Rating Agency for credit related reasons (and, for the avoidance of doubt, not as a result of the Authority withdrawing or terminating any such rating from any such Rating Agency) or reduced below “BBB-” (or its equivalent) by S&P or “Baa3” (or its equivalent) by Moody’s, or “BBB-” (or its equivalent) by Fitch or upon the occurrence and during the continuance of an Event of Default under the Credit Agreement, the applicable interest rate on the Direct Purchase Notes (and all Drawings thereunder) shall increase automatically to the Default Rate.

“Approved Fund” means any Fund that is administered or managed by (a) the Bank, (b) an
Affiliate of the Bank or (c) an entity or an Affiliate of an entity that administers or manages the Bank.

“Assignee” has the meaning set forth in Section 15.6 hereof.

“Authorized Officer” means the Authority’s Chairman, Vice Chairman, President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, Treasurer, and Deputy Treasurer.

“Available Commitment” means the Commitment from time to time in effect, as such amount is adjusted from time to time as follows: (a) downward in an amount equal to (i) the principal amount of each Drawing, (ii) the principal amount of each “Loan” (as defined in the JPM Revolving Credit Agreement) made to the Authority pursuant to the JPM Revolving Credit Agreement, and (iii) the principal amount of each Commercial Paper Note at any time issued and outstanding, (iv) the undrawn amount of each Letter of Credit issued by the Bank and (v) each LC Disbursement made by the Bank that have not yet been reimbursed; and (b) so long as this Agreement has not terminated, upward in an amount equal to (i) the principal amount of each Drawing that is repaid, (ii) the principal amount of each “Loan” that is repaid pursuant to the terms of the JPM Revolving Credit Agreement (as defined in the JPM Revolving Credit Agreement) and (iii) the principal amount of each Commercial Paper Note which is paid at maturity, (iv) the undrawn amount of each expired Letter of Credit issued by the Bank and (v) each LC Disbursement made by the Bank that has been reimbursed; provided, that, after giving effect to any such adjustment the Available Commitment shall never exceed the Commitment from time to time in effect. Any adjustments pursuant to clause (a) or (b) above shall occur simultaneously with the event requiring such adjustment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 3.14.

“Bank Transferee” has the meaning set forth in Section 15.6 hereof.


“Base Rate” means, for any day, a rate per annum equal to the highest of (i) the sum of 1.5% and the Prime Rate for such day, (ii) the sum of 2.0% and the Federal Funds Rate for such day and (iii) 7.5%.
“Benchmark Transition Event” means, initially, with respect to any (i) RFR Drawing, the Daily Simple SOFR or (ii) Term Benchmark Drawing, the Term SOFR Rate; provided that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 3.12.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Bank for the applicable Benchmark Replacement Date:

1. the Adjusted Daily Simple SOFR;

2. the sum of: (a) the alternate benchmark rate that has been selected by the Bank as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Drawing or RFR Drawing, any technical, administrative or operational changes (including changes to the definition of “Alternate Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,”
timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to the LIBOR Index, such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the LIBO Screen Rate published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide the LIBO Screen Rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate, any Available Tenor of such Benchmark (or such component thereof):
(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the LIBO Screen Rate published component used in the calculation thereof), the U.S. Federal Reserve System Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Screen Rate such Benchmark (or such component), in each case, which states that the administrator of the LIBO Screen Rate such Benchmark (or such component) has ceased or will cease to provide the LIBO Screen Rate all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the LIBO Screen Rate published component used in the calculation thereof) announcing that the LIBO Screen Rate is no longer all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder in accordance with Section 3.12 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder in accordance with Section 3.12.

“Borrowing” means a borrowing consisting of Drawings made under the Direct Purchase Notes on the same day by the Bank.

“Business Day” means a day other than a Saturday, Sunday or banking holiday in the State of New York.

“Change in Law” means the occurrence, after the Effective Original Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection
therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by
the Bank for International Settlements, the Basel Committee on Banking Supervision (or any
successor or similar authority) or the United States of America or foreign regulatory authorities, in
each case relating to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of
the date enacted, adopted or issued.

“CME Term SOFR Administrator” means CME Group Benchmark Administration
Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR)
(or a successor administrator).

“Code” means the Internal Revenue Code of 1986, as amended, and when reference is
made to a particular section thereof, the applicable Treasury Regulations from time to time
promulgated or proposed thereunder.

“Commercial Paper Notes” means those notes issued pursuant to the Commercial Paper
Note Resolution designated as “Series 4 Notes (Tax-Exempt)” and “Series 3 Notes (Taxable) has
the meaning set forth in the JPM Revolving Credit Agreement.

“Commercial Paper Note Resolution” means the resolution adopted by the Authority on
June 28, 1994, entitled “Resolution Authorizing Commercial Paper Notes”, as amended and
restated by the resolution adopted by the Authority on November 25, 1997, as amended and
restated in its entirety by the resolution adopted by the Authority on March 30, 2021, and as
subsequently amended and supplemented.

“Commitment” means an amount equal to the commitment of the Bank to purchase the
Direct Purchase Notes and to make Drawings under the Direct Purchase Notes and hereunder and
to issue Letters of Credit pursuant to Section 3.7 hereof, as such amount may be terminated and/or
reduced pursuant to Section 3.8, Sections 3.9, 3.14(b) or 12 hereof. The Authority and the Bank
agree that as of the Effective Date the Commitment of the Bank is in an amount equal to
$250,000,000.

“Commitment Period” means the period from the Original Closing Date through the
Termination Date.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a
tenor (including overnight) or an interest payment period having approximately the same length
(disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal
SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government
Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities
Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government
Securities Business Day, the U.S. Government Securities Business Day immediately preceding
such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the
SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR
shall be effective from and including the effective date of such change in SOFR without notice to
“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any condition or event that constitutes an Event of Default or that, with the giving of notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” means, for any day, a rate of interest per annum equal to (i) from and including the date such Event of Default occurs to and including the next succeeding Interest Payment Date, the sum of the applicable Tax-Exempt Rate and/or Taxable Rate and three percent (3.00%) and (ii) thereafter, the sum of the Base Rate in effect on such day plus three percent (3.00%); provided that, subject to Section 3.8 hereof, at no time shall the Default Rate exceed the Maximum Rate.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Authority files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when a Holder or any former Holder notifies the Authority that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Authority of such notification from such Holder or such former Holder, as applicable, the Authority shall deliver to such Holder or such former Holder, as applicable, a ruling or determination letter issued to or on behalf of the Authority by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Authority shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Authority, or upon any review or audit of the Authority or upon any other ground whatsoever, an Event of
Taxability shall have occurred; or

(iv) on the date when the Authority shall receive notice from a Holder, a Holder representative, on behalf of the Bank, or any former Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or such former Holder the interest on the Tax-Exempt Direct Purchase Note (and Tax-Exempt Drawings thereunder) due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Authority has been afforded the reasonable opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from a Holder, a Holder representative, on behalf of the Bank, or former Holder, the Authority shall promptly reimburse, such Holder or former Holder for any payments, including any taxes, interest, penalties or other charges, such Holder (or former Holder) shall be obligated to make as a result of the Determination of Taxability.

“Direct Purchase Notes” means the Tax-Exempt Note and the Taxable Note.

“Dollars”, “dollars” or “$” refers to lawful money of the United States of America.

“Drawing” means, with respect to each Direct Purchase Note, each installment of principal advanced by the Bank with respect to such Direct Purchase Note pursuant to the terms hereof, each Tax-Exempt Drawing and Taxable Drawing is sometimes referred to herein as a “Drawing.

“Drawing Date” shall mean each date on which a Drawing occurs.

“Effective Date” means April 22[ ], 2020, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Section 7.1 hereof.

“Environmental Laws” means any applicable federal, state and local environmental, health and safety statutes and regulations, including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 69901 et seq.

“Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Event of Taxability” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Authority, or the failure to take any action by the Authority, or the making by the Authority of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale, making or delivery of the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing) which has the effect of causing interest paid or payable on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing to become includable, in whole or in part, in the gross income of a Holder or any former Holder for federal income tax purposes or
(ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural Law, in either case, which has the effect of causing interest paid or payable on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing to become includable, in whole or in part, in the gross income of such Holder or such former Holder for federal income tax purposes with respect to the Tax-Exempt Direct Purchase Note or such Tax-Exempt Drawing.

“Excess Interest Amount” has the meaning set forth in Section 3.8 hereof.

“Existing Resolutions” means the 1998 Resolution, the Subordinate Resolution, the 2011 Revolving Credit Agreement Resolution, the 2012 Subordinate Notes Resolution, the 2017 Subordinate Notes Resolution, the 2019 Revolving Credit Agreement Resolution, the Note Purchase Agreement Resolution, the Commercial Paper Note Resolution and the Extendible Municipal Commercial Paper Note Resolution.

“Existing Termination Date” has the meaning set forth in Section 4.3 hereof.


“Federal Funds Rate” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depositary institutions, as determined in such manner as the Federal Reserve Bank of New York shall be set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the effective federal funds effective rate. Notwithstanding anything herein to the contrary, provided that if the Federal Funds Rate as so determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%) for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Letter” means the Second Amended and Restated Fee Letter dated April 22, 2022, between the Authority and the Bank, as such agreement may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.


“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or
otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR shall be 0.00%.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“hereunder”, “hereby”, “herein”, “hereto”, “hereof” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective work appears.

“Holder” means the Bank and each Bank Transferee or Non-Bank Transferee pursuant to Section 15.6 hereof so long as such Bank Transferee or Non-Bank Transferee is an owner of an interest in either Direct Purchase Note.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (b) all Guarantees by such Person of Indebtedness of others for which defenses to payment cannot be raised, (c) all capital lease obligations of such Person that have been or should be, in accordance with GAAP, recorded as capital leases, (d) all obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided, however, that “Indebtedness” shall not include indebtedness related to Separately Financed Projects.

“Interest Payment Date” means, (a) with respect to any Alternate Rate Drawing and any RFR Drawing, (i) each date that is on the numerically corresponding day in each calendar month
that is one month after the borrowing of such Borrowing (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Termination Date and (b) with respect to any Term Benchmark Drawing, the last day of each Interest Period applicable to such Drawing and the Termination Date; provided, however, that if any Term Benchmark Drawing and, in the case of a Term Benchmark Drawing with an Interest Period for a Drawing exceeds of more than three (3) months, the respective dates that fall every duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3)-months after the beginning of such Interest Period shall also be Interest Payment Dates’ duration after the first day of such Interest Period, and the Termination Date.

“Interest Period” means, as to each with respect to any Term Benchmark Drawing, the period commencing on the date of such Term Benchmark Drawing is made, converted to or continued and ending on the date one, three or six months thereafter, as selected by the Authority in its Request for Drawing; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion of any Drawing and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

- numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Term Benchmark Drawing or Commitment), as the Authority may elect; provided, that (b) if any Interest Period would otherwise expire on a day that is not other than a Business Day, such Interest Period shall expire be extended to the next succeeding Business Day; provided, that if any Interest Period with respect to a Drawing would otherwise expire on a day that is not a unless such next succeeding Business Day but is a day of which no further Business Day occurs in such month, case such Interest Period shall expire end on the immediately next preceding Business Day;

(e) any Interest Period with respect to a Drawing that begins commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant last calendar month at the end of such Interest Period; and

(d) no Interest Period shall extend beyond the Stated Expiration Date in effect on the related Drawing Date for such tenor that has been removed from this definition pursuant to Section 3.14(e) shall be available for specification in such Request for Drawing or Notice of Continuation/Conversion. For purposes hereof, the date of a Term Benchmark Drawing initially shall be the date on which such Term Benchmark Drawing is made and thereafter shall be the effective date of the most recent continuation or conversion of such Term Benchmark Drawing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBOR Index) determined by the Bank
(which determination shall be conclusive and binding absent manifest error) to be equal to the rate
that results from interpolating on a linear basis between: (a) the LIBOR Index for the longest
period for which the LIBOR Index is available) that is shorter than the Impacted Interest Period;
and (b) the LIBOR Index for the shortest period (for which that LIBOR Index is available) that
exceeds the Impacted Interest Period, in each case, at such time; provided that, if any Interpolated
Rate shall be less than zero, such rate shall be deemed to be zero for the purposes hereof.

“Investor Letter” has the meaning set forth in Section 15.6 hereof.

“Issuance Date” shall mean each date on which a Letter of Credit is issued pursuant to
Section 3.7 hereof.

“JPM Revolving Credit Agreement” means the Revolving Credit Agreement dated as of
April 22, 2020, as amended and restated by the Amended and Restated Revolving
Credit Agreement dated as of April [___], 2022, each between the Authority and the Bank, related
to the Commercial Paper Notes, as amended, restated, supplemented or otherwise modified from
time to time in accordance with the terms thereof.

“Law” means any treaty or any federal, regional, state and local law, statute, rule,
ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or
decree of any court or other Governmental Authority.

“LC Disbursement” means a payment made by the Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all
outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements
that have not yet been reimbursed by or on behalf of the Authority at such time. For all purposes of
this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any
amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform
Customs and Practice for Documentary Credits, International Chamber of Commerce Publication
No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or
No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of
the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such
Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining
available to be paid, and the obligations of the Authority and the Bank shall remain in full force
and effect until the Bank shall have no further obligations to make any payments or disbursements
under any circumstances with respect to any Letter of Credit.

“Lending Office” means, with respect the office of the Bank specified on the signature
page hereof, or such other office of the Bank as the Bank may from time to time specify to the
Authority.

“LIBOR Index” means, for any Interest Period, the London interbank offered rate as
administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for U.S. Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page or screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion; in each case the “LIBO Screen Rate”) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period; provided that, if the LIBOR Index shall not be available at such time for such Interest Period (an “Impacted Interest Period”), then the LIBOR Index shall be the Interpolated Rate; and provided further that if the LIBOR Index shall be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“London Banking Day” means any day that is a day for trading by and between banks in U.S. Dollar deposits in the London interbank market. “Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Agreement” has the meaning assigned to it in Section 3.14(b).

“Letter of Credit Commitment” means the commitment of the Bank to issue Letters of Credit hereunder. The initial amount of the Bank’s Letter of Credit Commitment is $150,000,000. The Letter of Credit Commitment may be modified from time to time by agreement between the Bank and the Authority.

“Material Adverse Effect” means material adverse effect on the (i) business, assets, operations or financial condition of the Authority taken as a whole, or (ii) ability of the Authority to perform its obligations under this Agreement.

“Maximum Federal Corporate Tax Rate” means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations is generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank as of such day).

“Maximum Rate” has the meaning set forth in Section 3.8 hereof.

“Moody’s” means Moody’s Investors Service and its successors.

“1998 Resolution” means the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented in accordance with its terms; provided, however, that no amendment or modification to the definition of “Trust Estate,” “Parity Debt”, “Subordinated Contract Obligation” or “Subordinated Indebtedness” therein (including any defined term incorporated by reference in such definition) shall be effective for purposes of this Agreement or with respect to the Direct Purchase Notes unless made with the consent of the Bank.

“Non-Bank Transferee” has the meaning set forth in Section 15.6 hereof.
“Note Counsel” means Hawkins, Delafield and Wood LLP, or any other firm or firms selected by the Authority whose opinion concerning bond matters is nationally recognized.

“Note Purchase Agreement Resolution” means the resolution of the Authority adopted on March 31[______], 2020, authorizing the execution of this Agreement and the JPM Revolving Credit Agreement.

“Notice of Continuation/Conversion” means a notice in the form of Exhibit E attached hereto.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for purposes of this Agreement.

“Obligations” has the meaning set forth in the 1998 Resolution.

“Original Closing Date” means April 22, 2020.

“Other Indebtedness” of any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the indebtedness secured thereby has been assumed, (e) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (f) all contingent obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided that obligations issued in accordance with Section 203 of the 1998 Resolution to finance Separately Financed Projects shall not be considered to be Other Indebtedness.

“Other Taxes” has the meaning set forth in Section 9.1(b) hereof.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the
“NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent” means, with respect to the Bank, any Person controlling the Bank.

“Parity Debt” has the meaning set forth in the 1998 Resolution.

“Participant” has the meaning set forth in Section 15.6 hereof.

“Paying Agent/Registrar” means the firm serving from time to time as paying agent/registrar for the Direct Purchase Notes pursuant to the Paying Agent/Registrar Agreement and any successor thereto. As of the Effective Date, the Paying Agent/Registrar is U.S. Bank National Association.

“Paying Agent/Registrar Agreement” means that certain Paying Agent and Registrar Agreement dated as of the date hereof, between the Authority and the Paying Agent/Registrar, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof, and any issuing and paying agent agreement entered into by the Authority in substitution therefor in accordance with the terms hereof and thereof.

“Person” means any individual, partnership, joint venture, firm, corporation or governmental entity.

“Prime Rate” means the rate of interest announced publicly by the Bank at its principal office in New York, New York, from time to time; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Rating Agencies” means Standard & Poor’s, Moody’s and Fitch.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Bank in its reasonable discretion.

“Reimbursement Obligations” means the obligations of the Authority to reimburse the Bank for all LC Disbursements.

“Request for Drawing” has the meaning set forth in Section 4.1 hereof.

“Relevant Governmental Body” means, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Drawing, the Adjusted Daily Simple SOFR, as
“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.


“RFR Drawing” means a Drawing that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Senior Debt” means the Revenue Bonds and any other Indebtedness of the Authority that has a priority in payment from the Trust Estate over the Note issued under the Revolving Credit Agreement and the Direct Purchase Notes; provided, that if no such senior obligations are outstanding, “Senior Debt” means any obligations of the Authority that are on a parity in payment from the Trust Estate with the Note issued under the Revolving Credit Agreement and the Direct Purchase Notes.

“Separately Financed Project” has the meaning set forth in the 1998 Resolution.

“Series 4 Notes” has the meaning given such term in Section 2.6(b).
“Series 2003A Revenue Bonds” means the Series 2003A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.


“Series 2011A Revenue Bonds” means the Series 2011A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.


“State” means the State of New York.

“Stated Expiration Date” means April 21, 2023, or such later date as may be agreed to between the parties pursuant to Section 4.3.

“Subordinated Contract Obligation” has the meaning set forth in the 1998 Resolution.

“Subordinated Indebtedness” has the meaning set forth in the 1998 Resolution.

“Subordinate Resolution” means the General Subordinate Resolution authorizing Subordinate Revenue Bonds adopted by the Authority on July 25, 2000, and as subsequently amended and supplemented and to the extent in effect.

“Tax-Exempt Drawing” means, with respect to the Tax-Exempt Direct Purchase Note, each installment of principal advanced by the Bank with respect to the Tax-Exempt Direct Purchase Note pursuant to the terms hereof.

“Tax-Exempt Note” means the Power Authority of the State of New York Tax-Exempt Direct Purchase Note, Series 202022 TE, in substantially the form attached hereto as Exhibit A-1, including all extensions, renewals and amendments thereto and restatements thereof.
“Tax-Exempt Rate” means a per annum rate of interest equal to the sum of (A) the Tax-Exempt Applicable Spread (as set forth in the definition of “Applicable Spread” herein) plus (B) the product of (x) the Applicable Factor multiplied by (y) the LIBOR Index Adjusted Term SOFR Rate for the applicable Interest Period. The Taxable-Exempt Rate shall be rounded upwards to the fourth decimal place.

“Taxable Date” means the date on which interest on the Tax-Exempt Direct Purchase Note or any Tax-Exempt Drawing is first includable in gross income of a Holder (including, without limitation, any previous Holder) as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“Taxable Drawing” means, with respect to the Taxable Direct Purchase Note, each installment of principal advanced by the Bank with respect to the Taxable Direct Purchase Note pursuant to the terms hereof.

“Taxable Note” means the Power Authority of the State of New York Taxable Direct Purchase Note, Series 20202022 T, in substantially the form attached hereto as Exhibit A-2, including all extensions, renewals and amendments thereto and restatements thereof.

“Taxable Period” has the meaning set forth in Section 3.11 hereof.

“Taxable Rate” means a per annum rate of interest equal to the sum of (A) the Taxable Applicable Spread (as set forth in the definition of “Applicable Spread” herein) plus (B) the LIBOR Index Adjusted Term SOFR Rate for the applicable Interest Period. The Taxable Rate shall be rounded upwards to the fourth decimal place.

“Taxes” has the meaning set forth in Section 9.1(a) hereof.

“Term Benchmark” when used in reference to any Term Benchmark Drawing or Borrowing, refers to whether such Term Benchmark Drawing, or the Term Benchmark Drawings comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Drawing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), with respect to any Term Benchmark Drawing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Bank as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on
such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“Termination Date” means (a) the Stated Expiration Date or (b) such earlier date on which the Commitment shall be terminated in full as permitted herein.

“Trust Estate” has the meaning set forth in the 1998 Resolution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“2012 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 9, 2012 entitled “Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable)”, as amended in accordance with its terms.

“2017 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 7, 2016 entitled “Resolution Authorizing Subordinated Notes, Series 2016” (Federally Taxable), as amended in accordance with its terms.

“2019 Revolving Credit Agreement” means the 2019 Revolving Credit Agreement dated as of January 16, 2019, among the Authority, the banks listed on the signature pages thereto and JPMorgan Chase Bank, National Association, as Administrative Agent, as amended in accordance with its terms.

“2019 Revolving Credit Agreement Resolution” means the resolution of the Authority adopted on December 11, 2018, authorizing the execution of this Agreement.

SECTION 2. REPRESENTATIONS

The Authority represents, covenants and warrants that:

Section 2.1. Existence and Power. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State, created in 1931 by and validly existing under the Act. The Authority has the power to execute and deliver this Agreement
Section 2.2. Authority, etc. The execution, delivery and performance by the Authority of this Agreement and the Direct Purchase Notes have been duly authorized by all necessary action of the Authority, including the Note Purchase Agreement Resolution. The Authority has heretofore delivered to the Bank a copy of the Note Purchase Agreement Resolution, certified as true and correct by the Corporate Secretary of the Authority, and the Note Purchase Agreement Resolution is in full force and effect. Assuming that this Agreement constitutes a legal, valid, and binding obligation of, and is enforceable against, the Bank, this Agreement constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, and the Direct Purchase Notes have been (or will be, as applicable) duly executed and delivered by the Authority and will constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms and the terms of the Note Purchase Agreement Resolution and this Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally, and shall be entitled to the benefits of the Note Purchase Agreement Resolution, of this Agreement and of the Act, subject to the pledge created by the 1998 Resolution, including Parity Debt as described therein, which includes, without limitation, debt issued pursuant to the Note Purchase Agreement Resolution and such liens as are permitted by Section 8.3 hereof. The making and performance by the Authority of this Agreement and the Direct Purchase Notes will not violate any provision of law or result in a breach of or constitute a default under or require any consent under any agreement or instrument to which the Authority is a party or by which the Authority or its property may be bound (including, without limitation, the Authority’s organizational documents and the JPM Revolving Credit Agreement) or affected or result in the creation or imposition of any “security interest” (as defined in Section 8.3 hereof) on any asset of the Authority except for the pledge contemplated hereby. This Agreement and the Direct Purchase Notes, collectively, constitute a revolving credit facility for purposes of Section 11 of the Revolving Credit Agreement Resolution.

Section 2.3. Financial Condition. (a) The financial statements of the Authority for the year ended December 31, 2019, with the opinion thereon of independent certified public accountants, copies of which have been delivered to the Bank, are complete and correct in all material respects and fairly present in all material respects the financial condition of the Authority as at the dates of said financial statements and the results of its operations for the periods ending on said dates. The Authority has no contingent obligations or liabilities, liabilities for taxes or unusual forward or long-term commitments that are material in amount, except as disclosed by or reserved against in said financial statements as of December 31, 2019, which would have a Material Adverse Effect.

(b) Since December 31, 2019, and as of the date hereof, there has been no material adverse change in the financial condition or in the results of operations of the Authority from that set forth in said financial statements as of and for the period ended December 31, 2019, that would have a Material Adverse Effect.

Section 2.4. Litigation. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, questioning the creation, organization
or existence of the Authority or the validity of this Agreement or the Direct Purchase Notes or any of the bonds or notes herein referred to or that have a reasonable likelihood of adverse determination and if adversely determined, would otherwise have a Material Adverse Effect or material adverse effect on the rights available to the Bank hereunder, except as may be referenced in an opinion referred to in Section 7.1(d) hereof.

Section 2.5. Government Approvals. No governmental approvals, licenses, authorizations, consents, filings or registrations (other than the approval of the Comptroller of the State of New York pursuant to the Act, which approval has been obtained and a copy thereof furnished to the Bank) are required for the making and performance by the Authority of this Agreement and the issuance of the Direct Purchase Notes.

Section 2.6. Obligations for Borrowed Money.

(a) Revenue Bonds. Pursuant to the 1998 Resolution, the Authority has issued and is obligated to pay and there were outstanding on the date hereof, an aggregate of not more than $490,440,000 in principal amount of Revenue Bonds of the Authority. The Revenue Bonds constitute Obligations.

(b) Commercial Paper Notes. Pursuant to the Commercial Paper Note Resolution, the Authority is currently authorized to issue its (i) Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $1,200,000,000, with not more than $612,938,000 of $1,420,000,000. On [_______], 2022, no such Commercial Paper Notes outstanding on the date hereof; consisting of commercial paper notes designated as “Series 3B Notes” and (ii) commercial paper notes designated as “Series 4 Notes,” in an aggregate principal amount were outstanding at any time not to exceed $220,000,000, with none of such Series 4 Notes outstanding on the date hereof. The Commercial Paper Notes and the Series 4 Notes are Subordinated Indebtedness. This Agreement shall constitute a Subordinated Contract Obligation. The obligations of the Authority to make payments under this Agreement shall constitute a Subordinated Contract Obligation within the meaning of the General Resolution and shall be deemed to be part of the Direct Purchase Notes.

(c) Extendible Municipal Commercial Paper Notes. Pursuant to the Extendible Municipal Commercial Paper Note Resolution, the Authority is currently authorized to issue its Extendible Municipal Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $200,000,000, with $5,000,000 of such Extendible Municipal Commercial Paper Notes outstanding on the date hereof. The Extendible Municipal Commercial Paper Notes constitute Subordinated Indebtedness.

(d) Subordinated Notes, Series 2012 (Federally Taxable). Pursuant to the 2012 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2012 in the principal amount of $25,160,000 on December 15, 2012, of which $19,575,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2012 are Subordinated Indebtedness.

(e) Subordinated Notes, Series 2017 (Federally Taxable). Pursuant to the 2017
Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2017 in the principal amount of $25,200,000 on February 21, 2017, of which $23,860,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2017 are Subordinated Indebtedness.

(f) Other. No bonds, notes or other obligations for money borrowed by the Authority other than those described in this Section 2.6 are outstanding on the date hereof, except for (i) obligations for which moneys and/or obligations of the United States have been set aside or placed in trust for the payment or redemption thereof and which have thereby been fully defeased in accordance with their terms or (ii) obligations incurred to finance Separately Financed Projects as defined in the 1998 Resolution.

Section 2.7. Title and Liens. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority except for defects which would not reasonably be expected to have a Material Adverse Effect. There are no liens or encumbrances (a) on any properties of the Authority, the foreclosure of which would have a Material Adverse Effect, except as described in this Agreement; or (b) on the revenues of the Authority other than the pledge effected hereby and by and pursuant to the Existing Resolutions.

Section 2.8. Security for the Direct Purchase Notes and Drawings. Each Direct Purchase Note (and all Drawings thereunder) is an obligation of the Authority payable from the Trust Estate and is Subordinated Indebtedness. Each Direct Purchase Note (and all Drawings thereunder) is secured by pledges of the Trust Estate as provided in Section 10 hereof. As of the date hereof, each Direct Purchase Note (and all Drawings thereunder) is subordinate only to (i) the debt secured by the pledge created by the 1998 Resolution, including Parity Debt as described therein, and (ii) debt permitted by Section 8.3 hereof; the lien securing the Direct Purchase Notes (and all Drawings thereunder) is on a parity with the pledges made to holders of obligations issued under the Commercial Paper Note Resolution, Extendible Municipal Commercial Paper Note Resolution, the Subordinate Resolution, the 2012 Subordinated Notes Resolution, the 2017 Subordinated Notes Resolution and any subsequent resolutions of the Authority (other than those permitted under Section 8.3 hereof) authorizing the issuance of debt.

Section 2.9. ERISA. Any employee pension benefit plan or a plan qualifying under Section 401 (a) of the Internal Revenue Code of 1986, as amended, maintained by the Authority is currently exempt from the requirements of Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

Section 2.10. Compliance with Laws and Agreements. The Authority (i) is in compliance with all laws, ordinances, governmental rules and regulations the noncompliance with which could reasonably be expected to result in a Material Adverse Effect, (ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, could reasonably be expected to result in a Material Adverse Effect and (iii) is in compliance with all indentures, agreements and other instruments binding upon its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Event of
Default has occurred and is continuing. Without limiting the generality of the foregoing, except as would not result or be reasonably expected to result in a Material Adverse Effect: (a) each of the properties of the Authority and all operations at such properties are in compliance with all applicable Environmental Laws and (b) there is no violation of any Environmental Law with respect to such properties or the businesses operated by the Authority.

Section 2.11. Federal Power Act. The Authority is not subject to regulation under Section 204 of the Federal Power Act of 1935 in connection with the issuance of the Direct Purchase Notes under this Agreement.

Section 2.12. Sovereign Immunity. The Authority is not authorized to assert a defense based on sovereign or governmental immunity in any action or proceeding to enforce the obligations of the Authority hereunder or under either Direct Purchase Note (or any Drawing thereunder) and, to the extent permitted by law, specifically waives the right to claim any such defense.

Section 2.13. Margin Stock. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of either Direct Purchase Note or any Drawing will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any other manner which would involve a violation of any of the regulations of the Board of Governors of the Federal Reserve System. The Authority is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 2.14. Complete and Correct Information. All information, reports and other papers and data with respect to the Authority furnished to the Bank or their counsel by the Authority in connection with the negotiation of this Agreement were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects.

Section 2.15. Tax-Exempt Status. With respect to the Tax-Exempt Direct Purchase Note and the Tax-Exempt Drawings, the Authority has not taken any action or omitted to take any action which action or inaction would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 2.16. Incorporation by Reference. The representations and warranties made by the Authority in the Commercial Paper Note Resolution are hereby incorporated herein by reference and made for the benefit of the Bank.

Section 2.17. Anti-Corruption Laws and Sanctions. The Authority and, to its knowledge, its officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions except where such non-compliance would not result in a Material Adverse Effect. No Borrowing, use of proceeds or, to the knowledge of the Authority, other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions. The Authority is not a Sanctioned Person.
SECTION 3.  NOTE PURCHASES.

Section 3.1. Purchase and Sale of Notes. (a) From the Effective Original Closing Date through the Termination Date, and upon and subject to the terms and conditions and on the basis of the representations, warranties and agreements contained in the Original Agreement and herein, the Bank hereby agreed to purchase the Direct Purchase Notes by making Drawings under the Direct Purchase Notes requested by Authority from time to time in an aggregate principal amount at any one time outstanding not to exceed the Commitment, and the Authority hereby agreed to sell and deliver to the Bank on the Effective Original Closing Date, the Direct Purchase Notes, each in an original maximum stated principal amount up to the Commitment, in accordance with and under the terms and conditions of the Note Purchase Agreement Resolution. Each Direct Purchase Note (and all Drawings thereunder) is authorized pursuant to the Act and the Note Purchase Agreement Resolution, and is to be issued only for the purposes authorized under the Note Purchase Agreement Resolution. Each Direct Purchase Note is issued under the Note Purchase Agreement Resolution and, pursuant to the Note Purchase Agreement Resolution, the principal and interest on the Direct Purchase Notes are payable from and secured by a lien on and pledge of the sources pledged under the terms of the Note Purchase Agreement Resolution and Section 10 hereof, including the Trust Estate. The outstanding principal amount of each Direct Purchase Note will be equal to 100% of the outstanding Drawings under such Direct Purchase Note. The aggregate principal amount of each Direct Purchase Note may be repaid and reborrowed pursuant to the terms hereof. The Direct Purchase Notes shall not be issued and Drawings shall not be made such that the principal amount of all Drawings under the Direct Purchase Notes shall exceed the Commitment; provided, however, that notwithstanding anything herein to the contrary, the Bank shall have no obligation to make a Drawing if the sum of such Drawing plus the aggregate principal amount of the outstanding Drawings plus the aggregate principal amount of Loans outstanding under the JPM Revolving Credit Agreement would exceed the Commitment then in effect. On any date, the aggregate principal amount of all Drawings made on such date shall not exceed the amount of the Available Commitment before giving effect to such Drawings. If the principal amount of all Drawings are paid in full on or before the Termination Date (i.e., there are no outstanding Drawings under such the Direct Purchase Notes) but the Direct Purchase Notes have not been redeemed, the Direct Purchase Notes will be deemed to not be retired and will be deemed to remain outstanding unless and until (i) on the Termination Date, no Drawings are outstanding or (ii) the Direct Purchase Notes are redeemed in full.

(b) Pursuant to and subject to the terms of this Agreement, each Drawing shall be made in an amount equal to the principal amount of such requested Drawing with no accrued interest and the Bank shall pay the principal amount of such Drawing to the Authority on the related Drawing Date upon satisfaction of the conditions precedent to such Drawing in Section 7.2 hereof.

(c) Notwithstanding anything herein to the contrary, in no event shall, at any time, the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes, plus (ii) the aggregate outstanding principal amount of all Loans as defined in the JPM Revolving Credit Agreement, plus (iii) the aggregate outstanding principal amount of all Drawings plus (iv) the aggregate LC Exposure exceed the Commitment from time to time in effect.

(d) The Direct Purchase Notes shall (i) be dated the Effective Date, (ii) be payable from
and secured by the Trust Estate in the manner described in Section 10 hereof, (iii) mature no event later than the Stated Expiration Date, with principal thereof and interest thereon payable as specified in this Agreement, and (iv) bear interest as set forth herein. Interest on the Direct Purchase Notes (and all Drawings thereunder) shall be calculated on the basis of a year of 360 days and actual days elapsed.

(e) At such date and time as shall have been mutually agreed upon by the Authority and the Bank, the certificates, opinions and other documents required by Section 7.1 below shall be executed and delivered (all of the foregoing actions are herein referred to collectively as the “Closing”). Assuming the Closing is completed in accordance with the provisions of this Agreement then, subject to the provisions of this Agreement and the conditions set forth in Section 7.2 hereof, the Bank shall make each Drawing under the Direct Purchase Note and pay the principal amount therefor specified in Section 3.1(b) hereof on each Drawing Date.

(f) Notwithstanding anything herein to the contrary, (i) the Bank shall maintain in accordance with its usual practices an account or accounts evidencing the indebtedness resulting from each Drawing under each Direct Purchase Note made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder and (ii) in any legal action or proceeding in respect of this Agreement or the Direct Purchase Notes, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded. The Bank’s accounts shall record the amount of each Drawing made under each Direct Purchase Note and the Interest Period applicable thereto.

(g) The Authority shall, without duplication, (i) make a principal payment on the related Direct Purchase Note on each date on which the Authority is required to make a principal payment on a Drawing in an amount equal to the principal payment due on such date and (ii) pay interest on the related Direct Purchase Note on each date on which the Authority is required to make an interest payment with to a Drawing in an amount equal to the interest payment due on such date. Since the Direct Purchase Notes evidence and secure the Authority’s obligations to repay the Drawings, the payment of the principal of and interest on the related Direct Purchase Note shall constitute payment of the principal of and interest on the related Drawing and the payment of the principal of and interest on the related Drawings shall constitute the payment of and principal and interest on the related Direct Purchase Note, and the failure to make any payment on any Drawing when due shall be a failure to make a payment on the related Direct Purchase Note when due and the failure to make any payment on the related Direct Purchase Note when due shall be a failure to make a payment on such Drawing when due.

Section 3.2. Interest Rate

(a) Subject to adjustment as set forth herein, (i) the Tax-Exempt Direct Purchase Note and all Tax-Exempt Term Benchmark Drawings thereunder shall bear interest at a rate per annum equal to the lesser of (A) the applicable Maximum Rate and (B) the Tax-Exempt Rate in effect for the applicable Interest Period and (ii) the Taxable Direct Purchase Note and all Taxable Term Benchmark Drawings thereunder shall bear interest at a rate per annum equal to the lesser of (A) the applicable Maximum Rate and (B) the Taxable Rate in effect for the applicable Interest Period.
A Term Benchmark Drawing may be continued in whole or in part for successive Interest Periods upon the Authority’s irrevocable request to the Bank in the form of Exhibit E hereto with blanks appropriately completed (each, a “Notice of Continuation”). The Bank must receive the Notice of Continuation/Conversion not later than 10:00 a.m. on the Business Day which is three (3) Business Days prior to the last day of the then current Interest Period. Upon the Bank’s timely receipt of a duly completed and executed Notice of Continuation/Conversion, the note described therein shall be continued as a Term Benchmark Drawing with the Interest Period specified therein, or, if no Interest Period is specified therein, then the applicable Term Benchmark Drawing shall be continued in the same Interest Period as applied to such Term Benchmark Drawing in the previous Interest Period.

(b) Any principal of, and to the extent permitted by applicable law, any interest on the Direct Purchase Notes and any Drawing and any other sum payable hereunder, which is not paid when due shall bear interest, from the date due and payable until paid, payable by the Authority on demand, at a rate per annum equal to the lesser of (i) the Default Rate and (ii) subject to Section 3.8 hereof, the Maximum Rate.

(c) Upon the occurrence of an Event of Default, the Direct Purchase Notes, the Drawings and all other Obligations payable hereunder shall bear interest, payable by the Authority on demand at a rate per annum equal to the lesser of (i) the Default Rate and (ii) subject to Section 3.8 hereof, the Maximum Rate.

(d) The Bank shall promptly notify the Authority and the Paying Agent/Registrar of the interest rate applicable to any Drawings upon determination of such interest rate; provided, however, that the failure by the Bank to provide notice of the applicable interest rate shall not relieve the Authority of its obligation to make payment of amounts as and when due hereunder. Each determination by the Bank of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

Section 3.3. Fees. The Authority hereby agrees to pay and perform its obligations provided for in the Fee Letter, including the payment of a commitment fee and all other fees and expenses and the other payments provided for therein in the amounts, at the times and on the dates set forth therein. The terms and provisions of the Fee Letter are incorporated herein by reference as if fully set forth herein. Any reference herein or in the Fee Letter to fees and/or other amounts or obligations payable hereunder shall include, without limitation, all fees and other amounts or obligations (including without limitation fees and expenses) payable pursuant to the Fee Letter, and any reference to this Agreement shall be deemed to include a reference to the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement between the Authority and the Bank and all obligations under the Fee Letter shall be construed as obligations hereunder.

Section 3.4. Capital or Liquidity Requirements Adjustment. If, due to a Change in Law, the Bank reasonably determines that it is required to increase the amount of capital or liquidity maintained by the Bank (or its Parent) based upon the existence of its Commitment to lend under this Agreement or based upon either Direct Purchase Note, the Bank shall promptly notify the Authority of an adjustment of its commitment fees payable hereunder or other payments required to be made hereunder that will, in the reasonable determination of the Bank, adequately
compensate the Bank (or its Parent) in light of such required increase in capital and/or liquidity, as applicable. In determining the amount of such adjustment, the Bank may use any reasonable allocation, averaging and attribution methods and may make reasonable assumptions regarding such matters as cost of capital, and any such determination made by the Bank shall, in the absence of manifest error, be conclusive and binding. The adjustment of the commitment fees or other payments pursuant to this Section 3.4 shall be applicable from the effective date of the change causing such adjustment or other payments. Such Bank shall notify the Authority of any such change promptly and in any event not more than 180 days after the occurrence thereof and, as soon as practicable thereafter, of the amount of the adjustment to the commitment fees or other payments resulting therefrom, which shall be set forth in a certificate delivered by the Bank to the Authority; provided, however, that notwithstanding any other provisions of this Section, the Authority shall have no liability for any such compensation to the extent incurred more than 180 days prior to the date such certificate is delivered to the Authority with respect thereto (any such date with respect to a certificate delivered under this Section or Section 3.5, a “Cut-Off Date”), except where such compensation applies retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after receipt thereof. It is expressly understood that each reference in this Section 3.4 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.4; provided that the amount of any payment required under this Section 3.4 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section 3.4 (a) for any required increase unless the Authority shall have received at least thirty (30) days’ prior notice from the Bank of the Change in Law giving rise to such required increase or (b) if the Authority shall prepay the Loans and Drawings, Direct Purchase Notes and Reimbursement Obligations in full and terminate the Commitment prior to the date on which any adjustment required to be paid pursuant to this Section 3.4 is due and payable.

Section 3.5. Increased Costs. If, due to a Change in Law, provided that the Bank making a claim under this Section 3.5 based on such requirement, in its reasonable discretion, determines that it is required to comply with such requirement, there shall be any increase in the cost to the Bank of committing to make drawings under either or both Direct Purchase Notes or issuing or maintaining any Letter of Credit, then the Authority shall from time to time pay to the Bank such additional amounts sufficient to compensate the Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Authority by the Bank, shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding any other provisions of this Section, the Authority shall have no liability for any such increased costs to the extent incurred prior to the Cut-Off Date, except where such increased costs apply retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after receipt thereof. It is expressly understood that each reference in this Section 3.5 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.5; provided that the amount of any payment required under this Section 3.5 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section 3.5 (a) for any increased costs incurred
unless the Authority shall have received at least thirty (30) days’ prior notice from the Bank of the Change in Law giving rise to such increased costs or (b) if the Authority shall prepay the Loans and Drawings, Direct Purchase Notes and Reimbursement Obligations in full and terminate the Commitment prior to the date on which any increased costs incurred pursuant to this Section 3.5 are due and payable.

Section 3.6. Use of Proceeds; Further Representations. (a) The proceeds of Drawings under the Direct Purchase Notes shall be used for the payment of any capital expenditures, operating expenses or any other lawful corporate purpose of the Authority.

(b) Each Borrowing hereunder by the Authority and issuance of a Letter of Credit shall be deemed to constitute (and shall constitute) a representation and warranty by the Authority as of the date such Borrowing or issuance, as applicable, is made only that:

(i) the proceeds of such Borrowing are being used solely and exclusively for the purposes set forth in Section 3.6(a);

(ii) no Event of Default has occurred and is continuing; and

(iii) the Authority is in compliance with all terms and conditions of the Direct Purchase Notes, the Commercial Paper Note Resolution, the 2019 Revolving Credit Agreement Resolution, the Note Purchase Agreement Resolution, the 1998 Resolution (as the same may have been duly supplemented from time to time), the Subordinate Resolution (as the same may have been duly supplemented from time to time and to the extent in effect) and any issuing and paying agency agreement relating to the Direct Purchase Notes.

The Authority will not request any Borrowing or the issuance of any Letter of Credit, and the Authority shall not use, and shall ensure that its directors, officers, employees and agents shall not knowingly use, the proceeds of any Borrowing or any LC Disbursement (A) in violation of any Anti-Corruption Laws or (B) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 3.7. Reserved Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Authority may request the Bank to issue Letters of Credit as the applicant thereof for the support of its obligations, in a form reasonably acceptable to the Bank, at any time and from time to time during the Commitment Period.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Authority shall, no less than three (3) Business Days in advance of the requested date of issuance, amendment or extension, telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Bank) to the Bank a letter of credit application, in each case, as required by the Bank and using the Bank’s standard form (each, a “Letter of Credit Agreement”) requesting the issuance of a Letter of Credit, or identifying the
Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the Authority may, at the sole discretion of the Bank, be required to enter into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Authority shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) (x) the aggregate undrawn amount of all outstanding Letters of Credit issued by the Bank at such time plus (y) the aggregate amount of all LC Disbursements made by the Bank that have not yet been reimbursed by or on behalf of the Authority at such time shall not exceed the Letter of Credit Commitment, (2) the LC Exposure shall not exceed the total Letter of Credit Commitment. The Authority may, at any time and from time to time, reduce the Letter of Credit Commitment with the consent of the Bank; provided that the Authority shall not reduce the Letter of Credit Commitment if, after giving effect of such reduction, the conditions set forth in clauses (i) and (ii) above shall not be satisfied.

The Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Bank from issuing such Letter of Credit, or any Law applicable to the Bank shall prohibit, or require that the Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that the Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, one year after such extension) and (ii) the date that is five Business Days prior to the Termination Date.

(d) Reimbursement. If the Bank shall make any LC Disbursement in respect of a Letter of Credit, the Authority shall reimburse such LC Disbursement by paying to the Bank an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the date that such LC Disbursement is made, if the Authority shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not
been received by the Authority prior to such time on such date, then not later than 12:00 noon, New York City time, on the Business Day immediately following the day that the Authority receives such notice, if such notice is not received prior to such time on the day of receipt.

(e)  **Obligations Absolute.** The Authority’s obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Authority’s obligations hereunder. The Bank shall have no liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Bank; provided that the foregoing shall not be construed to excuse the Bank from liability to the Authority to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Authority to the extent permitted by applicable law) suffered by the Authority that are caused by the Bank’s failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Bank (as finally determined by a court of competent jurisdiction), the Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f)  **Disbursement Procedures.** The Bank shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The Bank shall promptly after such examination notify the Authority by telephone (confirmed by telecopy or electronic mail) of such demand for payment if the Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Authority of its obligation to reimburse the Bank with respect to any such LC Disbursement.
(g) **Interim Interest.** If the Bank shall make any LC Disbursement, then, unless the Authority shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest at the Default Rate, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is paid in full and such interest shall be due and payable on demand therefor.

(h) **Cash Collateralization.** If any Event of Default shall occur and be continuing, on the Business Day that the Authority receives notice from the Bank demanding the deposit of cash collateral pursuant to this paragraph, the Authority shall deposit in an account or accounts with the Bank, in the name of the Bank and for the benefit of the Bank (the “Collateral Account”), an amount in cash equal to 105% of the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Authority described in Section 12.4. Such deposit shall be held by the Bank as collateral for the payment and performance of the obligations of the Authority under this Agreement. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Authority shall immediately deposit into the Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon.

The Bank shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Bank and at the Authority’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Bank to reimburse the Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Authority for the LC Exposure at such time or, if the maturity of the Drawings has been accelerated, be applied to satisfy other obligations of the Authority hereunder. If the Authority is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Authority within three Business Days after all Events of Default have been cured or waived.

**Section 3.8. Excess Interest.** If the amount of interest payable hereunder or in respect of any Direct Purchase Note or any Drawing on any date such interest is due and payable hereunder or under any Direct Purchase Note, any Drawing or any Drawing Reimbursement Obligation, calculated in accordance with the provisions of Section 3.2, exceeds the amount of interest that would be payable on such date had interest been calculated at the maximum rate of interest on such amount permitted by applicable law (the “Maximum Rate”), then interest on such amount payable on such date shall be calculated and payable on the basis of the Maximum Rate. Any interest that would have been due and payable hereunder or in respect of any Direct Purchase Note, any Drawing or any Drawing Reimbursement Obligation but for the operation of the preceding sentence shall be payable as provided in the next sentence and shall constitute the “Excess Interest Amount.” At any time that there is any accrued and unpaid Excess Interest Amount, the amount
payable hereunder or in respect of any Direct Purchase Note, any Drawing or any Reimbursement Obligation shall bear interest at the Maximum Rate, rather than the interest rate determined in accordance with Section 3.2, until payment by the Authority of the entire Excess Interest Amount. Upon the repayment of the Direct Purchase Notes and all Drawings and all Reimbursement Obligations, the Authority, if and to the extent permitted by applicable law, shall pay to the Bank a fee equal to the total amount of the accrued and unpaid Excess Interest Amount.

Section 3.9. Terminations and Reductions; Termination Fee. (a) On and after the date thirty (30) days following the Effective Date, the Authority shall have the right to terminate or reduce the Commitment upon at least five Business Days’ prior written notice to the Bank of such termination or reduction and payment of any termination fee required to be paid pursuant to the Fee Letter. Any partial reduction shall be in the total amount of $25,000,000 or an integral multiple of $1,000,000 in excess thereof. Once terminated or reduced, the Commitment may not be reinstated. The Authority agrees that any termination of this Agreement as a result of the provision of any credit or liquidity facility or any other bank agreement in substitution for this Agreement will require, as a condition thereto, that the Authority or the issuer of such facility will provide funds on the date of such termination or provision in an amount sufficient to pay in full at the time of termination all obligations due and owing to the Bank hereunder and under the Direct Purchase Notes.

(b) The Commitment shall terminate on the Termination Date.

(c) If the Commitment is terminated in its entirety, all accrued commitment fees shall be payable on the effective date of such termination. If the amount of the Commitment is reduced, the commitment fee that has accrued on the amount by which the Commitment has been reduced shall be payable on the effective date of such reduction together with any amounts required to be paid pursuant to the terms of the Fee Letter, at the times and in the manner set forth therein.

Section 3.10. Funding Indemnity. In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of (a) With respect to Drawings that are not RFR Drawings, in the event of (i) the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to purchase or hold any Direct Purchase Note or make Drawings under any Direct Purchase Note or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank, payment of any principal of any Term Benchmark Drawing other than on the last day of an Interest Period applicable thereto (including as a result of any an Event of Default or an optional or mandatory prepayment of Drawings), (ii) the conversion of any Term Benchmark Drawing on a date other than an Interest Payment Date for any reason, whether before or after default, and whether or not such payment is required by any indemnity provision of this Agreement or the Note Purchase Agreement Resolution, then upon the demand of the Bank, the Authority shall, to the extent permitted by applicable New York law, pay to the Bank a prepayment premium in such amount as will reimburse on the last day of the Interest Period applicable thereto or (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Drawing on the date specified in any notice
delivered pursuant hereto (regardless of whether such notice may be revoked under Section 3.2 or 4.1 hereof) and is revoked in accordance therewith), then, in any such event, the Authority shall compensate the Bank for the loss, cost, or expense. If the Bank requests such prepayment premium, it shall be attributable to such event. A certificate of any Lender setting forth any amount or amounts that the Bank is entitled to receive pursuant to this Section shall provide that such certificate is delivered to the Authority and shall be conclusive absent manifest error. The Authority shall pay the Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Drawings, in the event of (i) the loss, cost, or expense giving rise to the request for such prepayment premium in reasonable detail and such certificate shall be conclusive if reasonably determined, and the Authority may fully rely upon payment of any principal of any RFR Drawing other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Drawings) or (ii) the failure to borrow or prepay any RFR Drawing on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 3.2 or 4.1 hereof and is revoked in accordance therewith), then, in any such event, the Authority shall compensate the Bank for the loss, cost and expense attributable to such event. A certificate as determinative of the Bank setting forth any amount or amounts that the Bank is entitled to receive pursuant to this Section shall be delivered to the Authority and shall be conclusive absent manifest error. The Authority shall pay the Bank the amount shown as due on any such prepayment premium certificate within 10 days after receipt thereof.

Section 3.11. Taxability. (a) In the event a Taxable Date occurs, the Tax-Exempt Direct Purchase Note (and all Tax-Exempt Drawings thereunder) shall bear interest at the Taxable Rate on and after the Taxable Date. In addition to the foregoing (but not in duplication thereof), in the event a Taxable Date occurs, the Authority hereby agrees to pay to the Bank or any Holder on demand therefor, (1) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank or any Holder, as applicable, on the Tax-Exempt Direct Purchase Note and Tax-Exempt Drawing(s) during the period for which interest on the Tax-Exempt Direct Purchase Note and Tax-Exempt Drawing(s) thereunder is includable in the gross income of the Bank or any Holder, if the Tax-Exempt Direct Purchase Note and/or Tax-Exempt Drawings thereunder had borne interest at the Taxable Rate, beginning on the Taxable Date (the “Taxable Period”), and (B) the amount of interest actually paid to the Bank or any Holder, as applicable, during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by the Bank or any Holder, as applicable, as a result of interest on the Tax-Exempt Direct Purchase Note and/or any Tax-Exempt Drawings thereunder becoming includable in the gross income of the Bank or any Holder, as applicable, together with any and all reasonable attorneys’ fees, court costs, or other out-of-pocket costs incurred by the Bank or any Holder, as applicable, in connection therewith; provided, that at no time shall the interest rate exceed the applicable Maximum Rate.

(b) The obligations of the Authority under this Section 3.11 shall survive the termination of this Agreement.

Section 3.12—Interest Rates; LIBOR Notification. The interest rate on Drawings is
determined by reference to the LIBOR Index, which is derived from the London interbank offered rate ("LIBOR"). LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Drawings. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR.

Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.12, if:

(i) the Bank determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Drawing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Bank determines (which determination shall be conclusive absent manifest error) that (A) prior to the commencement of any Interest Period for a Term Benchmark Drawing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to the Bank of making or maintaining Term Benchmark Drawings for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to the Bank of making or maintaining such RFR Drawing:

then the Bank shall give notice thereof to the Authority by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Bank notifies the Authority that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Authority delivers a new Request for Drawing in accordance with the terms of Section 4.1 hereof or a new Notice of Continuation/Conversion in accordance with the terms of Section 3.2 hereof, any Request for Drawing or Notice of Continuation/Conversion, as applicable, that requests the conversion of any Term Benchmark Drawing to, or continuation of any Term Benchmark Drawing as, a Term Benchmark Drawing and any Request for Drawing that requests a Term Benchmark Drawing shall instead be deemed to be a Request for Drawing or Notice of Continuation/Conversion, as applicable, an Alternate Rate Drawing. Furthermore, if any Term Benchmark Drawing or RFR Drawing is outstanding on the date of the Authority’s receipt of the notice from the Bank referred to in this Section 3.12(a) with respect to a Relevant Rate applicable to such Term Benchmark Drawing or RFR Drawing, then until (x) the Bank notifies the Authority that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Authority delivers a new Request for Drawing in accordance with the terms of Section 4.1 hereof or a new Notice of Continuation/Conversion in accordance with the
terms of Section 3.2 hereof (1) any Term Benchmark Drawing shall on the last day of the Interest Period applicable to such Term Benchmark Drawing (or the next succeeding Business Day if such day is not a Business Day), be converted by the Bank to, and shall constitute, an Alternate Rate Drawing, on such day, and (2) any RFR Drawing shall on and from such day be converted by the Bank to, and shall constitute an Alternate Rate Drawing.

(b) Notwithstanding anything to the contrary herein, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Authority without any amendment to, or further action or consent of any other party to, this Agreement.

(c) Notwithstanding anything to the contrary herein, the Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(d) The Bank will promptly notify the Authority of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Bank pursuant to this Section 3.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement, except, in each case, as expressly required pursuant to this Section 3.12.

(e) Notwithstanding anything to the contrary herein at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Bank may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such
unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i)
above either (A) is subsequently displayed on a screen or information service for a Benchmark
(including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement
that it is or will no longer be representative for a Benchmark (including a Benchmark
Replacement), then the Bank may modify the definition of “Interest Period” for all Benchmark
settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Authority’s receipt of notice of the commencement of a Benchmark
Unavailability Period, the Authority may revoke any request for a Term Benchmark Drawing or
RFR Drawing of, conversion to or continuation of Term Benchmark Drawing to be made,
converted or continued during any Benchmark Unavailability Period and, failing that, the
Authority will be deemed to have converted any request for a Term Benchmark Drawing into a
request for a Term Benchmark Drawing of or conversion to (A) an RFR Drawing so long as the
Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an
Alternate Rate Drawing if the Adjusted Daily Simple SOFR is the subject of a Benchmark
Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the
then-current Benchmark is not an Available Tenor, the component of the Alternate Rate based
upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be
used in any determination of the Alternate Rate. Furthermore, if any Term Benchmark Drawing or
RFR Drawing is outstanding on the date of the Authority’s receipt of notice of the commencement
of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term
Benchmark Drawing or RFR Drawing, then until such time as a Benchmark Replacement is
implemented pursuant to this Section 3.12, (1) any Term Benchmark Drawing shall on the last day
of the Interest Period applicable to such Term Benchmark Drawing (or the next succeeding
Business Day if such day is not a Business Day), be converted by the Bank to, and shall constitute,
(x) an RFR Drawing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark
Transition Event or (y) an Alternate Rate Drawing if the Adjusted Daily Simple SOFR is the
subject of a Benchmark Transition Event, on such day and (2) any RFR Drawing shall on and from
such day be converted by the Bank to, and shall constitute an Alternate Rate Drawing

Section 3.13. Interest Rates; Benchmark Notification. The interest rate on a Term
Benchmark Drawing or RFR Drawing denominated in dollars may be derived from an interest rate
benchmark that may be discontinued or is, or may in the future become, the subject of regulatory
reform. In Upon the event occurrence of a Benchmark Transition Event occurs, Section 3.13 of this
Agreement 3.12(b) provides a mechanism for determining an alternative rate of interest. The Bank
will notify the Authority, pursuant to Section 3.12, in advance of any change to the reference rate
upon which the interest rate of Drawings is based. However, the Bank does not warrant or accept
any responsibility for, and shall not have any liability with respect to, the administration,
submission performance or any other matter related to LIBOR or other rates in the definition of
“LIBOR Index” any interest rate used in this Agreement, or with respect to any alternative, or
successor rate thereto, or replacement rate thereof, including without limitation, whether the
composition or characteristics of any such alternative, successor or replacement reference rate, as
it may or may not be adjusted pursuant to Section 3.13 hereof, will be similar to, or produce the
same value or economic equivalence of, the LIBOR Index existing interest rate being replaced or
have the same volume or liquidity as did LIBOR any existing interest rate prior to its
discontinuance or unavailability. The Bank and its affiliates and/or other related entities may

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engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Authority. The Bank may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Authority or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 3.13. Alternate Rate of Interest; Illegality. (a) If prior to the commencement of any Interest Period for a Drawing:

(i) the Bank determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Index, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Bank determines the LIBOR Index for such Interest Period will not adequately and fairly reflect the cost to the Bank of making or maintaining its Drawings (or Drawing) included in such Borrowing for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time;

then the Bank shall give notice thereof to the Authority as promptly as practicable thereafter and, until the Bank notifies the Authority that the circumstances giving rise to such notice no longer exist, (A) any Notice of Continuation that requests the continuation of any Interest Period shall be ineffective and any such Drawing shall be repaid or bear interest at the Base Rate on the last day of the then current Interest Period applicable thereto, and (B) if any Request for Drawing requests a Drawing, such Drawing shall bear interest at the Base Rate.

(b) If the Bank determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for the Bank or its applicable lending office to make, maintain, fund or continue any Drawing based on the LIBOR Index, or any Governmental Authority has imposed material restrictions on the authority of the Bank to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by the Bank to the Authority, any obligations of the Bank to make, maintain, fund or continue Drawings based on the LIBOR Index will be suspended until the Bank notifies the Authority that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Authority will upon demand from the Bank, either prepay, or cause to be prepaid, or convert all Drawings to bear interest at the Base Rate, either on the last day of the Interest Period therefor, if the Bank may lawfully continue to maintain such Drawings to such day, or immediately, if the Bank may not lawfully continue to maintain such Drawings. Upon any such prepayment or conversion, the Authority will also pay or cause to be paid accrued interest on the amount so
prepaid or converted.

(c) If a Benchmark Transition Event occurs, then the Bank will in good faith choose a replacement index for the LIBOR Index and make adjustments to applicable margins and related amendments to the documents such that, to the extent practicable, the all-in interest rate based on the replacement index (the “Alternate Rate”) will be substantially equivalent to the all-in LIBOR based interest rate in effect prior to its replacement. Such replacement index shall be applied in a manner consistent with market practice or, to the extent such market practice is not administratively feasible for the Bank, in a manner as otherwise reasonably determined by the Bank; the Authority acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of the LIBOR Index. For avoidance of doubt, all references to the LIBOR Index shall be deemed to be references to the Alternate Rate when the Alternate Rate becomes effective in accordance with this section. In addition, the Bank will have the right, from time to time by notice to Authority to make technical, administrative or operational changes (including, without limitation, changes to the definition of “Base Rate”, the definition of “Interest Period”, timing and frequency of determining rates and making payments of interest and other administrative matters) that the Bank decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Bank has provided notice to the Authority (the “Notice Date”) and (ii) a date specified by the Bank in the notice, without any further action or consent of the Authority, so long as Bank has not received, by 5:00 pm Eastern time on the Notice Date, written notice of objection to the Alternate Rate from the Authority. If the Authority provides such written notice of objection, the Authority and the Bank shall negotiate in good faith to determine the Alternate Rate and any related technical, administrative and operational changes. Any determination, decision, or election that may be made by the Bank pursuant to this section, including any determination with respect to a rate or adjustment or the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action (other than the actions described in the first sentence of this subsection (c)), will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Authority. Until an Alternate Rate shall be determined in accordance with this section, the Tax-Exempt Rate shall be equal to the sum of (a) the greater of (x) the product of the Prime Rate and the Applicable Factor and (y) 2.50%, plus (b) the Applicable Spread and the Taxable Rate shall each be equal to the sum of (a) the greater of (x) Prime Rate and (y) 2.50%, plus (b) the Applicable Spread, subject to the terms of this Agreement. In no event shall the Alternate Rate be less than one

Section 3.14. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.
SECTION 4. PROCEEDURES.

Section 4.1. Notices, etc. In order to request a Drawing, the Authority shall deliver a Request for Drawing, properly completed, to the Bank in the form of Exhibit B hereto, and deliver or cause to be delivered to the Bank the other documents required by Section 7.2 hereof, not later than 12:00 noon on a Business Day that is at least three (3) London Banking Business Days prior to the proposed Drawing Date. In addition to the other elements set forth in Exhibit A, each Request for Drawing shall specify: (1) the duration of the Interest Period with respect thereto, and that the last day of the proposed Interest Period will not be later than the Stated Expiration Date; (2) whether absent a different election by the Authority, at the end of the an Interest Period the Authority desires that the related Term Benchmark Drawing continue in the same Interest Period until otherwise directed by the Authority and (3) whether such Drawing shall be a Tax-Exempt Drawing under the Tax-Exempt Note or a Taxable Drawing under the Taxable Note. The Bank will, subject to the terms and conditions hereof, accept such delivery and pay or cause to be paid the principal amount of such Drawing under the related Direct Purchase Note by wire transfer in immediately available funds to the Authority as set forth in Section 4.2 hereof. Pursuant to Section 3.2 hereof, the Bank shall determine the initial Tax-Exempt Rate and Taxable Rate, as applicable, two London Banking(2) Business Days prior to the related Drawing Date.

Section 4.2. Availability. Not later than 2:00 P.M. (New York City time) on the date specified, the Bank shall pay to the Authority in immediately available funds (subject to provisions of Section 3 hereof) an amount equal to the amount specified in any Request for Drawing delivered by the Authority pursuant to Section 4.1 hereof. The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to each Direct Purchase Note (or on a supplemental schedule thereto) the principal amount of the related Direct Purchase Note and the amount of each payment or prepayment of the principal of the related Direct Purchase Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note. The Bank shall make the proceeds of Drawings available to the Authority by depositing such proceeds in an account of the Authority maintained with the Bank at its office in New York City designated by the Authority, in immediately available funds in an account designated by the Authority, or in any other manner reasonably requested by the Authority in its Request for Drawing.

Section 4.3. Extension of Commitment and Termination Date. The Commitment of the Bank may be extended beyond the then-scheduled Stated Expiration Date (the “Existing Termination Date”), subject to the provisions of this Section 4.3. The Authority may request an extension of the Commitment of the Bank by written notice to the Bank at any time on or after the date that is no more than 120 days prior to the Existing Termination Date and no less than 60 days prior to the Existing Termination Date. If the Bank agrees, in its individual and sole discretion, to renew its Commitment, it will notify the Authority of its decision to do so no later than 30 days following the receipt of the Authority’s request; provided that if the Bank does not respond to the Authority during such 30-day period, the Bank will be deemed to have declined to extend its Commitment. The Bank’s Commitment shall be renewed for the additional period requested by the Authority and approved by the Bank. The Authority and the Bank shall use their best efforts to complete the documentation necessary so to extend the Termination Date.
Section 5.1. Payment. (a) Each Direct Purchase Note shall only bear interest based on the principal amount of all outstanding Drawings thereunder. Accrued but unpaid interest on the Direct Purchase Notes (including the Drawings thereunder) shall be due and payable by the Authority on the applicable Interest Payment Date. Interest due and payable by the Authority on the Direct Purchase Notes (including the Drawings thereunder) shall be equal to the amount accrued to but excluding the related payment date. If the payment date for the principal of or interest on the Direct Purchase Notes is a day other than a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended period of time shall be included in the computation of interest; provided, however, the payment of interest on the Direct Purchase Notes on such extended date shall have the same force and effect as if made on the original payment date. Notwithstanding anything herein to the contrary, Reimbursement Obligations shall be evidenced and secured by the Taxable Note but shall be payable as set forth herein and in the Taxable Note not in the manner applicable to Taxable Drawings.

(b) All outstanding principal of the Direct Purchase Notes (including the Drawings thereunder), together with all accrued interest thereon, shall be due and payable by the Authority on the Termination Date.

(c) (i) Subject to Section 3.10, the Authority may prepay any Drawing at par, in whole or in part, on any Business Day provided at least three (3) Business Days’ prior written notice is given by the Authority to the Bank and the Paying Agent/Registrar. Each such notice shall specify the date and amount of such prepayment and the Drawing to be prepaid. Each such notice of optional prepayment shall be irrevocable and shall bind the Authority to make such prepayment in accordance with such notice. Any prepayment of a Drawing shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof, or the entire principal amount of the particular Drawing then outstanding.

(ii) If on any date the sum of (1) the aggregate principal amount of outstanding Loans (as defined in the JPM Revolving Credit Agreement), (2) the aggregate outstanding principal amount of all Drawings and (3) the aggregate principal amount of outstanding Commercial Paper Notes and (4) the LC Exposure exceeds the amount of the Commitment then in effect, the Authority shall immediately prepay one or more Loans (as defined in the JPM Revolving Credit Agreement), Drawings or Reimbursement Obligations in an amount equal to such excess.

(iii) All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due and payable at such time pursuant to this Agreement.

(d) The Direct Purchase Notes shall be delivered by the Authority to the Bank on the Effective Date.

Section 5.2. Notation of Partial Prepayment. The amount of any partial prepayment of Drawings shall be recorded on the related Direct Purchase Note by the Bank promptly upon receipt of such prepayment, it being understood, however, that if the Bank fails to make such notation or
makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note.

SECTION 6. PAYMENTS, ETC.

Section 6.1. Payments. All payments of principal and interest under this Agreement or the Direct Purchase Notes shall be made in lawful money of the United States of America and in immediately available funds to the Bank at JPMorgan Chase Bank, National Association, JPM-Delaware Loan Operations, 500 Stanton Christiana Road, Floor 1, Newark, DE 19713-2105 using the following wire instructions: ABA#: 021000021, Reference: New York Power Authority, Account Number: 9008113381H0110. If any principal of or interest on any Drawing or any Direct Purchase Note or other amount payable by the Authority hereunder falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding Business Day at such place and, in the case of such an extension as to principal, interest shall be payable in respect of such extension. The amount of any principal payment of Drawings shall be recorded on the related Direct Purchase Note by the Bank immediately upon receipt of such payment, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the related Direct Purchase Note. All payments received by the Bank after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Authority shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

SECTION 7. CONDITIONS.

Section 7.1. Closing. The obligation of the Bank to make the Commitment available to the Authority and to issue Letters of Credit hereunder is subject to the receipt by the Bank of the following on the date hereof, each dated the date hereof:

(a) Reserved.

(b) Agreement. (i) Counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, the Bank shall have received in form satisfactory to it telegraphic, telex or other written confirmation from such party of execution of a counterpart hereof by such party); and (ii) an executed copy of the JPM Revolving Credit Agreement and the Fee Letter.

(c) Signatures. A certificate of an officer of the Authority setting forth the name and signature of each officer of the Authority authorized to sign this Agreement and the Direct Purchase Notes and to borrow and effect all other transactions hereunder. The Bank may conclusively rely on each such certification until it receives notice in writing to the contrary.
(d) **Opinions of Counsel.** Favorable written opinions from either the Executive Vice President and General Counsel, Deputy General Counsel, or an Assistant General Counsel of the Authority, or independent counsel to the Authority, in substantially the forms of Exhibits C-1 and C-2 hereto;

(e) **Proof of Corporate Action.** Certified copies of all corporate action taken by the Authority to authorize the execution, delivery and performance of this Agreement and the Direct Purchase Notes, a conformed copy of any registration, consent or approval by any governmental officer, agency or commission required to be obtained in connection with the issuance of the Direct Purchase Notes and a copy of the certificate delivered to The Bank of New York Mellon, as “Trustee” under and as defined in the 1998 Resolution, designating the Direct Purchase Notes and Drawings as “Subordinated Indebtedness” and all payment obligations hereunder as “Subordinated Contract Obligations” within the meaning of the 1998 Resolution.

(f) **Financial Statements.** A copy of the financial statements referred to in Section 2.3 hereof.

(g) **Officer’s Certificate.** A certificate of the Treasurer or Deputy Treasurer of the Authority to the effect that (i) the representations and warranties of the Authority in Section 2 of this Agreement are true and correct on and as of the date hereof, (ii) no Event of Default has occurred and is continuing, (iii) the copies of the Commercial Paper Note Resolution, the 1998 Resolution, the 2012 Subordinated Notes Resolution, the 2019 Revolving Credit Agreement Resolution and the Note Purchase Agreement Resolution heretofore provided to the Bank by the Authority are true and correct copies of such resolutions as currently in effect.

(h) **Rating Confirmation.** A copy of the Moody’s confirmation received pursuant to Section 501(G) of the Commercial Paper Note Resolution.

Section 7.2. **Certain Conditions to Bank’s Purchase of Notes.** The Bank has entered into this Agreement in reliance upon the representations and warranties of the Authority contained herein and to be contained in the documents and instruments to be delivered at the Closing and at each Drawing and Letter of Credit issuance, and upon the performance by the Authority of its obligations hereunder, as of the date hereof and as of the Effective Date, each Drawing Date and each Drawing Issuance Date. Accordingly, any obligation of the Bank under this Agreement to purchase, to accept delivery of and to pay for the Direct Purchase Notes or to make any Drawing thereunder and to issue, amend or extend any Letter of Credit shall be subject to performance by the Authority of its obligations to be performed hereunder and the delivery of the documents and instruments required to be delivered hereby at or prior to each Drawing, and shall also be subject to the following additional conditions:

(a) delivery to the Bank of a Request for Drawing executed by an Authorized Officer in accordance with Section 4.1 hereof;

(b) [Reserved];
(c) as of the Drawing Date and/or Issuance Date, as applicable, this Agreement and the Note Purchase Agreement Resolution shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented in any manner which will adversely affect (i) the ability of the Authority to accept the Drawing or perform its obligations under the Direct Purchase Notes or under this Agreement or (ii) the security for the Direct Purchase Notes;

(d) as of the Drawing Date and/or Issuance Date, as applicable, all official action of the Authority relating to this Agreement, the Direct Purchase Notes, the requested Letter of Credit, if applicable, and the Note Purchase Agreement Resolution shall have been taken and shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented in any material adverse respect;

(e) each Drawing requested to be made by the Bank shall be a minimum principal amount of $1,000,000 or an integral multiple of $100,000 in excess thereof. The Authority shall not request that the Bank make more than four (4) Drawings in each calendar month;

(f) the Bank will have no obligation to make any Drawing under any Direct Purchase Note or issue any Letter of Credit if, because of a Change in Law, such request to for Drawing or Letter of Credit made by the Authority would be illegal. In such event, the Authority will have no liability whatsoever with respect to such request for purchase of Letter of Credit issuance and the Bank will have no liability for its failure to so purchase if such failure is due to a Change in Law;

(g) as of the Drawing Date and/or Issuance Date, as applicable, no Default or Event of Default shall have occurred and be continuing;

(h) with respect to Tax-Exempt Drawings only, an opinion of Note Counsel, addressed to the Bank, dated the Drawing Date, in the form approved by the Bank, and to the effect that the interest with respect to the Tax-Exempt Direct Purchase Note and such Tax-Exempt Drawing are excludable from gross income for federal income tax purposes;

(i) (i) the amount of the requested Drawing shall not exceed the Available Commitment; and (ii) the amount of the requested Letter of Credit shall not exceed the Available Commitment or the Letter of Credit Commitment;

(j) (i) the Drawing Date shall occur on or prior to the Termination Date and the obligation of the Bank to make Drawings shall not have otherwise terminated in accordance with the terms hereof; and (ii) the Issuance Date shall occur on or prior to the the date that is five Business Days prior to the Termination Date and the obligation of the Bank to issue Letter of Credit shall not have otherwise terminated in accordance with the terms hereof;

(k) with respect to Tax-Exempt Drawings only, delivery to the Bank of a copy of the properly completed Form 8038-G filed with the Internal Revenue Service relating to the such Drawing.
The submission by an Authorized Officer of a Request for Drawing in connection with each Drawing shall be deemed to be a representation and warranty by the Authority on each respective Drawing Date only that the conditions specified in this Section 7.2 have been satisfied on and as of such date. If the Authority is unable to satisfy the conditions to the obligations of the Bank with respect to a Drawing, the Bank shall not be obligated with respect to such Drawing.

SECTION 8. PARTICULAR CovenANTS OF AUTHORITY.

From the date hereof and until the termination of the Bank’s Commitment, the payment in full of the Direct Purchase Notes (and all Drawings thereunder), and all Reimbursement Obligations and the performance of all other obligations of the Authority under this Agreement, the Authority agrees that:

Section 8.1. Financial Statements, etc. The Authority shall deliver to the Bank:

(a) As soon as available and in any event within 105 days after the end of each semi-annual fiscal period ending June 30 and December 31, the financial statements of the Authority prepared in conformity with generally accepted accounting principles and on a basis consistent with the financial statements referred to in Section 2.3 hereof as at the last day of such period. Financial statements for each fiscal period ending December 31 shall be accompanied by an opinion as to such financial statements of independent certified accountants of recognized standing. Financial statements for each fiscal period ending June 30 that are not accompanied by such an opinion shall be certified (subject to normal year-end adjustments) as to fairness of presentation, generally accepted accounting principles and consistency, insofar as each of the foregoing relates to accounting matters, by the Executive Vice President and Chief Financial Officer or Vice President and Controller of the Authority.

(b) Concurrently with any delivery of financial statements under clause (a) above relating to a fiscal period ending December 31, a certificate of the Treasurer or Deputy Treasurer of the Authority certifying as to whether there shall have occurred and be continuing an Event of Default or any event that with notice or the lapse of time or both would become an Event of Default, specifying the details thereof and what action the Authority proposes to take with respect thereto.

(c) Copies of any other published reports of financial condition, receipts and expenditures prepared or issued by the Authority for general distribution to investors or lenders.

(d) From time to time, with reasonable promptness, such information regarding the business, affairs and financial condition of the Authority as the Bank may reasonably request.

The Authority shall be deemed to have complied with the requirements to provide the information set forth in this Section 8.1 to the extent such information (x)(i) has been posted on the Authority’s website (www.nypa.gov) or (ii) has been duly filed with the Electronic Municipal

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Market Access service of the Municipal Securities Rulemaking Board and is publicly available and (y) the Authority shall have given the Bank notice thereof within the time periods set forth above.

The Authority shall notify the Bank of any withdrawal or reduction by any Rating Agency of its rating of any outstanding Indebtedness of the Authority.

Section 8.2. Taxes and Charges. The Authority shall pay and discharge any taxes, assessments and governmental charges or levies that may be imposed upon it or upon its revenues, or upon any property belonging to it, prior to the date on which penalties attach thereto; provided that the Authority shall not be required by this paragraph to pay any such tax, assessment, charge, or levy (a) the payment of which is being contested in good faith and by proper proceedings or (b) the failure to make payment would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

Section 8.3. Security Interests. Without the prior written consent of the Bank, the Authority shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or other encumbrance upon any of its revenues, property or assets, now owned or hereafter acquired, securing any indebtedness or obligation having priority in payment over the Direct Purchase Notes or any Drawing (all such security being herein called “security interests”), except (i)(a) security interests created under the 1998 Resolution to secure Obligations and Parity Debt or (b) security interests upon the assets, revenues, rates, charges, rents, proceeds from the sale of, proceeds of insurance and other income and receipts derived from the ownership or operation of Separately Financed Projects as defined under the 1998 Resolution, (ii) security interests created pursuant to the 2007 Revolving Credit Agreement Resolution, (iii) security interests in the form of a covenant or authorization to pay any obligation of the Authority out of the proceeds of bonds or notes deposited in any fund or account established pursuant to any existing or future resolution of the Authority authorizing the issuance of its obligations and (iv) security interests that are incidental to and incurred in the ordinary course of the Authority’s business or the ownership of its property and assets, which (x) are not incurred in connection with the borrowing of money and (y) do not materially detract from the operation of its business or the value of its property or assets or materially impair the use thereof.

Section 8.4. Default, etc. As soon as reasonably possible and in any event within five Business Days after the Authority has knowledge of the occurrence of an Event of Default or an event that with the giving of notice or lapse of time or both, would constitute an Event of Default, the Authority shall notify the Bank if any Event of Default, or any event that with notice or lapse of time or both would become such an Event of Default, shall have occurred, specifying what action the Authority proposes to take with respect thereto.

Section 8.5. Commercial Paper Note Resolution, 1998 Resolution and this Agreement. The Authority shall not repeal or modify the Commercial Paper Note Resolution or the 1998 Resolution, or take any action impairing any authority, right or benefit conferred by the Commercial Paper Note Resolution or the 1998 Resolution, or this Agreement; provided, however, that the Authority may supplement or amend the Commercial Paper Note Resolution, or the 1998 Resolution, in accordance with its terms. The Authority shall not issue, or authorize the issuance
of, Commercial Paper Notes to the extent that the sum the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) exceed the Available Commitment from time to time in effect. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) plus (ii) the aggregate outstanding principal amount of all Loans (as defined in the JPM Revolving Credit Agreement), plus (iii) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Notes plus (iv) the aggregate LC Exposure, exceed the Commitment from time to time in effect.

Section 8.6. Litigation; Other Events. The Authority shall give to the Bank notice in writing by April 6 of each year of all litigation against or threatened against the Authority and of all proceedings before any governmental or regulatory agency to which the Authority is a party, except litigation or proceedings (a) described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof or (b) that do not have a reasonable likelihood of adverse determination or if adversely determined, would not have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. As to the litigation and proceedings described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof, the Authority shall give to the Bank notice in writing by April 6 of each year of any changes in the circumstances of such litigation or proceedings that would have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. In addition, the Authority shall give to the Bank notice of the commencement of any such litigation and the occurrence of any other event that is reasonably expected to result in a Material Adverse Effect.

Section 8.7. Further Assurances. The Authority shall (1) perform and comply with each of the covenants and provisions contained in this Agreement, in the Existing Resolutions and in any other resolution or agreement securing or providing for the issuance of obligations of the Authority for borrowed money and (2) take all action and do all things that it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Agreement and in order to provide for and to assure payment of the Direct Purchase Notes and Drawings at maturity including, but not limited to, as necessary for the foregoing purposes, directing the payment to it from time to time of any funds held under an Existing Resolution and available in accordance with the terms thereof to be paid to the Authority upon its direction.

Section 8.8. Compliance with Laws, Etc. The Authority shall comply in all material respects with all applicable laws, rules, regulations and orders (such compliance to include, without limitation, compliance with all environmental laws and all laws relating to hazardous waste and the payment before the same become delinquent of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith), non-compliance with which would have a Material Adverse Effect.
Section 8.9. Maintenance of Insurance. The Authority shall maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is required by law or is deemed by the Authority to be prudent.

Section 8.10. Reserved.

Section 8.11. 1998 Resolution and Subordinate Resolution. The Authority agrees that the Bank shall be a third-party beneficiary to Sections 503, 604, 605 and 606 of the 1998 Resolution and Sections 501, 603, 605(3) and 1003 of the Subordinate Resolution (collectively, the “Resolution Provisions”). The Authority further agrees not to amend or modify the Resolution Provisions, and agrees that no amendment or modification of the Resolution Provisions shall be effective, without the prior written consent of the Bank, and the Bank shall be entitled to enforce the Resolution Provisions. It is understood and agreed that the Bank shall not be a third-party beneficiary in respect of any other provisions of the 1998 Resolution or the Subordinate Resolution and shall not be entitled to take any action under the 1998 Resolution or the Subordinate Resolution to enforce any of the provisions thereof other than the Resolution Provisions.

Section 8.12. Reserved.

Section 8.13. Tax-Exempt Status. With respect to the Tax-Exempt Direct Purchase Note and all Tax-Exempt Drawings, the Authority shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 8.14. Resolutions or Agreements. The Authority shall not create or suffer to exist any default or Event of Default under the Existing Resolutions or under any other resolution or agreement securing or providing for the issuance of Other Indebtedness of the Authority in excess of $25,000,000 the effect of which is to accelerate or permit the acceleration of the maturity of the obligations thereby secured or issued.

Section 8.15. Payment of Fee Letter. The Authority shall pay any and all amounts owed under the Fee Letter when due and payable.

Section 8.16. Ratings Downgrade. The Authority shall not allow any Rating Agency then rating the Authority’s short-term debt obligations (if any) to lower such ratings to (a) in the case of Moody’s, below MIG-3 or P-3, (b) in the case of Standard & Poor’s, below SP-2 or A-3, and (c) in the case of Fitch, below F-3.

Section 8.17. Invalidity of Subordinate Revenue Bond. No court of competent jurisdiction shall adjudge in a final and non-appealable judgment any Subordinate Revenue Bond to be invalid, illegal or unenforceable against the Authority, and the Authority shall not deny in writing that it has any liability under any Subordinate Revenue Bond.

Section 8.18. Judgments for Payment of Money; Enforcement Proceedings. The Authority
shall not permit or suffer to exist any judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority or enforcement proceedings commenced by any creditor upon such judgment or order and continue for period of 60 consecutive days during which the enforcement of such judgment has not been effectively stayed (including by reason of a pending appeal or otherwise), dismissed, satisfied or bonded.

Section 8.19. Separately Financed Projects Reporting. The Authority shall provide notice to the Bank of the incurrence of any obligation under Section 203 of the 1998 Resolution to finance a Separately Financed Project within 10 business days of the incurrence thereof. Such notice shall include a description of the date of incurrence of such obligations, the principal amount, maturity and amortization, interest rate, if fixed, or method of computation thereof, if variable (and any default rates), and a description of such Separately Financed Project and the revenues and other security pledged to secure such obligations.

Section 8.20. Limitation Notes. The Authority will not request any Drawing under either Direct Purchase Note the proceeds of which are used to pay or repay any Indebtedness of the Authority which is known by the Authority to be owned by the Bank, which is known by the Authority to have been purchased by the Bank into its inventory as a dealer or remarketing agent, without the prior written consent of the Bank.

Section 9. Taxes.

Section 9.1. Taxes. (a) Any and all payments by the Authority hereunder or under the Direct Purchase Notes shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding, in the case of the Bank, taxes or withholdings (a) imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which the Bank is organized or any political subdivision thereof and, in the case of the Bank, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction of the Bank’s Lending Office or any political subdivision thereof or (b) imposed by Section 1471 through Section 1474 of the Internal Revenue Code of 1986, as amended (including any official interpretations thereof (collectively “FATCA”) on any “withholdable payment” payable to the Bank as a result of the failure of such Person to satisfy the applicable requirements as set forth in FATCA after December 31, 2012 (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Authority shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under the Direct Purchase Notes to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Authority agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment
made hereunder or under the Direct Purchase Notes or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Direct Purchase Notes (hereinafter referred to as “Other Taxes”).

(c) The Authority will indemnify the Bank for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 9) paid by the Bank and any liability including interest, expenses and penalties (other than penalties that have been incurred by the Bank because of such person’s willful misconduct or gross negligence) arising therefrom or with respect thereto, based on a claim for such Taxes or Other Taxes made by the applicable taxing authority, provided, however, that prior to such payment by the Bank, the Authority shall be notified by the Bank of the imposition of such Taxes and may contest, if the Authority so chooses, the imposition of such Taxes, provided further that the Bank may pay such Taxes or Other Taxes if such payment would not preclude the Authority’s ability to contest such imposition. This indemnification shall be made within 30 days from the date the Bank makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes, the Authority will furnish to the Bank, at its address referred to on the signature page hereof, the original or a certified copy of a receipt evidencing payment thereof.

(e) The Bank shall use its best efforts (consistent with its internal policy and legal regulatory restrictions) to change the jurisdiction of its Lending Office if such change would eliminate or reduce any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of the Bank, be otherwise disadvantageous to the Bank.

(f) Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section 9 shall survive the payment in full of principal and interest hereunder and under the Direct Purchase Notes.

SECTION 10. SECURITY FOR THE DIRECT PURCHASE NOTES.

Each Direct Purchase Note (and all Drawings thereunder) is and shall continue to be an obligation of the Authority payable from the Trust Estate and Subordinated Indebtedness. The Trust Estate is hereby pledged by the Authority for the payment of each Direct Purchase Note (and all Drawings thereunder), which pledge is subordinate in the manner set forth in the 1998 Resolution. The foregoing pledges shall be valid and binding from and after the date of execution and delivery hereof and the Trust Estate shall immediately be subject to the lien of such pledges without any physical delivery thereof or further act, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. This Agreement is a Subordinated Contract Obligation (within the meaning of the 1998 Resolution).

SECTION 11. PLEDGE OF STATE.

The Authority, as agent for the State, does hereby pledge to and agree with the holders the Direct Purchase Notes that the State will not limit or alter the rights vested in the Authority by the
Act, until the obligations of the Authority under the Direct Purchase Notes are fully met and discharged, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of interests in the Direct Purchase Notes.

SECTION 12. DEFAULTS.

If any of the following events or conditions shall occur and be continuing (each of the events or conditions described herein referred to as an “Event of Default”):

Section 12.1. Payment. The Authority shall fail to pay any installment of principal or interest on any Direct Purchase Note, any Drawing or any Drawing Reimbursement Obligation when due and payable and such failure shall continue for five Business Days;

Section 12.2. JPM Revolving Credit Agreement; the 2019 Revolving Credit Agreement. Any “event of default” under the JPM Revolving Credit Agreement or the 2019 Revolving Credit Agreement (as defined respectively therein) shall have occurred;

Section 12.3. Other Indebtedness. The Authority shall default in the payment when due (including any applicable grace period) of any Indebtedness of the Authority (other than Indebtedness outstanding under this Agreement) in excess of $25,000,000; provided that this Section 12.3 shall not apply if such default is remedied or waived by the holders of such Indebtedness prior to the Bank taking any action pursuant to the last paragraph of this Section 12;

Section 12.4. Bankruptcy; Moratorium. (A) The Authority shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of the Authority for all or a substantial part of the assets of the Authority, (ii) commence a voluntary case or other proceeding or file a petition seeking reorganization, liquidation, composition of indebtedness or any arrangement with creditors under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or of the State of New York, or (iii) make a general assignment for the benefit of creditors; (B) the Authority shall impose or declare a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on any obligations of the Authority that are on a parity with the Direct Purchase Notes and the Drawings or that have a priority in payment over the Direct Purchase Notes and the Drawings, or (C) any Governmental Authority having appropriate jurisdiction over the Authority shall make a finding or ruling or other determination or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Direct Purchase Notes or on all Indebtedness of the Authority;

Section 12.5. Judgments. Any final, non-appealable judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority and enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such judgment shall not have been satisfied or bonded within 60 days of the date thereof;
Section 12.6  Ratings. The lowering or withdrawal by all Rating Agencies then rating the applicable obligations of the rating on any obligations of the Authority that are on a parity with the Direct Purchase Notes issued under this Agreement or that have a priority in payment over the Direct Purchase Notes issued under this Agreement to (a) in the case of Moody’s, below Baa3, and (b) in the case of Standard & Poor’s and Fitch, below BBB-;

Section 12.7.  Invalidity. This Agreement, any Direct Purchase Note, or any Commercial Paper Note shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable against the Authority and such judgment shall be final and non-appealable, or the Authority shall deny in writing that it has any liability hereunder or thereunder;

Section 12.8.  Representations. Any representation or warranty made by the Authority in Section 2 or Section 3.6 hereof, or in any document furnished by the Authority hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

Section 12.9.  Covenants. The Authority shall default (other than as otherwise provided in Sections 12.1 through 12.7 hereof) in the performance of any agreement or covenant herein and such default shall continue unremedied for 30 days after written notice to the Authority from the Bank.

If any Event of Default shall occur and be continuing, the Bank may take, in addition to the remedies specified in the immediately succeeding paragraph, one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i)  by written notice to the Authority terminate the Commitment;

(ii) by written notice to the Authority, declare the outstanding amount of the principal of and interest on the Direct Purchase Notes (and all Drawings thereunder) and any and any and all other Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under this Agreement and the Direct Purchase Notes (and all Drawings thereunder) or to enforce performance or observance of any obligation, agreement or covenant of the Authority under this Agreement and the Direct Purchase Notes, whether for specific performance of any agreement or covenant of the Authority or in aid of the execution of any power granted to the Bank in this Agreement and the Direct Purchase Notes;

(ii) cure any Event of Default or event of nonperformance hereunder or under this Agreement and the Direct Purchase Notes; provided, however, that the Bank shall have no obligation to effect such a cure; and

-53-
(iii) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement and the Direct Purchase Notes and as otherwise available at law and at equity; and

(iv) require that the Authority provide cash collateral as required in Section 3.7(h) hereof.

SECTION 13. RESERVED.

SECTION 14. NOTICES, ETC.

Section 14.1. Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.2), all notices and other communications provided for herein to the Authority or the Bank shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number specified for such Person on the signature pages hereof.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient); provided, however, notices and other communications to the Authority delivered by telecopier shall be deemed to have been given only upon the sender’s receipt of an acknowledgement from the intended recipient. Notices delivered through electronic communications, to the extent provided in Section 14.2, shall be effective as provided in such Section 14.2.

Section 14.2. Electronic Communications. Notices and other communications to the Bank hereunder may be furnished by e-mail to the Bank’s email address specified on the signature pages hereof pursuant to procedures approved by the Bank. The Bank or the Authority may, in its discretion, agree to accept notices and other communications to it hereunder by e-mail communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Notices and other communications sent to an e-mail address of the Authority or, unless the Bank otherwise prescribes, to an e-mail address of the Bank shall be deemed received only upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 14.3. Change of Address, Etc. Each of the Authority and the Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Bank may change its address, telecopier or telephone number or e-mail address for notices and other communications hereunder by notice.
Section 14.4. Recordings. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

Section 15. Miscellaneous

Section 15.1. Waivers, etc. No failure on the part of the Bank to exercise, and no delay in exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 15.2. Expenses; Indemnification. The Authority agrees to pay, whether or not the Direct Purchase Notes are issued or any Drawing made under any Direct Purchase Note or hereunder or any Letter of Credit is issued or LC Disbursement made, (a) the reasonable legal fees and disbursements of outside counsel retained by the Bank in connection with the formulation, execution and delivery of this Agreement and the Fee Letter, any waiver or consent hereunder or under the Fee Letter or any amendment hereof or of the Fee Letter (including any extension of the Commitment and the Existing Termination Date, pursuant to Section 4.3 hereof) or any event or condition that constitutes an Event of Default, or, with the giving of notice or lapse of time or both, would constitute such an Event of Default; (b) the reasonable legal fees and disbursements of the outside counsel of the Bank; (c) all taxes, if any, upon any documents or transactions pursuant to this Agreement or the Fee Letter; and (d) costs of collection and enforcement (including reasonable counsel fees and disbursements) if an Event of Default occurs.

The Authority agrees to indemnify the Bank and hold the Bank harmless from and against any and all liabilities, losses, damages, and all reasonable costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Bank in connection with any investigative, administrative or judicial proceeding (whether or not the Bank shall be designated a party thereto) to the extent relating to or arising out of this Agreement, the Fee Letter or any actual or proposed use of proceeds of Direct Purchase Notes or any Drawing thereunder or any LC Disbursement; provided that no Bank shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

To the extent permitted by law, the Authority assumes all risks of the acts or omissions of the Paying Agent/Registrar with respect to the use of Drawings under the Direct Purchase Notes pursuant hereto and the use of LC Disbursements; provided that this assumption with respect to the Bank is not intended to and shall not preclude the Authority from pursuing such rights and remedies as it may have against the Paying Agent/Registrar under any other agreements. Neither the Bank nor its officers or directors shall be liable or responsible for (a) the use of the proceeds of the Direct Purchase Notes or the Drawings or LC Disbursements or for any acts or omissions of the Paying Agent/Registrar, (b) the validity, sufficiency, or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents shall, in fact,
prove to be in any or all respects invalid, fraudulent, forged or insufficient, (c) payments by the Bank against presentation of requests for drawings which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement, or (d) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Authority shall have a claim against the Bank to the extent of any direct, as opposed to consequential damages, but only to the extent caused by the gross negligence or willful failure of the Bank in failing to make a Drawing required to be made by the Bank hereunder after compliance by the Authority with all conditions precedent to such Drawing, unless the making of such Drawing was not otherwise permitted by law.

Section 15.3. Governing Law. This Agreement and the Direct Purchase Notes shall be governed by and construed in accordance with the law of the State of New York without regard to the conflict of laws principles of the State of New York.

Section 15.4. Waiver of Trial by Jury. To the fullest extent permitted by the law, the Authority and the Bank hereby waive trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). The Authority further agrees that, in the event of litigation, it will not personally or through its agents or attorneys seek to repudiate the validity of this Section 15.4, and it acknowledges that it freely and voluntarily entered into this agreement to waive trial by jury in order to induce the Bank to enter into this Agreement.

Section 15.5. Amendments, etc. No amendment or waiver of any provision of this Agreement or the Direct Purchase Notes, nor consent to any departure by the Authority therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 15.6. Successors and Assigns.

(a) Successors and Assigns Generally. This Agreement is a continuing obligation and shall be binding upon the Authority and the Bank, their respective successors, transferees and assigns and shall inure to the benefit of the Authority, the Bank and the Holders and their respective permitted successors, transferees and assigns. The Authority may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank may not at any time assign to one or more assignees all or a portion of its obligation to make Drawings under the Direct Purchase Notes and under this Agreement or issue Letters of Credit or make LC Disbursements without the consent of the Authority (such consent not to be unreasonably withheld, conditioned or delayed) unless such assignment is to an Affiliate of the Bank or an Approved Fund; provided that the Authority shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Bank within ten (10) Business Days after having received notice thereof. Each Holder may, in its sole discretion and in accordance with applicable law, from time to time assign, sell or transfer in whole or in part, its interest in the Notes, this Agreement and the other Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this
Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. The Authority agrees that each Holder shall be entitled to the benefits of Sections 3.4, 3.5, 3.11, 9.1 and 15.2 hereof to the same extent as if it were the Bank hereunder; provided, however, that a Holder shall not be entitled to receive any greater payment under this Agreement than the Bank would have been entitled to receive with respect thereto, unless the transfer to such Holder is made with the Authority’s prior written consent.

(b) Sales and Transfers by Holder to a Bank Transferee. Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of its interest in the Notes to a Person that is (i) an Affiliate of the Bank or (ii) a trust or other custodial arrangement established by the Bank or an Affiliate of the Bank, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the 1933 Act, or “institutional accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “Bank Transferee”), it being the express intent of the parties that no offering document is intended to be prepared in connection with the Direct Purchase Notes. From and after the date of such sale or transfer, JPMorgan Chase Bank, National Association (and its successors) shall continue to have all of the rights of the Bank hereunder and under the other Related Documents as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) the Authority and the Paying Agent/Registrar shall be required to deal only with the Bank with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the Authority.

(c) Sales and Transfers by Holder to a Non-Bank Transferee. Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees but each of which constitutes a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act or an “institutional accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (each a “Non-Bank Transferee”) all or a portion of its interest in the Direct Purchase Notes if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the Authority, the Paying Agent/Registrar and the Bank (if different than the Holder) by such selling Holder and Non-Bank Transferee, and (B) the Non-Bank Transferee shall have delivered to the Authority, the Paying Agent/Registrar and the selling Holder, an investment letter in substantially the form attached as Exhibit D to this Agreement (the “Investor Letter”).

From and after the date the Authority, the Paying Agent/Registrar and the selling Holder have received written notice and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall have the rights and obligations of a Holder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and any reference to the transferring Holder hereunder and under the other Related Documents shall thereafter refer to such transferring Holder and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring Holder (other than the Bank) no longer owns any interest in the Direct Purchase Notes, then it shall relinquish its rights and be released from its obligations hereunder.
and under the Related Documents.

(d) **Participations.** Each Holder shall have the right to grant participations in all or a portion of such Holder’s interest in the Direct Purchase Notes, this Agreement and the other Related Documents to one or more other banking institutions; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder and (ii) the Authority and the Paying Agent/Registrar shall be required to deal only with the Bank, with respect to any matters under this Agreement, the Direct Purchase Notes and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the Authority. The Authority agrees that each participant shall be entitled to the benefits of Sections 3.01, 3.02 and 8.04 hereof to the same extent as if it were the Bank hereunder; provided, however, that a participant shall not be entitled to receive any greater payment under this Agreement than the Bank would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Authority’s prior written consent; and provided, further, that the Bank shall provide the Authority with prior written notice of any such participation and the identity of the applicable participant.

(e) **Certain Pledges.** Without the consent of the Authority, the Bank may at any time pledge or assign a security interest in all or any portion of its rights and interests under this Agreement, the Direct Purchase Notes and the other Related Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or the United States Treasury or to any state or local governmental entity or with respect to public deposit; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

Section 15.7. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. The words “execution,” “signed,” “signature,” and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 15.8. **Reliance.** The Bank acknowledges that it has, independently, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Authority and its own decision to enter into this Agreement and extend credit hereunder.

Section 15.9. **No Personal Liability.** No trustee, officer or employee of the Authority shall be held personally liable on the Direct Purchase Notes or in connection with any claim based
thereon or on this Agreement.

Section 15.10. Defeasance. If the Commitment shall have terminated and the Authority shall pay or cause to be paid, or there shall otherwise be paid to the Bank, the entire principal of and interest on all Direct Purchase Notes (and all Drawings thereunder) and all other amounts owing to the Bank hereunder or under the Direct Purchase Notes (and all Drawings thereunder), then the pledge created under this Agreement and all covenants, agreements and other obligations of the Authority hereunder to the holder of the Direct Purchase Notes shall thereupon cease, terminate and become void and be discharged and satisfied, and thereupon all of the moneys and properties of the Authority then subject to such pledge shall be forever free and clear of such pledge and at the option of the Authority, expressed in writing, this Agreement shall be of no further force or effect.

Section 15.11. Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 15.12. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or the Direct Purchase Notes), the Authority acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Bank, are arm’s-length commercial transactions between the Authority, on the one hand, and the Bank, on the other hand, (B) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby; (ii) (A) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (whether financial, municipal or otherwise), agent or fiduciary, pursuant to Section 15B of the Securities Exchange Act of 1934 or otherwise, for the Authority or any other Person, and has no fiduciary duty to the Authority or any other Person and (B) the Bank have no obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (iii) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and the Bank have no obligation to disclose any of such interests to the Authority. To the fullest extent permitted by law, the Authority hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 15.13. USA PATRIOT Act. The Bank hereby notifies the Authority that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act. The Authority shall, promptly following a request by the Bank, provide all documentation and
other information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

Section 15.14. Survival. The provisions of Section 3.4, Section 3.5, Section 9 and Section 15.2 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Direct Purchase Notes (and all Drawings thereunder) and the Reimbursement Obligations, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

Section 15.15. Amendment and Restatement. This Agreement shall become effective on the Effective Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. From and after the Closing Date, all references made to the Original Agreement in any instrument or document shall, without more, be deemed to refer to this Agreement. Reference to this specific Agreement need not be made in any agreement, document, instrument, letter, certificate, the Original Agreement itself, or any communication issued or made pursuant to or with respect to the Original Agreement. This Agreement is entered into in substitution for, and not in satisfaction of, the rights and obligations of the parties hereto with respect to their obligations under the Original Agreement, and does not and is not intended to constitute a novation or an accord and satisfaction of any of the rights and obligations of the parties hereto with respect to the Original Agreement or the indebtedness, the obligations and liabilities of the Authority evidenced by or provided for under the Original Agreement. The parties hereto agree that this Agreement does not extinguish or discharge the obligations of the Authority or the Bank under the Original Agreement.

[Signature Pages to Follow]
POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________________
Name: ____________________________________
Title: _____________________________________

Address: 123 Main Street
White Plains, NY 10601
Telephone: (914) 287-3048
Facsimile: (914) 681-6995
Attn: Treasurer

With a copy to:

Address: 123 Main Street
White Plains, NY 10601
Attn: General Counsel
Telephone: (914) 390-8000
Facsimile: (914) 390-8040
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ____________________________________
    Name: Heather X. Talbott
    Its: Executive Director

Address: 383 Madison Avenue, 3rd Floor
Mail Code NY1-M165
New York, NY 10179
Telephone: (212) 270-4875
Facsimile: (917) 464-2427
Attn: Heather Talbott
Executive Director, Public Finance - Credit Origination
Email: heather.x.talbott@jpmorgan.com

With a copy to:

JPM-Delaware Loan Operations
Address: 500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn: Brandon Allen
Telephone: (302) 634-9588
Facsimile: (302) 634-4733
Email: 12012443628@tls.Ldsprod.com;
pfg_servicing@jpmorgan.com
EXHIBIT A-1
FORM OF TAX-EXEMPT DIRECT PURCHASE NOTE

POWER AUTHORITY OF THE STATE OF NEW YORK

TAX-EXEMPT DIRECT PURCHASE NOTE, SERIES 20202022 TE

Principal Amount: $250,000,000

Dated: April 22[____], 20202022

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Note Purchase Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all unpaid Tax-Exempt Drawings (as defined in the Note Purchase Agreement) made by the Bank to the Authority hereunder, such payment of principal to be made in full by the Authority on the Termination Date (as that term is defined in the Note Purchase Agreement), and promises to pay interest on the unpaid principal amount of this Note and all Tax-Exempt Drawings hereunder until this Note shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the applicable Tax-Exempt Rate (as defined in the Note Purchase Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Note Purchase Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Note Purchase Agreement) in effect from time to time. Each change in the Base Rate resulting from a change in the Prime Rate of the Bank or the Federal Funds Rate (as such terms are defined in the Note Purchase Agreement) shall become effective for purposes hereof on the day on which such change in such Prime Rate or the Federal Funds Rate becomes effective. The interest rate specified above may be adjusted pursuant to Sections 3.2, 3.8, 3.11 and 3.12 of the Note Purchase Agreement. Interest shall be computed on the basis of a year having the number of days specified in Section 3.1 of the Note Purchase Agreement, and actual days elapsed, and shall be paid on each Interest Payment Date.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the principal amount of Tax-Exempt Drawings under this Note and the amount of each payment or prepayment of the principal of Tax-Exempt Drawings under this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note Purchase Agreement with respect to this Note or any Tax-Exempt Drawing.

This Note is issued under a resolution of the Authority adopted March 31[____], 20202022 (as amended, modified or restated from time to time, the “Resolution”) and under the
Amended and Restated Note Purchase Agreement, dated as of April 22, 2020 (as amended, modified or restated from time to time pursuant to the terms thereof, the “Note Purchase Agreement”), between the Authority and JPMorgan Chase Bank, National Association. This Note is and shall continue to be an obligation of the Authority payable from the Trust Estate (as defined in the 1998 Resolution referred to in said Note Purchase Agreement) and, is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution). The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits of the Note Purchase Agreement Resolution and said Note Purchase Agreement.

Upon the occurrence of any Event of Default specified in said Note Purchase Agreement, the principal of this Note, and all Tax-Exempt Drawings hereunder and accrued interest thereon may be declared due and payable in the manner, upon the conditions and with the effect provided in said Note Purchase Agreement, and upon any such declaration, the principal of and interest on all Tax-Exempt Drawings then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of Tax-Exempt Drawings under this Note and any Tax-Exempt Drawing before maturity upon the terms provided in said Note Purchase Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent for the State of New York, does hereby pledge to and agree with the holder(s) of the interests in this Note that the State of New York will not limit or alter the rights vested in the Authority by said Act, as amended, until the obligations of the Authority under this Note shall have been fully met and discharged or adequate provision shall have been made by law for the protection of the holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note or in connection with any claim based hereon or on the Note Purchase Agreement Resolution or on said Note Purchase Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the Note Purchase Agreement Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issuance of this Note, together with all other indebtedness of the Authority, is within every debt and other limit prescribed by the laws of the State of New York.
IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the 22nd[____] day of April[____], 20202022.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________________
    Name: ______________________________
    Title: _______________________________

Attest:

_______________________________________
Title: ________________________________
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EXHIBIT A-2
FORM OF TAXABLE DIRECT PURCHASE NOTE

POWER AUTHORITY OF THE STATE OF NEW YORK

TAXABLE DIRECT PURCHASE NOTE, SERIES 20202022 T

Principal Amount: $250,000,000

Dated: April 22[____], 20202022

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Note Purchase Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all unpaid Reimbursement Obligations and Taxable Drawings (each as defined in the Note Purchase Agreement) made by the Bank to the Authority hereunder made pursuant to the Agreement, such payment of principal to be made in full by the Authority on the Termination Date (as that term is defined in the Note Purchase Agreement), and promises to pay interest on the unpaid principal amount of this Note and all Taxable Drawings hereunder until this Note shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the applicable Taxable Rate (as defined in the Note Purchase Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Note Purchase Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Note Purchase Agreement) in effect from time to time; provided, that with respect to unpaid Reimbursement Obligations, the Authority promises to pay interest on the unpaid principal amount of Reimbursement Obligation at a rate per annum equal at all times to the Default Rate in effect from time to time. Each change in the Base Rate resulting from a change in the Prime Rate of the Bank or the Federal Funds Rate (as such terms are defined in the Note Purchase Agreement) shall become effective for purposes hereof on the day on which such change in such Prime Rate or the Federal Funds Rate becomes effective. The interest rate specified above may be adjusted pursuant to Sections 3.2, 3.8 and 3.11 of the Note Purchase Agreement. Interest shall be computed on the basis of a year having the number of days specified in Section 3.1 of the Note Purchase Agreement, and actual days elapsed, and shall be paid on each Interest Payment Date.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the principal amount of Taxable Drawings under this Note and the amount of each payment or prepayment of the principal of Taxable Drawings under this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note Purchase Agreement with respect to this Note or any Taxable Drawing.
This Note is issued under a resolution of the Authority adopted March 31[_____], 2020 2022 (as amended, modified or restated from time to time, the “Resolution”) and under the Power Authority of the State of New York Amended and Restated Note Purchase Agreement, dated as of April 22[____], 2020 2022 (as amended, modified or restated from time to time pursuant to the terms thereof, the “Note Purchase Agreement”), between the Authority and JPMorgan Chase Bank, National Association. This Note is and shall continue to be an obligation of the Authority payable from the Trust Estate (as defined in the 1998 Resolution referred to in said Note Purchase Agreement) and, is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution). The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits of the Note Purchase Agreement Resolution and said Note Purchase Agreement.

Upon the occurrence of any Event of Default specified in said Note Purchase Agreement, the principal of this Note, all Taxable Drawings hereunder and accrued interest thereon may be declared due and payable in the manner, upon the conditions and with the effect provided in said Note Purchase Agreement, and upon any such declaration, the principal of and interest on all Taxable Drawings then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of Taxable Drawings under this Note and any Taxable Drawing before maturity upon the terms provided in said Note Purchase Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent for the State of New York, does hereby pledge to and agree with the holder(s) of the interests in this Note that the State of New York will not limit or alter the rights vested in the Authority by said Act, as amended, until the obligations of the Authority under this Note shall have been fully met and discharged or adequate provision shall have been made by law for the protection of the holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note or in connection with any claim based hereon or on the Note Purchase Agreement Resolution or on said Note Purchase Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the Note Purchase Agreement Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issuance of this Note, together with all other indebtedness of the Authority, is within every debt and other limit prescribed by the laws of the State of New York.
IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the 22nd[___] day of April[____], 20202022.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________
    Name: ______________________________
    Title: ______________________________

Attest:

Title: ______________________________
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Exhibit B
Form of Request for Drawing

[Letterhead of Power Authority of the State of New York]

Request for Drawing

JPM-Delaware Loan Operations
Address:  500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn:  Marcus Smith
Telephone:  (302) 634-9627
Facsimile:  (302) 634-4733
Email:  120l2443628@tls.Ldsprod.com;
pfg_servicing@jpmorgan.com

The Bank of New York Mellon
___________
___________
Attention: _____________
Telephone: _____________
Telecopy: _____________
E-Mail: _____________

Re:  Power Authority of the State of New York
Direct Purchase Notes, Series 20202022 TE and Series 20202022 T (the “Direct Purchase Notes”)

Date: _____________

Ladies and Gentlemen:

The Power Authority of the State of New York (the “Authority”) refers to the Amended
and Restated Note Purchase Agreement dated as of April 22[____], 20202022 (as amended,
supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the
“Agreement”), between the Authority and JPMorgan Chase Bank, National Association (the
“Bank”) (the terms defined therein being used herein as therein defined) and hereby requests,
pursuant to Section 4.1 of the Agreement, that the Bank make a Term Benchmark Drawing under
the Agreement, and in that connection sets forth below the following information relating to such
Term Benchmark Drawing (the “Proposed Drawing”):

1. The Business Day of the Proposed Drawing is _____________, 20__ (the
“Drawing Date”), which is at least three London Banking Business Days after the date hereof.
2. The principal amount of the Proposed Drawing to be made is \$______________, which is not greater than the Available Commitment as of the Drawing Date set forth in 1 above.

3. With respect to the interest rate of the Proposed Drawing:

   (A) The Interest Period selected for a Term Benchmark Drawing is [one], [three] or [six] month LIBOR months.

   [(B) At the end of the Interest Period elected by the Authority in (A) the Authority desires that the related Proposed Drawing continue in the same Interest Period until otherwise directed by the Authority].

   (C) The Proposed Drawing shall be a [Tax-Exempt][Taxable] Drawing under the [Tax-Exempt][Taxable] Note.

4. The aggregate amount of the Proposed Drawing shall be used solely for the purposes permitted in the Note Purchase Agreement Resolution and the Agreement. In accordance with Section 8.20 of the Agreement the aggregate amount of the Proposed Drawing shall not be used to refund any Indebtedness of the Authority owned by the Bank, which the Bank has purchased into its inventory as a dealer or remarketing agent, without the prior written consent of the Bank.

5. The maturity date shall be the Stated Expiration Date.

The submission of this Request for Drawing constitutes a representation and warranty only that each of the conditions specified in Section 3.6 of the Agreement have been satisfied on and as of the date hereof.
The Proposed Drawing shall be made by the Bank by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

[Insert wire instructions]

____________________
____________________
____________________

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _______________________________
Name: ____________________________
Title: ______________________________
JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

As General Counsel of the Power Authority of the State of New York (herein called the “Authority”) and in accordance with Section 7.1(d) of the Amended and Restated Note Purchase Agreement dated as of April 22[____], 2022, between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (herein called the “Note Purchase Agreement”), I hereby advise that in my opinion:

1. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, created by and validly existing under the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”). The Authority has the power to execute and deliver the Note Purchase Agreement and the Direct Purchase Notes issued pursuant to the Note Purchase Agreement (the “Notes”) and to incur and perform its obligations under the Note Purchase Agreement and under the Notes.

2. The execution and delivery of the Note Purchase Agreement and the issuance of the Notes do not and will not violate any provision of any agreement entered into pursuant to the Existing Resolutions (as defined in the Note Purchase Agreement) or, to my knowledge after inquiry, under any other agreement or instrument to which the Authority or its property is bound, or result in the creation or imposition of any “security interest” (as defined in the Note Purchase Agreement) on any asset of the Authority except for the pledge contemplated by the Note Purchase Agreement.

3. The Notes do not constitute an obligation, debt or liability of the State of New York, and the Authority has no power of taxation or power to pledge the credit of the State of New York.

4. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, (a) questioning the creation, organization or existence of the Authority or the validity of the Note Purchase Agreement, the Existing Resolutions or the Notes or any of the bonds or notes referred to in the Note Purchase Agreement
or the Existing Resolutions or (b) that have a reasonable likelihood of being adversely determined and, if adversely determined, would otherwise have a Material Adverse Effect (as defined in the Note Purchase Agreement) or material adverse effect upon the rights available to the Bank under the Note Purchase Agreement[, except as may be described in Appendix B hereto].

5. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority. As of the date first above written, there are no liens or encumbrances on any properties of the Authority the foreclosure of which would have a Material Adverse Effect, except as described in the Note Purchase Agreement. As of the date first above written, there are no liens or encumbrances on the revenues of the Authority other than the pledge effected by and pursuant to the Note Purchase Agreement and the pledges effected by and pursuant to the Existing Resolutions.

I am admitted to the bar of the State of New York. I express no opinion as to the laws of any jurisdiction other than the laws of the State of New York, and my opinion is limited to and applies only insofar as such laws may be concerned.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This letter is furnished by the Authority solely for your benefit in connection with the provisions of the Note Purchase Agreement and may not be relied upon by any other person, without the Authority’s express written consent.

The terms used in this opinion have the meanings ascribed to such terms in the Note Purchase Agreement.

______________________________
Justin E. Driscoll
General Counsel
In connection with the execution and delivery of the Amended and Restated Note Purchase Agreement dated as of April 22, 2020 (the “Note Purchase Agreement”), between the Power Authority of the State of New York (the “Authority”) and JPMorgan Chase Bank, National Association, we have examined an executed copy of the Note Purchase Agreement.

We have assumed but have not independently verified that the signatures on the Note Purchase Agreement were genuine. We have further assumed for purposes of the opinions expressed below that the Note Purchase Agreement has been duly authorized, executed and delivered by each party thereto, other than the Authority, and that such Note Purchase Agreement is a valid and binding obligation of, and enforceable against, each party thereto, other than the Authority.

Based on the foregoing, we are of the opinion that:

1. The Note Purchase Agreement has been duly authorized, executed and delivered by the Authority, is in full force and effect, creates the valid pledge described in Section 10 of the Note Purchase Agreement, is a legal, valid and binding obligation of the Authority, and is enforceable against the Authority in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and no other authorization for the Note Purchase Agreement is required.

2. The Direct Purchase Notes issued pursuant to the Note Purchase Agreement have been duly authorized, executed and delivered by the Authority and issued in accordance with law, including the Act, and in accordance with the Note Purchase Agreement. Each Direct Purchase Note is a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with their terms and the terms of the Note Purchase Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and each Note will be entitled to the benefits of the Note Purchase Agreement and of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, and constitute Subordinated Indebtedness under the 1998 Resolution.
3. The execution and delivery by the Authority of the Note Purchase Agreement and the issuance on the date hereof of the Note Direct Purchase Notes pursuant to the Note Purchase Agreement do not and will not violate any applicable Federal or New York law or regulation in effect on the date hereof.

4. No registration with, consent of, or approval by any government officer, agency or commission is necessary for the making and performance of the Note Purchase Agreement and the issuance and payment of the Note Direct Purchase Notes other than the approval of the Comptroller of the State of New York, which approval has been obtained and, to our knowledge after inquiry, is in full force and effect.

No attorney-client relationship has existed between the Bank and our firm in connection with the foregoing matters, and no such relationship shall exist by virtue of this letter.

This letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This letter is issued as of the date hereof, and we assume no obligation to update, revise or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any other reason whatsoever.

The terms used in this opinion have the meanings ascribed to such terms in the Note Purchase Agreement.

Very truly yours,
EXHIBIT D

FORM OF INVESTOR LETTER

April 22[___], 2020

Power Authority of the State of New York
Albany, New York

Re: Power Authority of the State of New York
Direct Purchase Notes, Series 2020 2022 TE and Series 2020 2022 T

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of above-referenced note (the "Direct Purchase Notes"), dated the date hereof. The Direct Purchase Notes were issued pursuant to that certain resolution of the Power Authority of the State of New York (the "Authority") adopted on March 31[___], 2020 (as amended and supplemented from time to time, the "Note Purchase Agreement Resolution"), authorizing the execution of the Amended and Restated Note Purchase Agreement dated as of April 22[___], 2020 2022, between the Authority and the JPMorgan Chase Bank, National Association (the "Bank," the "undersigned," "us" or "we," as applicable). The Bank is purchasing the Direct Purchase Notes pursuant to the Note Purchase Agreement. We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Direct Purchase Notes have not been registered pursuant to the Securities Act of 1933, as amended (the "1933 Act"), the securities laws of any state nor has the Note Purchase Agreement Resolution been qualified pursuant to the Trust Agreement Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Direct Purchase Notes (i) are not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, and (ii) will not be listed on any securities exchange.

2. We have not offered, offered to sell, offered for sale or sold any interest in the Direct Purchase Notes by means of any form of general solicitation or general advertising, we are not an underwriter of the Direct Purchase Notes within the meaning of Section 2(11) of the 1933 Act, and we are not selling or offering to sell the Direct Purchase Notes in a primary offering by, or on behalf of, the Authority.

3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations and taxable obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Direct Purchase Notes.

4. The Bank is either a “qualified institutional buyer” as defined in Rule 144A
promulgated under the 1933 Act, or an “institutional accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act, and is able to bear the economic risks of such investment.

5. The Bank understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Direct Purchase Notes. The Bank has made its own inquiry and analysis with respect to the Authority, the Direct Purchase Notes and the security therefor, and other material factors affecting the security for and payment of the Direct Purchase Notes.

6. The Bank acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Authority, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the Direct Purchase Notes and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Direct Purchase Notes.

7. The Direct Purchase Notes are being acquired by the Bank for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Bank reserves the right to sell, transfer or redistribute the Direct Purchase Notes and interests therein, but agrees that any such sale, transfer or distribution by the Bank shall be to a Person:

   (a) that is an affiliate of the Bank;

   (b) that is a trust or other custodial arrangement established by the Bank or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or institutional accredited investors;

   (c) that is a secured party, custodian or other entity in connection with a pledge by the Bank to secure public deposits or other obligations of the Bank or one of its affiliates to state or local governmental entities; or

   (d) that the Bank reasonably believes to be a qualified institutional buyer or institutional accredited investor and who executes an investor letter substantially in the form of this letter.
Very truly yours,

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ___________________________________

Name:  Heather X. Talbott
Its:        Executive Director
EXHIBIT E

NOTICE OF CONTINUATION/CONVERSION

JPM-Delaware Loan Operations
Address:  500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn:  Marcus Smith
Telephone:  (302) 634-9627
Facsimile:  (302) 634-4733
Email:  12012443628@tls.Ldsprod.com;
pfg_servicing@jpmorgan.com

The Bank of New York Mellon
______________
______________
Attention: ______________
Telephone: ______________
Telecopy: ______________
E-Mail: ______________

Re: Power Authority of the State of New York
-Direct Purchase Notes, Series 20202022 TE and Series 20202022 T
(the “Direct Purchase Notes”)

Date: ____________

Ladies and Gentlemen:

The Power Authority of the State of New York (the “Authority”) refers to the Amended and Restated Note Purchase Agreement dated as of April 22[___], 2022 (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the “Agreement”), between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (the terms defined therein being used herein as therein defined) and hereby gives the Bank notice irrevocably, pursuant to Section 3.2(a) of the Agreement, of the continuation of the interest rate on the [Tax-Exempt][Taxable] Drawing(s) specified herein, that:

1. The Business Day of the proposed continuation is __________, 20__ (the “Conversion/Continuation Date”), which is at least three Business Days following the date hereof.

2. The aggregate amount of the [Tax-Exempt][Taxable] Drawing(s) to be continued is $______________.

[Signature Page to NYPAA Investor Letter]
3. The [Tax-Exempt][Taxable] Drawing(s) is/are to be continued in the same Interest Period.

4. [If applicable:]

   (i) The duration of the Interest Period for the [Tax-Exempt][Taxable] Drawing(s) to be continued shall be [one] [three] [six] months.

   (ii) The last day of the proposed Interest Period for the [Tax-Exempt][Taxable] Drawing(s) to be continued will be __________, 20__ which is not later than the Stated Expiration Date in effect on the Conversion/Continuation Date.

The undersigned hereby certifies that on the date hereof and on the proposed conversion/continuation date, before and after giving effect thereto and to the application of the proceeds therefrom no Default or Event of Default shall have occurred and be continuing as of such date.
IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Continuation/Conversion as of the _____ day of _______________, ____.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________
    Name: ______________________________
    Title: ______________________________
AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

between

POWER AUTHORITY OF THE STATE OF NEW YORK

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

dated as of April 22, 2022
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This Amended and Restated Revolving Credit Agreement (this “Agreement”) dated as of April 22, 2022, between the POWER AUTHORITY OF THE STATE OF NEW YORK (the “Authority”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, (together with its successors and assigns, the “Bank”).

Preliminary Statements

WHEREAS, the Bank and the Authority have previously entered into the Revolving Credit Agreement dated as of April 22, 2020 (the “Original Agreement”); and

WHEREAS, the Bank and the Authority desire to amend and restate the Original Agreement in its entirety;

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, the parties foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to amend and restate the Original Agreement, the Authority and the Bank hereby agree as follows:

Section 1. Certain Definitions

As used herein:

“Act” means the Power Authority Act of the State, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended.

“Adjusted Base Rate” means, for any day with respect to each Loan, a rate per annum equal to (i) for the period from and including the date such Loan is made to but not including the Term Loan Date, the Base Rate and (ii) for the period from and including the Term Loan Date, the Base Rate plus 1.0%; provided, further, that at no time shall the Adjusted Base Rate be less than the highest rate of interest borne by any outstanding Commercial Paper Note.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Authority or its subsidiaries from time to time concerning or relating to bribery or corruption.

“Assignee” has the meaning set forth in Section 15.6 hereof.

“Authorized Officer” means the Authority’s Chairman, Vice Chairman, President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, Treasurer, and Deputy Treasurer.
“Available Commitment” means, and in no event shall it exceed, $250,000,000, such initial amount adjusted from time to time as follows: (a) downward in an amount equal to (i) the principal amount of each Loan and downward in an amount equal to, (ii) the principal amount of each Drawing pursuant to the Note Purchase Agreement, (ii) the undrawn amount of each Letter of Credit issued by the Bank pursuant to the Note Purchase Agreement and (v) each LC Disbursement made by the Bank pursuant to the Note Purchase Agreement that have not yet been reimbursed; (b) upward in an amount equal to (i) the principal amount of each Loan that is repaid pursuant to the terms of Section 5.1 hereof and upward in an amount equal to, (ii) the principal amount of each Drawing repaid pursuant to the Note Purchase Agreement, (ii) the undrawn amount of each expired Letter of Credit issued by the Bank and (iv) each LC Disbursement made by the Bank that has been reimbursed; and (c) downward by an amount that bears the same proportion to the Available Commitment immediately prior to such reduction as the amount of any reduction in the Commitment bears to the Commitment immediately prior to such reduction; provided, that, after giving effect to any such adjustment the Available Commitment shall never exceed $250,000,000. Any adjustments pursuant to clause (a), (b) or (c) above shall occur simultaneously with the event requiring such adjustment.


“Base Rate” means, for any day, a rate per annum equal to the highest of (i) the sum of 1.5% and the Prime Rate for such day, (ii) the sum of 2.0% and the Federal Funds Rate for such day and (iii) 7.5%.

“Borrowing” means a borrowing consisting of Loans made on the same day by the Bank.

“Business Day” means a day other than a Saturday, Sunday or banking holiday in the State of New York.

“Change in Law” means the occurrence, after the Effective Original Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case relating to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Commercial Paper Notes” means a designated portion of those notes issued pursuant to
the Commercial Paper Note Resolution, such portion initially being those notes designated as “Series 4 Notes (Tax-Exempt)” and “Series 3 Notes (Taxable)” B Notes,” subject to changes in series and subseries designations as provided in this definition. The Authority may change the series and subseries designation of notes issued pursuant to the Commercial Paper Note Resolution constituting Commercial Paper Notes for purposes of the Agreement from time to time, by delivering (A) a certificate signed by an authorized officer of the Authority and acknowledged and agreed to in writing by the Bank and (B) written confirmation from each Rating Agency then rating the newly designated series of Commercial Paper Notes that the newly designated series of Commercial Paper Notes have been rated at least “P-1” (or its equivalent) by Moody’s, “A-1” (or its equivalent) by S&P and/or “F1” (or its equivalent) by Fitch, as applicable; provided, however, that the maximum aggregate outstanding principal amount of notes constituting Commercial Paper Notes for purposes of the Agreement at any time shall not exceed $250,000,000.

“Commercial Paper Note Resolution” means the resolution adopted by the Authority on June 28, 1994, entitled “Resolution Authorizing Commercial Paper Notes”, as amended and restated by the resolution adopted by the Authority on November 25, 1997, as amended and restated in its entirety by the resolution adopted by the Authority on March 30, 2021, and as subsequently amended and supplemented.

“Commitment” means an amount equal to the commitment of the Bank to make Loans to the Authority, as such amount may be terminated and/or reduced pursuant to Section 3.9 or 12 hereof. The Authority and the Bank agree that as of the Effective Date the Commitment of the Bank is in an amount equal to $250,000,000.

“Dealer” has the meaning specified in the Commercial Paper Note Resolution.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default Rate” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.00%); provided, that at no time shall the Default Rate be less than the highest rate of interest borne by any outstanding Commercial Paper Note.

“Direct Purchase Notes” means the Power Authority of the State of New York Tax-Exempt Direct Purchase Note, Series 20202022 TE and the Power Authority of the State of New York Taxable Direct Purchase Note, Series 20202022 T, issued pursuant to the JPM Note Purchase Agreement.

“Drawing” has the meaning set forth in the JPM Note Purchase Agreement.

“Effective Date” means April 22[____], 20202022, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Section 7.1 hereof.
“Environmental Laws” means any applicable federal, state and local environmental, health and safety statutes and regulations, including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 66901 et seq.

“Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Excess Interest Amount” has the meaning set forth in Section 3.8 hereof.

“Existing Resolutions” means the 1998 Resolution, the Subordinate Resolution, the 2011 Revolving Credit Agreement Resolution, the 2012 Subordinate Notes Resolution, the 2017 Subordinate Notes Resolution, the 2019 Revolving Credit Agreement Resolution, the Revolving Credit Agreement Resolution, the Commercial Paper Note Resolution and the Extendible Municipal Commercial Paper Note Resolution.

“Existing Termination Date” has the meaning set forth in Section 4.3 hereof.


“Federal Funds Rate” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depositary institutions, as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“Fee Letter” means the Second Amended and Restated Fee Letter dated April 22[___], 2020[2022], between the Authority and the Bank, as such agreement may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.


“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any
Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“hereunder”, “hereby”, “herein”, “hereto”, “hereof” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective work appears.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (b) all Guarantees by such Person of Indebtedness of others for which defenses to payment cannot be raised, (c) all capital lease obligations of such Person that have been or should be, in accordance with GAAP, recorded as capital leases, (d) all obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided, however, that “Indebtedness” shall not include indebtedness related to Separately Financed Projects.

“Issuing and Paying Agent” has the meaning specified in the Commercial Paper Note Resolution.

“JPM Note Purchase Agreement” means the Note Purchase Agreement dated as of the date hereof, April 22, 2020, as amended and restated by the Amended and Restated Revolving Credit Agreement dated as of April 1, 2022, each between the Authority and the Bank, related to the Direct Purchase Notes, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Law” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“Lending Office” means, with respect the office of the Bank specified on the signature page hereof, or such other office of the Bank as the Bank may from time to time specify to the Authority.

“Loan” means each loan made hereunder.

“Material Adverse Effect” means material adverse effect on the (i) business, assets, operations or financial condition of the Authority taken as a whole, or (ii) ability of the Authority to perform its obligations under this Agreement.
“Maximum Rate” has the meaning set forth in Section 3.8 hereof.

“Moody’s” means Moody’s Investors Service and its successors.

“1998 Resolution” means the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented in accordance with its terms; provided, however, that no amendment or modification to the definition of “Trust Estate,” “Parity Debt”, “Subordinated Contract Obligation” or “Subordinated Indebtedness” therein (including any defined term incorporated by reference in such definition) shall be effective for purposes of this Agreement or with respect to the Note unless made with the consent of the Bank.

“Non-Terminating Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Note” shall have the meaning as defined in Section 3.1 hereof.

“Notice of Borrowing” has the meaning set forth in Section 4.1 hereof.

“Obligations” has the meaning set forth in the 1998 Resolution.

“Other Indebtedness” of any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the indebtedness secured thereby has been assumed, (e) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (f) all contingent obligations of such Person as an account party in respect of letters of credit and letters of guaranty for which defenses to payment cannot be raised; provided that obligations issued in accordance with Section 203 of the 1998 Resolution to finance Separately Financed Projects shall not be considered to be Other Indebtedness.

“Other Taxes” has the meaning set forth in Section 9.1(b) hereof.

“Parent” means, with respect to the Bank, any Person controlling the Bank.

“Parity Debt” has the meaning set forth in the 1998 Resolution.

“Participant” has the meaning set forth in Section 15.6 hereof.

“Person” means any individual, partnership, joint venture, firm, corporation or governmental entity.

“Prime Rate” means the rate of interest announced publicly by the Bank at its principal
office in New York, New York, from time to time; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Rating Agencies” means Standard & Poor’s, Moody’s and Fitch.

“Revolving Credit Agreement Resolution” means the resolution of the Authority adopted on March 31, 2022, authorizing the execution of this Agreement and the JPM Note Purchase Agreement.


“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Separately Financed Project” has the meaning set forth in the 1998 Resolution.

“Series 4 Notes” has the meaning given such term in Section 2.6(b).

“Series 2003A Revenue Bonds” means the Series 2003A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.


“Series 2011A Revenue Bonds” means the Series 2011A Revenue Bonds issued by the Authority pursuant to the 1998 Resolution.

“Specified Representations” means the representations and warranties of the Authority set
forth in Section 2 except for those set forth in Sections 2.4 and 2.6.


“State” means the State of New York.

“Stated Expiration Date” means April 24, 2023, or such later date as may be agreed to between the parties pursuant to Section 4.3.

“Subordinated Contract Obligation” has the meaning set forth in the 1998 Resolution.

“Subordinated Indebtedness” has the meaning set forth in the 1998 Resolution.

“Subordinate Resolution” means the General Subordinate Resolution authorizing Subordinate Revenue Bonds adopted by the Authority on July 25, 2000 and as subsequently amended and supplemented and to the extent in effect.

“Taxes” has the meaning set forth in Section 9.1(a) hereof.

“Termination Date” means (a) the Stated Expiration Date or (b) such earlier date on which the Commitment shall be terminated in full as permitted herein.

“Terminating Event of Default” has the meaning set forth in the first paragraph of Section 12 hereof.

“Term Loan Date” means, with respect to each Loan, the earlier of (a) the first Business Day that is 90 days after the date such Loan is made and (b) the Termination Date.

“Term Loan End Date” means, with respect to each Loan, the earliest to occur of (i) the Stated Expiration Date, and (ii) the date on which the Bank has declared or directed the Note to become immediately due and payable pursuant to Section 12 hereof.

“Term Loan Payment Date” means, with respect to each Loan, (a) the related Term Loan Date and the corresponding date in every third month occurring thereafter which occurs prior to the Term Loan End Date, and (b) the Term Loan End Date.

“Trust Estate” has the meaning set forth in the 1998 Resolution.

“2012 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 9, 2012 entitled “Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable)”, as amended in accordance with its terms.

“2017 Subordinated Notes Resolution” means the resolution adopted by the Authority on November 7, 2016 entitled “Resolution Authorizing Subordinated Notes, Series 2016” (Federally Taxable)”, as amended in accordance with its terms.
“2019 Revolving Credit Agreement” means the 2019 Revolving Credit Agreement dated as of January 16, 2019, among the Authority, the banks listed on the signature pages thereto and JPMorgan Chase Bank, National Association, as Administrative Agent, as amended in accordance with its terms.

“2019 Revolving Credit Agreement Resolution” means the resolution of the Authority adopted on December 11, 2018, authorizing the execution of this Agreement.

SECTION 2. REPRESENTATIONS

The Authority represents, covenants and warrants that:

Section 2.1. Existence and Power. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State, created in 1931 by and validly existing under the Act. The Authority has the power to execute and deliver this Agreement and the Note and to incur and perform its obligations hereunder and under the Note.

Section 2.2. Authority, etc. The execution, delivery and performance by the Authority of this Agreement and the Note have been duly authorized by all necessary action of the Authority, including the Revolving Credit Agreement Resolution. The Authority has heretofore delivered to the Bank a copy of the Revolving Credit Agreement Resolution, certified as true and correct by the Corporate Secretary of the Authority, and the Revolving Credit Agreement Resolution is in full force and effect. Assuming that this Agreement constitutes a legal, valid, and binding obligation of, and is enforceable against, the Bank, this Agreement constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, and the Note has been duly executed and delivered by the Authority and, upon the making of any Loan hereunder in accordance herewith, will constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms and the terms of the Revolving Credit Agreement Resolution and this Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally, and shall be entitled to the benefits of the Revolving Credit Agreement Resolution, of this Agreement and of the Act, subject to the pledge created by the 1998 Resolution, including Parity Debt as described therein, which includes, without limitation, debt issued pursuant to the Revolving Credit Agreement Resolution and such liens as are permitted by Section 8.3 hereof. The making and performance by the Authority of this Agreement and the Note will not violate any provision of law or result in a breach of or constitute a default under or require any consent under any agreement or instrument to which the Authority is a party or by which the Authority or its property may be bound (including, without limitation, the Authority’s organizational documents and the JPM Note Purchase Agreement) or affected or result in the creation or imposition of any “security interest” (as defined in Section 8.3 hereof) on any asset of the Authority except for the pledge contemplated hereby. This Agreement and the Note, collectively, constitute a a revolving credit facility for purposes of Section 11 of the Revolving Credit Agreement Resolution.

Section 2.3. Financial Condition. (a) The financial statements of the Authority for the year ended December 31, 20192020, with the opinion thereon of independent certified public accountants, copies of which have been delivered to the Bank, are complete and correct in all
material respects and fairly present in all material respects the financial condition of the Authority as at the dates of said financial statements and the results of its operations for the periods ending on said dates. The Authority has no contingent obligations or liabilities, liabilities for taxes or unusual forward or long-term commitments that are material in amount, except as disclosed by or reserved against in said financial statements as of December 31, 2019, which would have a Material Adverse Effect.

(b) Since December 31, 2019, and as of the date hereof, there has been no material adverse change in the financial condition or in the results of operations of the Authority from that set forth in said financial statements as of and for the period ended December 31, 2019, that would have a Material Adverse Effect.

Section 2.4. Litigation. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, questioning the creation, organization or existence of the Authority or the validity of this Agreement or the Note or any of the bonds or notes herein referred to or that have a reasonable likelihood of adverse determination and if adversely determined, would otherwise have a Material Adverse Effect or material adverse effect on the rights available to the Bank hereunder, except as may be referenced in an opinion referred to in Section 7.1(d) hereof.

Section 2.5. Government Approvals. No governmental approvals, licenses, authorizations, consents, filings or registrations (other than the approval of the Comptroller of the State of New York pursuant to the Act, which approval has been obtained and a copy thereof furnished to the Bank) are required for the making and performance by the Authority of this Agreement and the issuance of the Note.

Section 2.6. Obligations for Borrowed Money.

(a) Revenue Bonds. Pursuant to the 1998 Resolution, the Authority has issued and is obligated to pay and there were outstanding on the date hereof, an aggregate of not more than $490,440,000 in principal amount of Revenue Bonds of the Authority. The Revenue Bonds constitute Obligations.

(b) Commercial Paper Notes. Pursuant to the Commercial Paper Note Resolution, the Authority is currently authorized to issue its (i) Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $1,200,000,000, with not more than $612,938,000 of 1,420,000,000. On April [__], 2022, no such Commercial Paper Notes were outstanding on the date hereof. Consisting of commercial paper notes designated as “Series 3B Notes” and (ii) commercial paper notes designated as “Series 4 Notes,” in an aggregate principal amount outstanding at any time not to exceed $220,000,000, with none of such Series 4 Notes outstanding on the date hereof. The Commercial Paper Notes, the Series 3B Notes and the Series 4 Notes are Subordinated Indebtedness. This Agreement shall constitute a Subordinated Contract Obligation. The obligations of the Authority to make payments under this Agreement shall constitute a Subordinated Contract Obligation within the meaning of the General Resolution and shall be deemed to be part of the Series 3B Notes and Series 4 Notes.
(c) **Extendible Municipal Commercial Paper Notes.** Pursuant to the Extendible Municipal Commercial Paper Note Resolution, the Authority is currently authorized to issue its Extendible Municipal Commercial Paper Notes in an aggregate principal amount outstanding at any time not to exceed $200,000,000, with $5,000,000 of such Extendible Municipal Commercial Paper Notes outstanding on the date hereof. The Extendible Municipal Commercial Paper Notes constitute Subordinated Indebtedness.

(d) **Subordinated Notes, Series 2012 (Federally Taxable).** Pursuant to the 2012 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2012 in the principal amount of $25,160,000 on December 15, 2012, of which $19,575,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2012 are Subordinated Indebtedness.

(e) **Subordinated Notes, Series 2017 (Federally Taxable).** Pursuant to the 2017 Subordinated Notes Resolution, the Authority issued Subordinate Notes, Series 2017 in the principal amount of $25,200,000 on February 21, 2017, of which $23,860,000 in principal amount were outstanding on the date hereof. Such Subordinate Notes, Series 2017 are Subordinated Indebtedness.

(f) **Other.** No bonds, notes or other obligations for money borrowed by the Authority other than those described in this Section 2.6 are outstanding on the date hereof, except for (i) obligations for which moneys and/or obligations of the United States have been set aside or placed in trust for the payment or redemption thereof and which have thereby been fully defeased in accordance with their terms or (ii) obligations incurred to finance Separately Financed Projects as defined in the 1998 Resolution.

Section 2.7. **Title and Liens.** The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority except for defects which would not reasonably be expected to have a Material Adverse Effect. There are no liens or encumbrances (a) on any properties of the Authority, the foreclosure of which would have a Material Adverse Effect, except as described in this Agreement; or (b) on the revenues of the Authority other than the pledge effected hereby and by and pursuant to the Existing Resolutions.

Section 2.8. **Security for the Note.** The Note is an obligation of the Authority payable from the Trust Estate and is Subordinated Indebtedness. The Note is secured by pledges of the Trust Estate as provided in Section 10 hereof. As of the date hereof, the Note is subordinate only to (i) the debt secured by the pledge created by the 1998 Resolution, including Parity Debt as described therein, and (ii) debt permitted by Section 8.3 hereof; the lien securing the Note is on a parity with the pledges made to holders of obligations issued under the Commercial Paper Note Resolution, Extendible Municipal Commercial Paper Note Resolution, the Subordinate Resolution, the 2012 Subordinated Notes Resolution, the 2017 Subordinated Notes Resolution and any subsequent resolutions of the Authority (other than those permitted under Section 8.3 hereof) authorizing the issuance of debt.

Section 2.9. **ERISA.** Any employee pension benefit plan or a plan qualifying under
Section 401 (a) of the Internal Revenue Code of 1986, as amended, maintained by the Authority is currently exempt from the requirements of Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

Section 2.10. Compliance with Laws and Agreements. The Authority (i) is in compliance with all laws, ordinances, governmental rules and regulations the noncompliance with which could reasonably be expected to result in a Material Adverse Effect, (ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, could reasonably be expected to result in a Material Adverse Effect and (iii) is in compliance with all indentures, agreements and other instruments binding upon its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing. Without limiting the generality of the foregoing, except as would not result or be reasonably expected to result in a Material Adverse Effect: (a) each of the properties of the Authority and all operations at such properties are in compliance with all applicable Environmental Laws and (b) there is no violation of any Environmental Law with respect to such properties or the businesses operated by the Authority.

Section 2.11. Federal Power Act. The Authority is not subject to regulation under Section 204 of the Federal Power Act of 1935 in connection with the issuance of the Note or incurring of the Loans under this Agreement.

Section 2.12. Sovereign Immunity. The Authority is not authorized to assert a defense based on sovereign or governmental immunity in any action or proceeding to enforce the obligations of the Authority hereunder or under the Commercial Paper Note Resolution and, to the extent permitted by law, specifically waives the right to claim any such defense.

Section 2.13. Margin Stock. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Loans or the Note will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or in any other manner which would involve a violation of any of the regulations of the Board of Governors of the Federal Reserve System. The Authority is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 2.14. Complete and Correct Information. All information, reports and other papers and data with respect to the Authority furnished to the Bank or their counsel by the Authority in connection with the negotiation of this Agreement were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects.

Section 2.15. Tax-Exempt Status. With respect to the Commercial Paper Notes the interest on which is intended to be excluded from gross income for Federal income tax purposes, the Authority has not taken any action or omitted to take any action which action or inaction would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.
Section 2.16. Incorporation by Reference. The representations and warranties made by the Authority in the Commercial Paper Note Resolution are hereby incorporated herein by reference and made for the benefit of the Bank.

Section 2.17. Anti-Corruption Laws and Sanctions. The Authority and, to its knowledge, its officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions except where such non-compliance would not result in a Material Adverse Effect. No Borrowing, use of proceeds or, to the knowledge of the Authority, other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions. The Authority is not a Sanctioned Person.

SECTION 3. REVOLVING CREDIT.

The Authority hereby requests the Bank, and the Bank hereby agrees, on the terms of this Agreement, to make Loans to the Authority under this Section 3 from time to time from the Effective Original Closing Date to and including the Business Day immediately preceding the Termination Date, at such time (on a Business Day) and in amounts as the Authority shall request such that the aggregate principal amount of Loans at any one time outstanding shall not exceed the Commitment at such time; provided, however, that notwithstanding anything herein to the contrary, the Bank shall have no obligation to make a Loan if the sum of such Loan plus the aggregate principal amount of the outstanding Loans plus the aggregate principal amount of Drawings outstanding under the Direct Purchase Notes would exceed the Commitment then in effect. Within the limits of the Available Commitment, the Authority may borrow, repay, prepay and reborrow under this Section 3 from the Effective Original Closing Date to and including the Business Day immediately preceding the Termination Date. Each Borrowing from the Bank shall be in a minimum amount of $100,000 or any greater multiple of $1,000 in excess thereof. The Authority shall have the right to terminate or reduce the Commitment in accordance with Section 3.9 hereof. The following provisions shall apply to the Loans:

Section 3.1. Note. Each Loan and the indebtedness of the Authority resulting from each Loan made by the Bank shall be evidenced by, and repaid with interest in accordance with, a promissory note to the order of the Bank (the “Note”), in substantially the form of Exhibit A hereto, [dated the date hereof, which is being delivered to the Bank simultaneously with the delivery of this Agreement].

All Loans shall be repaid in accordance with the terms of the Note. The Note is an obligation of the Authority payable from the Trust Estate in the manner set forth in the 1998 Resolution and constitutes Subordinated Indebtedness. Upon demand by the Authority on any Business Day from the Effective Original Closing Date to and including the Business Day immediately preceding the Termination Date, the Bank will use its best efforts furnish to the Authority, within one Business Day after its receipt of such demand, a written certificate setting forth any information the Authority may request with respect to the amount and date of any Loan and any payment or prepayment of the Note and the then outstanding principal amount of the Note, or, within three Business Days after receipt of such demand, a copy of the Note certified by the Bank to be true and correct copies, as specified by the Authority in such demand. Upon the termination of the Commitment, whether on or before the Termination Date, and final payment of the then
outstanding principal and interest on the Note and any other amounts payable hereunder or under the Note, the Note shall be surrendered by the Bank to the Authority and cancelled at the principal office of the Authority or at such other time and place as may be mutually agreed upon.

The Authority shall, without duplication, (i) make a principal payment on the Note on each date on which the Authority is required to make a principal payment on a Loan in an amount equal to the principal payment due on such date and (ii) pay interest on the Note on each date on which the Authority is required to make an interest payment with to a Loan in an amount equal to the interest payment due on such date. Since the Note evidences and secures the Authority’s obligations to repay each Loan, the payment of the principal of and interest on the Note shall constitute payment of the principal of and interest on the related Loan and the payment of the principal of and interest on the Loans shall constitute the payment of and principal and interest on the Note, and the failure to make any payment on any Loan when due shall be a failure to make a payment on the Note when due and the failure to make any payment on the Note when due shall be a failure to make a payment on such Loan when due.

Notwithstanding anything herein to the contrary, (i) the Bank shall maintain in accordance with its usual practices an account or accounts evidencing the indebtedness resulting from each Loan and the Note made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder and (ii) in any legal action or proceeding in respect of this Agreement of the Note, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded.

Section 3.2. Interest. The Authority agrees to pay interest on the unpaid principal amount of each Loan made hereunder for the period commencing on the date of such Loan until such Loan shall be paid in full, at a rate per annum equal to the Adjusted Base Rate or as otherwise provided in the Note. The foregoing rate of interest may be adjusted pursuant to Section 3.8 hereof. Interest shall be computed in accordance with, and shall be due and payable on, the dates specified in the Note.

All computations of interest shall be made by the Bank on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Bank of interest hereunder shall be conclusive and binding on the Authority for all purposes, absent manifest error. Any amount that is not paid when due hereunder or under the Note (whether at stated maturity, by acceleration, default or otherwise) shall bear interest, from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times to the Default Rate in effect from time to time.

Section 3.3. Fees. The Authority hereby agrees to pay and perform its obligations provided for in the Fee Letter, including the payment of a commitment fee and all other fees and expenses and the other payments provided for therein in the amounts, at the times and on the dates set forth therein. The terms and provisions of the Fee Letter are incorporated herein by reference as if fully set forth herein. Any reference herein or in the Fee Letter to fees and/or other amounts or obligations payable hereunder shall include, without limitation, all fees and other amounts or obligations (including without limitation fees and expenses) payable pursuant to the Fee Letter,
and any reference to this Agreement shall be deemed to include a reference to the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement between the Authority and the Bank and all obligations under the Fee Letter shall be construed as obligations hereunder.

Section 3.4. Capital or Liquidity Requirements Adjustment. If, due to a Change in Law, the Bank reasonably determines that it is required to increase the amount of capital or liquidity maintained by the Bank (or its Parent) based upon the existence of its Commitment to lend under this Agreement or based upon the Loans, the Bank shall promptly notify the Authority of an adjustment of its commitment fees payable hereunder or other payments required to be made hereunder that will, in the reasonable determination of the Bank, adequately compensate the Bank (or its Parent) in light of such required increase in capital and/or liquidity, as applicable. In determining the amount of such adjustment, the Bank may use any reasonable allocation, averaging and attribution methods and may make reasonable assumptions regarding such matters as cost of capital, and any such determination made by the Bank shall, in the absence of manifest error, be conclusive and binding. The adjustment of the commitment fees or other payments pursuant to this Section 3.4 shall be applicable from the effective date of the change causing such adjustment or other payments. The Bank shall notify the Authority of any such change promptly and in any event not more than 180 days after the occurrence thereof and, as soon as practicable thereafter, of the amount of the adjustment to the commitment fees or other payments resulting therefrom, which shall be set forth in a certificate delivered by the Bank to the Authority; provided, however, that notwithstanding any other provisions of this Section, the Authority shall have no liability for any such compensation to the extent incurred more than 180 days prior to the date such certificate is delivered to the Authority (a “Cut-Off Date”), except where such compensation applies retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after the end of the applicable Increased Capital Notice Period (defined below). It is expressly understood that each reference in this Section 3.4 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.4; provided that the amount of any payment required under this Section 3.4 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to pay such adjusted commitment fees or other payments if, within the thirty (30) day period (such period, an “Increased Capital Notice Period”) beginning on the date the Authority receives written notice from the Bank of the Change in Law giving rise to such adjusted commitment fees or other payments, the Authority shall prepay the Loans, the Note and Direct Purchase Notes in full and terminate the Bank’s Commitment.”

Section 3.5. Increased Costs. If, due to a Change in Law, provided that the Bank making a claim under this Section 3.5 based on such requirement, in its reasonable discretion, determines that it is required to comply with such requirement, there shall be any increase in the cost to the Bank of committing to make Loans pursuant to Section 4.1 hereof, then the Authority shall from time to time pay to the Bank such additional amounts sufficient to compensate the Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Authority by the Bank, shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding any other provisions of this Section, the Authority shall have no liability for any such increased
costs to the extent incurred prior to the Cut-Off Date, except where such increased costs apply retroactively to a date prior to the Cut-Off Date, in which case the 180-day period shall be extended to include the period of retroactive effect. The Authority shall pay to the Bank the amount shown as due on such certificate within 10 days after the end of the applicable Increased Costs Notice Period (defined below). It is expressly understood that each reference in this Section 3.5 to the Bank shall include the holder of a participation issued by the Bank in the Commitment and any such Participant shall be subject to the provisions of this Section 3.5; provided that the amount of any payment required under this Section 3.5 shall be determined as if the Bank had not sold such participation. The Authority shall not be required to pay such increased costs if, within the thirty (30) day period (such period, an “Increased Costs Notice Period”) beginning on the date the Authority receives written notice from the Bank of the Change in Law giving rise to such increased costs, the Authority shall prepay the Loans, the Note and Direct Purchase Notes in full and terminate the Bank’s Commitment.

Section 3.6. Use of Proceeds; Further Representations. (a) The proceeds of the Loans shall be used for the payment of the principal of and interest on the Commercial Paper Notes (other than Commercial Paper Notes issued in violation of clause (i) of the last paragraph of Section 12 hereof).

(b) Each Borrowing hereunder by the Authority shall be deemed to constitute (and shall constitute) a representation and warranty by the Authority as of the date such Loan is made that:

(i) the Specified Representations are true and correct in all material respects as of the date of such Loan as if made on and as of such date, provided, however, that if the Authority notifies the Bank in the Notice of Borrowing that it is unable to reaffirm the Specified Representations, then (A) such representations and warranties shall be deemed not to have been made, (B) any Loans comprising the Borrowing that is the subject of such Notice of Borrowing, and, unless the Authority notifies the Bank that it is able to make the Specified Representations, any Loans made subsequently, shall be repaid not later than the Term Loan Date, and (C) the Bank shall be entitled to give the direction and make the declaration described in clause (i) of the last paragraph of Section 12 hereof, which direction shall be effective unless and until the Authority has notified the Bank that it is able to make the Specified Representations, whereupon the Bank shall rescind such direction;

(ii) the proceeds of such Loan are being used solely and exclusively for the purposes set forth in Section 3.6(a);

(iii) no Terminating Event of Default has occurred and is continuing;

(iv) the Authority is and will remain in compliance with any direction previously given by the Bank not to issue further Commercial Paper Notes as provided in clause (i) of the last paragraph of Section 12 hereof; and

(v) the Authority is in compliance with all terms and conditions of the Commercial Paper Notes, the Commercial Paper Note Resolution, the 2019 Revolving
Credit Agreement Resolution, the Revolving Credit Agreement Resolution, the 1998 Resolution (as the same may have been duly supplemented from time to time), the Subordinate Resolution (as the same may have been duly supplemented from time to time and to the extent in effect) and any issuing and paying agency agreement relating to the Commercial Paper Notes.

The Authority will not request any Borrowing, and the Authority shall not use, and shall ensure that its directors, officers, employees and agents shall not knowingly use, the proceeds of any Borrowing (A) in violation of any Anti-Corruption Laws or (B) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 3.7. Reserved.

Section 3.8. Excess Interest. If the amount of interest payable in respect of any Loan on any date such interest is due and payable hereunder, calculated in accordance with the provisions of Section 3.2, exceeds the amount of interest that would be payable on such date had interest been calculated at the maximum rate of interest on such Loan permitted by applicable law (the “Maximum Rate”), then interest on such Loan payable on such date shall be calculated and payable on the basis of the Maximum Rate. Any interest that would have been due and payable on a Loan but for the operation of the preceding sentence shall be payable as provided in the next sentence and shall constitute the “Excess Interest Amount.” At any time that there is any accrued and unpaid Excess Interest Amount, the Loan shall bear interest at the Maximum Rate, rather than the interest rate determined in accordance with Section 3.2, until payment by the Authority of the entire Excess Interest Amount. Upon the repayment of all Loans made hereunder, the Authority, if and to the extent permitted by applicable law, shall pay to the Bank a fee equal to the total amount of the accrued and unpaid Excess Interest Amount.

Section 3.9. Terminations and Reductions; Termination Fee. (a) On and after the date thirty (30) days following the Effective Date, the Authority shall have the right to terminate or reduce the Commitment upon at least five Business Days’ prior written notice to the Bank of such termination or reduction and payment of any termination fee required to be paid pursuant to the Fee Letter. Any partial reduction shall be in the total amount of $25,000,000 or an integral multiple of $1,000,000 in excess thereof. Once terminated or reduced, the Commitment may not be reinstated.

(b) The Commitment shall terminate on the Termination Date.

Section 4. Procedures.

Section 4.1. Notices, etc. Not later than 10:30 A.M. (New York City time) on the date of any proposed Loan, an Authorized Officer of the Authority shall give the Bank, at its office referred to in Section 14 hereof, telephonic notice specifying the amount of each Borrowing under Section 3 hereof. Such notices shall be confirmed in writing by an Authorized Officer of the Authority not later than 11:30 A.M. (New York City time) on the date of the Borrowing, in substantially the form of Exhibit B hereto (a “Notice of Borrowing”), which must be delivered by email to the email addresses of the Bank set forth on the signature pages hereof or such other email
address of the Bank as the Bank may from time to time specify to the Authority. An Authorized Officer of the Authority shall give the Bank, at its office specified below, telephonic notice, specifying the outstanding principal amount of such Loan not later than 10:00 A.M. (New York City time) two Business Days prior to the day of prepayment of all or any part of any outstanding Loan. Absent written evidence to the contrary, the Bank’s records with respect to any telephonic notice given under this Section 4.1 shall be conclusive and binding as to such telephonic notice.

Each Notice of Borrowing and notice of prepayment (and any related telephonic notice) shall be irrevocable and binding on the Authority.

Section 4.2. Availability. Not later than 2:00 P.M. (New York City time) on the date specified, the Bank shall pay to the Authority in immediately available funds (subject to provisions of Section 3 hereof) an amount equal to the amount specified in any Notice of Borrowing delivered by the Authority pursuant to Section 4.1 hereof. The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to the Bank’s Note (or on a supplemental schedule thereto) the amount of each Loan made by the Bank under this Agreement and the amount of each payment or prepayment of the principal of the Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note. The Bank shall make the proceeds of the Loans available to the Authority by depositing such proceeds in an account of the Authority maintained with the Bank at its office in New York City designated by the Authority, in immediately available funds in an account designated by the Authority, or in any other manner reasonably requested by the Authority in its Notice of Borrowing.

Section 4.3. Extension of Commitment and Termination Date. The Commitment of the Bank may be extended beyond the then-scheduled Stated Expiration Date (the “Existing Termination Date”), subject to the provisions of this Section 4.3. The Authority may request an extension of the Commitment of the Bank by written notice to the Bank at any time on or after the date that is no more than 120 days prior to the Existing Termination Date and no less than 60 days prior to the Existing Termination Date. If the Bank agrees, in its individual and sole discretion, to renew its Commitment), it will notify the Authority of its decision to do so no later than 30 days following the receipt of the Authority’s request; provided that if the Bank does not respond to the Authority during such 30-day period, the Bank will be deemed to have declined to extend its Commitment. The Bank’s Commitment shall be renewed for the additional period requested by the Authority and approved by the Bank. The Authority and the Bank shall use their best efforts to complete the documentation necessary so to extend the Termination Date.

SECTION 5. PREPAYMENTS.

Section 5.1. Prepayment. (i) The Authority shall have the right, at any time or from time to time without penalty or premium to make prepayments of principal of Loans provided that (a) the Authority shall give the Bank notice of each prepayment or selection as provided in Section 4.1 hereof, and (b) except for a prepayment that results in the prepayment of the full outstanding principal amount of any Loan, each prepayment shall be in an amount at least equal to $1,000,000 or greater multiples of $100,000. There shall be no prepayments of the Loans except as permitted
by this Section 5. Any amount of principal of a Loan prepaid under this Section 5.01(i) may be reborrowed in accordance with Section 3 hereof.

(ii) **Mandatory Prepayments.** If on any date the sum of (A) the aggregate principal amount of outstanding Loans, (B) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Notes and (C) the aggregate principal amount of outstanding Commercial Paper Notes (plus the amount of interest to accrue thereon to maturity) exceeds the amount of the Commitment, the Authority shall immediately prepay one or more of the Loans or one or more of the Drawings in an amount equal to such excess. Each such prepayment shall be accompanied by the payment of accrued interest to the date of such prepayment on the amount prepaid.

Section 5.2. **Notation of Partial Prepayment.** The amount of any partial prepayment shall be recorded on the Note by the Bank promptly upon receipt of such prepayment, it being understood, however, that if the Bank fails to make such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note.

**SECTION 6. PAYMENTS, ETC.**

Section 6.1. **Payments.** All payments of principal and interest under this Agreement or the Note shall be made in lawful money of the United States of America and in immediately available funds to the Bank at JPMorgan Chase Bank, National Association, JPM-Delaware Loan Operations, 500 Stanton Christiana Road, Floor 1, Newark, DE 19713-2105 using the following wire instructions: ABA#: 021000021, Reference: New York Power Authority, Account Number: 9008113381H0110. If any principal of or interest on the Note or other amount payable by the Authority hereunder falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding Business Day at such place and, in the case of such an extension as to principal, interest shall be payable in respect of such extension. The amount of any principal payment shall be recorded on the Note by the Bank immediately upon receipt of such payment, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Note. All payments received by the Bank after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Authority shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

**SECTION 7. CONDITIONS.**

Section 7.1. **Closing.** The obligation of the Bank to make the Commitment available to the Authority is subject to the receipt by the Bank of the following on the date hereof, each dated the date hereof:

(a) **Note.** The Note to the order of the Bank, duly executed by the Authority.
(b) **Agreement.** (i) Counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, the Bank shall have received in form satisfactory to it telegraphic, telex or other written confirmation from such party of execution of a counterpart hereof by such party); and (ii) an executed copy of the JPM Note Purchase Agreement.

(c) **Signatures.** A certificate of an officer of the Authority setting forth the name and signature of each officer of the Authority authorized to sign this Agreement and the Note and to borrow and effect all other transactions hereunder. The Bank may conclusively rely on each such certification until it receives notice in writing to the contrary.

(d) **Authority Counsel.** Favorable written opinions from either the Executive Vice President and General Counsel, Deputy General Counsel, or an Assistant General Counsel of the Authority, or independent counsel to the Authority, in substantially the forms of Exhibits C-1 and C-2 hereto.

(e) **Proof of Corporate Action.** Certified copies of all corporate action taken by the Authority to authorize the execution, delivery and performance of this Agreement and the Note, a conformed copy of any registration, consent or approval by any governmental officer, agency or commission required to be obtained in connection with the issuance of the Note and a copy of the certificate delivered to The Bank of New York Mellon, as “Trustee” under and as defined in the 1998 Resolution, designating the Note as “Subordinated Indebtedness” and all payment obligations hereunder as “Subordinated Contract Obligations” within the meaning of the 1998 Resolution.

(f) **Financial Statements.** A copy of the financial statements referred to in Section 2.3 hereof.

(g) **Officer’s Certificate.** A certificate of the Treasurer or Deputy Treasurer of the Authority to the effect that (i) the representations and warranties of the Authority in Section 2 of this Agreement are true and correct on and as of the date hereof, (ii) no Terminating Event of Default or Non-Terminating Event of Default has occurred and is continuing, (iii) the copies of the Commercial Paper Note Resolution, the 1998 Resolution, the 2012 Subordinated Notes Resolution, the 2019 Revolving Credit Agreement Resolution and the Revolving Credit Agreement Resolution heretofore provided to the Bank by the Authority are true and correct copies of such resolutions as currently in effect.

(h) **Rating Confirmation.** A copy of the Moody’s confirmation received pursuant to Section 501(G) of the Commercial Paper Note Resolution.

**Section 7.2. Each Loan.** The obligation of the Bank to make each Loan to be made by it under Section 3 hereof is subject to the conditions precedent that (i) the Bank shall have received a Notice of Borrowing pursuant to and in accordance with the terms and conditions of Section 4.1 hereof, (ii) immediately after the making of such Loan, the aggregate outstanding principal amount of all Loans plus the aggregate outstanding principal amount of all Drawings under the Direct
Purchase Notes shall not exceed the aggregate amount of the Commitment, and (iii) no Terminating Event of Default (as defined in Section 12 hereof) shall have occurred and be continuing. In addition, the Bank shall have no obligation to make a Loan the proceeds of which shall be used to pay the principal of or interest on any maturing Commercial Paper Note that was issued by the Authority or the Issuing and Paying Agent after receipt by the Issuing and Paying Agent and the Authority of any direction previously given by the Bank not to issue further Commercial Paper Notes as provided in clause (i) of the last paragraph of Section 12 hereof.

Section 7.3. Condition to Initial Commercial Paper Note Issuance. No Commercial Paper Note shall be issued unless on or prior the date of the initial issuance thereof, the Bank shall have received a copy of each rating confirmation (other than Moody’s) received pursuant to Section 501(G) of the Commercial Paper Note Resolution.

Section 8. PARTICULAR COVENANTS OF AUTHORITY.

From the date hereof and until the termination of the Bank’s Commitment, the payment in full of the Note and the performance of all other obligations of the Authority under this Agreement, the Authority agrees that:

Section 8.1. Financial Statements, etc. The Authority shall deliver to the Bank:

(a) As soon as available and in any event within 105 days after the end of each semi-annual fiscal period ending June 30 and December 31, the financial statements of the Authority prepared in conformity with generally accepted accounting principles and on a basis consistent with the financial statements referred to in Section 2.3 hereof as at the last day of such period. Financial statements for each fiscal period ending December 31 shall be accompanied by an opinion as to such financial statements of independent certified accountants of recognized standing. Financial statements for each fiscal period ending June 30 that are not accompanied by such an opinion shall be certified (subject to normal year-end adjustments) as to fairness of presentation, generally accepted accounting principles and consistency, insofar as each of the foregoing relates to accounting matters, by the Executive Vice President and Chief Financial Officer or Vice President and Controller of the Authority.

(b) Concurrently with any delivery of financial statements under clause (a) above relating to a fiscal period ending December 31, a certificate of the Treasurer or Deputy Treasurer of the Authority certifying as to whether there shall have occurred and be continuing an Event of Default or any event that with notice or the lapse of time or both would become an Event of Default, specifying the details thereof and what action the Authority proposes to take with respect thereto.

(c) Copies of any other published reports of financial condition, receipts and expenditures prepared or issued by the Authority for general distribution to investors or lenders.

(d) From time to time, with reasonable promptness, such information regarding
the business, affairs and financial condition of the Authority as the Bank may reasonably request.

The Authority shall be deemed to have complied with the requirements to provide the information set forth in this Section 8.1 to the extent such information (x)(i) has been posted on the Authority’s website (www.nypa.gov) or (ii) has been duly filed with the Electronic Municipal Market Access service of the Municipal Securities Rulemaking Board and is publicly available and (y) the Authority shall have given the Bank notice thereof within the time periods set forth above.

The Authority shall cause the Issuing and Paying Agent to deliver to the Bank monthly and as otherwise requested by the Bank a report of the par amounts, CUSIP numbers and maturity dates of outstanding Commercial Paper Notes. In the event the Issuing and Paying Agent fails to comply with such delivery requirement, and the Bank notifies the Authority of such non-compliance, the Authority shall use reasonable efforts to (a) obtain the foregoing information regarding outstanding Commercial Paper Notes and provide it to the Bank and (b) cause the Issuing Paying Agent to cure its non-compliance. If the Issuing and Paying Agent shall fail to cure such non-compliance within 30 days after it receives notice thereof, the Authority shall, at the request of the Bank, arrange for a substitute Issuing and Paying Agent acceptable to the Bank.

The Authority shall notify the Bank of any withdrawal or reduction by any Rating Agency of its rating of any outstanding Indebtedness of the Authority.

Section 8.2. Taxes and Charges. The Authority shall pay and discharge any taxes, assessments and governmental charges or levies that may be imposed upon it or upon its revenues, or upon any property belonging to it, prior to the date on which penalties attach thereto; provided that the Authority shall not be required by this paragraph to pay any such tax, assessment, charge, or levy (a) the payment of which is being contested in good faith and by proper proceedings or (b) the failure to make payment would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

Section 8.3. Security Interests. Without the prior written consent of the Bank, the Authority shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or other encumbrance upon any of its revenues, property or assets, now owned or hereafter acquired, securing any indebtedness or obligation having priority in payment over the Note (all such security being herein called “security interests”), except (i)(a) security interests created under the 1998 Resolution to secure Obligations and Parity Debt or (b) security interests upon the assets, revenues, rates, charges, rents, proceeds from the sale of, proceeds of insurance and other income and receipts derived from the ownership or operation of Separately Financed Projects as defined under the 1998 Resolution, (ii) security interests in the form of a covenant or authorization to pay any obligation of the Authority out of the proceeds of bonds or notes deposited in any fund or account established pursuant to any existing or future resolution of the Authority authorizing the issuance of its obligations and (iii) security interests that are incidental to and incurred in the ordinary course of the Authority’s business or the ownership of its property and assets, which (x) are not incurred in connection with the borrowing of money and (y) do not materially detract from the operation of its business or the value of its
property or assets or materially impair the use thereof.

Section 8.4. Default, etc. As soon as reasonably possible and in any event within five Business Days after the Authority has knowledge of the occurrence of an Event of Default or an event that with the giving of notice or lapse of time or both, would constitute an Event of Default, the Authority shall notify the Bank if any Event of Default, or any event that with notice or lapse of time or both would become such an Event of Default, shall have occurred, specifying what action the Authority proposes to take with respect thereto.

Section 8.5. Commercial Paper Note Resolution, 1998 Resolution and this Agreement. The Authority shall not repeal or modify the Commercial Paper Note Resolution or the 1998 Resolution, or take any action impairing any authority, right or benefit conferred by the Commercial Paper Note Resolution or the 1998 Resolution, or this Agreement; provided, however, that the Authority may supplement or amend the Commercial Paper Note Resolution, or the 1998 Resolution, in accordance with its terms. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) exceed the Available Commitment from time to time in effect. The Authority shall not issue, or authorize the issuance of, Commercial Paper Notes to the extent that the sum of (i) the aggregate principal amount of all outstanding Commercial Paper Notes (after giving effect to such issuance) plus the aggregate amount of interest payable (including any portion thereof not yet accrued) in respect of such Commercial Paper Notes (as determined by reference to the next interest payment date) plus (ii) the aggregate outstanding principal amount of all Loans, plus (iii) the aggregate outstanding principal amount of all Drawings under the Direct Purchase Note plus (iv) the aggregate LC Exposure (as defined in the JPM Note Purchase Agreement), exceed the Commitment from time to time in effect.

Section 8.6. Litigation; Other Events. The Authority shall give to the Bank notice in writing by April 6 of each year of all litigation against or threatened against the Authority and of all proceedings before any governmental or regulatory agency to which the Authority is a party, except litigation or proceedings (a) described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof or (b) that do not have a reasonable likelihood of adverse determination or if adversely determined, would not have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. As to the litigation and proceedings described in Appendix B to the opinion of counsel to the Authority referred to in Section 7.1(d) hereof, the Authority shall give to the Bank notice in writing by April 6 of each year of any changes in the circumstances of such litigation or proceedings that would have a Material Adverse Effect or material adverse effect upon the rights available to the Bank hereunder. In addition, the Authority shall give to the Bank notice of the commencement of any such litigation and the occurrence of any other event that is reasonably expected to result in a Material Adverse Effect.

Section 8.7. Further Assurances. The Authority shall (1) perform and comply with each of the covenants and provisions contained in this Agreement, in the Existing Resolutions and in
any other resolution or agreement securing or providing for the issuance of obligations of the Authority for borrowed money and (2) take all action and do all things that it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Agreement and in order to provide for and to assure payment of the Note at maturity including, but not limited to, as necessary for the foregoing purposes, directing the payment to it from time to time of any funds held under an Existing Resolution and available in accordance with the terms thereof to be paid to the Authority upon its direction.

Section 8.8. Compliance with Laws, Etc. The Authority shall comply in all material respects with all applicable laws, rules, regulations and orders (such compliance to include, without limitation, compliance with all environmental laws and all laws relating to hazardous waste and the payment before the same become delinquent of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith), non-compliance with which would have a Material Adverse Effect.

Section 8.9. Maintenance of Insurance. The Authority shall maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is required by law or is deemed by the Authority to be prudent.

Section 8.10. Copies of “No Issuance” Notices. The Authority shall provide the Bank with any notice delivered to the Authority or any issuing and paying agent appointed pursuant to the Commercial Paper Note Resolution relating to the Series 4 Notes or any other series of commercial paper notes (other than the Commercial Paper Notes), directing the Authority and such issuing and paying agent to cease issuing such notes.

Section 8.11. 1998 Resolution and Subordinate Resolution. The Authority agrees that the Bank shall be a third-party beneficiary to Sections 503, 604, 605 and 606 of the 1998 Resolution and Sections 501, 603, 605(3) and 1003 of the Subordinate Resolution (collectively, the “Resolution Provisions”). The Authority further agrees not to amend or modify the Resolution Provisions, and agrees that no amendment or modification of the Resolution Provisions shall be effective, without the prior written consent of the Bank, and the Bank shall be entitled to enforce the Resolution Provisions. It is understood and agreed that the Bank shall not be a third-party beneficiary in respect of any other provisions of the 1998 Resolution or the Subordinate Resolution and shall not be entitled to take any action under the 1998 Resolution or the Subordinate Resolution to enforce any of the provisions thereof other than the Resolution Provisions.

Section 8.12. Reserved.

Section 8.13. Tax-Exempt Status. With respect to the Commercial Paper Notes the interest on which is intended to be excluded from gross income for Federal income tax purposes, the Authority shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest from the gross income of the holders thereof for purposes of Federal income taxation under the Internal Revenue Code of 1986, as amended.

Section 8.14. Resolutions or Agreements. The Authority shall not create or suffer to exist
any default or Event of Default under the Existing Resolutions or under any other resolution or agreement securing or providing for the issuance of Other Indebtedness of the Authority in excess of $25,000,000 the effect of which is to accelerate or permit the acceleration of the maturity of the obligations thereby secured or issued.

Section 8.15. Payment of Fee Letter. The Authority shall pay any and all amounts owed under the Fee Letter when due and payable.

Section 8.16. Ratings Downgrade. The Authority shall not allow any Rating Agency then rating the Authority’s short-term debt obligations (if any) to lower such ratings to (a) in the case of Moody’s, below MIG-3 or P-3, (b) in the case of Standard & Poor’s, below SP-2 or A-3, and (c) in the case of Fitch, below F-3.

Section 8.17. Invalidity of Subordinate Revenue Bond. No court of competent jurisdiction shall adjudge in a final and non-appealable judgment any Subordinate Revenue Bond to be invalid, illegal or unenforceable against the Authority, and the Authority shall not deny in writing that it has any liability under any Subordinate Revenue Bond.

Section 8.18. Judgments for Payment of Money; Enforcement Proceedings. The Authority shall not permit or suffer to exist any judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority or enforcement proceedings commenced by any creditor upon such judgment or order and continue for period of 60 consecutive days during which the enforcement of such judgment has not been effectively stayed (including by reason of a pending appeal or otherwise), dismissed, satisfied or bonded.

Section 8.19. Separately Financed Projects Reporting. The Authority shall provide notice to the Bank of the incurrence of any obligation under Section 203 of the 1998 Resolution to finance a Separately Financed Project within 10 business days of the incurrence thereof. Such notice shall include a description of the date of incurrence of such obligations, the principal amount, maturity and amortization, interest rate, if fixed, or method of computation thereof, if variable (and any default rates), and a description of such Separately Financed Project and the revenues and other security pledged to secure such obligations.

Section 8.20. JPM Note Purchase Agreement. The Authority shall cause the JPM Note Purchase Agreement to remain in full force and effect at all times during the term of this Agreement (except to the extent terminated by the Bank).

Section 8.21. Limitation Notes. The Authority will not issue any Commercial Paper Notes the proceeds of which are used to pay or repay the principal of or interest on Drawings under the Direct Purchase Notes without the prior written consent of the Bank.

Section 8.22. Maintenance of Issuing and Paying Agent. (i) The Authority will, at all times, maintain a reputable dealer of recognized national standing for the Commercial Paper Notes, and will notify the Bank as promptly as practicable of any appointment of a successor dealer (which successor dealer shall not be appointed without the prior written consent of the
Bank, which response to such notice shall be prompt and which consent shall not be unreasonably withheld or delayed) for the Commercial Paper Notes before the date such appointment is to take effect. The Authority will, at all times, maintain a reputable Issuing and Paying Agent of recognized national standing for the Commercial Paper Notes.

(ii) The Authority shall use its best efforts to cause the Dealers and the Issuing and Paying Agent to market, issue, and deliver, as applicable, Commercial Paper Notes at the then current market rate, up to the maximum interest rate applicable thereto. If a Dealer fails to sell the Commercial Paper Notes for sixty (60) consecutive days, then the Authority, at the written request of the Bank and with mutual agreement of the Authority, shall replace the applicable Dealer with a Dealer reasonably satisfactory to the Bank.

SECTION 9. TAXES.

Section 9.1, Taxes. (a) Any and all payments by the Authority hereunder or under the Note shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, excluding, in the case of the Bank, taxes or withholdings (a) imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which the Bank is organized or any political subdivision thereof and, in the case of the Bank, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction of the Bank’s Lending Office or any political subdivision thereof or (b) imposed by Section 1471 through Section 1474 of the Internal Revenue Code of 1986, as amended (including any official interpretations thereof (collectively “FATCA”) on any “withholdable payment” payable to the Bank as a result of the failure of such Person to satisfy the applicable requirements as set forth in FATCA after December 31, 2012 (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Authority shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under the Note to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Authority agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the Note or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or the Note (hereinafter referred to as “Other Taxes”).

(c) The Authority will indemnify the Bank for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 9) paid by the Bank and any liability including interest, expenses and penalties (other than penalties that have been incurred by the Bank because of such person’s willful misconduct or gross negligence) arising therefrom or with respect thereto, based on a claim for such Taxes or Other Taxes made by the applicable taxing authority, provided, however, that prior to such payment by the Bank, the Authority shall be notified by the Bank of the imposition of
such Taxes and may contest, if the Authority so chooses, the imposition of such Taxes, *provided further* that the Bank may pay such Taxes or Other Taxes if such payment would not preclude the Authority’s ability to contest such imposition. This indemnification shall be made within 30 days from the date the Bank makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes, the Authority will furnish to the Bank, at its address referred to on the signature page hereof, the original or a certified copy of a receipt evidencing payment thereof.

(e) The Bank shall use its best efforts (consistent with its internal policy and legal regulatory restrictions) to change the jurisdiction of its Lending Office if such change would eliminate or reduce any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of the Bank, be otherwise disadvantageous to the Bank.

(f) Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section 9 shall survive the payment in full of principal and interest hereunder and under the Note.

SECTION 10. SECURITY FOR THE NOTE.

The Note is and shall continue to be an obligation of the Authority payable from the Trust Estate and Subordinated Indebtedness. The Trust Estate is hereby pledged for the payment of the Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. The foregoing pledges shall be valid and binding from and after the date of execution and delivery hereof and the Trust Estate shall immediately be subject to the lien of such pledges without any physical delivery thereof or further act, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. This Agreement is a Subordinated Contract Obligation (within the meaning of the 1998 Resolution).

SECTION 11. PLEDGE OF STATE.

The Authority, as agent for the State, does hereby pledge to and agree with the holders from time to time of the Note that the State will not limit or alter the rights vested in the Authority by the Act, until the obligations of the Authority under the Note are fully met and discharged, *provided* that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of the Note.

SECTION 12. DEFAULTS.

If any of the following events or conditions shall occur and be continuing (each of the events or conditions described herein referred to as an “Event of Default”; each Event of Default set forth in Sections 12.1 through 12.7 hereof inclusive being herein referred to as a “Terminating Event of Default” and each Event of Default set forth in Sections 12.8, 12.9 and 12.10 hereof inclusive being referred to as a “Non-Terminating Event of Default”):
Section 12.1. Payment. The Authority shall fail to pay any installment of principal or interest on the Note when due and payable and such failure shall continue for five Business Days;

Section 12.2. Reserved.

Section 12.3. Other Indebtedness. The Authority shall default in the payment when due (including any applicable grace period) of any Indebtedness of the Authority (other than Indebtedness outstanding under this Agreement) in excess of $25,000,000; provided that this Section 12.3 shall not apply if such default is remedied or waived by the holders of such Indebtedness prior to the Bank taking any action pursuant to the last paragraph of this Section 12;

Section 12.4. Bankruptcy; Moratorium. (A) The Authority shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of the Authority for all or a substantial part of the assets of the Authority, (ii) commence a voluntary case or other proceeding or file a petition seeking reorganization, liquidation, composition of indebtedness or any arrangement with creditors under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or of the State of New York, or (iii) make a general assignment for the benefit of creditors; (B) the Authority shall impose or declare a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on any obligations of the Authority that are on a parity with the Note issued under this Agreement or that have a priority in payment over the Note issued under this Agreement, or (C) any Governmental Authority having appropriate jurisdiction over the Authority shall make a finding or ruling or other determination or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Commercial Paper Notes, the Note or on all Indebtedness of the Authority;

Section 12.5. Judgments. Any final, non-appealable judgment or order for the payment of money in excess of $25,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Bank) shall be rendered against the Authority and enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such judgment shall not have been satisfied or bonded within 60 days of the date thereof;

Section 12.6 Ratings. The lowering or withdrawal by all Rating Agencies then rating the applicable obligations of the rating on any obligations of the Authority that are on a parity with the Note issued under this Agreement or that have a priority in payment over the Note issued under this Agreement to (a) in the case of Moody’s, below Baa3, and (b) in the case of Standard & Poor’s and Fitch, below BBB-;

Section 12.7. Invalidity. This Agreement, the Note, or any Commercial Paper Note shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable against the Authority and such judgment shall be final and non-appealable, or the Authority shall deny in writing that it has any liability hereunder or thereunder;

Section 12.8. Representations. Any representation or warranty made by the Authority in
Section 2 or Section 3.6 hereof, or in any document furnished by the Authority hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

Section 12.9. Covenants. The Authority shall default (other than as otherwise provided in Sections 12.1 through 12.7 hereof) in the performance of any agreement or covenant herein and such default shall continue unremedied for 30 days after written notice to the Authority from the Bank.

Section 12.10. JPM Note Purchase Agreement; the 2019 Revolving Credit Agreement. Any “event of default” under the JPM Note Purchase Agreement or the 2019 Revolving Credit Agreement (as defined respectively therein) shall have occurred;

THENCEUPON, in any such case and subject to the remainder of this Section, the Bank may do any or all of the following: (i) in the case of any Event of Default, direct the Authority to cease issuing Commercial Paper Notes, whereupon the Authority shall immediately cease to issue any Commercial Paper Notes until such time (if any) as the Bank shall rescind such directions, and, after receiving such cessation direction, the Authority shall immediately provide telephonic notice effectuating such cessation, (ii) in the case of a Non-Terminating Event of Default, declare the obligation of the Bank to make Loans to be terminated 30 days after written notice to the Authority from the Bank of such Non-Terminating Event of Default provided that the obligations of the Bank to make Loans for the purpose of paying Commercial Paper Notes outstanding on the date of such written notice shall remain in effect to the extent and so long as necessary for the payment of such Commercial Paper Notes at their maturity dates and the Available Commitment shall immediately be reduced to the then outstanding principal amount of Commercial Paper Notes plus the amount of interest to accrue on such outstanding Commercial Paper Notes, and the Available Commitment shall be further reduced in a similar manner as and when such Commercial Paper Notes mature; (iii) in the case of a Terminating Event of Default, by notice to the Authority, declare the obligation of the Bank to make Loans to be terminated, whereupon the same shall forthwith terminate, (iv) in the case of any Terminating Event of Default, upon notice to the Authority, declare the Note, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Note, all such interest thereon and all other amounts payable under this Agreement shall forthwith become immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority, and/or (v) in the case of any Non-Terminating Event of Default, 30 days after written notice to the Authority, declare the Note, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Note, all such interest thereon and all other amounts payable under this Agreement shall forthwith become immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority; provided, however, that in the case of any Event of Default specified in Section 12.4 hereof (A) the obligation of the Bank to make Loans shall automatically be terminated and (B) the Note, all such interest thereon and all other amounts payable under this Agreement shall forthwith become immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority; for purposes of clause (iii) of this paragraph, no Terminating Event of Default shall be deemed to have occurred solely as a result of the Authority’s failure to pay, prior to the regularly scheduled date for payment thereof, any portion of the principal or interest on the Note that has been accelerated
pursuant to clause (iv) above solely as a result of the occurrence of a Non Terminating Event of Default, but the foregoing shall not otherwise limit, affect or impair the validity of such acceleration. The Bank shall provide The Bank of New York Mellon, as Issuing and Paying Agent under an Issuing and Paying Agency Agreement entered into by the Authority pursuant to the Commercial Paper Note Resolution, with written notice of the occurrence of an Event of Default and written notice rescinding such notice in the event that an Event of Default is determined by the Bank to be no longer in existence hereunder, and such notice shall be provided by the Bank to any other entity required to receive such notice pursuant to such Resolution; provided, however, that the failure to do so shall in no way affect the Bank’s obligations hereunder.

If any Event of Default shall occur and be continuing, the Bank may take, in addition to the remedies specified in the immediately succeeding paragraph, one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under this Agreement and the Note or to enforce performance or observance of any obligation, agreement or covenant of the Authority under this Agreement and the Note, whether for specific performance of any agreement or covenant of the Authority or in aid of the execution of any power granted to the Bank in this Agreement and the Note;

(ii) cure any Event of Default or event of nonperformance hereunder or under this Agreement and the Note; provided, however, that the Bank shall have no obligation to effect such a cure; and

(iii) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement and the Note and as otherwise available at law and at equity.

SECTION 13. RESERVED.

SECTION 14. NOTICES, ETC.

Section 14.1. Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.2), all notices and other communications provided for herein to the Authority or the Bank shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telexcopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number specified for such Person on the signature pages hereof.

   Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telexcopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the
provided, however, notices and other communications to the Authority delivered by
telecopier shall be deemed to have been given only upon the sender’s receipt of an
acknowledgement from the intended recipient. Notices delivered through electronic
communications, to the extent provided in Section 14.2, shall be effective as provided in such
Section 14.2.

Section 14.2. Electronic Communications. Notices and other communications to the Bank
hereunder may be furnished by e-mail to the Bank’s email address specified on the signature pages
hereof pursuant to procedures approved by the Bank. The Bank or the Authority may, in its
discretion, agree to accept notices and other communications to it hereunder by e-mail
communications pursuant to procedures approved by it, provided that approval of such procedures
may be limited to particular notices or communications.

Notices and other communications sent to an e-mail address of the Authority or, unless the
Bank otherwise prescribes, to an e-mail address of the Bank shall be deemed received only upon
the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return
receipt requested” function, as available, return e-mail or other written acknowledgement),
provided that if such notice or other communication is not sent during the normal business hours of
the recipient, such notice or communication shall be deemed to have been sent at the opening of
business on the next business day for the recipient

Section 14.3. Change of Address, Etc. Each of the Authority and the Bank may change its
address, telecopier or telephone number or e-mail address for notices and other communications
hereunder by notice to the other parties hereto. Each other Bank may change its address, telecopier
or telephone number or e-mail address for notices and other communications hereunder by notice
to the Authority and the Bank.

Section 14.4. Recordings. All telephonic notices to and other telephonic communications
with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such
recording.

Section 15. Miscellaneous

Section 15.1. Waivers, etc. No failure on the part of the Bank to exercise, and no delay in
exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver
thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further
exercise thereof or the exercise of any other right. The remedies herein provided are cumulative
and not exclusive of any remedies provided by law.

Section 15.2. Expenses; Indemnification. The Authority agrees to pay, whether or not any
Loan is made hereunder, (a) the reasonable legal fees and disbursements of outside counsel
retained by the Bank in connection with the formulation, execution and delivery of this Agreement
and the Fee Letter, any waiver or consent hereunder or under the Fee Letter or any amendment
hereof or of the Fee Letter (including any extension of the Commitment and the Existing
Termination Date, pursuant to Section 4.3 hereof) or any event or condition that constitutes an
Event of Default, or, with the giving of notice or lapse of time or both, would constitute such an
Event of Default; (b) the reasonable legal fees and disbursements of the outside counsel of the Bank; (c) all taxes, if any, upon any documents or transactions pursuant to this Agreement or the Fee Letter; and (d) costs of collection and enforcement (including reasonable counsel fees and disbursements) if an Event of Default occurs.

The Authority agrees to indemnify the Bank and hold the Bank harmless from and against any and all liabilities, losses, damages, and all reasonable costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Bank in connection with any investigative, administrative or judicial proceeding (whether or not the Bank shall be designated a party thereto) to the extent relating to or arising out of this Agreement, the Fee Letter, the Commercial Paper Note Resolution or any actual or proposed use of proceeds of Loans hereunder; provided that no Bank shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

To the extent permitted by law, the Authority assumes all risks of the acts or omissions of the Issuing and Paying Agent with respect to the use of the Loans made pursuant thereto; provided that this assumption with respect to the Bank is not intended to and shall not preclude the Authority from pursuing such rights and remedies as it may have against the Issuing and Paying Agent under any other agreements. Neither the Bank nor its officers or directors shall be liable or responsible for (a) the use of the proceeds of the Note or any Loan, or for any acts or omissions of the Issuing and Paying Agent or the Dealer, (b) the validity, sufficiency, or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents shall, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (c) payments by the Bank against presentation of requests for Loans which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement, or (d) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Authority shall have a claim against the Bank to the extent of any direct, as opposed to consequential damages, but only to the extent caused by the gross negligence or willful failure of the Bank in failing to make a Loan required to be made by the Bank hereunder after compliance by the Authority with all conditions precedent to such Loan, unless the making of such Loan was not otherwise permitted by law.

Section 15.3. Governing Law. This Agreement and the Note shall be governed by and construed in accordance with the law of the State of New York without regard to the conflict of laws principles of the State of New York.

Section 15.4. Waiver of Trial by Jury. To the fullest extent permitted by the law, the Authority and the Bank hereby waive trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). The Authority further agrees that, in the event of litigation, it will not personally or through its agents or attorneys seek to repudiate the validity of this Section 15.4, and it acknowledges that it freely and voluntarily entered into this agreement to waive trial by jury in order to induce the Bank to enter into this Agreement.

Section 15.5. Amendments, etc. No amendment or waiver of any provision of this
Agreement or the Note, nor consent to any departure by the Authority therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 15.6. Successors and Assigns. (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; except that the Authority may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank.

(b) The Bank may at any time grant to one or more banks or other institutions (each a “Participant”) participating interests in its Commitment or any or all of its Loans. In the event of any such grant by the Bank of a participating interest to a Participant, whether or not upon notice to the Authority, the Bank shall remain responsible for the performance of its obligations hereunder, and the Authority shall continue to deal solely and directly with the Bank in connection with the Bank’s rights and obligations under this Agreement. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the Authority hereunder including, without limitation, the right to approve any amendment, modification or waiver or any provision of this Agreement; provided that any such agreement may provide that the Bank will not agree to any amendment, waiver or modification of this Agreement described in clauses (b) through (d) of Section 15.5 hereof without the consent of the Participant. Subject to subsection (f) below, the Authority agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Section 3.4, Section 3.5 and Section 9 hereof with respect to its participating interest. An assignment or other transfer that is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) The Bank may at any time assign to one or more banks or other institutions (each an “Assignee”) all, or a proportionate part (equivalent to an initial Commitment of not less than $10,000,000, or a larger multiple of $1,000,000) of all, of its rights and obligations under this Agreement and the Note, and such Assignee shall assume such rights and obligations, pursuant to an Assignment and Assumption Agreement in substantially the form of Exhibit D hereto executed by such Assignee and the Bank, with (and subject to) the subscribed consent of the Authority, which consent shall not be unreasonably withheld, together with interests in the Note subject to such assignment, provided, however, that no such assignment shall be effected unless the senior securities of such bank or other institution, or securities secured by such bank’s or other institution’s letters of credit, are assigned (a) at least one long-term rating of at least A1 by Moody’s, A+ by Fitch, or A+ by Standard & Poor’s (so long as no two of the three of Moody’s, Fitch, and Standard & Poor’s have assigned long-term ratings below A2, A, and A, respectively), and (b) short-term ratings of at least P-1 by Moody’s, A-1 by Standard & Poor’s, and F1 by Fitch.

(d) Upon execution and delivery of such instrument and payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee, such Assignee shall be the Bank party to this Agreement and shall have all the rights and obligations of the Bank with a Commitment as set forth in such instrument of assumption, and the Bank shall be released from its obligations hereunder to a corresponding extent, and no further
consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (d), the Bank and the Authority shall make appropriate arrangements so that, if required, a new Note is issued to the Bank and Assignee and the old Note of the assigning Bank is returned to the Authority.

(e) The Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank, the Department of the Treasury or to any state or local governmental entity or with respect to public deposits. No such assignment shall release the Bank from its obligations hereunder.

(f) No Participant in the Bank’s rights shall be entitled to receive any greater payment under Section 3.4, Section 3.5 or Section 9 hereof than the Bank would have been entitled to receive with respect to the rights transferred, unless such transfer is made with the Authority’s prior written consent.

Section 15.7. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. The words “execution,” “signed,” “signature,” and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 15.8. Reliance. The Bank acknowledges that it has, independently, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Authority and its own decision to enter into this Agreement and extend credit hereunder.

Section 15.9. No Personal Liability. No trustee, officer or employee of the Authority shall be held personally liable on the Note or in connection with any claim based thereon or on the Commercial Paper Note Resolution, the Subordinate Resolution, or on this Agreement.

Section 15.10. Defeasance. If the Commitment shall have terminated and the Authority shall pay or cause to be paid, or there shall otherwise be paid to the Bank, the entire principal of and interest on the Note and all other amounts owing to the Bank hereunder or under the Note, then the pledge created under this Agreement and all covenants, agreements and other obligations of the Authority hereunder to the holder of the Note shall thereupon cease, terminate and become void and be discharged and satisfied, and thereupon all of the moneys and properties of the Authority then subject to such pledge shall be forever free and clear of such pledge and at the option of the Authority, expressed in writing, this Agreement shall be of no further force or effect.
Section 15.11. Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 15.12. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or the Note), the Authority acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Bank, are arm’s-length commercial transactions between the Authority, on the one hand, and the Bank, on the other hand, (B) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby; (ii) (A) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (whether financial, municipal or otherwise), agent or fiduciary, pursuant to Section 15B of the Securities Exchange Act of 1934 or otherwise, for the Authority or any other Person, and has no fiduciary duty to the Authority or any other Person and (B) the Bank have no obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (iii) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and the Bank have no obligation to disclose any of such interests to the Authority. To the fullest extent permitted by law, the Authority hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 15.13. USA PATRIOT Act. The Bank hereby notifies the Authority that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Bank, provide all documentation and other information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

Section 15.14. Survival. The provisions of Section 3.4, Section 3.5, Section 9 and Section 15.2 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

Section 15.15. Amendment and Restatement. This Agreement shall become effective on the Effective Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. From and after the Closing Date, all references made to the Original Agreement in any instrument or document shall, without more, be deemed to refer to this Agreement. Reference to this specific Agreement need not be made in any agreement, document, instrument, letter.
certificate, the Original Agreement itself, or any communication issued or made pursuant to or with respect to the Original Agreement. This Agreement is entered into in substitution for, and not in satisfaction of, the rights and obligations of the parties hereto with respect to their obligations under the Original Agreement, and does not and is not intended to constitute a novation or an accord and satisfaction of any of the rights and obligations of the parties hereto with respect to the Original Agreement or the indebtedness, the obligations and liabilities of the Authority evidenced by or provided for under the Original Agreement. The parties hereto agree that this Agreement does not extinguish or discharge the obligations of the Authority or the Bank under the Original Agreement.

[Signature Pages to Follow]
POWER AUTHORITY OF THE STATE OF NEW YORK

By: 
Name: 
Title: 

Address: 123 Main Street
White Plains, NY 10601
Telephone: (914) 287-3048
Facsimile: (914) 681-6995
Attn: Treasurer

With a copy to:

Address: 123 Main Street
White Plains, NY 10601
Attn: General Counsel
Telephone: (914) 390-8000
Facsimile: (914) 390-8040
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ______________________________________
    Name:  Heather X. Talbott
    Its:    Executive Director

Address: 383 Madison Avenue, 3rd Floor
Mail Code NY1-M165
New York, NY 10179
Telephone:  (212) 270-4875
Facsimile:  (917) 464-2427
Attn:  Heather Talbott
Executive Director, Public Finance - Credit Origination
Email: heather.x.talbott@jpmorgan.com

With a copy to:

JPM-Delaware Loan Operations
Address:  500 Stanton Christiana Road, Floor 1
Newark, DE 19713-2105
Attn:  Brandon Allen
Telephone:  (302) 634-9588
Facsimile:  (302) 634-4733
Email:  12012443628@tls.Ldsprod.com; pfg_servicing@jpmorgan.com

[Signature Page to Revolving Credit Agreement (NYPA-JPM)]
EXHIBIT A

POWER AUTHORITY OF THE STATE OF NEW YORK

PROMISSORY NOTE

Dated:  April 22[______], 2020

POWER AUTHORITY OF THE STATE OF NEW YORK (hereinafter called the “Authority”), a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, for value received, hereby promises to pay to the order of JPMorgan Chase Bank, National Association or its successors or assigns (the “Bank”), at the principal office of the Bank for the account of its Lending Office (as that term is defined in the Revolving Credit Agreement hereinafter mentioned), the principal sum of $250,000,000, or, if less, the aggregate principal amount of all loans (“Loans”) made by the Bank to the Authority pursuant to the Revolving Credit Agreement described below, such payment of principal of each such Loan to be made in full by the Authority on the Term Loan Date (as that term is defined in the Revolving Credit Agreement) applicable to such Loan, provided, however, that if on the Term Loan Date no Event of Default, as defined in the Revolving Credit Agreement, and no event or condition that, with the giving of notice or the lapse of time or both, would constitute an Event of Default, has occurred and is continuing, and such Loan is not then governed by the proviso clause of Section 3.6(b)(i) of the Revolving Credit Agreement, such payment of such Loan shall not be required on the Term Loan Date and shall instead be made by the Authority on each Term Loan Payment Date, provided that if there is no such numerically corresponding date in any such calendar month, the relevant installment shall be payable on the last day of such month; and provided further that all outstanding principal on such Loan shall be due and payable on the Term Loan End Date, and promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan shall be paid in full, at the following rates per annum: (i) during any period, at a variable rate per annum equal to the Adjusted Base Rate (as defined in the Revolving Credit Agreement); and (ii) notwithstanding clause (i), if an Event of Default under the Revolving Credit Agreement shall have occurred and be continuing, at a rate per annum equal at all times to the Default Rate (as defined in the Revolving Credit Agreement) in effect from time to time.

The Bank is hereby authorized by the Authority to and shall record on the schedule annexed to this Note (or on a supplemental schedule thereto) the amount of each Loan made by the Authority to the Authority.
Bank under the Revolving Credit Agreement and the amount of each payment or prepayment of the principal of this Note received by the Bank, it being understood, however, that if the Bank fails to make any such notation or makes a mistake with respect to any such notation, such failure or mistake shall not affect the rights or obligations of the Bank or the Authority hereunder or under the Revolving Credit Agreement with respect to the Loans.

This Note is issued under a resolution of the Authority adopted March 31, 2022 (as amended, supplemented, restated or otherwise modified from time to time, the “Resolution”) and under the Power Authority of the State of New York Amended and Restated Revolving Credit Agreement, dated as of April 22, 2022 (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms thereof, the “Revolving Credit Agreement”), between the Authority and JPMorgan Chase Bank, National Association. This Note is and shall continue to be an obligation of the Authority payable from the Trust Estate (as defined in the 1998 Resolution referred to in said Revolving Credit Agreement) and, is and shall constitute Subordinated Indebtedness (within the meaning of said 1998 Resolution). The Trust Estate (as so defined) is hereby pledged for payment of this Note, which pledge is subordinate in the manner set forth in the 1998 Resolution. This Note is also entitled to the benefits of the Resolution and said Revolving Credit Agreement.

Upon the occurrence of any Event of Default specified in said Revolving Credit Agreement, the principal of this Note and accrued interest thereon may be declared due and payable in the manner, upon the conditions and with the effect provided in said Revolving Credit Agreement, and upon any such declaration, the principal of and interest on all Loans then outstanding shall become immediately due and payable hereunder.

The Authority may pay all or any part of the principal of this Note before maturity upon the terms provided in said Revolving Credit Agreement.

Pursuant to Section 1011 of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of New York, the Authority, as agent for the State of New York, does hereby pledge to and agree with the holder of this Note that the State of New York will not limit or alter the rights vested in the Authority by said Act, as amended, until the obligations of the Authority under this Note shall have been fully met and discharged or adequate provision shall have been made by law for the protection of the holders of this Note.

The Authority has no power to pledge the credit of the State of New York, nor shall any of its obligations, including this Note, be deemed to be obligations of the State of New York.

No trustee, officer or employee of the Authority shall be held personally liable on this Note or in connection with any claim based hereon or on the Resolution or on said Revolving Credit Agreement.

It is hereby certified and recited that all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issuance of this Note, together with all other indebtedness of the Authority, is within every debt and other limit
prescribed by the laws of the State of New York.

IN WITNESS WHEREOF, POWER AUTHORITY OF THE STATE OF NEW YORK has caused this Note to be signed in its name and on its behalf by the manual signature of its Treasurer, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual signature of its Corporate Secretary, Deputy Corporate Secretary, or an Assistant Corporate Secretary as of the 22nd day of April, 2020.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ________________________________
    Name: ________________________________
    Title: ________________________________

Attest:

_______________________________________
Title: ________________________________
# Loans and Payments of Principal

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JPMorgan Chase Bank, National Association, as Bank  
383 Madison Avenue, 8th Floor  
New York, NY 10179  

Re: Notice of Borrowing  

Ladies and Gentlemen:  

The Power Authority of the State of New York (the “Authority”), pursuant to the Amended and Restated Revolving Credit Agreement dated as of April 22, 2022 (as amended from time to time, the “Revolving Credit Agreement”) between the Authority, the lenders party thereto and JPMorgan Chase Bank, National Association (the “Bank”), hereby confirms the Authority’s telephonic notice given to you on __________ of a borrowing under said Revolving Credit Agreement in the principal amount of $__________ to be made on ____________. The Bank shall make the proceeds of the Loan available to the Authority [specify manner].  

THE AUTHORITY HEREBY CERTIFIES that all terms and conditions to the subject Borrowing have been complied with, including all representation and warranties required to be made or deemed made pursuant to the terms of the Revolving Credit Agreement [in the event the notice specified in the proviso clause of Section 3.6(b)(i) of the Revolving Credit Agreement is to be given: provided, however, that the Authority is unable to reaffirm the Specified Representations.]  

POWER AUTHORITY OF THE STATE OF NEW YORK  

By: ____________________________________________  
Name: ____________________________________________  
Title: ____________________________________________
EXHIBIT C-1

POWER AUTHORITY OF THE STATE OF NEW YORK
30 South Pearl Street
Albany, NY 12207

April 22[____], 2020

JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

As General Counsel of the Power Authority of the State of New York (herein called the “Authority”) and in accordance with Section 7.1(d) of the Amended and Restated Revolving Credit Agreement dated as of April 22[____], 2020[____] between the Authority and JPMorgan Chase Bank, National Association (the “Bank”) (herein called the “Revolving Credit Agreement”), I hereby advise that in my opinion:

1. The Authority is a body corporate and politic, a political subdivision and a corporate municipal instrumentality of the State of New York, created by and validly existing under the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”). The Authority has the power to execute and deliver the Revolving Credit Agreement and the note issued on the date hereof pursuant to the Revolving Credit Agreement (the “Note”) and to incur and perform its obligations under the Revolving Credit Agreement and under the Note.

2. The execution and delivery of the Revolving Credit Agreement and the issuance of the Note do not and will not violate any provision of any agreement entered into pursuant to the Existing Resolutions (as defined in the Revolving Credit Agreement) or, to my knowledge after inquiry, under any other agreement or instrument to which the Authority or its property is bound, or result in the creation or imposition of any “security interest” (as defined in the Revolving Credit Agreement) on any asset of the Authority except for the pledge contemplated by the Revolving Credit Agreement.

3. The Note does not constitute an obligation, debt or liability of the State of New York, and the Authority has no power of taxation or power to pledge the credit of the State of New York.

4. There are no suits or proceedings pending, or to the knowledge of the Authority threatened, against or affecting the Authority, (a) questioning the creation, organization or existence of the Authority or the validity of the Revolving Credit Agreement, the Existing Resolutions or the Note or any of the bonds or notes referred to in the Revolving Credit Agreement or the Existing Resolutions or (b) that have a reasonable likelihood of being adversely determined and, if adversely determined, would otherwise have a Material Adverse Effect (as defined in the Revolving Credit Agreement) or material adverse effect upon the rights available to the Bank.
under the Revolving Credit Agreement[, except as may be described in Appendix B hereto].

5. The Authority (or the State of New York for the benefit of the Authority) has good and legal title to each of the fixed properties and assets of the Authority. As of the date first above written, there are no liens or encumbrances on any properties of the Authority the foreclosure of which would have a Material Adverse Effect, except as described in the Revolving Credit Agreement. As of the date first above written, there are no liens or encumbrances on the revenues of the Authority other than the pledge effected by and pursuant to the Revolving Credit Agreement and the pledges effected by and pursuant to the Existing Resolutions.

I am admitted to the bar of the State of New York. I express no opinion as to the laws of any jurisdiction other than the laws of the State of New York, and my opinion is limited to and applies only insofar as such laws may be concerned.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This letter is furnished by the Authority solely for your benefit in connection with the provisions of the Revolving Credit Agreement and may not be relied upon by any other person, without the Authority’s express written consent.

The terms used in this opinion have the meanings ascribed to such terms in the Revolving Credit Agreement.

_______________________________________
Justin E. Driscoll
General Counsel
APPENDIX B
TO
EXHIBIT C-1

[To be updated]
EXHIBIT C-2

LETTERHEAD OF HAWKINS DELAFIELD & WOOD LLP, BOND COUNSEL TO THE AUTHORITY]

April 22, 2020

JPMorgan Chase Bank, National Association

Ladies and Gentlemen:

In connection with the execution and delivery of the Amended and Restated Revolving Credit Agreement dated as of April 22, 2020 (the “Revolving Credit Agreement”), between the Power Authority of the State of New York (the “Authority”) and JPMorgan Chase Bank, National Association, we have examined an executed copy of the Revolving Credit Agreement.

We have assumed but have not independently verified that the signatures on the Revolving Credit Agreement were genuine. We have further assumed for purposes of the opinions expressed below that the Revolving Credit Agreement has been duly authorized, executed and delivered by each party thereto, other than the Authority, and that such Revolving Credit Agreement is a valid and binding obligation of, and enforceable against, each party thereto, other than the Authority.

Based on the foregoing, we are of the opinion that:

1. The Revolving Credit Agreement has been duly authorized, executed and delivered by the Authority, is in full force and effect, creates the valid pledge described in Section 10 of the Revolving Credit Agreement, is a legal, valid and binding obligation of the Authority, and is enforceable against the Authority in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and no other authorization for the Revolving Credit Agreement is required.

2. The promissory note (the “Note”) issued on the date hereof pursuant to the Revolving Credit Agreement has been duly authorized, executed and delivered by the Authority and issued in accordance with law, including the Act, and in accordance with the Revolving Credit Agreement. The Note is a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms and the terms of the Revolving Credit Agreement, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity, and the Note will be entitled to the benefits of the Revolving Credit Agreement and of the Power Authority Act, Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, and constitute Subordinated Indebtedness under the 1998 Resolution.

3. The execution and delivery by the Authority of the Revolving Credit Agreement and the issuance on the date hereof of the Note pursuant to the Revolving Credit Agreement do not and will not violate any applicable Federal or New York law or regulation in effect on the date hereof.
4. No registration with, consent of, or approval by any government officer, agency or commission is necessary for the making and performance of the Revolving Credit Agreement and the issuance and payment of the Note other than the approval of the Comptroller of the State of New York, which approval has been obtained and, to our knowledge after inquiry, is in full force and effect.

No attorney-client relationship has existed between the Bank and our firm in connection with the foregoing matters, and no such relationship shall exist by virtue of this letter.

This letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This letter is issued as of the date hereof, and we assume no obligation to update, revise or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any other reason whatsoever.

The terms used in this opinion have the meanings ascribed to such terms in the Revolving Credit Agreement.

Very truly yours,
EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

AGREEMENT dated as of __________, 201_ among [ASSIGNOR] (the "Assignor"), [ASSIGNEE] (the "Assignee"), POWER AUTHORITY OF THE STATE OF NEW YORK (the "Authority").

WITNESSETH

WHEREAS, this Assignment and Assumption Agreement (the "Agreement") relates to the Power Authority of the State of New York Amended and Restated Revolving Credit Agreement dated as of April 22, 2020, among the Authority and the Assignor (as amended, restated, supplemented or otherwise modified from time to time, the "Revolving Credit Agreement");

WHEREAS, as provided under the Revolving Credit Agreement, the Assignor has a Commitment to make Loans to the Authority in an aggregate principal amount at any time outstanding not to exceed $_________;

WHEREAS, Loans made to the Authority by the Assignor under the Revolving Credit Agreement in the aggregate principal amount of $_________ are outstanding at the date hereof; and

WHEREAS, the Assignor proposes to assign to the Assignee all of the rights of the Assignor under the Revolving Credit Agreement in respect of a portion of its Commitment thereunder in an amount equal to $________ (the "Assigned Amount"), together with a corresponding portion of its outstanding Loans, and the Assignee proposes to accept assignment of such rights and assume the corresponding obligations from the Assignor on such terms;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Revolving Credit Agreement.

Section 2. Assignment. The Assignor hereby assigns and sells to the Assignee all of the rights of the Assignor under the Revolving Credit Agreement to the extent of the Assigned Amount, and the Assignee hereby accepts such assignment from the Assignor and assumes all of the obligations of the Assignor under the Revolving Credit Agreement to the extent of the Assigned Amount, including the purchase from the Assignor of the corresponding portion of the principal amount of the Loans made by the Assignor outstanding at the date hereof. Upon the execution and delivery hereof by the Assignor, the Assignee and the Authority and the payment of the amounts specified in Section 3 required to be paid on the date hereof and the payment of the amounts specified in Section 15.6(e) of the Revolving Credit Agreement (i) the Assignee shall, as of the date hereof, succeed to the rights and be obligated to perform the obligations of the Bank under the Revolving Credit Agreement with a Commitment in an amount equal to the Assigned
Amount, and (ii) the Commitment of the Assignor shall, as of the date hereof, be reduced by a like amount and the Assignor released from its obligations under the Revolving Credit Agreement to the extent such obligations have been assumed by the Assignee. The assignment provided for herein shall be without recourse to the Assignor.

Section 3. Payments. As consideration for the assignment and sale contemplated in Section 2 hereof, the Assignee shall pay to the Assignor on the date hereof in Federal funds an amount equal to $_______. It is understood that commitment and/or facility fees accrued to the date hereof are for the account of the Assignor and such fees accruing from and including the date hereof are for the account of the Assignee. Each of the Assignor and the Assignee hereby agrees that if it receives any amount under the Revolving Credit Agreement that is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party’s interest therein and shall promptly pay the same to such other party.

Section 4. Consent of the Authority. This Agreement is conditioned upon the consent of the Authority pursuant to Section 15.6 of the Revolving Credit Agreement. The execution of this Agreement by the Authority is evidence of this consent. Pursuant to Section 15.6 of the Revolving Credit Agreement, the Authority agrees to execute and deliver a Note payable to the order of the Assignee to evidence the assignment and assumption provided for herein.

Section 5. Non-Reliance on Assignor. The Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition, or statements of the Authority, or the validity and enforceability of the obligations of the Authority in respect of the Revolving Credit Agreement or the Note. The Assignee acknowledges that it has, independently and without reliance on the Assignor, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of the Authority.

Section 6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 7. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[ASSIGNOR]

By: ______________________________________
   Name: ______________________________
   Title: _______________________________

[ASSIGNEE]

By: ______________________________________
   Name: ______________________________
   Title: _______________________________

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ______________________________________
   Name: ______________________________
   Title: _______________________________
2f. Audit Committee Report: (Chair Eugene Nicandri)

[Oral Report Only]
Date: March 29, 2022

To: MEMORANDUM TO THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: 2021 Financial Reports Pursuant to Section 2800 of the Public Authorities Law and Regulations of the Office of the State Comptroller

SUMMARY

The Authority’s Interim President and Chief Executive Officer recommends to the Trustees that they approve the consolidated Financial Report for the year ended December 31, 2021 (Exhibit “A”), based on the representation of the Authority’s Interim President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer and the unqualified opinion issued by the Authority’s external auditors KPMG.

The Trustees are requested to authorize the Corporate Secretary to submit this report to the Governor, legislative leaders, the State Comptroller, and the Authorities Budget Office (“ABO”) pursuant to Section 2800 of the Public Authorities Law (“PAL”). In accordance with regulations adopted by the Office of the State Comptroller (“OSC”), the Trustees are also requested to approve and authorize posting of a report of actual versus budgeted results for the year 2021 (Exhibit “B”) on the Authority’s website.

BACKGROUND

The PAL codifies the State’s commitment to maintain public confidence in public authorities by ensuring that the governance principles of accountability, transparency and integrity are followed. To facilitate these objectives, the State established an independent Authorities Budget Office to monitor and evaluate compliance of State authorities with PAL requirements, including Section 2800 that requires annual financial reports submitted by public authorities thereunder be certified by its chief executive officer and chief financial officer and approved by its board.

In furtherance of the PAL requirements, OSC has regulations that address the preparation of annual budgets and related reporting requirements by covered public authorities, which includes the Authority. These regulations establish procedural and substantive requirements for authority budgets and reporting, including a public report of actual versus budgeted results by the chief financial officer not later than 90 days after the close of each fiscal year.

DISCUSSION

The Authority’s Interim President and Chief Executive Officer recommends to the Trustees that they approve the consolidated Financial Report for the year ended December 31, 2021 (Exhibit “A”), based on the representation of the Authority’s Interim President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer and the unqualified opinion issued by the Authority’s external auditors KPMG.
The Trustees are requested to approve the required financial report (consolidated) for the year ended December 31, 2021 and authorize the Corporate Secretary to submit this report in accordance with PAL Section 2800. This report was reviewed by the Audit Committee at its meeting on March 18, 2022. The Trustees are also requested to approve a report of actual versus budgeted (consolidated) results for the year 2021 and authorize posting it on the Authority’s website.

FISCAL INFORMATION

There is no anticipated fiscal impact.

RECOMMENDATION

The Chief Financial Officer recommends that based on the representation of the Authority’s Interim President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer and the unqualified opinion issued by the Authority’s external auditors KPMG, the Trustees approve and authorize submittal of the financial report (consolidated) for the year ended December 31, 2021 and posting of a report of actual versus budgeted financial report (consolidated) results for the year 2021 on the Authority’s website (Exhibits “A” and “B”) as discussed herein.

The Audit Committee reviewed the financial report financial report (consolidated) for the year ended December 31, 2021 at their meeting on March 18, 2022 and is also recommending its approval.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

WHEREAS, pursuant to Section 2800(1) of the Public Authorities Law, the Authority is required to annually submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year, a complete and detailed report or reports setting forth information regarding, among other things, certain financial information; and

WHEREAS, pursuant to Section 2800(3), financial information submitted under Section 2800 shall be approved by the Authority's Board of Trustees and shall be certified in writing by the Chief Executive Officer and the Chief Financial Officer of the Authority that based on the officer's knowledge the information provided therein (a) is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made and (c) fairly presents in all material respects the financial condition and results of operations of the Authority as of, and for, the periods presented in the financial statements; and

WHEREAS, on the date hereof, the Interim Chief Executive Officer and Chief Financial Officer have so certified as to the financial information contained within the attached reports for the fiscal year ending December 31, 2021;

NOW THEREFORE BE IT RESOLVED, That pursuant to Section 2800 of the Public Authorities Law, the financial reports attached hereto are adopted and the Corporate Secretary be, and hereby is, authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the
Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget Office the attached financial report for the year ending 2021 in accordance with the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to 2 NYCRR Part 203, the attached report of actual vs. budgeted results for the year 2021 is approved in accordance with the foregoing memorandum of the Interim President and Chief Executive Officer; and the Corporate Secretary is authorized to post the report on the Authority’s website; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Executive Vice President and Chief Financial Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
NEW YORK POWER AUTHORITY

Financial Report
December 31, 2021
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</tr>
</tbody>
</table>
Independent Auditors’ Report

Board of Trustees
New York Power Authority

Report on the Audit of the Financial Statements

Opinions

We have audited the consolidated financial statements of the business-type activities and fiduciary funds of the Power Authority of the State of New York (Authority), as of and for the year ended December 31, 2021, and the related notes to the consolidated financial statements, which collectively comprise the Authority’s consolidated financial statements as listed in the table of contents.

In our opinion, the accompanying consolidated financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities and fiduciary funds of the Authority, as of December 31, 2021, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with U.S. generally accepted accounting principles.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditors’ Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with U.S. generally accepted accounting principles, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority’s ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditors’ Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors’ report
that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and Government Auditing Standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS and Government Auditing Standards, we:

• Exercise professional judgment and maintain professional skepticism throughout the audit.

• Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.

• Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority’s internal control. Accordingly, no such opinion is expressed.

• Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.

• Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority’s ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

U.S. generally accepted accounting principles require that the Management’s Discussion and Analysis and Required Supplementary Information be presented to supplement the consolidated financial statements. Such information is the responsibility of management and, although not a part of the consolidated financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the consolidated financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the consolidated financial statements, and other knowledge we obtained during our audit of the consolidated financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated March 29, 2022 on our consideration of the Authority’s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters.
The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority’s internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority’s internal control over financial reporting and compliance.

New York, New York
March 29, 2022
Management Report

Management is responsible for the preparation, integrity and objectivity of the consolidated financial statements of the Authority, as well as all other information contained in the Annual Report. The consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles (U.S. GAAP) and, in some cases, reflect amounts based on the best estimates and judgments of management, giving due consideration to materiality. Financial information contained in the Annual Report is consistent with the financial statements.

The Authority maintains a system of internal controls to provide reasonable assurance that transactions are executed in accordance with management’s authorization, that financial statements are prepared in accordance with U.S. generally accepted accounting principles and that the assets of the Authority are properly safeguarded. The system of internal controls is documented, evaluated and tested on a continuing basis. No internal control system can provide absolute assurance that errors and irregularities will not occur due to the inherent limitations of the effectiveness of internal controls; however, management strives to maintain a balance, recognizing that the cost of such system should not exceed the benefits derived.

The Authority maintains an internal auditing program to independently assess the effectiveness of internal controls and to report findings and recommend possible improvements to management. This program includes a comprehensive assessment of internal controls to ensure that the system is functioning as intended. Additionally, as part of its audit of the Authority’s consolidated financial statements, KPMG LLP, the Authority’s independent auditors, considers internal controls over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority’s internal controls over financial reporting. Management has considered the recommendations of its internal auditors, the Office of the State Comptroller (OSC), and the independent auditors concerning the system of internal controls and has taken actions that it believed to be cost-effective in the circumstances to respond appropriately to these recommendations. Based on its structure and related processes, management believes that, as of December 31, 2021, the Authority’s system of internal controls provides reasonable assurance related to material items, as to the integrity and reliability of the financial statements, the protection of assets from unauthorized use or disposition and the prevention and detection of fraudulent financial reporting.

The members of the Authority’s Board of Trustees (the Authority’s Trustees), appointed by the Governor, by and with the advice and consent of the Senate, are not employees of the Authority. The Authority’s Trustees’ Audit Committee meets with the Authority’s management, its Sr. Vice President of Internal Audit and its independent auditors periodically, throughout the year, to discuss internal controls and accounting matters, the Authority’s financial statements, the scope and results of the audit by the independent auditors and the periodic audits by the OSC, and the audit programs of the Authority’s internal auditing department. The independent auditors and the Sr. Vice President of Internal Audit have direct access to the Audit Committee.

Adam Barsky
Executive Vice President and Chief Financial Officer

March 29, 2022
Overview of the Consolidated Financial Statements

The New York Power Authority (the “Power Authority”) is considered a special-purpose government entity engaged in business-type activities and follows financial reporting for enterprise funds. Effective January 1, 2017, the New York State Canal Corporation (the “Canal Corporation”) became a subsidiary of the Power Authority, and the Power Authority assumed certain powers and duties relating to the Canal System to be exercised through the Canal Corporation. The Power Authority and its subsidiary (collectively “the Authority”) follow financial reporting for enterprise funds. The consolidated financial statements of the Authority are prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). Under the criteria set forth in GASB Statement No. 14, The Financial Reporting Entity, as amended by Governmental Accounting Standard (GAS) No. 39, Determining Whether Certain Organizations Are Component Units and GAS No. 61, The Financial Reporting Entity: Omnibus—an amendment of GASB Statements No. 14 and No. 34, the Authority considers its relationship to the State to be that of a related organization. The Power Authority and its subsidiary the Canal Corporation are referred to collectively as the “Authority” in the consolidated financial statements, except where noted.

This consolidated report consists of three parts: management’s discussion and analysis, the basic consolidated financial statements, and the notes to the consolidated financial statements.

The consolidated financial statements provide summary information about the Authority’s overall financial condition. The notes provide explanation and more details about the contents of the consolidated financial statements.

Forward Looking Statements

The statements in this management’s discussion and analysis (MD&A) that are not purely historical facts are forward-looking statements based on current expectations of future events. Such forward-looking statements are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including, but not limited to, risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes to or development in various important factors. Accordingly, actual results may vary from those we presently expect and such variations may be material. We therefore caution against placing undue reliance on the forward-looking statements contained in this MD&A. All forward-looking statements included in this MD&A are made only as of the date of this MD&A and we assume no obligation to update any such forward-looking statements as a result of new information, future events or other factors.
Summary of Consolidated Revenues, Expenses and Changes in Net Position

The following is a summary of the Authority’s consolidated financial information for 2021 and 2020:

<table>
<thead>
<tr>
<th></th>
<th>2021 ($ in millions)</th>
<th>2020 ($ in millions)</th>
<th>2021 vs. 2020 favorable/unfavorable (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues</td>
<td>$2,741</td>
<td>$2,265</td>
<td>21%</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchased power</td>
<td>539</td>
<td>484</td>
<td>(11)</td>
</tr>
<tr>
<td>Fuel oil &amp; gas</td>
<td>190</td>
<td>109</td>
<td>(74)</td>
</tr>
<tr>
<td>Wheeling</td>
<td>849</td>
<td>650</td>
<td>(31)</td>
</tr>
<tr>
<td>Operations and maintenance</td>
<td>743</td>
<td>683</td>
<td>(9)</td>
</tr>
<tr>
<td>Depreciation</td>
<td>281</td>
<td>258</td>
<td>(9)</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>2,602</td>
<td>2,184</td>
<td>(19)</td>
</tr>
<tr>
<td>Operating income</td>
<td>139</td>
<td>81</td>
<td>72</td>
</tr>
<tr>
<td>Nonoperating revenues</td>
<td>17</td>
<td>26</td>
<td>(35)</td>
</tr>
<tr>
<td>Nonoperating expenses</td>
<td>84</td>
<td>124</td>
<td>32</td>
</tr>
<tr>
<td>Net income (loss) and change in net position</td>
<td>72</td>
<td>(17)</td>
<td>524</td>
</tr>
<tr>
<td>Net position – beginning</td>
<td>4,743</td>
<td>4,760</td>
<td></td>
</tr>
<tr>
<td>Net position – ending</td>
<td>$4,815</td>
<td>$4,743</td>
<td>2</td>
</tr>
</tbody>
</table>

The following summarizes the Authority’s consolidated financial performance for the years 2021:

The Authority had a net income of $72 million for the year ended December 31, 2021 compared to $17 million net loss in 2020, an increase of $89 million (524%). The 2021 increase in net income compared to 2020 was primarily due to higher operating income of $58 million (72%), lower nonoperating expenses of $40 million (32%), and partially offset by lower nonoperating revenues of $9 million (35%). Operating income increased by $58 million (72%) compared to 2020 primarily due to higher prices on market-based sales of energy and capacity. Operating expenses were $418 million (19%) higher in 2021, primarily due to increases in purchased power and fuel costs related to mostly higher prices and volumes that are substantially offset by the recovery of such costs through operating revenues. The operations and maintenance expenses were $60 million (9%) higher compared to 2020 primarily due to maintenance repairs and other various expenses.

The change in net position was attributable to the 2021 net income of $72 million.

Operating Revenues

Operating revenues of $2,741 million in 2021 were $476 million, or 21%, higher than the $2,265 million in 2020, primarily due to higher market energy prices and the pass through of higher power costs to customers, partially offset by lower hydro production.
Purchased Power and Fuel

Purchased power costs increased by $55 million or 11% in 2021 to $539 million from $484 million in 2020. The increase was primarily due to higher fuel costs resulting from higher gas prices as well as an increase in volume due to higher demand. Purchased power costs increased primarily due to higher market prices as well as an increase in volume.

Operations and Maintenance (O&M)

O&M expenses increased by $60 million or 9% in 2021 compared to 2020, primarily due to increases in maintenance repairs and other various expenses.

Nonoperating Revenues

Nonoperating revenues decreased by $9 million, or 35% to $17 million from $26 million in 2020, primarily due to lower investment income and decreased market value on the Authority’s investment portfolio.

Nonoperating Expenses

Nonoperating expenses decreased by $40 million, or 32%, as a result of higher interest capitalized due to the increased construction work in progress.

EBIDA

Reconciliation of Net Income (Loss) to EBIDA and EBIDA after certain non-cash charges

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net (loss) income</td>
<td>$72</td>
<td>$(17)</td>
</tr>
<tr>
<td>Add: Interest, net</td>
<td>84</td>
<td>124</td>
</tr>
<tr>
<td>Depreciation</td>
<td>281</td>
<td>258</td>
</tr>
<tr>
<td>EBIDA</td>
<td>437</td>
<td>365</td>
</tr>
</tbody>
</table>

EBIDA represents net income (loss) before interest expense, depreciation and amortization and is a non-GAAP financial measure. EBIDA does not represent net income (loss), as that term is defined under Generally Accepted Accounting Principles (GAAP) and should not be considered as an alternative to net income (loss) as an indicator of the Authority’s operating performance or any other measure of performance derived in accordance with GAAP. EBIDA is not intended to be a measure of cash flows, as depicted on the statement of cash flows, available for management or discretionary use as such measures do not consider certain cash requirements such as capital expenditures and debt service requirements. EBIDA as presented herein is not necessarily comparable to similarly titled measures presented by the Authority.

Cash Flows

Cash and cash equivalents in 2021, was a decrease of $356 million compared to an increase of $947 million in 2020, due primarily to the issuance of bonds in 2020. Net cash flows provided by operating activities were $364 million in 2021, an increase of $168 million compared to 2020 primarily due to increased operating revenues.
Net Generation

Net generation was 29.7 million megawatt-hours (MWh) in 2021 and 31.5 million MWh in 2020. Net generation from the Niagara and St. Lawrence hydroelectric plants in 2021 (23.5 million MWh) was 6% lower than 2020 (25.0 million MWh) due to the reduced hydro flows to the Niagara and St. Lawrence hydroelectric plants. For 2021, net hydro generation was approximately 116% of long-term average and below 2020, which was 123%. Combined net generation of the fossil fuel plants for 2021 was 6.2 million MWh, or 4% lower than 2020 (6.5 million MWh).

Summary of Consolidated Statements of Net Position

The following is a summary of the Authority’s consolidated statements of net position for 2021 and 2020:

<table>
<thead>
<tr>
<th>2021 ($ in millions)</th>
<th>2020 ($)</th>
<th>2021 vs. 2020 (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td>$1,930</td>
<td>$1,101</td>
</tr>
<tr>
<td>Capital assets</td>
<td>6,488</td>
<td>6,032</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>1,598</td>
<td>2,667</td>
</tr>
<tr>
<td>Deferred outflows of resources</td>
<td>386</td>
<td>261</td>
</tr>
<tr>
<td><strong>Total assets and deferred outflows</strong></td>
<td><strong>$10,402</strong></td>
<td><strong>$10,061</strong></td>
</tr>
<tr>
<td>Current liabilities</td>
<td>$1,352</td>
<td>$1,037</td>
</tr>
<tr>
<td>Noncurrent liabilities</td>
<td>3,292</td>
<td>3,690</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td><strong>4,644</strong></td>
<td><strong>4,727</strong></td>
</tr>
<tr>
<td>Deferred inflows of resources</td>
<td>943</td>
<td>591</td>
</tr>
<tr>
<td>Net position</td>
<td>4,815</td>
<td>4,743</td>
</tr>
<tr>
<td><strong>Total liabilities, deferred inflows and net position</strong></td>
<td><strong>$10,402</strong></td>
<td><strong>$10,061</strong></td>
</tr>
</tbody>
</table>

The following summarizes the Authority’s consolidated statements of net position variances for the years 2021:

In 2021, current assets increased by $829 million (75%) to $1,930 million due to increase in allocation of funds to be used for operating and capital commitments. Capital assets increased by $456 million (8%) to $6,488 million, compared to last year, due to continuing investments in generating assets at existing facilities and transmission upgrades necessary to maintain reliability. Other noncurrent assets, decreased by $1,069 million (40%), compared to last year, primarily due to allocation of funds for capital investments and energy efficiency programs. Deferred outflows increased by $125 million (48%) primarily due to changes in deferral of pension resources and decrease in fair value of hedging derivatives. Current liabilities increased by $315 million (30%) to $1,352 million compared to last year. This increase is attributable primarily to timing of accounts payable and accrued liabilities related to capital projects and increase in short-term debt by $103 million. Noncurrent liabilities were lower by $398 million (11%), primarily due to lower liability related to Pension ($200 million) and OPEB ($198 million) compared to last year. Effective January 2021, the Authority’s Trustees approved an amendment to the Power Authority’s OPEB Trust allowing its OPEB trust to be used to pay benefits for both the Power Authority’s OPEB Plan and the Canal Retiree Health Plan. Deferred inflows increased by $352 million, primarily
due to the changes in the deferral of Pension and OPEB resources. The changes in net position for 2021 and 2020 are discussed in the summary of revenues, expenses and changes in net position in this Management’s Discussion and Analysis.

Capital Asset and Long-Term Debt Activity

The Authority currently estimates that it will expend approximately $4.7 billion ($3.1 billion for various capital improvements, which includes Reimagine the Canals Initiative capital projects of approximately $219 million, and $1.6 billion for energy services projects) over the five-year period 2022-2026. The Authority anticipates that these expenditures will be funded using existing construction funds, internally generated funds and additional borrowings. Such additional borrowings are expected to be accomplished through the issuance of commercial paper notes and/or the issuance of long-term fixed rate debt.

The Authority’s capital plan includes the provision of approximately $1.6 billion, the amount of which will be reimbursed subsequently back to the Authority, in financing for Energy Services projects to be undertaken by the Authority’s governmental customers and other public entities in the State. It should also be noted that due to projects currently under review as well as energy initiatives announced in the Governor’s State of the State address, there is a potential for significant increases in the capital expenditures indicated in the table below. Such additional capital expenditures would be subject to evaluation and Trustee approval.

Projected capital requirements during this period include (in millions):
In 2012, the Authority’s Trustees approved a $726 million Transmission Life Extension and Modernization Program (Transmission LEM Program) on the Authority’s Transmission system through 2025. As of December 31, 2021, the Authority has spent approximately $455.3 million. The Transmission LEM Program encompasses transmission assets in the Central, Northern and Western regions of New York and will include work to be done such as upgrades, refurbishments and replacements associated with switchyards and substations, transmission line structures or towers and associated hardware and replacement of the submarine cable on the PV-20 line. Reinvestment in this strategic component of the Authority’s overall mission supports the repair, upgrade and/or expansion of the transmission infrastructure. The Transmission LEM Program will be financed with internal funds and proceeds from debt obligations issued by the Authority. The work on the Transmission LEM Program is underway and is expected to continue through 2025.

The Authority’s Trustees approved a $460 million Life Extension and Modernization Program at the Niagara project’s Lewiston Pump-Generating Plant, (Lewiston LEM Program) of which approximately $381.7 million has been spent as of December 31, 2021. The work to be done includes a major overhaul of the plant’s 12 pump turbine generator units. The Lewiston LEM Program will increase pump and turbine efficiency, operating efficiency, and the peaking capacity of the overall Niagara project. The Authority filed an application with the Federal Energy Regulatory Commission (FERC) for a non-capacity license amendment in connection with the program. The amendment was approved with a FERC order issued in 2012. The Lewiston LEM Program will be financed with internal funds and proceeds from debt obligations issued by the Authority. The unit work began in late 2012 and is on-going, with the final unit expected to be completed in 2023.
More detailed information about the Authority’s capital assets is presented in note 2 “Summary of Significant Accounting Policies” and note 5 “Capital Assets” of the notes to the consolidated financial statements.

Capital Structure

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long-term debt, net of current maturities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue bonds</td>
<td>$1,626</td>
<td>$1,629</td>
</tr>
<tr>
<td>Subordinated:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subordinated Notes, Series 2017 and 2012</td>
<td>38</td>
<td>40</td>
</tr>
<tr>
<td>Commercial paper</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total long-term debt, net of current maturities</td>
<td>1,664</td>
<td>1,674</td>
</tr>
<tr>
<td>Net position</td>
<td>4,815</td>
<td>4,743</td>
</tr>
<tr>
<td>Total capitalization</td>
<td>$6,479</td>
<td>$6,417</td>
</tr>
</tbody>
</table>

(1) The Subordinated Notes, Series 2017 and 2012, which were issued in 2017 and 2012, respectively, are subordinate to the Series 2003A Revenue Bonds, the Series 2007B Revenue Bonds, the Series 2020A Revenue Bonds and 2020B Revenue Bonds.

Long-term debt, net of current maturities, decreased by $10 million, primarily due to a $5 million repayment of EMCP and approximately $3 million of amortized debt premium/discount.

Long-term debt to equity (long-term debt/net position) ratio as of December 31, 2021 and 2020, was at .35-to-1 for each period. Long-term debt of .35 cannot exceed 1 to maintain weighted average cost of capital formula rate approved by FERC in 2016 rate filing. Short-term debt of $605 million, consisting of the Series 1 CP Notes and certain Series 2 and Series 3A and 3B CP Notes and the Direct Purchase Note, is excluded from the long-term debt to equity ratio, as it is used by the Authority to finance the Authority’s current and future energy efficiency programs.

Debt Ratings

<table>
<thead>
<tr>
<th></th>
<th>Moody’s</th>
<th>Standard &amp; Poor’s</th>
<th>Fitch</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYPAs’s underlying credit ratings:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior debt:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt (a)</td>
<td>Aa2</td>
<td>AA</td>
<td>AA</td>
</tr>
<tr>
<td>Subordinate debt:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subordinate Notes, Series 2017</td>
<td>N/A</td>
<td>AA-</td>
<td>N/A</td>
</tr>
<tr>
<td>Subordinate Notes, Series 2012</td>
<td>N/A</td>
<td>N/A</td>
<td>AA</td>
</tr>
<tr>
<td>Commercial paper</td>
<td>P-1</td>
<td>A-1+</td>
<td>F1+</td>
</tr>
</tbody>
</table>

(a) Long term debt includes certain bonds – Series 2007B Revenue Bonds and Series 2003A Revenue Bonds – the principal and interest when due is guaranteed under insurance policies issued by MBIA Insurance.
Corporation and Assured Guaranty Municipal Corporation, respectively. The credit ratings of MBIA Insurance Corporation and Assured Guaranty Municipal Corporation are currently at or below the Authority’s underlying credit ratings.

In 2021, Standard & Poor’s Ratings Service affirmed the Authority’s commercial paper rating, senior debt rating and Subordinated Notes rating (Series 2017). In 2021, Moody’s Investors Service affirmed the Authority’s commercial paper rating and senior debt rating (Moody’s did not reconfirm or review the Authority’s Subordinated Notes, Series 2017 or Series 2012). In 2021, Fitch Ratings affirmed the Authority’s commercial paper rating, senior debt rating and Subordinated Notes (Series 2012).

The Authority has a line of credit under a 2019 revolving credit agreement (the 2019 RCA), with a syndicate of banks, to provide liquidity support for the Series 1-3A CP Notes, under which the Authority may borrow up to $700 million in aggregate principal amount outstanding at any time for certain purposes, including the repayment of the Series 1–3A CP Notes. The 2019 RCA has been extended to January 13, 2023. There are no outstanding borrowings under the 2019 RCA.

Under the hybrid revolving credit agreement and note purchase agreement supporting the Authority’s Commercial Paper Notes and liquidity effective April 22, 2020, each between the Authority and a single bank as Administrative Agent and sole lender thereunder (Hybrid Credit Agreement), the Authority is able to borrow up to $250 million in aggregate principal amount outstanding at any time for the repayment of the Commercial Paper Notes and/or Direct Purchase Note(s) under the Hybrid Credit Agreement. The Hybrid Credit Agreement expires April 20, 2022, unless extended by the parties. At December 31, 2021, the Authority has an outstanding $100 million Direct Purchase Note under its note purchase agreement connected to its Hybrid Credit Agreement. The Authority repaid the $100 million in January 2022 and as of January 2022, there were no outstanding borrowings under the Hybrid Credit Agreement.

Economic Conditions

In December 2020, the Authority’s Board of Trustees approved its new strategic plan, VISION2030. VISION2030 provides a roadmap for transforming the state’s energy infrastructure to a clean, reliable, resilient, and affordable system over the next decade. VISION2030 focuses on five strategic priorities to achieve the clean energy goals of the Authority’s customers and the state. They include Authority’s intention to preserve the value of hydroelectric generation; facilitate the rapid development of transmission assets; pioneer the path to decarbonization while ensuring reliability, resilience, and affordability of the state’s electric grid; partner with customers to deliver clean and affordable energy solutions and adaptively reimagine the New York State canal system. Five foundational pillars: digitalization, best-in-class environmental, social and governance (ESG) performance and reporting; leadership in diversity, equity and inclusion priorities; enterprise resilience; and resource alignment (i.e., process excellence, workforce planning and knowledge management initiatives) support VISION2030. The costs and revenues with respect to the plan are reflected in the Authority’s 2022-2025 financial plan.

The Authority believes, based on evaluations it has performed, that the impact, if any, the current economic conditions related to inflation, supply chain constraints and the conflict in the Ukraine are not expected to be material to the Authority’s future financial condition or operations.

Climate Leadership and Community Protection Act

New York State’s nation-leading climate plan is one of the most aggressive climate and clean energy initiative in the nation, calling for an orderly and just transition to clean energy that creates jobs and continues fostering a green economy as New York State. Enshrined into law through the Climate Leadership and Community Protection
Act (“CLCPA”), New York is on a path to achieving its mandated goal of a zero-emission electricity sector by 2040, including 70 percent renewable energy generation by 2030, and to reach economy wide carbon neutrality. CLCPA’s targets for decarbonizing power generation include bringing 28 GW (16 GW of land-based renewables, 6 GW of offshore wind, and 6 GW of distributed solar) of renewables to market by 2030; accelerating transmission network investment to integrate renewables and alleviate load pockets; and ensuring grid reliability and flexibility through an integrated set of solutions including 3 GW of storage, dispatchable clean generation, and demand-side solutions. Targets for decarbonizing beyond the power sector include reduction of statewide energy use by 185 TBtu; electrification of transportation; and coordinated electrification of building heating and industrial processes. Fundamental to the CLCPA and Power Authority’s participation in achieving its goals is ensuring an equitable transition to a thriving clean energy.

**Accelerated Renewable Energy Growth and Community Benefit Act**

The Accelerated Renewable Energy Growth and Community Benefit Act (the “Renewable Energy Act”) was enacted as part of the 2020-21 Enacted State Budget. In summary, the Renewable Energy Act:

- Establishes a new Office of Renewable Energy Siting, through which the State will consolidate the environmental review of major renewable energy facilities.
- Provides accelerated timetables for review of applications for major utility transmission facilities.
- Authorizes New York State Energy Research and Development Authority (“NYSERDA”) to undertake several “host community benefit” programs to provide benefits to residents of local communities where new renewable general projects are slated for development.
- Directs the Department of Public Service (“DPS”), in consultation with NYSERDA, the Authority, the Long Island Power Authority, the New York Independent System Operator (“NYISO”), and the state’s regulated utilities, to undertake a comprehensive study of the power delivery system in the state, for the purpose of identifying investor-owned utility distribution and local transmission upgrades, and bulk transmission system investments necessary to help the State meet the environmental goals of the CLCPA.
- Requires the PSC to identify bulk transmission projects that need to be developed expeditiously to meet CLCPA goals (“Priority Transmission Project(s)” or “PTP(s))”.
- Declares that it is appropriate for the Authority, by itself or in collaboration with other parties to develop those bulk transmission investments designated as PTPs that are needed expeditiously to achieve CLCPA targets.

Authorizes the Authority, through a public process, to solicit interest from potential co-participants in each PTP it has agreed to develop and assess whether any joint development would provide for significant additional benefits in achieving the CLCPA targets, and thereafter determine to undertake the development of the PTP on its own, or undertake the PTP jointly with one or more other parties and enter into such agreements and take such other actions the Authority determines to be necessary in order to develop the PTP. For PTPs substantially within the Authority’s existing rights of way, the Renewable Energy Act authorizes the Authority to select private sector participants through a competitive bidding process.

**Sustainability**

Sustainability encompasses the ESG performance of a company that contributes to long-term value creation. The 2021-2025 Sustainability Plan (https://www.nypa.gov/innovation/initiatives/sustainability) serves as a roadmap to help bring the Authority’s ESG ambition to life over the next five years. The plan outlines the ESG goals, strategies, and initiatives that the Authority is committed to in aligning with and supporting its VISION2030
objectives. The Sustainability Plan is an integrated, cross functional, collaborative and continuously revisited plan as the Authority’s sustainability journey evolves and targets are achieved.

In reporting our ESG progress and doubling down on our commitments, annual sustainability reports provide the platform to transparently communicate and disclose our performance in alignment with ESG reporting framework. The Authority is in the process of evaluating the integrated reporting framework for future publications.

**Transmission Congestion and System Operation**

Infrastructure limitations in the vicinity of the Authority’s Niagara Project contribute to transmission congestion that limits the amount of Niagara Project output that can be accommodated on the transmission system. Transmission congestion prevents the full and efficient use of this asset, as well as other generation assets located in Western New York. To begin alleviating this congestion, on July 20, 2015, the NYPSC issued an order that granted requests from the Authority and National Grid to establish a Public Policy Requirement driving the need for transmission additions to, among other things, enable the Authority to fully operate the Niagara Project and support the import of capacity from Ontario during emergency conditions. This order initiated the NYISO’s competitive solicitation process which resulted in the NYISO Board of Directors selection of the NextEra Energy Transmission New York, Inc. (NextEra) Empire State Line transmission project on October 17, 2017. The Nextera project, a partial solution to the identified congestion issues, has received its regulatory approvals and is under construction. This project is expected to be completed by June of 2022.

In 2020, New York State passed the Accelerated Renewable Energy Growth and Community Benefit Act (“Renewable Energy Act”), the purpose of which is to help prioritize the planning, investment, and responsible development of a state-of-the-art grid infrastructure. The Renewable Energy Act focuses on grid planning and energy delivery constraint relief and calls for a comprehensive study to identify cost-effective distribution, local and bulk electric system upgrades and a bulk transmission investment program that draws upon the Power Authority’s capability to expeditiously construct new transmission (Renewable Energy Act discussed herein). On October 15, 2020, the New York Public Service Commission (“NYSPSC”), acting through its authority under the Renewable Energy Act, designated the Smart Path Connect Project (“SPC”) also known as Northern New York (“NNY”) as a Priority Project. This project will complete the transmission upgrades in the Moses – Marcy corridor and enable higher amount of integration of renewable energy in New York Grid.

**Regional Greenhouse Gas Initiative**

The Regional Greenhouse Gas Initiative (the "RGGI") is a cooperative effort by Northeastern and Mid-Atlantic states, including New York, to reduce carbon dioxide emission levels. Participating states have established a regional carbon dioxide emissions cap from the power sector (fossil fuel-fired power plants 25MW or greater). RGGI States make periodic adjustments to the RGGI cap to account for banked CO2 allowances accumulated through the third control period. The size of the adjustment was last calculated in March 2021 and the adjustment will be made over a five-year period (2021-2025), as specified in the 2017 Model Rule. Central to this initiative is the implementation of a multi-state cap-and-trade program with a market-based emissions trading system. The program requires electricity generators to hold carbon dioxide allowances in a compliance account in a quantity that matches their total emissions of carbon dioxide for the three-year compliance period. The program also provides for (1) an annually replenished cost containment reserve that is used if emission reduction costs are higher than projected, and (2) an emission containment reserve to withhold allowances from circulation if credit prices fall below an established trigger price (i.e., when emission reduction costs are lower than expected). The Authority's Flynn plant, the Small Clean Power Plants (“SCPPs”), and 500-MW Plant are subject to the RGGI requirements as is the Astoria Energy II plant. The Authority has participated in program auctions to acquire carbon dioxide allowances and expects to recover RGGI costs through its power sales revenues. The Authority is
monitoring proposed federal and state legislation, regulations and programs (including any changes to RGGI) that would impact carbon dioxide emission levels.

**Competitive Environment**

The Authority’s mission statement that was ratified by the Trustees in December 2020, is to “Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.”

The mission statement adheres to maintaining Power Authority’s core operating businesses while also moving to support the energy goals of New York State, codified in the Clean Energy Standard, New York State Climate Leadership and Community Protection Act, our Enhanced Authority under changes to the Power Authority Act enacted in 2019, and the Accelerated Renewable Energy Growth and Community Benefit Act.

The Authority's financial performance goal is to maintain a strong financial position to have the resources necessary to achieve its mission.

To maintain its position as a reliable provider of power in a changing environment, the Authority has undertaken and continues to carry out a multifaceted program, including: (a) the upgrade and relicensing of the Niagara, St. Lawrence-FDR, and Blenheim-Gilboa (“BG”) projects; (b) long-term supplemental electricity supply agreements with the Power Authority’s governmental customers located in Southeastern New York (NYC and Westchester Governmental Customers); (c) construction and operation of the Eugene W. Zeltmann Power Project (the Power Authority’s 500-MW combined cycle electric generating plant) located at the Power Authority’s Poletti plant site; (d) a long-term electricity supply contract with Astoria Energy II LLC for the purchase of the output of a 550-MW power plant in Astoria, Queens, (“AEII”), in which the Authority’s net costs associated with the AEII power purchase agreement are recovered under a separate contract with the NYC Governmental Customers who are served by the output; (e) a firm transmission capacity purchase agreement with Hudson Transmission Partners, LLC (“HTP”) for a portion of the output of the 660 MW, seven mile, underground and underwater transmission line connecting into the transmission system operated by PJM Interconnection LLC; (f) construction and maintenance of new transmission lines to relieve congestion and increase transfer capability from central to eastern New York addressing NYISO’s AC Transmission Public Policy Need (“AC Proceeding”); (g) implementation of an enterprise-wide risk management program; and (h) implementation of an enterprise-wide resiliency program to embed resilience culture and to prepare for a more uncertain operating environment. As a component of the Authority’s strategic plan, efforts to modernize the Authority’s generation and transmission infrastructure are being developed and implemented to increase flexibility and resiliency, and to serve customers’ needs in an increasingly dynamic energy marketplace.

To achieve its goal of promoting clean energy and efficiency, the Authority implements energy efficiency services for the benefit of its power supply customers and for various other public entities throughout the State. The Authority finances the installation of energy saving greenhouse measures and equipment which are owned by the customers and public entities to focus on the reduction of the demand for electricity and the efficient use of energy.

The Authority operates in a competitive and sometimes volatile energy market environment. Through its participation in the NYISO and other commodity markets, the Authority is subject to electric energy prices, fuel prices and electric capacity price risks that impact the revenue and purchased power streams of its facilities and customer market areas. Such volatility can potentially have adverse effects on the Authority’s financial condition. To mitigate downside effects, many of the Authority’s customer contracts provide for the complete or partial pass-through of these costs.
To moderate cost impacts to the Authority and its customers, the Authority, at times, hedges market risks through the use of financial instruments and physical contracts. Hedges are transacted by the Authority to mitigate volatility in the cost of energy or related products needed to meet customer needs; to mitigate risk related to the price of energy and related products sold by the Authority; to mitigate risk related to margins (electric sales versus fuel use) where the Authority owns generation or other capacity; and to mitigate geographic cost differentials of energy procured or sold for transmission or transportation to an ultimate location. Commodities to be hedged include, but are not limited to, natural gas, natural gas basis, electric energy, electric capacity, congestion costs associated with the transmission of electricity and non-energy commodities. Any such actions are taken pursuant to policies approved by the Authority’s Trustees and under the oversight of an Executive Risk & Resilience Management Committee.

The Authority can give no assurance that, even with these measures, it will retain its competitive status in the marketplace in the future as a result of the restructuring of the State’s electric utility industry and the emergence of new competitors or increased competition from existing participants.

**Smart Path Connect** – In meeting the advancement of the State’s energy goals and supporting the Authority’s VISION2030 goals, in 2020, the New York State Public Service Commission’s (“NYSPSC”) approved the Smart Path Connect Project (“Project”) as a PTP with an in-service date of December 2025. The Project will be developed in cooperation with a third-party co-participant. Together the Authority and co-participant will rebuild approximately 100 miles of 230kV and 345kV transmission lines, construct three new substations, and expand and/or upgrade eight existing substations. The goal of the Project is to allow for renewable generation from northern New York regions to be transmitted down-state, improving the NYS renewable energy consumption, as well as the efficiency of energy pricing throughout the state. Construction on a portion of the Project, which will require an Article VII certificate, is anticipated to begin in mid-2022. The start of construction has been modified but does not impact the overall in-service date. The Article VII application of the Project was submitted to the NYSPSC in June of 2021 and is expected to be approved in mid-2022 at which time construction will begin consistent with permits requirements. In 2021, the Authority’s Trustees authorized capital expenditures for the Authority’s portion of the Project in the amount of $605 million. As of December 31, 2021, the Authority has spent approximately $22 million.

**Smart Path** – The Authority is moving forward with its plans to update a major section of the Moses Adirondack line (“Smart Path”) project, one of the Authority’s backbone transmission facilities. The project covers 78 miles of 230 kV transmission line from Massena to the town of Croghan in Lewis County. In July 2017, the Authority received authorization under the New York Independent System Operator (NYISO) tariff to include the costs of this project in its Transmission Adjustment Charge mechanism for cost recovery of the Authority’s transmission system costs, which means that the costs will be allocated to all ratepayers in the State. The project includes the update of obsolete wood pole structures with higher, steel pole structures, as well as update of failing conductor with new conductor and insulation. The line will operate at its current 230 kV level, but the conductor and insulation design will accommodate future 345 kV operation. The Authority anticipates that the Moses Adirondack line will support the transmission of growing levels of renewable generation located in upstate New York and Canada, such as wind and hydroelectricity, and assist in meeting the State’s renewable energy goals. The rebuilt line is also expected to enhance grid reliability by supporting the NYISO’s black start plan. On September 21, 2018, the Public Service Commission (PSC) determined that the Authority’s April 2018 Article VII application was complete. The PSC granted the Certificate of Compatibility and Public Need for the project on November 14, 2019, approving the Joint Proposal. On February 6, 2020, the PSC issued an order approving Part One of the Environmental Management and Construction Plan. Additionally, the Authority has received its Nationwide Permit from the U.S. Army Corps of Engineers and the New York State Department of Public Service has issued a Notice to Proceed. The Authority estimates a project cost of $484 million through project completion in 2023. As of December 31, 2021, the Authority has spent approximately $311 million on the Smart Path project.
**Clean Path** – In September of 2021 Governor Hochul announced the award of the Clean Path NY (CPNY) project. The award was a result of Forward Power- a joint venture between energyRe, LLC and Invenergy, LLC- submitting a proposal to NYSERDA in response to the Tier 4 solicitation for the delivery of renewable energy into the NYISO Zone J (New York City) area. The Power Authority and Forward Power are collaborating on the project. The proposed project plans to deliver power from new and existing solar and wind generation projects in Upstate and Western New York through a newly constructed High Voltage Direct Current transmission line into New York City. The NYSERDA contract for the project is currently under review with the New York State Public Service Commission and is expected to be approved by mid-2022. Preparation of permitting applications, engineering and procurement are ongoing. The project is expected to be in-service in 2027.

**Rate Actions**

Power and energy from the St. Lawrence-FDR and Niagara hydroelectric facilities are sold to municipal electric systems, rural electric cooperatives, industrial and other business customers, certain public bodies, investor-owned utilities, out-of-state customers, and into the wholesale market. The charges for firm and/or firm peaking power and associated energy sold by the Authority, as applicable, to the fifty-one municipal electric systems and rural electric cooperatives in New York State, two public transportation agencies, two investor-owned utilities for the benefit of rural and domestic customers, nine host communities and seven out-of-state public customers have been established based on the costs to serve these loads.

Niagara and St. Lawrence-FDR’s Expansion & Replacement Power, ReCharge New York, and Preservation Power customers are allocated over 30% of the average generation capacity of the plants. Their rates are subject to annual adjustment based on the average of three contractually agreed-upon economic indices reflecting changes in industrial energy prices.

In 2019, the Authority’s Trustees approved a seven-year extension of an agreement for the sale of firm hydroelectric power and energy from the St. Lawrence-FDR project to the Aluminum Company of America (“Alcoa”) at its West Plant facilities. The existing contract with Alcoa, for an aggregate of 240 MW, has been executed effective April 1, 2019, through March 31, 2026, replacing prior long-term contracts. The contract extension provides for monthly Base Energy Rate adjustments based upon the price of aluminum on the London Metal Exchange and contains provisions for employment (450 jobs) and capital commitments ($14 million). Changes from the previous contract include: a reduced allocation of 240 MW, with the additional 5 MW being allocated to Arconic, a business independent of Alcoa, sold under a separate Preservation Power sale agreement; a monthly Clean Energy Standard (“CES”) charge relating to Zero Emission Credits (“ZEC”) and Renewable Energy Credits (“REC”) that the Power Authority purchases which are attributable to Alcoa’s load. The contract specifies a sharing mechanism for the CES charges between Alcoa, New York State and the Power Authority, whereby Alcoa’s share increases as the aluminum price increases. The Authority has entered into aluminum contracts to mitigate potential downside risk in that market, with future activities based upon prevailing economic conditions as appropriate.

ReCharge New York (“RNY”) is the Governor’s statewide economic development electric power program, designed to retain and create jobs through the allocation of low-cost power. The RNY program allocates 455 MW of hydropower from the Authority’s Niagara and St. Lawrence-FDR projects at Preservation Power rates, which are similar to the Expansion and Replacement power customer rates, with certain adjustments. An additional 455 MW of market power can also be procured for RNY customers upon request.

Various municipalities, school districts and public agencies in New York City are served by the Authority’s combined-cycle Eugene W. Zeltmann Power Project (“Zeltmann”), the contracted output of the Astoria Energy II plant, and capacity and energy purchased by the Authority in the NYISO markets. In 2017 and 2018, the Authority
executed new supplemental long-term electricity supply agreements (Supplemental LTAs) with its eleven NYC Governmental Customers, including the Metropolitan Transportation Authority, the City of New York, the Port Authority of New York, and New Jersey (Port Authority), the New York City Housing Authority, and the New York State Office of General Services. Under the Supplemental LTAs, fixed costs were contractually set for each customer and are subject to renegotiation after five years. Variable costs, including fuel, purchased power and NYISO related costs, are to be set on a pro-forma cost of service basis and reconciled as a pass-through to each customer by an energy charge adjustment.

The Authority’s other SENY customers are Westchester County and numerous municipalities, school districts and other public agencies located in Westchester County (collectively, the “Westchester Governmental Customers.”) The Power Authority has entered into an evergreen supplemental electricity supply agreement with all 103 Westchester Governmental Customers. Westchester Governmental Customers are partially served by the Power Authority’s four small hydroelectric plants. The remainder of the Westchester Governmental Customers’ load requirements are supplied through energy and capacity purchased from the NYISO markets. Sales of energy generated by the small hydroelectric resources into the NYISO markets, as well as grandfathered and historic fixed priced transmission congestion contracts, all help to offset the cost of the energy purchased, with an energy charge adjustment mechanism in place for cost reconciliation.

Cost recovery for the Authority’s provision of transmission service over its facilities has been governed by the NYISO tariffs since the formation of the NYISO in November 1999, which included an annual transmission revenue requirement (“TRR”) for the Power Authority of $165.4 million. The Power Authority receives cost recovery through the NYISO tariff mechanism known as the NYPA Transmission Adjustment Charge (“NTAC”) recovering the Power Authority’s Backbone Transmission System costs on a statewide basis after accounting for the Power Authority’s revenues received from pre-existing customer transmission service contracts, Transmission Service Charge (“TSC”) assessed on customers in the Power Authority’s upstate load zone, and other sources.

In July 2012, the Authority filed for its first requested increase in the revenue requirement with FERC since the 1999 implementation of the NYISO. This filing resulted in FERC’s October 4, 2013 order accepting an uncontested settlement agreement establishing a new $175.5 million TRR for the Authority effective August 1, 2012.

In January 2016, the Authority filed with FERC to convert from a Stated Rate to a Formula Rate to ensure recovery of its TRR based upon operating and maintenance expenses as well as the capital spending necessary to maintain the reliability of its transmission system. FERC accepted the filing and made it effective April 1, 2016, as requested, subject to hearing and settlement judge procedures. The Authority filed an unopposed Offer of Settlement on September 30, 2016 that fully resolved the issues raised by interested parties in settlement negotiations concerning the formula rate. The settlement was approved by FERC on January 19, 2017. Separately, the annual TRR under the formula of $190 million initially made effective April 1, 2016 was updated on July 1, 2016 to $198.2 million pursuant to the formula rate annual update process. The TRR is updated annually prior to the start of each rate year (July 1st - June 30th). Effective July 1, 2021, the Transmission Revenue Requirement is $278.9 million, which includes the revenue requirements for the Marcy South Series Compensation and AC Transmission (renamed as Central East Energy Connect) projects.

**Certain New Legislation Affecting the Authority**

Bills are periodically introduced or passed in the New York State Legislature which propose to limit or restrict the powers, rights and exemptions from regulation which the Authority currently possesses under the Power Authority Act and other laws, or could otherwise affect the Authority’s financial condition or its ability to conduct its business, activities, or operations in the manner presently conducted or contemplated hereby. It is not possible
to predict whether any such bills, or other bills of a similar type which may be introduced or passed in the future, will be enacted.

As more specifically described in the enactment, and subject to limitations described therein, the 2019-20 Enacted State Budget (2019-20 ESB) amended the Power Authority Act to authorize the Authority, subject to feasible and advisable determinations by the Authority’s Trustees, to: (1) design, finance, develop, construct, install, lease, operate and maintain electric vehicle charging stations throughout the state for use by the public; (2) plan, finance, construct, acquire, operate, improve and maintain, either alone or jointly with one or more other entities, transmission facilities for the purpose of transmitting power and energy generated by renewable wind energy generation projects that are located in State territorial waters, and/or in waters under the jurisdiction or regulation of the U.S.; (3) supply certain market power and energy and renewable energy products to any Authority customer, public entity, or community choice aggregation (“CCA”) community in the State (collectively, “Eligible Entities); and (4) alone or jointly with one or more other entities, finance the development of renewable energy generating projects that are located in the State, including its territorial waters, and/or on property or in waters under the jurisdiction or regulatory authority of the United States, purchase power, energy or related credits or attributes produced from such renewable energy generating projects, and allocate and sell such products to Eligible Entities. The Authority may exercise any of this authority at its discretion, and the amendments made by 2019-20 ESB do not affect the Authority’s previously existing statutory authority.

On July 18, 2019, the State enacted CLCPA. CLCPA directs the New York State Department of Environmental Conservation (the “NYSDEC”) to develop regulations to reduce statewide greenhouse gas emissions (“GHG”) to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050. NYSDEC is currently drafting regulations that would implement these and other related goals.

Several provisions of CLCPA could potentially impact the Authority’s business and operations, such as the following: (1) a requirement that specified State entities, including the Authority, adopt regulations to contribute to achieving statewide GHG emissions; (2) a requirement that State entities, including the Authority, assess and implement strategies to reduce GHG emissions; (3) consideration of whether actions that the Authority would undertake in the course of its operations are consistent with State GHG emission limits that will be established pursuant to the enactment; and (4) potential allocation or realignment of resources to support State clean energy and energy efficiency goals for disadvantaged communities.

Many of the provisions of CLCPA that could impact the Authority are not likely to be implemented for years based on deadlines established in the enactment. Therefore, the Authority is not in a position at this time to evaluate the impact of any particular provision of CLCPA on the Authority’s business and operations.

As part of the 2020-2021 Enacted State Budget, legislation was enacted that is expected to expedite the siting and construction of clean energy projects to combat climate change in an effort to improve the State’s economic recovery from the COVID-19 health crisis. The Renewable Energy Act will create an Office of Renewable Energy Siting to improve and streamline the process for environmentally responsible and cost-effective siting of large-scale renewable energy projects across the State while delivering significant benefits to local communities. The Renewable Energy Act, which will be implemented by the Authority and New York State Department of State, NYSESDA, the Department of Public Service (“DPS”), NYSDEC and the Empire State Development Corporation, will accelerate progress towards the State’s clean energy and climate goals, including the goal to obtain 70% of the State’s electricity from renewable sources by 2030.
Renewable Energy Certificate (REC) Purchase Agreement

The CLCPA establishes a goal to produce 70% of the state’s electricity by renewable energy sources. To meet this goal the Authority has engaged with NYSERDA to procure RECs. On August 30, 2021, both the Authority and NYSERDA entered into a long term agreement for the purchase of RECs. On an annual basis, NYSERDA and the Authority will communicate the available REC supply and offtake ratios. The Authority will continue to evaluate its forecasted annual customer load and adjust the REC ratio appropriately. The initial REC offtake under the agreement will be for compliance year 2024. The Authority intends to seek recovery of costs associated with the agreement through sales of renewable energy credits by the Authority to the Authority’s customers.

Commitments and contingencies

The Authority’s commitments and contingencies are more fully detailed in note 13 “Commitments and Contingencies” of the notes to the consolidated financial statements.

Canal Corporation

Effective January 1, 2017, the New York State Canal Corporation (the “Canal Corporation”) became a subsidiary of the Power Authority pursuant to the Canal Transfer Legislation enacted in April 2016, authorized, but does not require, the Authority, to the extent that the Authority’s Trustees deem it feasible and advisable as required by the General Bond Resolution, to transfer moneys, property and personnel to the Canal Corporation.

The Canal Corporation operates at a loss and is expected to require substantial operating and maintenance support and capital investment. The Canal Corporation’s expenses are expected to be funded by transfers of funds from the Authority. Any transfer of funds would be subject to approval by the Authority’s Board of Trustees and compliance with the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented. Certain expenses eligible for reimbursement are expected to be reimbursed to the Authority by moneys held in the Canal Development Fund maintained by the State Comptroller and the Commissioner of Taxation and Finance. For the year ended December 31, 2021, the Canal Corporation recognized $2 million in revenues, $69 million in operations and maintenance expenses and $32 million in depreciation expense.

By resolution adopted December 7, 2021, the Canal Corporation’s Board of Directors adopted a budget for 2022-2025 that consisted of expenditures for operations and maintenance expenses and for capital expenses. The Authority’s budget and financial plan for 2022-2025 includes Canal-related operating expenditures averaging approximately $89 million per year and capital expenditures of approximately $40 million per year and $2 million per year for Canal Development Fund expenses.

Contacting the Authority

This financial report is designed to provide our customers and other interested parties with a general overview of the Authority’s finances. If you have any questions about this report or need additional financial information, contact the New York Power Authority, 123 Main Street, White Plains, New York 10601. Email: info@nypa.gov
# NEW YORK POWER AUTHORITY

Consolidated Statement of Net Position

(In millions)

## Assets and Deferred Outflows

| December 31, |
| 2021 |

### Current Assets:
- Cash and cash equivalents: $533
- Investment in securities: 767
- Receivables - customers: 253
- Materials and supplies, at average cost:
  - Plant and general: 85
  - Fuel: 27
- Miscellaneous receivables and other: 265
- **Total current assets**: 1,930

### Noncurrent Assets:
- Restricted funds:
  - Cash and cash equivalents: 58
  - Investment in securities: 15
- **Total restricted assets**: 73
- Capital Assets:
  - Capital assets not being depreciated: 979
  - Capital assets, net of accumulated depreciation: 5,509
- **Total capital assets**: 6,488

### Other Noncurrent Assets:
- Other long-term assets: 1,525
- **Total other noncurrent assets**: 1,525
- **Total noncurrent assets**: 8,086
- **Total assets**: 10,016

### Deferred outflows of resources:
- Asset retirement obligation: 17
- Accumulated decrease in fair value of derivative hedging: 87
- Pensions: 188
- Postemployment benefits other than pensions: 94
- **Total assets and deferred outflows of resources**: $10,402

See accompanying notes to the consolidated financial statements.
NEW YORK POWER AUTHORITY
Consolidated Statement of Net Position
(In millions)

<table>
<thead>
<tr>
<th>Liabilities, Deferred Inflows and Net Position</th>
<th>December 31, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities:</strong></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and accrued liabilities</td>
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<td>Short-term debt</td>
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<td>Long-term debt due within one year</td>
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<tr>
<td>Capital lease obligation due within one year</td>
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<tr>
<td><strong>Total current liabilities</strong></td>
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<tr>
<td><strong>Noncurrent liabilities:</strong></td>
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<tr>
<td>Long-term debt:</td>
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<tr>
<td>Senior:</td>
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<td>Revenue bonds</td>
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<tr>
<td>Subordinated:</td>
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<td>Subordinated Notes</td>
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<td>Commercial paper</td>
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<td><strong>Total long-term debt</strong></td>
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<td><strong>Other noncurrent liabilities:</strong></td>
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<tr>
<td>Capital lease obligation</td>
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<tr>
<td>Disposal of spent nuclear fuel</td>
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<tr>
<td>Relicensing</td>
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<tr>
<td>Postemployment benefits other than pensions</td>
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<tr>
<td><strong>Total other noncurrent liabilities</strong></td>
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<td><strong>Total noncurrent liabilities</strong></td>
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<td><strong>Total liabilities</strong></td>
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<td><strong>Deferred inflows of resources:</strong></td>
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<tr>
<td>Cost of removal obligations</td>
<td>402</td>
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<tr>
<td>Accumulated increase in fair value of derivative hedging</td>
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<tr>
<td>Pensions</td>
<td>225</td>
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<tr>
<td>Postemployment benefits other than pensions</td>
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<tr>
<td><strong>Net position:</strong></td>
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<tr>
<td>Net investment in capital assets</td>
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<td>Restricted</td>
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<td>Unrestricted</td>
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<tr>
<td><strong>Total net position</strong></td>
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<tr>
<td><strong>Total liabilities, deferred inflows of resources and net position</strong></td>
<td>$ 10,402</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.
NEW YORK POWER AUTHORITY
Consolidated Statement of Revenues, Expenses and Changes in Net Position
(In millions)

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating revenues:</strong></td>
<td></td>
</tr>
<tr>
<td>Power sales</td>
<td>$1,697</td>
</tr>
<tr>
<td>Transmission charges</td>
<td>328</td>
</tr>
<tr>
<td>Wheeling charges</td>
<td>688</td>
</tr>
<tr>
<td>Other</td>
<td>28</td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td>2,741</td>
</tr>
<tr>
<td><strong>Operating Expenses:</strong></td>
<td></td>
</tr>
<tr>
<td>Purchased power</td>
<td>539</td>
</tr>
<tr>
<td>Fuel oil and gas</td>
<td>190</td>
</tr>
<tr>
<td>Wheeling</td>
<td>849</td>
</tr>
<tr>
<td>Operations</td>
<td>572</td>
</tr>
<tr>
<td>Maintenance</td>
<td>171</td>
</tr>
<tr>
<td>Depreciation</td>
<td>281</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>2,602</td>
</tr>
<tr>
<td><strong>Operating income</strong></td>
<td>139</td>
</tr>
<tr>
<td><strong>Nonoperating revenues and expenses:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Nonoperating revenues:</strong></td>
<td></td>
</tr>
<tr>
<td>Investment income</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total nonoperating revenues</strong></td>
<td>17</td>
</tr>
<tr>
<td><strong>Nonoperating expenses</strong></td>
<td></td>
</tr>
<tr>
<td>Interest on long-term debt</td>
<td>52</td>
</tr>
<tr>
<td>Interest - other</td>
<td>59</td>
</tr>
<tr>
<td>Interest capitalized</td>
<td>(26)</td>
</tr>
<tr>
<td>Amortization of debt premium</td>
<td>(1)</td>
</tr>
<tr>
<td><strong>Total nonoperating expenses</strong></td>
<td>84</td>
</tr>
<tr>
<td><strong>Net income and change in net position</strong></td>
<td>72</td>
</tr>
<tr>
<td>Net position, January 1</td>
<td>4,743</td>
</tr>
<tr>
<td>Net position, December 31</td>
<td>$4,815</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.
NEW YORK POWER AUTHORITY

Consolidated Statement of Cash Flows
(In millions)

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash flows from operating activities:</td>
<td></td>
</tr>
<tr>
<td>Received from customers for the sale of power, transmission and wheeling</td>
<td>$ 2,719</td>
</tr>
<tr>
<td>Disbursements for:</td>
<td></td>
</tr>
<tr>
<td>Purchased power</td>
<td>(536)</td>
</tr>
<tr>
<td>Fuel, oil and gas</td>
<td>(178)</td>
</tr>
<tr>
<td>Wheeling of power by other utilities</td>
<td>(847)</td>
</tr>
<tr>
<td>Operations and maintenance</td>
<td>(794)</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td>364</td>
</tr>
<tr>
<td>Cash flows from capital and related financing activities:</td>
<td></td>
</tr>
<tr>
<td>Gross additions to capital assets</td>
<td>(641)</td>
</tr>
<tr>
<td>Issuance of commercial paper</td>
<td>90</td>
</tr>
<tr>
<td>Issuance of direct purchase note</td>
<td>100</td>
</tr>
<tr>
<td>Repayment of commercial paper</td>
<td>(5)</td>
</tr>
<tr>
<td>Repayment of notes</td>
<td>(2)</td>
</tr>
<tr>
<td>Interest paid, net</td>
<td>(69)</td>
</tr>
<tr>
<td><strong>Net cash used in capital and related financing activities</strong></td>
<td>(527)</td>
</tr>
<tr>
<td>Cash flows from noncapital-related financing activities:</td>
<td></td>
</tr>
<tr>
<td>Energy conservation program payments received from participants</td>
<td>351</td>
</tr>
<tr>
<td>Energy conservation program costs</td>
<td>(260)</td>
</tr>
<tr>
<td>Issuance of commercial paper</td>
<td>113</td>
</tr>
<tr>
<td>Repayment of commercial paper</td>
<td>(201)</td>
</tr>
<tr>
<td>Interest paid on commercial paper</td>
<td>(4)</td>
</tr>
<tr>
<td>Payment received from New York State</td>
<td>86</td>
</tr>
<tr>
<td>Empire State Trailways and other</td>
<td>26</td>
</tr>
<tr>
<td>Margin deposits</td>
<td>(94)</td>
</tr>
<tr>
<td><strong>Net cash provided by noncapital-related financing activities</strong></td>
<td>17</td>
</tr>
<tr>
<td>Cash flows from investing activities:</td>
<td></td>
</tr>
<tr>
<td>Earnings received on investments</td>
<td>13</td>
</tr>
<tr>
<td>Purchase of investment securities</td>
<td>(2,126)</td>
</tr>
<tr>
<td>Sale of investment securities</td>
<td>1,903</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(210)</td>
</tr>
<tr>
<td><strong>Net decrease in cash</strong></td>
<td>(356)</td>
</tr>
<tr>
<td>Cash and cash equivalents, January 1</td>
<td>947</td>
</tr>
<tr>
<td>Cash and cash equivalents, December 31</td>
<td>$ 591</td>
</tr>
</tbody>
</table>

Reconciliation to net cash provided by operating activities:

| Operating income | $ 139 |
| Adjustments to reconcile operating income to net cash provided by operating activities: | |
| Change in assets, deferred outflows, liabilities and deferred inflows: | |
| Provision for depreciation | 281 |
| Net increase in miscellaneous payments and other | (206) |
| Net increase in receivables and materials and supplies | (55) |
| Net increase in accounts payable/accrued liabilities and other | 205 |
| **Net cash provided by operating activities** | $ 364 |

See accompanying notes to the consolidated financial statements.
# NEW YORK POWER AUTHORITY

Statement of Fiduciary Net Position
(In millions)

<table>
<thead>
<tr>
<th>June 30, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
</tr>
<tr>
<td>Receivables:</td>
</tr>
<tr>
<td>Due from broker for investments sold</td>
</tr>
<tr>
<td>Investment income</td>
</tr>
<tr>
<td>Total receivables</td>
</tr>
<tr>
<td>Investments at fair value:</td>
</tr>
<tr>
<td>Domestic equity</td>
</tr>
<tr>
<td>International equity</td>
</tr>
<tr>
<td>Global Index Fund</td>
</tr>
<tr>
<td>International contrarian value fund</td>
</tr>
<tr>
<td>Real Estate (REIT)</td>
</tr>
<tr>
<td>Fixed Income</td>
</tr>
<tr>
<td>Total investments</td>
</tr>
<tr>
<td>Total assets</td>
</tr>
</tbody>
</table>

| Liabilities: |
| Payables: |
| Due to broker for investments purchased | – |
| Total liabilities | – |

Net position available for postemployment benefits other than pensions | $ 785 |

See accompanying notes to the consolidated financial statements
NEW YORK POWER AUTHORITY
Statement of Changes in Fiduciary Net Position
(In millions)

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>June 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
</tr>
<tr>
<td>Additions:</td>
<td></td>
</tr>
<tr>
<td>Employer contributions</td>
<td>$34</td>
</tr>
<tr>
<td>Investment income:</td>
<td></td>
</tr>
<tr>
<td>Net increase in fair value of investments</td>
<td>130</td>
</tr>
<tr>
<td>Interest and dividend income</td>
<td>8</td>
</tr>
<tr>
<td>Less: investment expense</td>
<td>(2)</td>
</tr>
<tr>
<td>Net investment income</td>
<td>136</td>
</tr>
<tr>
<td>Total additions</td>
<td>170</td>
</tr>
<tr>
<td>Deductions:</td>
<td></td>
</tr>
<tr>
<td>Benefits payments</td>
<td>34</td>
</tr>
<tr>
<td>Total deductions</td>
<td>34</td>
</tr>
<tr>
<td>Changes in net position</td>
<td>136</td>
</tr>
</tbody>
</table>

Net position available for postemployment benefits other than pensions – beginning of year | 649 |

Net position available for postemployment benefits other than pensions – end of year | $785 |

See accompanying notes to the consolidated financial statements.
(1) General

The Power Authority of the State of New York (the Power Authority), doing business as the New York Power Authority, is a corporate municipal instrumentality and political subdivision of the State of New York (State) created in 1931 by Title 1 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended (Power Authority Act or Act).

The Power Authority’s mission is to lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity. The mission statement adheres to maintaining the Power Authority’s core operating businesses while also moving to support the energy goals of New York State set forth in New York State Climate Leadership and Community Protection Act, additional authority provided to the Power Authority in Chapter 58 of the Laws of 2019, and the Accelerated Renewable Energy Growth and Community Benefit Act enacted in 2020. The Authority’s financial performance goal is to have the resources necessary to achieve its mission, to maximize opportunities to serve its customers better and to preserve its strong credit rating.

The Power Authority is authorized by the Power Authority Act to help provide a continuous and adequate supply of dependable electricity to the people of the State. The Power Authority generates, transmits and sells electricity principally at wholesale. The Power Authority’s primary customers are municipal and investor-owned utilities, rural electric cooperatives, high load factor industries and other qualifying businesses located throughout New York State, various public corporations located primarily in Southeastern New York within the metropolitan area of New York City, and certain out-of-state entities. In addition to contractual sales to customers, the Power Authority also sells power into an electricity market operated by the NYISO.

To provide electric service, the Power Authority owns and operates five major generating facilities, eleven small gas-fired electric generating facilities, and four small hydroelectric facilities in addition to more than 1,400 circuit miles of transmission lines, including major 765-kV and 345-kV transmission facilities. The Power Authority’s five major generating facilities consist of two large hydroelectric facilities (Niagara and St. Lawrence-FDR), a large pumped-storage hydroelectric facility (Blenheim-Gilboa), the Eugene W. Zeltmann (Zeltmann or 500-MW Plant) combined cycle electric generating plant located in Queens, New York and the Richard M. Flynn combined cycle plant located on Long Island (Flynn). To provide additional electric generation capacity to the Power Authority’s NYC Governmental Customers, the Power Authority entered into a long-term electricity supply agreement with Astoria Energy II LLC in 2008 for the purchase of the output of an Astoria, Queens based natural-gas fueled 550-MW generating plant, which entered service in the summer of 2011.

The Power Authority acts through a Board of Trustees. The Power Authority’s Trustees are appointed by the Governor of the State of New York, with the advice and consent of the State Senate. The Power Authority is a fiscally independent public corporation that does not receive State funds nor tax revenues nor credits. The Power Authority generally finances construction of new projects through a combination of internally generated funds and sales of bonds and notes to investors and pays related debt service with revenues from the generation and transmission of electricity. Accordingly, the financial condition of the Authority is not controlled by or dependent on the State or any political subdivision of the State. Under the criteria set forth in Governmental Accounting Standards Board (GASB) the Authority considers its relationship to the State to be that of a related organization.

Income of the Power Authority and properties acquired by it for its projects are exempt from taxation. However, the Power Authority is authorized by the Power Authority Act to enter into agreements to make payments in lieu of taxes with respect to property acquired for any project where such payments are based solely on the value of the real property without regard to any improvement thereon by the Authority and where no bonds to pay any costs of such project were issued prior to January 1, 1972.

Article XV of the New York State Constitution provides, in part, that the barge canal, the divisions of which are the Erie canal, the Oswego canal, the Champlain canal, and the Cayuga-Seneca canal, and the terminals
constructed as part of the barge canal system (collectively, the “Canal System”) shall remain the property of the State and under its management and control forever. Legislation enacted in 1992 (the “1992 Legislation”) transferred jurisdiction of the Canal System, among other assets and properties, from the New York State Commissioner of Transportation to the New York State Thruway Authority (the Thruway Authority), to be held by the Thruway Authority in the name of the people of the State. Such Canal System remained the property of the State and under its management and control as exercised by and through the Thruway Authority, through its then newly created subsidiary, the New York State Canal Corporation (the “Canal Corporation”). The 1992 Legislation deemed the Canal Corporation to be the State for the purposes of such management and control of the canals but for no other purposes.

Legislation was enacted on April 4, 2016 (the “Canal Transfer Legislation”) which provided for (1) the transfer, effective January 1, 2017, of the New York State Canal Corporation (Canal Corporation) from the Thruway Authority to the Power Authority, and (2) as of January 1, 2017, the Power Authority’s assumption from the Thruway Authority of powers and duties relating to the Canal System, and jurisdiction over the Canal System and state assets, equipment and property in connection with the planning, development, construction, reconstruction, maintenance and operation of the Canal System, which the Power Authority is authorized to exercise through the Canal Corporation. The Canal Corporation is responsible for a 524-mile Canal System consisting of the Erie, Champlain, Oswego and Cayuga-Seneca canals and the terminals constructed as part of the barge canal system (the “Canal System”).

(2) Summary of Significant Accounting Policies

Significant accounting policies include the following:

(a) **Basis of Reporting**

The operations of the Power Authority and its subsidiary, the Canal Corporation, are presented as an enterprise fund following the accrual basis of accounting in order to recognize the flow of economic resources. Accordingly, revenues are recognized in the period in which they are earned and expenses are recognized in the period in which they are incurred. The accounts and transactions of the Canal Corporation are included in the consolidated financial statements and notes to the consolidated financial statements. All significant transactions between the Power Authority and the Canal Corporation have been eliminated. The Power Authority and its blended component unit are referred to collectively as the “Authority” in the consolidated financial statements, except where noted.

The Authority complies with all applicable pronouncements of the Governmental Accounting Standards Board (GASB). In accordance with Governmental Accounting Standards (GAS) Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*, (GAS No. 62) the Authority applies all authoritative pronouncements applicable to nongovernmental entities (i.e., Accounting Standards Codification (ASC) of the Financial Accounting Standards Board) that do not conflict with GASB pronouncements.

(b) **Regulatory Accounting**

The Power Authority’s Board of Trustees has broad rate setting authority for its power sales agreements with customers. The sale of transmission service over the Power Authority’s facilities is provided pursuant to New York Independent System Operator (NYISO) tariffs and under contracts that pre-dated existence of the NYISO. The Power Authority files its transmission system revenue requirement with the Federal Energy Regulatory Commission (FERC) for inclusion in the NYISO’s open access tariff.

The Authority accounts for its regulated operations under the provisions of GAS No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre November 30, 1989 FASB and AICPA*
Pronouncements, paragraphs 476-500. These provisions recognize the economic ability of regulators, through the ratemaking process, to create future economic benefits and obligations affecting rate-regulated entities. Accordingly, the Authority records these future economic benefits and obligations as regulatory assets and regulatory liabilities, respectively. Regulatory assets represent probable future revenues associated with previously incurred costs that are expected to be recovered from customers. Regulatory liabilities represent amounts that are collected from customers through the ratemaking process associated with costs to be incurred in future periods. Based on the action of the Board of Trustees, the Authority believes the future collection of the costs held over through regulatory assets is probable. For regulatory assets see Note 2(l) “Summary of Accounting Policies – Other Long-Term Assets” of the notes to the consolidated financial statements.

(c) Estimates

The preparation of consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(d) Capital Assets

Capital assets are recorded at original cost and consist of amounts expended for labor, materials, services and indirect costs to license, construct, acquire, complete and place in operation the projects of the Authority. Interest on amounts borrowed to finance construction of the Authority’s projects is charged to the project prior to completion. The costs of current repairs are charged to operating expense, and renewals and betterments are capitalized. The cost of capital assets retired less salvage is charged to accumulated depreciation. Depreciation of capital assets is generally provided on a straight-line basis over the estimated lives of the various classes of capital assets.

The related depreciation provisions at December 31, 2021 expressed as a percentage of average depreciable capital assets on an annual basis are:

<table>
<thead>
<tr>
<th>Type of plant:</th>
<th>Average depreciation rate 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production:</td>
<td></td>
</tr>
<tr>
<td>Hydro</td>
<td>2.3%</td>
</tr>
<tr>
<td>Gas turbine/combined cycle</td>
<td>2.1</td>
</tr>
<tr>
<td>Transmission</td>
<td>1.7</td>
</tr>
<tr>
<td>General</td>
<td>3.9</td>
</tr>
<tr>
<td>Canal system</td>
<td>3.7</td>
</tr>
<tr>
<td></td>
<td>2.7%</td>
</tr>
</tbody>
</table>

(e) Asset Retirement and Cost of Removal Obligations

The Authority has recorded a liability at fair value to recognize legal obligations for asset retirements in the period incurred and to capitalize the cost by increasing the carrying amount of the related long-lived asset. The Authority determined that it had legal liabilities for the retirement of certain Small Clean Power Plants (SCPPs) in New York City and, accordingly, has recorded a liability for the retirement of these assets. In connection with these legal obligations, the Authority has also recognized a liability for the remediation of certain contaminated soils discovered during the construction process. The Authority records asset
retirement obligations in accordance with GAS Statement No. 83 (GAS No. 83), Accounting for Certain Asset Retirement Obligations.

The Authority also applies GAS No. 49 Accounting and Financial Reporting for Pollution Remediation Obligations, to asset retirement obligations involving pollution remediation obligations, which upon the occurrence of any one of five specified obligating events, requires an entity to estimate the components of expected pollution remediation outlays and determine whether outlays for those components should be accrued as a liability or, if appropriate, capitalized when goods and services are acquired.

In addition to asset retirement obligations, the Authority has other cost of removal obligations that are being collected from customers and accounted for under the provisions of GAS Statement No. 62, Codification of Accounting and Financial Reporting Guidance Contained in Pre November 30, 1989 FASB and AICPA Pronouncements, paragraphs 476-500. These cost of removal obligations are reflected in deferred inflows of resources in the statement of net position.

Asset retirement obligations (ARO) amounts included in deferred outflows and cost of removal obligation amounts included in deferred inflows are as follows:

<table>
<thead>
<tr>
<th>ARO amounts</th>
<th>Cost of removal obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance – December 31, 2020</td>
<td>$ 17</td>
</tr>
<tr>
<td>Depreciation Expense</td>
<td>–</td>
</tr>
<tr>
<td>Other expense</td>
<td>–</td>
</tr>
<tr>
<td>Balance – December 31, 2021</td>
<td>$ 17</td>
</tr>
</tbody>
</table>

(f) Long-Lived Assets

The Authority applies GAS No. 42, Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries, which states that asset impairments are generally recognized only when the service utility of an asset is reduced or physically impaired.

GAS No. 42 states that asset impairment is a significant, unexpected decline in the service utility of a capital asset. The service utility of a capital asset is the usable capacity that at acquisition was expected to be used to provide service, as distinguished from the level of utilization which is the portion of the usable capacity currently being used. Decreases in utilization and existence of or increases in surplus capacity that are not associated with a decline in service utility are not considered to be impairments.

(g) Cash, Cash Equivalents and Investments

Cash includes cash and cash equivalents and short-term investments with maturities, when purchased, of three months or less. The Authority accounts for investments at their fair value. Fair value is determined using quoted market prices. Investment income includes changes in the fair value of these investments. Realized and unrealized gains and losses on investments are recognized as investment income in accordance with GAS No. 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools.
(h) **Derivative Instruments**

The Authority uses financial derivative instruments to manage the impact of energy and capacity price, fuel cost changes, non-energy commodities and interest rate when applicable, on its earnings and cash flows. The Authority recognizes the fair value of all financial derivative instruments as either an asset or liability on its consolidated statement of net position with the offsetting gains or losses recognized in earnings or deferred charges. The Authority applies GAS No. 53, *Accounting and Financial Reporting for Derivative Instruments*, which establishes accounting and reporting requirements for derivative instruments (see Note 8 “Risk Management and Hedging Activities” of the notes to the consolidated financial statements).

(i) **Accounts Receivable**

Accounts receivable are classified as current assets and are reported net of an allowance for uncollectible amounts.

(j) **Materials and Supply Inventory**

Material and supplies are valued at weighted average cost and are charged to expense during the period in which the material or supplies are used.

(k) **Debt Refinancing Charges**

Debt refinancing charges, representing the difference between the reacquisition price and the net carrying value of the debt refinanced, are amortized using the interest method over the life of the new debt or the old debt, whichever is shorter, in accordance with GAS No. 23, *Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities*. See note 6 “Long-Term Debt” of the notes to the consolidated financial statements.

(l) **Other Long-Term Assets**

Other long-term assets at December 31, 2021 consist of the following:

<table>
<thead>
<tr>
<th>December 31, 2021 (In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other long-term assets:</td>
</tr>
<tr>
<td>Regulatory assets (a):</td>
</tr>
<tr>
<td>Recoverable electricity supply market costs</td>
</tr>
<tr>
<td>Allowance for funds used during construction</td>
</tr>
<tr>
<td>Other regulatory assets</td>
</tr>
<tr>
<td>Total regulatory assets</td>
</tr>
<tr>
<td>Energy efficiency program costs (b)</td>
</tr>
<tr>
<td>Other long-term receivables</td>
</tr>
<tr>
<td>Transmission line interconnection costs</td>
</tr>
<tr>
<td>Other postemployment employee benefits</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Total other long-term assets</td>
</tr>
</tbody>
</table>

(a) Regulatory assets reflect previously incurred costs that are expected to be recovered from customers through the ratemaking process.
(b) Energy efficiency program costs will be recovered from certain customers through the terms of contracts.

In 2017, a Memorandum of Understanding was entered between the Authority and five investor-owned utility companies to provide Hurricane Relief assistance in Puerto Rico. The Authority’s deployment cost associated with the assistance efforts are subject to reimbursement by the Emergency Management Assistant Compact (EMAC) program. As of December 31, 2021, the related costs are included in other long-term assets in the consolidated statement of net position.

(m) **Compensated Absences**

The Authority accrues the cost of unused sick leave which is payable upon the retirement of its employees. The Authority has accrued $52 million and $7 million in other non-current liabilities and in current liabilities at December 31, 2021, respectively, on the statement of net position. The current year’s cost is accounted for as a current operating expense in the statement of revenues, expenses, and changes in net position.

(n) **Net Position**

Net Position represents the difference between assets plus deferred outflows and liabilities plus deferred inflows and is classified into three components:

a. Net investment in capital assets – This consists of capital assets, net of depreciation reduced by related outstanding debt and accounts. This indicates that these assets are not accessible for other purposes.

b. Restricted – This represents restricted assets reduced by related liabilities and deferred inflows of resources that are not accessible for general use because their use is subject to restrictions enforceable by third parties.

c. Unrestricted – This represents the net amount of assets, deferred outflows of resources, liabilities and deferred inflows of resources that are not included in the components noted above and that are available for general use.

(o) **New York Independent System Operator (NYISO)**

The Power Authority is a member and a customer of the New York Independent System Operator (NYISO). The NYISO schedules the use of the bulk transmission system in the State, which normally includes all the Power Authority’s transmission facilities, and collects ancillary services, losses and congestion fees from customers. In addition, the Power Authority schedules power from its generating facilities in conjunction with the NYISO. The NYISO coordinates the reliable dispatch of power and operates a market for the sale of electricity and ancillary services within the State.

Based upon the Power Authority’s scheduled customer power needs and available electricity generated by the Authority’s operating assets, the Authority buys and sells energy in an electricity market operated by the NYISO. A significant amount of the Power Authority’s energy and capacity revenues result from sales of the Power Authority’s generation into the NYISO market. A significant amount of the Power Authority’s operating expenses consist of various NYISO purchased power charges in combination with generation related fuel expenses.

(p) **Operating Revenues**

The customers served by the Power Authority and the rates paid by such customers vary with the Power Authority facilities designated to serve such loads. These customers are served under contracts and tariffs approved by the Trustees.
The principal operating revenues are generated from the sale, transmission, and wheeling of power. Revenues are recorded when power is delivered or service is provided. Customers’ meters are read, and bills are rendered, monthly. Wheeling charges are for costs the Authority incurred for the transmission and/or delivery of power and energy to customers over transmission lines owned by other utilities. Sales to the Authority’s five largest customers operating in the State accounted for approximately 46% of the Authority’s operating revenues in 2021.

In addition to contractual sales to customers, the Power Authority also sells power into an electricity market operated by the NYISO. These sales are affected by market prices and are not subject to rate regulation by the Power Authority’s Board of Trustees or other regulatory bodies.

(q) **Operating Expenses**

The Authority’s operating expenses include fuel, operations and maintenance, depreciation, purchased power costs, and other expenses related to the sale of power. Energy costs are charged to expense as incurred.

Purchased power costs include capacity, energy and ancillary service purchases made in the wholesale market on behalf of its customers (except for those made through previously approved purchased power agreements). Wheeling expenses are based on contractual and/or tariff rates of the service provider and are recovered through pass-through provisions in customer contracts.

(r) **Pension Plans**

The Authority is a cost-sharing employer that participates in the New York State and Local Employees’ Retirement System (NYSLERS), which is a cost-sharing multiple-employer plan in which the participating government employers pool their assets and their obligations to provide defined benefit pensions. The plan assets of this type of plan can be used to pay the pensions of the retirees of any participating employer. The amounts reported by the Authority for its proportionate share of the net pension liability, pension expense and deferred outflows and deferred inflows have been provided by the New York State and Local Employees’ Retirement System to employers participating in the NYSLERS in accordance with Statement No. 68, *Accounting and Financial Reporting for Pensions*, and have been determined on the same basis as reported by the NYSLERS. See Note 10 “Pension Plans” of the notes to the consolidated financial statements.

(s) **Postemployment Benefits Other Than Pensions (OPEB)**

The Power Authority provides certain health care and life insurance benefits for eligible retired employees and their dependents under a single employer noncontributory (except for certain optional life insurance coverage) health care plan (Power Authority OPEB Plan). The Power Authority has an established trust for its OPEB obligations (OPEB Trust) that is separate from the Power Authority and is held by an independent custodian for the exclusive benefit of the OPEB Trust beneficiaries and not of the Power Authority. The ownership of the OPEB Trust assets are held by the independent custodian at all times and the OPEB Trust assets are not considered funds or assets of the Power Authority for any purpose. All of the OPEB Trust assets are irrevocably dedicated to, and are used for the exclusive purpose of, making payments of benefits to or for the benefit of the Power Authority OPEB Plan beneficiaries and for paying administrative expenses of the Power Authority OPEB Plan and the OPEB Trust and will not be available to any creditors of the Power Authority. The OPEB Trust does not issue a stand-alone financial report and its financial statements are reported as a fiduciary fund in the Authority’s financial report.

The Canal Corporation provides health care and death benefit for eligible retired employees. Substantially all employees may become eligible for these benefits if they reach normal retirement age while working for the Canal Corporation. The Canal Corporation participates, pursuant to the provision of Section 163(4)
of the New York State Civil Service Law, in the New York State health Insurance Program (NYSHIP). NYSHIP does not issue a standalone financial report since there are no assets legally segregated for the sole purpose of paying benefits under the plan.

Effective January 2021, the Authority’s Trustee approved an amendment to the OPEB Trust allowing the trust to be used to pay benefits for both the Power Authority OPEB Plan and the Canal Retiree Health Plan. This change has been reflected as of the June 30, 2021 measurement date.

The Power Authority has changed their reporting period under GASB 74 and 75 from January 1 through December 31 to July 1 through June 30, effective for the 2021 reporting period. Instead of using a reporting period of January 1, 2021 through December 31, 2021, the Authority will use the period July 1, 2020 through June 30, 2021. The measurement date was also changed to the end of the updated reporting period (i.e. June 30, 2021 for the first year of reporting).

Actuarial valuations are performed biennially. For purposes of measuring the net OPEB liability, deferred outflows of resources and deferred inflows of resources related to OPEB, and OPEB expenses, information about the fiduciary net position of the OPEB Trust and additions to/deductions from OPEB Trust’s fiduciary net position have been determined on the same basis as they are reported by the Power Authority OPEB Plan as of the same measurement date. For this purpose, the Power Authority OPEB Plan recognizes benefit payments when due and payable in accordance with the benefit terms. Investments are reported at fair value, except investments that have a maturity at the time of purchase of one year or less, which are reported at cost.

(t) **New Accounting Pronouncements**

GASB issued GAS Statement No. 87 (GAS No. 87), *Leases*, which was effective for reporting periods beginning after December 15, 2019 prior to issuance of (GAS No.95). GAS No. 87 requires recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows or outflows of resources based on payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right-to-use an underlying asset. Under GAS No. 87, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources. The Authority is currently evaluating the impact of GAS No. 87 on its consolidated financial statements.

GASB issued GAS Statement No. 89 (GAS No. 89), *Accounting for Interest Cost Incurred Before the End of a Construction Period*, which is effective for reporting periods beginning after December 15, 2019 and will be applied prospectively. GAS No. 89 addresses (1) enhancement of the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) simplifies accounting for interest cost incurred before the end of a construction period. GAS No. 89 requires that interest cost incurred before the end of a construction period be recognized as an expense in the period in which the cost is incurred for financial statements prepared using the economic resources measurement focus. As a result, interest cost incurred before the end of a construction period will not be included in the historical cost of a capital asset reported in a business-type activity or enterprise fund. Based on the Authority’s evaluation and FERC accounting, the Authority, being a GAAP regulated utility, is exempt from the certain provisions of GAS No. 89 and will continue capitalizing interest cost incurred before the end of construction period as a regulatory asset. The Authority adopted GAS No. 89 and at December 31.2021, the Authority recorded a $36 million allowance for use during construction (AFUDC) as a regulatory asset in its consolidated statement of net position.

GASB issued GAS Statement No. 91 (GAS No. 91), *Conduit Debt Obligations*, which was effective for reporting periods beginning after December 15, 2020 prior to issuance of GAS Statement 95 (GAS No.95).
GAS No. 91 provides a single method of reporting conduit debt obligations by issuers associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This statement clarifies the definition of a conduit debt obligation, establishes that a conduit debt obligation is not a liability of the issuer, establishes standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations and improves required note disclosures. The Authority is evaluating the impact of GAS No. 91 on its consolidated financial statements.

In May 2020, in response to challenges arising from the COVID-19 virus, GASB issued Statement No. 95 (GAS No. 95), Postponement of the Effective Dates of Certain Authoritative Guidance, in which GASB approved an 18-month postponement for Statement 87, Leases. In addition, GAS No. 95 postponed for one-year effective dates for all statements and implementation guides with a current effective date of reporting periods beginning after June 15, 2018, and later. As such GAS No. 87 will be effective for reporting periods beginning after June 15, 2021 and GAS No. 91 will be effective for reporting period beginning after December 31, 2021.

GASB issued GAS Statement No.92 (GAS No. 92), Omnibus 2020, which originally had an effective date for reporting periods beginning after June 15, 2020. This effective date has been postponed to June 15, 2021 due to the issuance of GAS No.95. GAS No.92 establishes accounting and financial reporting requirements for specific issues related to leases, intra-entity transfers of assets, postemployment benefits, government acquisitions, risk financing and insurance-related activities of public entity risk pools, fair value measurements, and derivative instruments. The Authority is evaluating the impact of GAS No.92 on its consolidated financial statements.

GASB issued GAS Statement No. 93 (GAS No. 93) Replacement of Interbank Offered Rates, which originally had an effective date for reporting periods beginning after June 15, 2020. This effective date has been postponed to June 15, 2021 due to the issuance of GAS No.95. Some governments have entered into agreements in which variable payments made or received depend on an interbank offered rate (IBOR)—most notably, the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form at the end of 2021, prompting governments to amend or replace financial instruments for the purpose of replacing LIBOR with other reference rates, by either changing the reference rate or adding or changing fallback provisions related to the reference rate. GASB 93 objective is to address those and other accounting and financial reporting implications that result from the replacement of an IBOR. The Authority is evaluating the impact of GAS No.93 on its consolidated financial statements.

GASB issued GAS Statement No. 96 (GAS No. 96), Subscription-Based Information Technology Arrangements, which is effective for reporting periods beginning after June 15, 2022. GAS No.96 requires recognition of certain subscription assets and liabilities for Subscription-based information Technology Arrangements (SBITA) which were previously either capitalized or expensed. It establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability. The Authority is evaluating the impact of GAS No.96 on its consolidated financial statements.

GASB Issued GASB Statement No. 97 (GAS No. 97), Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—an amendment of GASB Statements No.14 and No.84 and superseded of GASB Statement No.32, which is effective for reporting periods beginning after June 15, 2021. The primary objectives of this Statement are to increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board, mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans and to enhance the relevance, consistency, and comparability of the accounting and financial reporting for
Internal Revenue Code (IRC) Section 457 deferred compensation plans. The Authority is evaluating the impact of GAS No.97 on its consolidated financial statements.

(3) Bond Resolutions and Related Matters

On February 24, 1998, the Authority adopted its “General Resolution Authorizing Revenue Obligations” (as amended and supplemented up to the present time, the General Bond Resolution). The General Bond Resolution covers all of the Authority’s projects, which it defines as any project, facility, system, equipment or material related to or necessary or desirable in connection with the generation, production, transportation, transmission, distribution, delivery, storage, conservation, purchase or use of energy or fuel, whether owned jointly or singly by the Authority, including any output in which the Authority has an interest authorized by the Act or by other applicable State statutory provisions, provided, however, that the term “Project” shall not include any Separately Financed Project as that term is defined in the General Bond Resolution. The Authority has covenanted with bondholders under the General Bond Resolution that at all times the Authority shall maintain rates, fees or charges, and any contracts entered into by the Authority for the sale, transmission, or distribution of power shall contain rates, fees or charges sufficient together with other monies available therefore (including the anticipated receipt of proceeds of sale of Obligations, as defined in the General Bond Resolution, issued under the General Bond Resolution or other bonds, notes or other obligations or evidences of indebtedness of the Authority that will be used to pay the principal of Obligations issued under the General Bond Resolution in anticipation of such receipt, but not including any anticipated or actual proceeds from the sale of any Project), to meet the financial requirements of the General Bond Resolution. Revenues of the Authority (after deductions for operating expenses and reserves, including reserves for working capital, operating expenses or compliance purposes) are applied first to the payment of, or accumulation as a reserve for payment of, interest on and the principal or redemption price of Obligations issued under the General Bond Resolution and the payment of Parity Debt issued under the General Bond Resolution.

The General Bond Resolution also provides for withdrawal for any lawful corporate purpose as determined by the Authority, including but not limited to the retirement of Obligations issued under the General Bond Resolution, from amounts in the Operating Fund in excess of the operating expenses, debt service on Obligations and Parity Debt issued under the General Bond Resolution, and subordinated debt service requirements.

On December 7, 2021, the Authority adopted its “General Resolution Authorizing Transmission Project Revenue Obligations” (as amended and supplemented up to the present time, the Transmission Bond Resolution). The Transmission Bond Resolution authorizes the issuance of Obligations to finance the costs of certain projects, facilities, systems, equipment, and/or materials related to or necessary or desirable in connection with the transmission or distribution of electric energy, whether owned or leased jointly or singly by the Authority, including any transmission capacity in which the Authority has an interest or which it has a contractual right to use, as authorized by the Act or by other applicable State statutory provisions which have been designated by Authority pursuant to a supplemental resolution as a Separately Financed Project under the General Bond Resolution and a transmission project for purposes of the Transmission Bond Resolution. No Obligations have been issued under the Transmission Bond Resolution as of December 31, 2021.

Collateral - Under the Authority’s General Bond Resolution, a Trust Estate was created and pledged for the payment of the principal and redemption price of, and interest on, the Authority’s Obligations issued under the General Bond Resolution and, on a parity basis, other Parity Debt as defined in the General Bond Resolution. The Authority’s subordinated debt, including the Commercial Paper Notes, loans issued under the 2019 Revolving Credit Agreement and Hybrid Credit Agreement described below, the Extendible Municipal Commercial Paper Notes, the Subordinated 2012 Notes and Subordinated 2017 Notes, are not Obligations under the General Bond Resolution but share a subordinated lien in the Trust Estate. The Trust Estate means, collectively: (i) all Revenues (as defined in the General Bond Resolution, which excludes revenues from Separately Financed Projects) of the Authority; (ii) the proceeds of the sale of Obligations until expended for the purposes authorized in the
supplemental resolution authorizing the issuance of such Obligations; (iii) all funds, accounts and subaccounts established by the General Bond Resolution, including investment earnings thereon; and (iv) all funds, moneys, and securities and any and all other rights and interests in property, whether tangible or intangible, conveyed as and for additional security pursuant to the General Bond Resolution by the Authority, or by anyone on its behalf, or with its written consent, to the Trustee.

Under the Authority’s Transmission Bond Resolution, a Trust Estate was created and pledged for the payment of the principal and redemption price of, and interest on, the Authority’s Obligations issued under the Transmission Bond Resolution and, on a parity basis, other Parity Debt as defined in the Transmission Bond Resolution. The Trust Estate means, collectively: (i) all Revenues (as defined in the Transmission Bond Resolution) of the Authority; (ii) the proceeds of the sale of Obligations until expended for the purposes authorized in the supplemental resolution authorizing the issuance of such Obligations; (iii) all funds, accounts and subaccounts established by the Transmission Bond Resolution, including investment earnings thereon; and (iv) all funds, moneys, and securities and any and all other rights and interests in property, whether tangible or intangible, conveyed as and for additional security pursuant to the Transmission Bond Resolution by the Authority, or by anyone on its behalf, or with its written consent, to the Trustee.

**Events of Default/Termination** - Pursuant to the General Bond Resolution, upon an Event of Default so long as such Event of Default shall not have been remedied, either the Trustee or the owners of 25% in principal amount of the Obligations then outstanding may declare the principal and accrued interest on all Obligations due and payable immediately.

Under the revolving credit agreement supporting the Authority’s Commercial Paper Notes effective January 16, 2019, as amended, among the Authority, a single bank as Administrative Agent, and the lenders thereunder (2019 Revolving Credit Agreement), the Authority is able to borrow up to $700 million in aggregate principal amount outstanding at any time for the repayment of the Commercial Paper Notes. In the case of an Event of Default (as defined in the 2019 Revolving Credit Agreement), the lenders under the 2019 Revolving Credit Agreement holding 66 2/3% of the commitments thereunder will be able to: terminate their commitments; direct the Authority to cease issuing Commercial Paper Notes; and declare the principal and accrued interest on obligations under the 2019 Revolving Credit Agreement due and immediately payable.

Under the hybrid revolving credit agreement and note purchase agreement supporting the Authority’s Commercial Paper Notes and liquidity effective April 22, 2020, each between the Authority, and a single bank as Administrative Agent and sole lender thereunder (Hybrid Credit Agreement), the Authority is able to borrow up to $250 million in aggregate principal amount outstanding at any time for the repayment of the Commercial Paper Notes and/or Direct Purchase Note(s) under the Hybrid Credit Agreement. In the case of an Event of Default (as defined in the Hybrid Credit Agreement), the sole lender under the Hybrid Credit Agreement holding 100% of the commitment thereunder will be able to: terminate their commitment; direct the Authority to cease issuing Commercial Paper Notes; and declare the principal and accrued interest on obligations under the Hybrid Credit Agreement due and immediately payable.

(4) **Cash and Investments**

Investment of the Authority’s funds is administered in accordance with the applicable provisions of the Bond Resolution and with the Authority’s investment guidelines. These guidelines comply with the New York State Comptroller’s investment guidelines for public authorities and were adopted pursuant to Section 2925 of the New York Public Authorities Law.
(a) **Investment Credit Risk**

The Authority’s investments are restricted to (a) authorized collateralized certificates of deposit, Certificate of Deposit Account Registry Service (“CDARS”) program or similar FDIC-insured, reciprocal products, time deposits and money market funds, which shall not exceed 40% of the Authority’s invested funds and no more than $50 million invested in any one fund, (b) direct obligations of or obligations guaranteed by the United States of America or the State of New York, (c) obligations issued or guaranteed by certain specified federal agencies and any agency controlled by or supervised by and acting as an instrumentality of the United States government, and (d) obligations of any state or any political subdivision thereof or any agency, instrumentality or local government unit of any such state or political subdivision which is rated in any of the three highest long-term rating categories, or the highest short-term rating category, by nationally recognized rating agencies, (e) Guaranteed Investment Contracts or GIC Funds issued by creditworthy insurance companies and collateralized by issuer’s general or separate account assets, with no more than $50 million invested in any one contract or fund. The Authority’s investments in the senior debt securities of Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB) Federal Agricultural Mortgage Corporation (FAMC) and Federal Home Loan Mortgage Corporation (FHLMC) were rated Aaa by Moody’s Investors Services (Moody’s), AAA by Fitch Ratings (Fitch) and AA+ by Standard & Poor’s (S&P).

(b) **Interest Rate Risk**

Securities that are the subject of repurchase agreements or reverse repurchase agreements must have a market value at least equal to the cost of the investment. The agreements are limited to a maximum fixed term of 30 days and may not exceed $250 million or $50 million with any one dealer or bank. Monies will not be invested for terms in excess of the projected use of funds. As of December 31, 2021, the Authority had $50 million invested in repurchase agreements.

(c) **Concentration of Investment Credit Risk**

There is no limit on the amount that the Power Authority may invest in any one issuer; however, investments in authorized certificates of deposit shall not exceed 25% of the Authority’s invested funds and shall not exceed $25 million from any one bank. At December 31, 2021, the Authority’s total investment portfolio of $1,355 million, excluding the Canal Development Fund, consists of investments of $10 million (1%), $119 million (9%), $221 million (16%) $79 million (6%), $259 million (19%) in securities of FNMA, FHLMC, FHLB, FFCB, U.S. government and other various municipal debt securities, respectively.

(d) **Other**

All investments are held by designated custodians in the name of the Authority. The bank balances at December 31, 2021 and 2020 were $43 million of which $42 million were uninsured but were collateralized by assets held by the bank in the name of the Authority.

Cash and Investments of the Authority at December 31, 2021 are as follows:
As of December 31, 2021, restricted funds include the POCR fund ($7 million), the Lower Manhattan Energy Independence Initiative fund ($6 million) and the Fish & Wildlife Habitat Enhancement fund related to the Niagara relicensing ($13 million), the Western New York Economic Development Fund ($11 million), the Northern New York Economic Development Fund ($5 million) (see Note 13(a) “Commitments and Contingencies – Power Programs”), Canal Development Fund ($18 million) and other ($13 million).
(5) **Capital Assets**

The following schedule summarizes the capital assets activity of the Authority for the year ended December 31, 2021.

<table>
<thead>
<tr>
<th></th>
<th>Beginning balance</th>
<th>Additions</th>
<th>Retirements/ Transfers</th>
<th>Ending balance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital assets, not being depreciated:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>$193</td>
<td>$0</td>
<td>$0</td>
<td>$193</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>791</td>
<td>691</td>
<td>(696)</td>
<td>786</td>
</tr>
<tr>
<td><strong>Total capital assets not being depreciated</strong></td>
<td>984</td>
<td>691</td>
<td>(696)</td>
<td>979</td>
</tr>
<tr>
<td><strong>Capital assets, being depreciated:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Production – Hydro</td>
<td>2,313</td>
<td>114</td>
<td>$0</td>
<td>2,427</td>
</tr>
<tr>
<td>Production – Gas turbine/combined cycle</td>
<td>2,385</td>
<td>13</td>
<td>$0</td>
<td>2,398</td>
</tr>
<tr>
<td>Transmission</td>
<td>2,551</td>
<td>370</td>
<td>(6)</td>
<td>2,915</td>
</tr>
<tr>
<td>General</td>
<td>1,405</td>
<td>114</td>
<td>(5)</td>
<td>1,514</td>
</tr>
<tr>
<td>Canal System</td>
<td>802</td>
<td>117</td>
<td>$0</td>
<td>919</td>
</tr>
<tr>
<td><strong>Total capital assets being depreciated</strong></td>
<td>9,456</td>
<td>728</td>
<td>(11)</td>
<td>10,173</td>
</tr>
<tr>
<td>Less accumulated depreciation for:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Production – Hydro</td>
<td>924</td>
<td>47</td>
<td>$0</td>
<td>971</td>
</tr>
<tr>
<td>Production – Gas turbine/combined cycle</td>
<td>1,381</td>
<td>87</td>
<td>$0</td>
<td>1,468</td>
</tr>
<tr>
<td>Transmission</td>
<td>1,371</td>
<td>42</td>
<td>(6)</td>
<td>1,407</td>
</tr>
<tr>
<td>General</td>
<td>492</td>
<td>57</td>
<td>(4)</td>
<td>545</td>
</tr>
<tr>
<td>Canal System</td>
<td>240</td>
<td>33</td>
<td>$0</td>
<td>273</td>
</tr>
<tr>
<td><strong>Total accumulated depreciation</strong></td>
<td>4,408</td>
<td>266</td>
<td>(10)</td>
<td>4,664</td>
</tr>
<tr>
<td><strong>Net value of capital assets, being depreciated</strong></td>
<td>5,048</td>
<td>462</td>
<td>(1)</td>
<td>5,509</td>
</tr>
<tr>
<td><strong>Net value of all capital assets</strong></td>
<td>$6,032</td>
<td>$1,153</td>
<td>(697)</td>
<td>$6,488</td>
</tr>
</tbody>
</table>
(6) Long-Term Debt

a. Components

<table>
<thead>
<tr>
<th></th>
<th>Amount (In millions)</th>
<th>Interest rate (a)</th>
<th>Maturity</th>
<th>Earliest redemption date prior to maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior debt:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Series 2020A Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term Bonds</td>
<td>1,121</td>
<td>3.25% to 4.00%</td>
<td>11/15/2045 - 2060</td>
<td>** 5/15/2030</td>
</tr>
<tr>
<td>Revenue Bonds (Taxable):*</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Series 2003A Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term Bonds</td>
<td>117</td>
<td>5.649% to 5.749%</td>
<td>11/15/2020 to 2033</td>
<td>** Any date</td>
</tr>
<tr>
<td>Series 2007B Revenue (b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term Bonds</td>
<td>210</td>
<td>5.905% to 5.985%</td>
<td>11/15/2037 and 2043</td>
<td>** Any date</td>
</tr>
<tr>
<td>Series 2020B Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term Bonds</td>
<td>114</td>
<td>2.818%</td>
<td>11/15/2039</td>
<td>** Any date</td>
</tr>
<tr>
<td></td>
<td>1,562</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plus unamortized premium and discount</td>
<td>64</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less deferred refinancing costs</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,626</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less due in one year</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term senior debt, net of due in one year</td>
<td>$1,626</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) interest rate at issuance

* All outstanding taxable term bonds are subject to Make-Whole Call provisions.

** Bonds are subject to sinking fund provisions.
Interest on Series 2003A, 2007B and 2020B Revenue Bonds and Subordinated Notes, Series 2012 and Subordinated Notes, Series 2017 is not excluded from gross income for bondholders’ Federal income tax purposes.

The Revenue Bonds outstanding at December 31, 2021 have an average interest rate of 4.25% and mature through 2060.

As indicated in Note 3 “Bond Resolution and Related Matters” of the notes to the consolidated financial statements, the Authority has pledged future revenues to service the Obligations and Parity Debt (Senior Debt) issued under the Bond Resolution. The total principal and interest remaining to be paid on the Senior Debt is $3.2 billion as of December 31, 2021. Principal and interest paid for 2021 and operating income plus depreciation were $69.4 million and $420 million, respectively.

Senior revenue bonds are subject to redemption prior to maturity in whole or in part as provided in the supplemental resolutions authorizing the issuance of each series of bonds, beginning for each series on the date indicated in the table above, at principal amount or at various redemption prices according to the date of redemption, together with accrued interest to the redemption date.

At December 31, 2021, the current market value of the senior debt was approximately $2.0 billion. Market values were obtained from a third party that utilized a matrix-pricing model.
Subordinate Debt:

**Subordinate Notes** – In 2016, the Authority’s Trustees authorized the issuance of Subordinated Notes, Series 2017 (Subordinated Notes, Series 2017) and in 2012, the Authority’s Trustees authorized the issuance of Subordinated Notes, Series 2012 (Subordinated Notes, Series 2012), in a principal amount not to exceed $30 million for each note for the purpose of accelerating the funding for the State Parks Greenway Fund, which was established pursuant to the Niagara Relicensing Settlement entered into by the Authority and the New York State Office of Parks, Recreation & Historic Preservation in connection with the Niagara Project’s relicensing. The Authority issued the Subordinated Notes, Series 2017 on February 24, 2017 in the amount of $25.2 million and the Subordinated Notes, Series 2012 on December 18, 2012 in the amount of $25 million. These Subordinated Notes, Series 2017 and Series 2012 are subordinate to the Series 2003A Revenue Bonds, the Series 2007B, and the Series 2020A and 2020B Revenue Bonds.

**Commercial Paper** – Under the Extendible Municipal Commercial Paper (EMCP) Note Resolution, adopted December 17, 2002, and as subsequently amended and restated, the Authority may issue a series of notes, designated EMCP Notes, Series 1, maturing not more than 270 days from the date of issue, up to a maximum amount outstanding at any time of $200 million (EMCP Notes). The Authority has the option to extend the maturity of the EMCP Notes and would exercise such right in the event there is a failed remarketing. This option serves as a substitute for a liquidity facility for the EMCP Notes. During 2021, the Authority repaid the then outstanding $5 million of EMCP. There are no outstanding borrowings under the EMCP at December 31, 2021.

Under the provisions of the Second Amended and Restated Resolution Authorizing Commercial Paper Notes, adopted by the Authority on March 30, 2021 (the “Second Amended and Restated Resolution”) and the Certificate of Determination dated April 21, 2021 (the “Certificate of Determination” and together with the Second Amended and Restated Resolution, the “Resolution”), the Authority may issue from time to time a separate series of notes maturing not more than 270 days from the date of issue, up to a maximum amount outstanding at any time of $200 million (Series 1 CP Notes), $300 million (Series 2 CP Notes), and $450 million (Series 3A ($200 million) and 3B ($250 million) CP Notes). See Note 7 “Short-Term Debt” of the notes to the consolidated financial statements in the Authority’s December 31, 2021 Financial Report for Series 1, and certain Series 2 and Series 3A and 3B CP Notes designated as short-term debt. There were no Series 4 CP Notes outstanding as of December 31, 2021.

The Authority has a line of credit under a 2019 revolving credit agreement (the 2019 RCA), with a syndicate of banks, to provide liquidity support for the Series 1-3A CP Notes, under which the Authority may borrow up to $700 million in aggregate principal amount outstanding at any time for certain purposes, including the repayment of the Series 1–3 CP Notes. The 2019 RCA has been extended to January 13, 2023. There were no outstanding borrowings under the 2019 RCA.

The Authority has a hybrid revolving credit agreement and note purchase agreement supporting the Authority’s Commercial Paper Notes and liquidity effective April 22, 2020, each between the Authority, and a single bank as Administrative Agent and sole lender thereunder (Hybrid Credit Agreement), the Authority is able to borrow up to $250 million in aggregate principal amount outstanding at any time for the repayment of the Commercial Paper Notes and/or Direct Purchase Note(s) under the Hybrid Credit Agreement. The term of the Hybrid Credit Agreement is through April 20, 2022, unless extended by the parties. At December 31, 2021, the Authority has an outstanding $100 million Direct Purchase Note under its note purchase agreement connected to its Hybrid Credit Agreement. The Authority repaid the $100 million in January 2022 and as of January 2022, there were no outstanding borrowings under the Hybrid Credit Agreement.

As of December 31, 2021, the CP Notes and the Direct Purchase Note are subordinate to the Series 2003A Revenue Bonds, the Series 2007B, the Series 2020A and 2020B Revenue Bonds.

Currently, interest on the CP (Series 3A and 3B) is taxable to holders for Federal income tax purposes.

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NEW YORK POWER AUTHORITY
Notes to the Consolidated Financial Statements
December 31, 2021

The interest rate used to calculate future interest expense on variable rate debt is the interest rate at issuance.

<table>
<thead>
<tr>
<th>Maturities and Interest Expense:</th>
<th>Long-Term Debt</th>
<th>Capitalized Lease Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(In millions)</td>
<td>(In millions)</td>
</tr>
<tr>
<td></td>
<td>Principal</td>
<td>Interest</td>
</tr>
<tr>
<td>Years ending December 31:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2022</td>
<td>$1</td>
<td>$68</td>
</tr>
<tr>
<td>2023</td>
<td>2</td>
<td>68</td>
</tr>
<tr>
<td>2024</td>
<td>16</td>
<td>68</td>
</tr>
<tr>
<td>2025</td>
<td>17</td>
<td>67</td>
</tr>
<tr>
<td>2026</td>
<td>18</td>
<td>66</td>
</tr>
<tr>
<td>2027–2031</td>
<td>108</td>
<td>314</td>
</tr>
<tr>
<td>2032–2036</td>
<td>143</td>
<td>281</td>
</tr>
<tr>
<td>2037–2041</td>
<td>207</td>
<td>246</td>
</tr>
<tr>
<td>2042–2046</td>
<td>252</td>
<td>196</td>
</tr>
<tr>
<td>2047–2051</td>
<td>297</td>
<td>140</td>
</tr>
<tr>
<td>2052–2056</td>
<td>300</td>
<td>80</td>
</tr>
<tr>
<td>2057–2060</td>
<td>240</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>1,601</td>
<td>1,617</td>
</tr>
<tr>
<td>Plus unamortized bond premium</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$1,665</td>
<td>$1,617</td>
</tr>
</tbody>
</table>

In 2008, the Authority entered into a long-term power supply contract with Astoria Energy II LLC for the purchase of all the output of Astoria Energy II, a new 550-MW plant, which entered into commercial operation on July 1, 2011 in Astoria, Queens. The delivery period under the contract is through 2031. The Authority entered into a separate contract with its’ New York City Governmental Customers to purchase the output of Astoria Energy II and is coterminous with the power purchase agreement with Astoria Energy II LLC. All net costs of the Authority under the power purchase agreement with Astoria Energy II LLC pass through to the New York City Governmental Customers for the full term of the power purchase agreement. See note 13(b) “Commitments and Contingencies – Governmental Customers in the New York City Metropolitan Area” of the notes to the consolidated financial statements.

b. Terms by Which Interest Rates Change for Variable Rate Debt

CP Notes

The Authority determines the rate for each rate period which is the minimum rate necessary to remarket the notes at par in the Dealer’s opinion.

If the Authority exercises its option to extend the maturity of the EMCP Notes, the reset rate will be the higher of (SIFMA + E) or F, where SIFMA is the Securities Industry and Financial Markets Association Municipal Swap Index, which is calculated weekly, and where “E” and “F” are fixed percentage rates expressed in basis points (each basis point being 1/100 of one percent) and yields, respectively, that are determined based on the Authority’s debt ratings subject to a cap rate of 12%. As of December 31, 2021, the reset rate would have been 7%.
## Changes in Noncurrent Liabilities

Changes in the Authority’s noncurrent liabilities for the year ended December 31, 2021 are comprised of the following:

<table>
<thead>
<tr>
<th></th>
<th>Beginning balance</th>
<th>Additions</th>
<th>Maturities/ refinings and other</th>
<th>Ending balance</th>
<th>Due within one year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Senior debt:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue bonds</td>
<td>$1,562</td>
<td>$—</td>
<td>$—</td>
<td>$1,562</td>
<td>$—</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>1,562</td>
<td>—</td>
<td>—</td>
<td>1,562</td>
<td>—</td>
</tr>
<tr>
<td><strong>Subordinate debt:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subordinated Notes, Series 2017</td>
<td>22</td>
<td>—</td>
<td>1</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>Subordinated Notes, Series 2012</td>
<td>19</td>
<td>—</td>
<td>1</td>
<td>18</td>
<td>—</td>
</tr>
<tr>
<td>Commercial paper</td>
<td>5</td>
<td>—</td>
<td>5</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>46</td>
<td>—</td>
<td>7</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td><strong>Net unamortized discounts/ premiums and deferred losses</strong></td>
<td>67</td>
<td>—</td>
<td>3</td>
<td>64</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total debt, net of unamortized discounts/ premiums/ deferred losses</strong></td>
<td>$1,675</td>
<td>$—</td>
<td>$10</td>
<td>$1,665</td>
<td>$1</td>
</tr>
<tr>
<td><strong>Other noncurrent liabilities:</strong></td>
<td>$984</td>
<td>$—</td>
<td>$58</td>
<td>926</td>
<td>58</td>
</tr>
<tr>
<td>Capitalized lease obligation</td>
<td>229</td>
<td>—</td>
<td>—</td>
<td>229</td>
<td>—</td>
</tr>
<tr>
<td>Disposal of nuclear fuel</td>
<td>251</td>
<td>17</td>
<td>18</td>
<td>250</td>
<td>—</td>
</tr>
<tr>
<td>Relicensing</td>
<td>552</td>
<td>—</td>
<td>330</td>
<td>222</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total other noncurrent liabilities</strong></td>
<td>$2,016</td>
<td>$17</td>
<td>$406</td>
<td>$1,627</td>
<td>$58</td>
</tr>
</tbody>
</table>
(7) **Short-Term Debt**

CP Notes (short-term portion) outstanding was as follows:

<table>
<thead>
<tr>
<th>Authorized</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In millions)</td>
<td></td>
</tr>
<tr>
<td>CP Notes (Series 1)</td>
<td>$200</td>
</tr>
<tr>
<td>CP Notes (Series 2)</td>
<td>300</td>
</tr>
<tr>
<td>CP Notes (Series 3A)</td>
<td>200</td>
</tr>
<tr>
<td>CP Notes (Series 3B)</td>
<td>250</td>
</tr>
</tbody>
</table>

Under the provisions of the Second Amended and Restated Resolution Authorizing Commercial Paper Notes, adopted by the Authority on March 30, 2021 (the “Second Amended and Restated Resolution”) and the Certificate of Determination dated April 21, 2021 (the “Certificate of Determination” and together with the Second Amended and Restated Resolution, the “Resolution”), the Authority may issue from time to time a separate series of notes maturing not more than 270 days from the date of issue, up to a maximum amount outstanding at any time of $200 million (Series 1 CP Notes), $300 million (Series 2 CP Notes), and $450 million (Series 3A ($200 million), and 3B ($250 million) CP Notes). There were no Series 4 CP Notes outstanding as of December 31, 2021. It had been and shall be the intent of the Authority to use the proceeds of the Series 1 CP Notes and certain Series 2 and Series 3 CP Notes to finance the Authority’s current and future energy efficiency programs and for other corporate purposes.

**Direct Purchase Note** – At December 31, 2021, the Authority has an outstanding $100 million Direct Purchase Note under its note purchase agreement connected to its Hybrid Credit Agreement. The Authority repaid the $100 million in January 2022.

The changes in short-term debt are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Beginning balance</th>
<th>Increases</th>
<th>Decreases</th>
<th>Ending balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$</td>
<td>502</td>
<td>304</td>
<td>$605</td>
</tr>
</tbody>
</table>
(8) Risk Management and Hedging Activities

Overview

The Authority deploys a robust risk management program spanning its enterprise and operational risk profile. Using a well-defined governance process the escalation of risks and the corresponding risk informed decisions are made to accept, mitigate, transfer, or avoid risks consistent with the execution of its strategic vision. For example, the transfer of risk is typically executed through the purchase of insurance coverage for its operations, and in certain instances, is self-insured. Property insurance protects the various real and personal property owned by the Authority and the property of others while in its care, custody and control for which it may be held liable. Liability insurance protects the Authority from third-party liability related to its operations, including general liability, automobile, aircraft, marine and its officers and directors. Cyber liability insurance protects the Authority against first- and third-party losses. Insured losses by the Authority did not exceed coverage for any of the four preceding fiscal years. The Authority self-insures a certain amount of its general liability coverage, the physical damage claims for its owned and leased vehicles and for portions of its medical, dental and workers’ compensation insurance programs. The Authority pursues subrogation claims as appropriate against any entities that cause damage to its property.

Another aspect of the Authority’s risk management program is to manage risk and related volatility on its earnings and cash flows associated with electric energy prices, fuel prices, electric capacity prices and certain non-energy commodity prices. Through its participation in the NYISO and other commodity markets, the Authority is subject to electric energy price, fuel price, electric capacity price and certain non-energy commodity price risks that impact the revenue and purchased power streams of its facilities and customer market areas. Such volatility can potentially have adverse effects on the Authority’s financial condition. To mitigate potential adverse effects and to moderate cost impacts to its customers (many of the Authority’s customer contracts provide for the complete or partial pass-through of these costs), the Authority manages market risks by utilizing financial derivative instruments and/or physical forward contracts. These instruments are transacted by the Authority to mitigate the volatility in the cost of energy or related products needed to meet customer needs; the risk related to the price of energy and related products sold by the Authority; the risk related to margins (electric sales versus fuel use) where the Authority owns generation or other capacity; and to geographic cost differentials of energy procured or sold for transmission or transportation to an ultimate location. Commodities to be hedged include, but are not limited to, natural gas, natural gas basis, electric energy, electric capacity, congestion costs associated with the transmission of electricity and non-energy commodities.

To achieve the Authority’s risk management program objectives, the Authority’s Trustees have authorized the use of various derivative instruments for hedging purposes that are considered derivatives under GAS No. 53, Accounting and Financial Reporting for Derivative Instruments (GAS No. 53).

The fair values of all Authority derivative instruments, as defined by GAS No. 53, are reported in current and noncurrent assets or liabilities on the consolidated statement of net position as risk management activities. For designated hedging derivative instruments, changes in the fair values are deferred and classified as deferred outflows or inflows on the consolidated statement of net position. The fair value for over-the-counter and exchange-traded energy, capacity and non-energy commodity derivative instruments are determined by end-of-trading-month forward prices over the lifetime of each outstanding energy derivative instrument using the prices published by Standard & Poor’s Global Platt’s (“Platts”), market sources and/or internal pricing models.
Derivative Instruments

The following table shows the fair value of outstanding derivative instruments for 2021:

<table>
<thead>
<tr>
<th>Derivative instrument description</th>
<th>Fair value December 31, 2020</th>
<th>Net change in fair value</th>
<th>Fair value December 31, 2021</th>
<th>Type of hedge or transaction</th>
<th>Financial statement classification for changes in fair value</th>
<th>Notional amount December 31, 2021</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy swaps/futures (sales)</td>
<td>2</td>
<td>(80)</td>
<td>(78)</td>
<td>Cash Flow</td>
<td>Deferred outflow</td>
<td>(10,678,384) MWh</td>
<td>MWh</td>
</tr>
<tr>
<td>Energy capacity futures</td>
<td>(13)</td>
<td>4</td>
<td>(9)</td>
<td>Cash Flow</td>
<td>Deferred outflow</td>
<td>(16,458,000) KWm</td>
<td>KWm</td>
</tr>
<tr>
<td>Totals</td>
<td>$ (11)</td>
<td>$ (76)</td>
<td>$(87)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Energy swaps and futures – The Authority sells energy swaps and futures to manage the revenue stream from forecasted merchant hydro generation through 2024. Net settlement payments were $46 million in 2021.

Energy capacity futures – The Authority sells forward installed capacity futures intended to mitigate the volatility of market prices for transactions in the NYISO markets through 2024. Net settlement payments were $19.4 million in 2021.

Non-energy commodities swaps – During 2021, the Authority sold certain non-energy commodities swaps to mitigate volatilities of specific commodity market prices effecting electric rates in certain customers’ energy supply contracts. Net settlement payments were $33.7 million in 2021.

Other – Over the lifetime of each outstanding energy derivative instrument certain derivative instruments may become ineffective due to changes in the hedged item. The change in fair market value of such derivative instruments would be recognized as other nonoperating charges or credits in the statements of revenues, expenses and changes in net position. In 2021, all derivative instruments were determined to be effective.

Counterparty Credit Risk

The Authority imposes thresholds, based upon agency-published credit ratings and/or analysis, for unsecured credit that can be extended to counterparties to the Authority’s commodity derivative transactions. The thresholds are established in bilateral credit support agreements with counterparties and require collateralization of mark-to-market values in excess of the thresholds. In addition, the Authority regularly monitors each counterparty’s market-implied credit ratings and the Authority may restrict transactions with counterparties on the basis of that monitoring, even if the applicable unsecured credit threshold is not exceeded.

Based upon the fair values as of December 31, 2021, the Authority’s individual or aggregate exposure to derivative instrument counterparty credit risk is not significant.

Other Considerations

The Authority from time to time may be exposed to any of the following risks:

Basis risk – The Authority is exposed to other basis risk in a portion of its electrical commodity-based swaps where the electrical commodity swap payments received are based upon a reference price in a NYISO Market Zone that differs from the Zone in which the hedged electric energy load is forecasted. If the correlation between these Zones’ prices should weaken, the Authority may be exposed to risk as a result of the hedging inability of the electrical commodity swaps to offset the delivery price of the related energy.
**Rollover risk** – Certain electrical commodity swaps are based upon projected future customer loads or facility operations. Beyond the terms of these swaps, the Authority is subject to the corresponding market volatilities.

**Termination risk** – The Authority or its counterparties may terminate a derivative instrument agreement if either party fails to perform under the terms of the agreement. The risk that such termination may occur at a time which may be disadvantageous to the Authority has been mitigated by including certain terms in these agreements by which the counterparty has the right to terminate only as a result of certain events, which includes a payment default by the Authority; other Authority defaults which remain uncured within a defined time-frame after notice; bankruptcy or insolvency of the Authority (or similar events); or a downgrade of the Authority’s credit rating below investment grade. If at the time of termination the Authority has a liability position related to its hedging derivative instruments, the Authority would be liable to the counterparty for a payment equal to the liability, subject to netting arrangements.

**Market access risk** – The Authority remarkets its CP Notes on a continuous basis. Should the market experience a disruption or dislocation, the Authority may be unable to remarket its Notes for a period of time. To mitigate this risk, the Authority has entered into liquidity facilities with highly rated banks to provide loans to support the CP Note programs. See Note 6 “Long-Term Debt” of the notes to the consolidated financial statements.

**Dodd Frank Act**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DF Act) which was enacted into law addresses, among other things, interest rate and energy related commodity swap transactions of the type in which the Authority engages. The requirements and processes are set forth in regulations promulgated by the Commodities Futures Trading Commission (CFTC). Pursuant to CFTC rules, the Authority, as a public entity and electric, which has policies authorizing the use of financial derivatives solely to manage its risk, and in certain instances, the risk of its customers, is exempted from posting collateral beyond that of any existing credit support annexes in support of its open over-the-counter hedge positions. These CFTC rules are not anticipated to have significant impact on the Authority’s liquidity and/or future risk mitigation activities. CFTC DF Act rules are continually being reviewed for updates and the Authority will continue to monitor their potential impact on the Authority’s liquidity and/or future risk mitigation activities.

(9) **Fair Value Measurements**

GAS No. 72 establishes a hierarchy of valuation inputs based on the extent to which the inputs are observable in the marketplace. Inputs are used in applying the various valuation techniques and take into account the assumptions that market participants use to make valuation decisions. Inputs may include price information, credit data, interest and yield curve data, and other factors specific to the financial instrument. Observable inputs reflect market data obtained from independent sources. In contrast, unobservable inputs reflect the entity’s assumptions about how market participants would value the financial instrument.

The fair value hierarchy prioritizes the inputs used to measure fair value into three broad Levels (Levels 1, 2, and 3), moving from quoted prices in active markets in Level 1 to unobservable inputs in Level 3. A financial instrument’s level within the fair value hierarchy (where Level 1 is the highest and Level 3 is the lowest) is based on the lowest level of any input that is significant to the fair value measurement. The categorization of a financial instrument within the fair value hierarchy is based upon pricing transparency and is not necessarily an indication of the Authority’s perceived risk of that financial instrument.

The following describes the fair value hierarchy of inputs used by the Authority to measure fair value and the primary valuation methodologies used for financial instruments measured at fair value on a recurring basis:

- Level 1 – quoted prices for identical assets or liabilities in active markets that the Authority can access at the measurement date.
• Level 2 – quoted prices other than quoted prices included within Level 1 and other inputs that are observable for an asset or liability, either directly or indirectly.

• Level 3 – pricing inputs are unobservable for the asset or liability and may rely on inputs using the best available data under the circumstances, including the Authority’s own data.

The following describes the valuation methodologies used by the Authority for assets and liabilities measured at fair value:

• U.S. government obligations – The fair value is based on institutional bond quotes and evaluations based on various market data/inputs.

• U.S. government agencies and instrumentalities – The fair value of government agencies and instrumentalities are based on institutional bond quotes and evaluations based on various market and industry inputs.

• Corporate obligations – The fair value is based on institutional bond quotes and evaluations on various market and industry inputs.

• Derivative instruments – The Authority hedges market risks through the use of derivative instruments. Derivative instruments are traded on both exchange-based and non-exchange based markets. A detail disclosure on derivatives is included in Note 8 “Risk Management and Hedging Activities” of notes to the consolidated financial statements.

  • The fair values for over-the-counter and/or exchange-traded derivative instruments are determined by the latest end-of-trading-month forward prices over the lifetime of each outstanding derivative instrument using prices published by Platts, market sources and/or internal pricing models.

The following tables summarize the Authority’s outstanding assets and liabilities, of which there are no Level 3, within the fair value hierarchy at December 31, 2021:
(a) The accounting rules for fair value measurements and disclosures require consideration of the impact of nonperformance risk (including credit risk) from a market participant perspective in the measurement of the fair value of assets and liabilities. At December 31, 2021, the Authority determined that nonperformance risk would have no material impact on the financial position or results of operations.
(10) Pension Plans

**General Information**

The Authority and substantially all of the Authority’s employees participate in the New York State and Local Employees’ Retirement System (NYSLERS) and the Public Employees’ Group Life Insurance Plan (the Plan). These are cost-sharing multiple-employer defined benefit retirement plans.

The NYSLERS uses a tier concept to distinguish membership classes (i.e., tiers 1 through 6) with tier membership based on the date an employee joins the System. The ERS is non-contributory for tiers 1 and 2 employees who joined the NYSLERS on or prior to July 27, 1976. Tiers 3 and 4 employees, who joined the NYSLERS between July 28, 1976 and December 31, 2009 and have less than ten years of service, contribute 3% of their salary. Tier 5 employees who joined the NYSLERS on or after January 1, 2010 contribute 3% of their salary during their entire length of service. Tier 6 employees who joined the NYSLERS on or after April 1, 2013 contribute 3% of their salary through March 31, 2013 and up to 6% thereafter, based on their annual salary, during their entire length of service. Members become vested in the plan after ten years of service and generally are eligible to receive benefits at age 55. The benefit is generally 1.67% of final average salary (FAS) times the number of years of service, for members who retire with less than 20 years of service, and 2% of FAS for members who retire with 20 or more years of service. The NYSLERS provides an annual automatic cost of living adjustment to members or surviving spouses based on certain eligibility criteria.

The NYSLERS and the Plan provide retirement benefits as well as death and disability benefits. Obligations of employers and employees to contribute and benefits to employees are governed by the New York State Retirement and Social Security Law (NYSRSSL). As set forth in the NYSRSSL, the Comptroller of the State of New York (Comptroller) serves as sole trustee and administrative head of the NYSLERS and the Plan. The Comptroller adopts and may amend rules and regulations for the administration and transaction of the business of the NYSLERS and the Plan, and for the custody and control of their funds. Under the authority of the NYSRSSL, the Comptroller shall certify annually the rates expressed as proportions of payroll of members, which shall be used in computing the contributions required to be made by employers.

The Authority is required to contribute at an actuarially determined rate. The average contribution rate relative to payroll for the NYSLERS fiscal year ended March 31, 2021 was 15%. The average contribution rates relative to payroll for the NYSLERS fiscal years ending March 31, 2022 and 2023 have been set at approximately 16% and 12%, respectively. The required contributions for 2021 was $36 million. The Authority’s contributions to the NYSLERS were equal to 100% of the required contributions for each year.

The NYSLERS and the Plan issue a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to the New York State and Local Employees’ Retirement System, 110 State Street, Albany, NY 12244 or may be found on the internet at www.osc.state.ny.us/retire/publications/index.php.

**Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions**

At December 31, 2021, the Authority reported a liability of $1 million for its proportionate share of the net pension liability. The NYSLERS total pension liability, which was used to calculate the NYSLERS net pension liability, was determined by the NYSLERS actuarial valuation as of March 31, 2021 (measurement date). The Authority’s proportion of the net pension liability was determined by the Authority’s long-term share of contributions to the pension plan relative to the projected contributions of all participating employers, actuarially determined. The Authority’s proportionate share of the net pension liability was 0.673% as of March 31, 2021. The Canal Corporation’s proportionate share was 0.091% at March 31, 2021.
For the year ended December 31, 2021, the Authority recognized pension expense of $18 million. At December 31, 2021, the Authority reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

<table>
<thead>
<tr>
<th>Deferred Outflows</th>
<th>Deferred Inflows</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difference between expected and actual experience</td>
<td>$9</td>
</tr>
<tr>
<td>Net difference between projected and actual earnings on investments</td>
<td>–</td>
</tr>
<tr>
<td>Change of assumptions</td>
<td>140</td>
</tr>
<tr>
<td>Net difference between employer contributions and proportionate share of contributions</td>
<td>3</td>
</tr>
<tr>
<td>Employer contributions subsequent to the measurement date</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>$188</td>
</tr>
</tbody>
</table>

The $36 million reported as deferred outflows of resources related to pensions resulting from the Authority’s contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2022. The other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as a credit to pension expense as follows (in millions):

<table>
<thead>
<tr>
<th>Year ending December 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>$ (13)</td>
</tr>
<tr>
<td>2023</td>
<td>(5)</td>
</tr>
<tr>
<td>2024</td>
<td>(12)</td>
</tr>
<tr>
<td>2025</td>
<td>(43)</td>
</tr>
<tr>
<td>Total</td>
<td>$ (73)</td>
</tr>
</tbody>
</table>

**Actuarial Assumptions**

The NYSLERS total pension liability at March 31, 2021 was determined by using the NYSLERS actuarial valuation as of April 1, 2020 with updated procedures to roll forward the NYSLERS total pension liability to March 31, 2021. The following actuarial assumptions were used for the April 1, 2020 NYSLERS actuarial valuation:

- **Actuarial cost method:** Entry age normal
- **Inflation rate:** 2.7%
- **Salary increases:** 4.4% annually
- **Investment rate of return:** 5.9% compounded annually, net of investment
- **Cost of living adjustments:** 1.4% annually

The NYSLERS Annuitant mortality rates are based on April 1, 2015 – March 31, 2020 NYSLERS experience with adjustments for mortality improvements based on the Society of Actuaries’ Scale MP-2020.

The NYSLERS long term expected rate of return on pension plan investments was determined using a building block method in which best estimate ranges of expected future real rates of return (expected returns net of
investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of arithmetic real rates of return for each major asset class are summarized in the following table:

**Long-Term Expected Rate of Return**

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Target Allocation</th>
<th>Long-term Expected Real Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Equity</td>
<td>32%</td>
<td>4.05%</td>
</tr>
<tr>
<td>International Equity</td>
<td>15%</td>
<td>6.30</td>
</tr>
<tr>
<td>Private Equity</td>
<td>10%</td>
<td>6.75</td>
</tr>
<tr>
<td>Real Estate</td>
<td>9%</td>
<td>4.95</td>
</tr>
<tr>
<td>Credit</td>
<td>4%</td>
<td>3.63</td>
</tr>
<tr>
<td>Opportunistic/ARS Portfolio</td>
<td>3%</td>
<td>4.50</td>
</tr>
<tr>
<td>Real Asset</td>
<td>3%</td>
<td>5.95</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>23%</td>
<td>0.00</td>
</tr>
<tr>
<td>Cash</td>
<td>1%</td>
<td>0.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

**Discount Rate**

The discount rate used to calculate the total pension liability was 5.9 percent. The projection of cash flows used to determine the discount rate assumes that contributions from plan members will be made at the current contribution rates and that contributions from employers will be made at statutorily required rates, actuarially. Based upon the assumptions, the NYSLERS fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

**Sensitivity of Proportionate Share of the Net Pension Liability to Changes in the Discount Rate**

The following presents the Authority’s proportionate share of the net pension liability calculated using the discount rate of 5.9 percent, as well as what the Authority’s proportionate share of the net pension liability would be if it were calculated using a discount rate that is one percentage point lower (4.9 percent) or one percentage point higher (6.9 percent) than the current rate:

<table>
<thead>
<tr>
<th>Discount rate</th>
<th>1% Decrease</th>
<th>Current Assumption</th>
<th>1% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Authority’s proportionate share of the net pension liability (asset)</td>
<td>$211 million</td>
<td>$1 million</td>
<td>$(193) million</td>
</tr>
</tbody>
</table>

The NYSLERS actuary has not recommended any future changes to the actuarial assumptions used in the NYSLERS August 2020 actuarial valuation report.
(11) Postemployment Benefits Other Than Pensions, Deferred Compensation and Savings

(a) Power Authority

The Power Authority provides certain health care and life insurance benefits for eligible retired employees and their dependents under a single employer noncontributory (except for certain optional life insurance coverage) health care plan (Power Authority OPEB Plan). Employees and/or their dependents become eligible for these benefits when the employee has at least 10 years of service and retires or dies while working at the Power Authority. Salaried employees hired after December 31, 2015 and IBEW employees hired after October 15, 2015, become eligible after 15 years of service. In addition, they will be required to contribute 50% of the active plan contribution.

The Power Authority has an established trust for OPEB obligations (OPEB Trust), with the trust to be held by an independent custodian. Plan members are not required to contribute to the OPEB Trust. The OPEB Trust is set-up to pay for the exclusive benefit of the OPEB Trust plan participants. The funding of the Power Authority’s OPEB Trust is at the discretion of management. Changes to the Power Authority OPEB Plan or OPEB Trust agreement are approved by the Board of Trustees. The Power Authority made contributions on a pay-as-you-go basis in 2021 and did not contribute any amount beyond these contributions to the OPEB Trust.

The Canal Corporation provides health care and death benefits for eligible retired employees. Substantially all employees may become eligible for these benefits if they reach normal retirement age while working for the Canal Corporation. The Canal Corporation participates, pursuant to the provision of Section 163(4) of the New York State Civil Service Law, in the New York State Health Insurance Program (NYSHIP). NYSHIP does not issue a standalone financial report since there are no assets legally segregated for the sole purpose of paying benefits under the plan. To be eligible an employee must (1) retire as a member of Canal Corporation or be at least 55 years old at time of termination; (2) be enrolled in the NYSHIP on date of retirement; and (3) complete at least 5 years of service for the retiree and dependent to have coverage while the employee is living. Ten years of service are needed for continued dependent coverage upon death of the employee. The Plan currently pays a portion of the medical premium cost for retired employees and covered dependents. Additionally, the Plan reimburses retirees and covered dependents for their Medicare Part B premiums.

Amendment to the Authority’s OPEB Trust – Prior to 2021, an OPEB Trust was established to pay benefits for those covered under the Power Authority’s OPEB Plan. The Canal Retiree Health Plan operated on a pay-as-you-go basis, as no OPEB Trust existed for this plan. Effective January 2021, the Authority’s Trustees approved an amendment to the Power Authority’s OPEB Trust allowing the trust to be used to pay benefits for both the Power Authority’s OPEB Plan and the Canal Retiree Health Plan. This change has been reflected as of the June 30, 2021 measurement date for Fiscal Year Ending June 30, 2021 reporting, with both plans being accounted for as a single plan under GASB 75. The trust amendment resulted in an increase in the discount rate used for the Canal Plan liabilities to 7.00% as of the June 30, 2021 measurement date; if this change had not occurred, a rate of 2.18% would have been selected. This amendment resulted in a combined net OPEB liability reduction of $100 million.

Change to Measurement Date – The Authority has elected to change their reporting period under GASB 74 and 75 from January 1 through December 31 to July 1 through June 30, effective for the 2021 reporting period. Instead of using a reporting period of January 1, 2021 through December 31, 2021, the Authority has used the period July 1, 2020 through June 30, 2021. The measurement date was changed to the end of the updated reporting period (i.e. June 30, 2021 for the first year of reporting).

As of the June 30, 2021 measurement date (using December 31, 2019 census information), the following current and former employees were covered by the benefit terms, under the Power Authority Plan. It is
assumed that 100% of future retirees who meet the eligibility requirements will participate in the Power Authority OPEB plan.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Active employees</strong></td>
<td>1,789</td>
</tr>
<tr>
<td><strong>Inactive employees</strong></td>
<td>2,798</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>4,587</td>
</tr>
</tbody>
</table>

As of the June 30, 2021 measurement date (using census information as of May 1, 2020), the following current and former employees were covered by the benefit terms, under the Canal Retiree Health Plan. It is assumed that 100% of future retirees who meet the eligibility requirements will participate in the OPEB plan.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Active employees, including opt-out (actives not in medical plan)</strong></td>
<td>458</td>
</tr>
<tr>
<td><strong>Inactive employees and beneficiaries, receiving and or entitled to benefits</strong></td>
<td>654</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,112</td>
</tr>
</tbody>
</table>

### OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB

For the year ended December 31, 2021, the Authority recognized OPEB expense credit of $(46.2) million. At December 31, 2021, the Authority reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

<table>
<thead>
<tr>
<th></th>
<th>Deferred Outflows of Resources</th>
<th>Deferred Inflows of Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Differences between expected and actual experience</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Changes in assumptions</td>
<td>13</td>
<td>190</td>
</tr>
<tr>
<td>Differences between projected &amp; actual investment earnings</td>
<td>65</td>
<td>120</td>
</tr>
<tr>
<td>Employer contributions subsequent to the measurement date</td>
<td>15</td>
<td>–</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$94</td>
<td>$316</td>
</tr>
</tbody>
</table>

The $15 million reported as deferred outflows of resources related to OPEB resulting from the Authority’s contributions subsequent to the measurement date will be recognized as a reduction of the total OPEB liability in the following year. The remaining $237 million reported as net inflows of resources related to OPEB will be recognized as a credit in OPEB expense as follows:

<table>
<thead>
<tr>
<th>Year ending December 31,</th>
<th>(In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>$</td>
</tr>
<tr>
<td>2023</td>
<td>(58)</td>
</tr>
<tr>
<td>2024</td>
<td>(62)</td>
</tr>
<tr>
<td>2025</td>
<td>(55)</td>
</tr>
<tr>
<td>2026</td>
<td>(43)</td>
</tr>
<tr>
<td>2027</td>
<td>(19)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>(237)</td>
</tr>
</tbody>
</table>
Net OPEB Liability

The Authority’s net OPEB liability (asset) was measured as of June 30, 2021 based on valuation results as of December 31, 2019 for the Power Authority’s plan and May 1, 2020 for the Canal plan, projected to the measurement date on a no gain/loss basis. The Authority’s net OPEB asset of $171 million is recorded in long-term receivables in other noncurrent assets, respectively, in the Authority’s consolidated statement of net position.

The following table shows the components of the Authority’s changes in its total OPEB liability, the OPEB fiduciary net position, and the net OPEB (asset) during the measurement period ending June 30, 2021.

<table>
<thead>
<tr>
<th></th>
<th>Total OPEB Liability</th>
<th>Plan Fiduciary Net Position</th>
<th>Net OPEB (Asset)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance – beginning of year</td>
<td>$ 524</td>
<td>$ 649</td>
<td>$ 125</td>
</tr>
<tr>
<td>Canal transfer to the Power Authority OPEB Plan</td>
<td>218</td>
<td>—</td>
<td>218</td>
</tr>
<tr>
<td>Service Cost</td>
<td>20</td>
<td>—</td>
<td>20</td>
</tr>
<tr>
<td>Interest</td>
<td>42</td>
<td>—</td>
<td>42</td>
</tr>
<tr>
<td>Change of Benefit Terms</td>
<td>(2)</td>
<td>—</td>
<td>(2)</td>
</tr>
<tr>
<td>Differences between expected and actual experience</td>
<td>(1)</td>
<td>—</td>
<td>(1)</td>
</tr>
<tr>
<td>Changes of Assumptions</td>
<td>(153)</td>
<td>—</td>
<td>(153)</td>
</tr>
<tr>
<td>Contributions – employer</td>
<td>—</td>
<td>34</td>
<td>(34)</td>
</tr>
<tr>
<td>Net investment income</td>
<td>—</td>
<td>137</td>
<td>(137)</td>
</tr>
<tr>
<td>Benefit payments</td>
<td>(34)</td>
<td>(34)</td>
<td>—</td>
</tr>
<tr>
<td>Administrative expense</td>
<td>—</td>
<td>(1)</td>
<td>1</td>
</tr>
<tr>
<td><strong>Net changes</strong></td>
<td><strong>90</strong></td>
<td><strong>136</strong></td>
<td><strong>(46)</strong></td>
</tr>
<tr>
<td>Balance – end of year</td>
<td>$ 614</td>
<td>$ 785</td>
<td>$ 171</td>
</tr>
</tbody>
</table>

The components of the net OPEB asset at June 30, 2021, were as follows (in millions):

- Total OPEB liability: $ 614
- Plan fiduciary net position: (785)
- Net OPEB (Asset): $ (171)

Plan fiduciary net position as a percentage of the total OPEB liability: 128%

Actuarial Assumptions

The total OPEB liability in the June 30, 2021 measurement was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:
Investment rate of return: 7.00%

Healthcare Cost Trend Rates: The Power Authority: Pre-Medicare - 7.0 percent for 2020, decreasing 0.5 percent per year to an ultimate rate of 4.5 percent for 2025 and later years. Post-Medicare – 4.9 percent for 2020, decreasing to an ultimate rate of 4.5 percent for 2025. Prescription drugs (Rx) – 7 percent for 2020, decreasing to an ultimate rate of 4.5 percent for 2025. Medicare Advantage – 3.5 percent for gross costs, 2.0 percent for Medicare reimbursements, reimbursement assumed to cover a minimum of 85 percent of gross costs.

Canal: Same as for the Power Authority except the Pre-Medicare 2020 trend is 5.75 percent, decreasing to an ultimate rate of 4.5 percent in 2026.

Salary increases: Varies by service, average of 8.0 percent for first year of service, 4.5 percent for 5 years of service, 3.8 percent for 10 years of service, 3.3 percent for 15 years of service, and 3.0 percent for 20 years or more of service.

Mortality: The General Pub-2010 headcount weighted tables were used for active employees and healthy retirees and dependents, while the corresponding Contingent Survivor mortality tables were used for surviving spouses and the corresponding Disabled Retiree mortality tables were used for disabled participants. To project mortality improvement for years after 2010, the MP-2020 Projection Scale is applied on a fully generational basis to the base rates.

Long-Term Expected Rate of Return

The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which best estimate ranges of expected future real rates (expected returns net of inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. Best estimates of arithmetic real rates of return for each major asset class are summarized in the following table:

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Target Allocation</th>
<th>Long-term Expected Real Rate of Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Equity</td>
<td>37 %</td>
<td>6.8 %</td>
</tr>
<tr>
<td>International Equity</td>
<td>24 %</td>
<td>7.5 %</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>30 %</td>
<td>3.3 %</td>
</tr>
<tr>
<td>Real Estate</td>
<td>6 %</td>
<td>6.5 %</td>
</tr>
<tr>
<td>Cash</td>
<td>3 %</td>
<td>2.4 %</td>
</tr>
<tr>
<td>Total</td>
<td>100 %</td>
<td></td>
</tr>
</tbody>
</table>
Rate of Return

For the Power Authority OPEB Plan year ended June 30, 2021, the annual money-weighted rate of return on investments, net of investment expense, was 21 percent. The money-weighted rate of return expresses investment performance, net of investment expense, adjusted for the changing amounts actually invested.

Discount Rate

The discount rate used to calculate the total OPEB liability was 7.0%, the long-term rate of return on the OPEB Trust assets. The projection of cash flows used to determine the discount rate assumed that the Authority will contribute at a rate equal to the average of contributions made over the most recent five-year period (2016 through 2021), and that contributions apply first to service cost of current and future plan members and then to past service costs. Based on those assumptions, the OPEB plan’s fiduciary net position was projected to be available to make all projected OPEB payments for current active and inactive employees for the foreseeable future.

Sensitivity of the Net OPEB (Asset) to Changes in the Discount Rate

Changes in the discount rate affect the measurement of the total OPEB liability. The following table depicts the Authority’s Net OPEB liability / (asset), as well as the sensitivity of using a discount rate that is 1 percentage point lower (6.0 percent) or 1 percentage point higher (8.0 percent) than the current discount rate:

<table>
<thead>
<tr>
<th></th>
<th>1% Decrease (6.0%)</th>
<th>Current Discount Rate (7.0%)</th>
<th>1% Increase (8.0%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net OPEB Liability / (Asset)</td>
<td>$ (91) million</td>
<td>$ (171) million</td>
<td>$ (237) million</td>
</tr>
</tbody>
</table>

Sensitivity of the Net OPEB Liability / (Asset) to Changes in the Healthcare Cost Trend Rates

Changes in the healthcare cost trends affect the measurement of the total OPEB liability. The table below shows the sensitivity of the net OPEB liability / (asset) to the changes in the healthcare cost trends:

<table>
<thead>
<tr>
<th></th>
<th>1% Decrease Healthcare Trend Rate</th>
<th>Current Healthcare Trend Rate</th>
<th>1% Increase Healthcare Trend Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net OPEB Liability / (Asset)</td>
<td>$ (244) million</td>
<td>$ (171) million</td>
<td>$ (81) million</td>
</tr>
</tbody>
</table>

Deferred Compensation and Savings Plans

The Power Authority offers union employees and salaried employees a deferred compensation plan created in accordance with Internal Revenue Code, Section 457. This plan permits participants to defer a portion of their salaries until future years. Amounts deferred under the plan are not available to employees or beneficiaries until termination, retirement, death or unforeseeable emergency.

The Power Authority also offers salaried employees a savings plan created in accordance with Internal Revenue Code, Section 401(k). This plan also permits participants to defer a portion of their salaries. The
Power Authority matches contributions of employees up to limits specified in the plan. Matching annual contributions were approximately $4.5 million for 2021.

Both the deferred compensation plan and the savings plan have a loan feature.

Independent trustees are responsible for the administration of the 457 and 401(k) plan assets under the direction of a committee of union representatives and nonunion employees and a committee of nonunion employees, respectively. Various investment options are offered to employees in each plan. Employees are responsible for making the investment decisions relating to their savings plans.

(12) Nuclear Plant Divestiture and Related Matters

On November 21, 2000, the Power Authority sold the James A. Fitzpatrick nuclear plant (JAF) and the Indian Point 3 nuclear plant (IP3) to two subsidiaries of Entergy Corporation (collectively, Entergy or the Entergy Subsidiaries). On March 31, 2017, Entergy transferred JAF to Exelon Generation Company, LLC (Exelon).

In accordance with the Nuclear Waste Policy Act of 1982, in June 1983, the Power Authority entered into a contract with the U.S. Department of Energy (DOE) under which DOE, commencing not later than January 31, 1998, would accept and dispose of spent nuclear fuel. In conjunction with the sale of the nuclear plants, the Power Authority’s contract with the DOE was assigned to Entergy. Entergy assigned the portion of the pre-1983 spent fuel obligation applicable to JAF to Exelon in connection with the sale of JAF to Exelon. The Power Authority remains liable for the pre-1983 spent fuel obligation to Exelon for JAF and to Entergy for IP3 (see Note 13(e) “Commitments and Contingencies – New York State Budget and Other Matters” relating to a temporary transfer of such funds to the State). As of December 31, 2021, the pre-1983 spent fuel liability for JAF and IP3 totaled $229 million.

(13) Commitments and Contingencies

(a) Power Programs

Recharge New York Power Program

Chapter 60 (Part CC) of the Laws of 2011 (Chapter 60) established the “Recharge New York Power Program” (RNYPP), administered by the Authority, which has as its central benefit up to 910 MW of low cost power comprised of up to 455 MW of hydropower from the Niagara and St. Lawrence-FDR Projects and up to 455 MW of other power procured by the Authority from other sources. The 910 MW of power is available for allocation as provided by Chapter 60 to eligible new and existing businesses and not-for-profit corporations under contracts of up to seven years. RNYPP was effective beginning July 1, 2012.

The hydropower used for the RNYPP was power formerly used to provide low-cost electricity to domestic and rural customers of the three private utilities that serve upstate New York. To mitigate the impacts from the redeployment of this hydropower for the RNYPP, Chapter 60 created a “Residential Consumer Discount Program” (RCDP). The RCDP authorizes the Authority, as deemed feasible and advisable by its Trustees, to provide annual funding of $100 million for the first three years following withdrawal of the hydropower from the residential and farm customers, $70 million for the fourth year, $50 million for the fifth year, and $30 million each year thereafter, for the purpose of funding a residential consumer discount program for those customers that had formerly received the hydropower that is utilized in the RNYPP. Chapter 60 further authorizes the Authority, as deemed feasible and advisable by the Trustees, to use revenues from the sales of hydroelectric power, and such other funds of the Authority, as deemed feasible and advisable by the Trustees, to fund the RCDP. The Authority’s Trustees have authorized the release of a total $624 million...
NEW YORK POWER AUTHORITY
Notes to the Consolidated Financial Statements
December 31, 2021

for the period from August 2011 to December 2021 in support of the RCDP. The Authority supplemented the market revenues through the use of internal funds, from the August 2011 start of the program through December 31, 2021 totaling approximately $47 million. Operations and maintenance expenses included $30 million of residential consumer discounts in year ended December 31, 2021.

Western New York Power Proceeds Allocation Act

Effective in March 2012, Chapter 58 (Part GG) of the Laws of 2012 (Chapter 58) created the Western New York Power Proceeds Act (WNYPPA). The WNYPPA authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority’s Niagara project into an account administered by the Authority known as the Western New York Economic Development Fund (WNYED Fund). Net earnings are defined as any excess revenues earned from such power sold into the wholesale market over the revenues that would have been received had the power been sold at the Expansion Power and Replacement Power rates. Proceeds from the Fund may be used to support eligible projects undertaken within a 30-mile radius of the Niagara power project that satisfy applicable criteria. Chapter 58 also establishes a five-member Western New York Power Allocations Board, which is appointed by the Governor. Chapter 58 also repealed Chapter 436 of the Laws of 2010 which had created a similar program that could not be effectively implemented.

The Authority’s Trustees have approved the release of up to $66 million in net earnings, calculated for the period August 30, 2010 through December 31, 2021 as provided in the legislation, for deposit into the WNYED Fund. As of December 31, 2021, approximately $47 million has been deposited into the Fund. As of December 31, 2021, the Authority has approved awards of Fund money totaling approximately $40 million to businesses that have proposed eligible projects and has made payments totaling $36 million to such businesses. Payment of these awards is contingent upon the execution of acceptable contracts between the Authority and individual awardees.

Northern New York Power Proceeds Allocation Act

Chapter 545 of the Laws of 2014 enacted the “Northern New York Power Proceeds Act” (NNYPPA). The NNYPPA authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit “net earnings” from the sale of unallocated St. Lawrence County Economic Development Power (SLCEDP) by the Authority in the wholesale energy market into an account the Authority would administer known as the Northern New York Economic Development Fund (NNYED Fund), and to make awards to eligible applicants that propose eligible projects that satisfy applicable criteria. The NNYPPA also establishes a five-member Northern New York Power Allocations Board appointed by the Governor to review applications seeking NNY Fund benefits and to make recommendations to the Authority concerning benefits awards.

SLCEDP consists of up to 20 MW of hydropower from the Authority’s St. Lawrence-FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department (“MED”) for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 (Authority-MED Contract). The NNYPPA defines “net earnings” as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first 5 years after enactment, the amount of SLCEDP the Authority could use to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority pursuant to the Authority-MED contract. Thereafter, the amount of SLCEDP that the Authority could use for such purpose may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated.
As of December 31, 2021, the Authority’s Trustees approved the release of funds, of up to $15 million, into the NNYED Fund representing “net earnings” from the sale of unallocated SLCEDP into the wholesale energy market for the period December 29, 2014 through December 31, 2021. As of December 31, 2021, approximately $6 million has been deposited into the Fund. As of December 31, 2020, the Authority has approved awards of NNYED Fund money totaling approximately $2 million to businesses that have proposed eligible projects and have made payments totaling approximately $1 million to such businesses. Payment of approved awards of the NNYED Fund money is contingent upon the execution of acceptable contracts between the Authority and individual awardees.

### Economic Development Customer Assistance Program

Based upon the current economic conditions relating to COVID-19, the Authority’s Trustees on March 31, 2020 approved an Economic Development Customer Assistance Program (“EDCAP”) consisting of two temporary measures to provide financial relief to its customers in the Authority’s Economic Development Power Programs (Recharge New York, Western New York, Expansion Power & Replacement Power, and Preservation Power programs) that are subject to the Annual Adjustment Factor (“AAF”). The AAF, whether it represents an increase or decrease, is normally applied to program base rates annually on July 1st in accordance with the applicable tariffs. Each of the Economic Development Power Programs require a commitment from the recipients of job growth within their business, job retention and/or capital commitment.

These two temporary measures include (1) suspension of the AAF which is otherwise scheduled under applicable tariffs to be applied to energy and demand rates annually on July 1st, for a period of one year from July 1, 2020 through June 30, 2021; and (2) provision to such customers of the option to defer payment of energy bills to the Authority, beginning with the April 2020 invoice, for up to 6 months, with repayment of deferred amounts to occur in equal installments over the subsequent 18-month period. As of December 31, 2021, 358 customers had applied for this program resulting in interest free deferred payments of approximately $50 million with no corresponding increase in interest rates. As of December 31, 2021, there are 112 remaining customers with $6.1 million EDCAP balance.

In addition, as an enhancement to the aforementioned EDCAP, the Authority’s Trustees authorized a Temporary Power Assistance (“TPA”) initiative to make available for sale to Authority customers receiving power under the RNY, Expansion Power, Replacement Power and Preservation Power programs (collectively, EDP Programs) supplemental power increases as part of a TPA initiative. The amount of supplemental power increases shall be determined as a percentage of the customer’s current allocation(s) and in accordance with other eligibility and allocation criteria and sold pursuant to the rates and other terms and conditions provided for in the customer’s contract, provided that the total amount of supplemental power made available under each EDP Program shall not exceed in aggregate 230 megawatts of unallocated EDP Program power (subject to statutory allocation limits). Sales of supplemental power under TPA shall not be made beyond January 31, 2024. As of December 31, 2021, 230 customers had applied for this program. The net impact of the TPA initiative was approximately $29 million as of December 31, 2021.

(b) **Governmental Customers in the New York City Metropolitan Area**

In 2018, the Authority executed new supplemental long-term electricity supply agreements (Supplemental LTAs) with its eleven NYC Governmental Customers, including the Metropolitan Transportation Authority, the City of New York, the Port Authority of New York and New Jersey (Port Authority), the New York City Housing Authority, and the New York State Office of General Services. Under the Supplemental LTAs, the NYC Governmental Customers agreed to purchase their electricity from the Authority through December 31, 2027, with the NYC Governmental Customers having the right to (1) terminate at any time upon at least 12 months’ notice or (2) terminate effective December 31, 2022 upon at least 6 months’ notice. Under the Supplemental LTAs, fixed costs were set for each customer and are subject to renegotiation in 2022.
Variable costs, including fuel, purchased power and NYISO related costs, will be passed through to each customer by an energy charge adjustment.

The Authority’s other Southeastern New York (SENY) Governmental Customers are Westchester County and numerous municipalities, school districts, and other public agencies located in Westchester County (collectively, the “Westchester Governmental Customers”). The Authority has entered a supplemental electricity supply agreement with all 103 Westchester Governmental Customers. Among other things, under the agreement, an energy charge adjustment mechanism is applicable, and customers are allowed to partially terminate service from the Authority on at least two months’ notice prior to the start of the NYISO capability periods. Full termination is allowed on at least one year’s notice, effective no sooner than January 1 following the one year notice.

**Astoria Energy II**

In 2008, the Authority entered into a long-term power supply contract with Astoria Energy II LLC for the purchase of all the output of Astoria Energy II, a new 550-MW plant, which entered into commercial operation on July 1, 2011 in Astoria, Queens. The delivery period under the contract is through 2031. The Authority entered into a separate contract with its’ New York City Governmental Customers to purchase the output of Astoria Energy II and is coterminous with the power purchase agreement with Astoria Energy II LLC. All net costs of the Authority under the power purchase agreement with Astoria Energy II LLC pass through to the New York City Governmental Customers for the full term of the power purchase agreement.

The Authority is accounting for and reporting this lease transaction as a capital lease in the amount of $984 million as of December 31, 2021 which reflects the present value of the monthly portion of lease payments allocated to real and personal property. The balance of the monthly lease payments represents the portion of the monthly lease payment allocated to operations and maintenance costs which are recorded monthly. As of December 31, 2020, the Authority has a recorded capital asset (net of depreciation) of $589 million and a regulatory asset with respect to the recoverable cost associated with the lease obligation of $395 million (see note 2 (i) “Summary of Accounting Policies − Other Long-Term Assets” of the notes to the consolidated financial statements).

**HTP Transmission Line**

In 2011 the Trustees authorized Authority staff to enter into an agreement with Hudson Transmission Partners, LLC (“HTP”) for the purchase of capacity to meet the long-term requirements of the Authority’s NYC Governmental Customers and to improve the transmission infrastructure serving New York City through the transmission rights associated with HTP’s transmission line (the “Line”) extending from Bergen County, New Jersey in the PJM Interconnection, LLC (PJM) transmission system, to Consolidated Edison Company of New York, Inc.’s (“Con Edison”) West 49th Street substation. Specifically, the Authority executed a Firm Transmission Capacity Purchase Agreement (FTCPA) with HTP under which the Authority gained the entitlement to 75% of the Line’s 660 MW capacity, or 495 MW, for 20 years. On March 31, 2017, the Authority and HTP amended the FTCPA to, among other changes, (a) create a mechanism for HTP to relinquish its Firm Transmission Withdrawal Rights (“FTWRs”) as discussed below and (b) increase the Authority’s leased portion of the Line’s capacity to 87.12%, or 575 MW, at a monthly capacity charge rate that represents a decrease in the unit price (on a $/MW-month basis) paid to HTP in the original FTCPA.

The Authority’s payment obligations under the FTCPA include capacity payments, interconnection and transmission upgrades, and Regional Transmission Expansion Plan (“RTEP”) charges allocated to HTP in accordance with the PJM tariff. Interconnection and transmission upgrades were completed in 2018 at a total cost to the Authority of $334.9 million. The RTEP charges imposed upon HTP, which are still subject to legal challenge, are discussed in more detail below.
It is estimated that the revenues derived from the Authority’s rights under the FTCPA will not be sufficient to fully cover the Authority’s costs under the FTCPA during the 20-year term of the FTCPA. In December 2021, the Authority estimated that its under-recovery of costs for the Line could be in the range of approximately $104 million to $110 million per year over the period from 2022-2025. The under-recovery estimates were based on projections of the capacity payment obligations, the costs of interconnection and transmission upgrades and energy revenues.

The Authority’s obligations under the FTCPA include payment of the RTEP charges allocated to HTP. From June 2013 through December 2021, the Authority has paid approximately $141.6 million in RTEP charges for the Line. Effective 2018, HTP relinquished the FTWRs held by HTP on the Line that were the basis for a significant share of its RTEP allocations. PJM’s annual RTEP cost allocation update for 2018 eliminated the Authority’s obligation in 2018 and beyond to pay RTEP charges related to the Bergen Linden Corridor project, which accounted for the bulk of the projected RTEP allocations to HTP.

While PJM had determined that the Authority had no RTEP payment responsibility starting in 2018 as a result of HTP’s FTWR relinquishment, in 2020, FERC reversed PJM’s determination over the Authority’s objections, and held that a portion of the RTEP charges assignable to the HTP facility dating back to 2018 had to be reinstated as they were unrelated to whether HTP had retained FTWRs. These reinstated RTEP charges were for projects other than the Bergen Linden Corridor project. FERC authorized PJM to begin collection for the back periods starting in August 2020. The Authority is accruing approximately $1.1 million per month through the term of the agreement which ends in 2033. Depending on PJM TO’s Annual Revenue Requirement, the RTEP charges could trend downward during the out years. The Authority is contesting the ruling.

(c) Small, Clean Power Plants

To meet capacity deficiencies and ongoing load requirements in the New York City metropolitan area in the early 2000s, the Authority placed into operation the Small, Clean Power Plants (SCPPs), consisting of eleven natural-gas-fueled combustion-turbine electric units located at six sites in New York City and one site in the service region of LIPA.

As a result of the settlement of litigation relating to one SCPP site (the Site”), the Authority has agreed under the settlement agreement to cease operations at the Site, which houses two units, under certain conditions and if the Mayor of New York City directs such cessation. No such cessation has occurred. Regarding the Site, the settlement agreement also allows an adjacent landowner to put its real property to the Authority under certain conditions. No formal put notice has been received. Also, regarding the Site, the Authority and an adjacent landowner may enter into buy, sell or other types of agreements outside the terms of the settlement agreement.

(d) Legal and Related Matters

St. Regis Litigation

In 1982 and again in 1989, several groups of Mohawk Indians, including a Canadian Mohawk tribe, filed lawsuits (the St. Regis litigation) against the State, the Governor of the State, St. Lawrence and Franklin counties, the St. Lawrence Seaway Development Corporation, the Authority and others, claiming ownership to certain lands in St. Lawrence and Franklin counties and to Barnhart, Long Sault and Croil islands. These islands are within the boundary of the Authority’s St. Lawrence-FDR Project and Barnhart Island is the location of significant Project facilities. Settlement discussions were held periodically between 1992 and 1998. In 1998, the Federal government intervened on behalf of all Mohawk plaintiffs.
The parties agreed to a land claim settlement, dated February 1, 2005, which if implemented would have included, among other things, the payment by the Authority of $2 million a year for 35 years to the tribal plaintiffs and the provision of up to 9 MW of low cost Authority power for use on the reservation. The legislation required to effectuate the settlement was never enacted and the litigation continued.

In 2013, all claims against the Authority were dismissed and the lawsuit against the Authority was concluded. On May 28, 2014, the State of New York, the St. Regis Mohawk Tribe, St. Lawrence County and the Authority executed a Memorandum of Understanding (St. Regis MOU) that outlined a framework for the possible settlement of all the St. Regis land claims. In the St. Regis MOU, the Authority endorses a negotiated settlement that, among other terms and conditions, would require the Authority to pay the Tribe $2 million a year for 35 years and provide up to 9 MW of its hydropower at preference power rates to serve the needs of the Tribe’s Reservation. The St. Regis MOU would require an Act of Congress to forever extinguish all Mohawk land claims prior to such a settlement becoming effective.

Any settlement agreement, including the terms endorsed in the St. Regis MOU, would in the first instance need to be negotiated and agreed upon by all parties to the St. Regis litigation, including parties that did not execute the St. Regis MOU, such as the two other Mohawk groups, the federal government and Franklin County. In addition, before any settlement becomes effective and the Authority is obligated to make any payments contemplated by the St. Regis MOU, federal and state legislation must be enacted which approves the settlement and extinguishes all Mohawk land claims. The Authority is in continuing settlement discussions with some of the parties to the St. Regis litigation.

**Long Island Sound Cable Project**

In 2014, one of the Sound Cable Project underwater cables was severely impacted by an anchor and/or anchor chain dropped by one or more vessels, causing the entire electrical circuit to fail and the circuit to trip. As a result of the impact to the cable, dielectric fluid was released into Long Island Sound. At December 31, 2021, the consolidated statement of net position includes approximately $19 million, in other long-term assets, reflecting the cost of damages net of insurance recoveries. In 2021, the Authority recovered $9.2 of its damages through legal proceedings and believes that it will recover the remainder through contractual obligations.

**Helicopter Incident Near the Authority’s Transmission Lines in Beekmantown, New York**

The Authority contracted with Northline Utilities, LLC (“Northline”) to install fiber optic ground wire along the Authority’s transmission system. Thereafter, Northline entered into a contract with Catalyst Aviation, LLC (“Catalyst”) for helicopter services. In 2018, a Catalyst helicopter was destroyed when it collided with a wooden utility pole and power lines near Beekmantown, New York. Members of the helicopter crew were injured, and two members of that crew died as a result of their injuries. The Authority has received two notices of claim arising out of this incident. The Authority has pursued insurance coverage under Northline’s insurance policies that name the Authority as an additional insured. The Authority tendered its defense of these Notices of Claim to Northline’s insurer and the insurer has accepted the Authority’s tender. The Authority believes that there exists sufficient insurance coverage to cover these claims. In any event, to the extent that the insurance coverage limitations are insufficient, Northline is responsible under the defense and indemnification provisions of its contract with the Authority.

**Other Actions or Claims**

In addition to the matters described above, other actions or claims against the Authority are pending for the taking of property in connection with its projects, for negligence, for personal injury (including asbestos-related injuries), in contract, and for environmental, employment and other matters. All of such other actions or claims will, in the opinion of the Authority, be disposed of within the amounts of the Authority’s insurance
coverage, where applicable, or the amount which the Authority has available therefore and without any material adverse effect on the business of the Authority. While the Authority cannot presently predict the outcome of the matters described above or any related litigation, the Authority believes that it has meritorious defenses and positions with respect thereto. However, adverse decisions of a certain type in the matters discussed above could adversely affect Authority operations and revenues.

(e) **New York State Budget and Other Matters**

Section 1011 of the Power Authority Act (Act) constitutes a pledge of the State to holders of Authority obligations not to limit or alter the rights vested in the Authority by the Act until such obligations together with the interest thereon are fully met and discharged or unless adequate provision is made by law for the protection of the holders thereof. Bills are periodically introduced into the State Legislature, which propose to limit or restrict the powers, rights and exemption from regulation that the Authority currently possesses under the Act and other applicable law or otherwise would affect the Authority’s financial condition or its ability to conduct its business, activities, or operations, in the manner presently conducted or contemplated by the Authority. It is not possible to predict whether any such bills or other bills of a similar type which may be introduced in the future will be enacted.

In addition, from time to time, legislation is enacted into New York law that purports to impose financial and other obligations on the Authority, either individually or along with other public authorities or governmental entities. The applicability of such provisions to the Authority would depend upon, among other things, the nature of the obligations imposed and the applicability of the pledge of the State set forth in Section 1011 of the Act to such provisions. There can be no assurance that in the case of each such provision, the Authority will be immune from the financial obligations imposed by such provision. Examples of such legislation affecting only the Authority include legislation, discussed below and elsewhere herein, relating to the Authority’s voluntary contributions to the State, the Authority’s temporary transfer of funds to the State, and contributions and transfers to fund temporary and permanent programs administered by the Authority and other State entities.

**Budget**

The Authority is requested, from time to time, to make financial contributions or transfers of funds to the State. Any such contribution or transfer of funds must (i) be authorized by law (typically, legislation enacted in connection with the State budget), and (ii) satisfy the requirements of the Bond Resolution. The Bond Resolution requirements to withdraw moneys “free and clear of the lien and pledge created by the (Bond) Resolution” are as follows: (1) such withdrawal must be for a “lawful corporate purpose as determined by the Authority,” and (2) the Authority must determine “taking into account, among other considerations, anticipated future receipt of Revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed” for (a) payment of reasonable and necessary operating expenses, (b) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals, or for retirement from service, decommissioning or disposal of facilities, (c) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt, or (d) payment of interest and principal on subordinate debt.

In 2011, the Authority’s Trustees adopted a policy statement (Policy Statement) which relates to, among other things, voluntary contributions, transfers, or other payments to the State by the Authority after that date. The Policy Statement provides, among other things, that in deciding whether to make such contributions, transfers, or payments, the Authority shall use as a reference point the maintenance of a debt service coverage ratio of at least 2.0 (this reference point should not be interpreted as a covenant to maintain any particular coverage ratio), in addition to making the other determinations required by the Bond Resolution. The Policy Statement may at any time be modified or eliminated at the discretion of the Authority’s Trustees.
Section 17 of Part JJJ of Chapter 59 of the Laws of 2021, part of the 2021-22 State Enacted Budget, provides that notwithstanding any provision of law to the contrary, as deemed feasible and advisable by its trustees, the Power Authority is authorized and directed to transfer to the state treasury to the credit of the general fund up to $20 million for the state fiscal year commencing April 1, 2021, the proceeds of which will be utilized to support energy-related state activities. As of December 31, 2021, there were no contributions made. The Authority cannot predict what additional contributions to the State may be authorized in the future.

Temporary Asset Transfers

As a result of budget legislation enacted in February 2009, the Authority was authorized to provide, subject to Trustee approval, temporary asset transfers to the State of certain funds held in reserves. Pursuant to the terms of a Memorandum of Understanding dated February 2009 (the “MOU”) between the State and the Authority, the Authority transferred to the State in 2009 $103 million of funds set aside for future construction projects (“Asset A”) and $215 million of funds associated with its Spent Nuclear Fuel Reserves (“Asset B”). The Authority subsequently executed amendments to the MOU in 2014 and 2017 that extended the return date for Asset A and Asset B and provided for the return of the Assets in installments over several years, subject to annual appropriation by the State Legislature. In the Second Amendment to the MOU in 2017, the Authority and the State agreed on a framework for alternative cost recovery agreements for each of State Fiscal Year 2017-18 through State Fiscal Year 2022-23 the asset transfers have not been fully returned to the Authority that would relieve the Authority of up to $5 million in cost recovery assessment payments to the State in each year. Asset A was returned to the Authority in 2018.

As of December 31, 2021, the Authority has received cumulative installment payments of $172 million on the return of Asset B. Pursuant to the amended MOU, the remaining portion of Asset B ($43 million) is to be returned by the State in installments in the State Fiscal Year 2022-2023, subject to annual appropriation by the State Legislature. The asset transfer is reported in miscellaneous receivables and other ($43 million at December 31, 2021) in the statement of net position.

(f) Relicensing of Niagara

The Federal Energy Regulatory Commission (“FERC”) issued the Authority a new 50-year license for the Niagara project effective September 1, 2007. In doing so, FERC approved six relicensing settlement agreements entered into by the Authority with various public and private entities. The Authority had estimated that the capital cost associated with the relicensing of the Niagara project would be approximately $495 million. This estimate does not include the value of the power allocations and operation and maintenance expenses associated with several habitat and recreational elements of the settlement agreements. As of December 31, 2021, the balance in the recorded liability associated with the Niagara relicensing on the consolidated statement of net position is $219 million ($18 million in current and $201 million in other noncurrent liabilities). In addition to internally generated funds, the Authority had issued additional debt obligations to fund, among other things, Niagara relicensing costs. The costs associated with the relicensing of the Niagara project, including the debt issued therefore, were incorporated into the cost-based rates of the project.

The Authority executed the Relicensing Settlement Agreement Addressing New License Terms and Conditions (“Settlement Agreement”) entered into by several parties to the relicensing of the Niagara Project, including The New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”). The Settlement Agreement provides, among other things, for the establishment of a Relicensing Settlement Agreement State Parks Greenway Fund, which is to be funded by the Authority in the amount of $3 million per year to OPRHP for the term of the 50-year License. In 2012 and 2017, OPRHP requested that the Authority accelerate such payments by making two lump sum payments of approximately $25 million each
to pay for authorized projects. In order to make the lump sum payments, the Authority issued (a) $25 million in subordinated notes in 2012 and (b) $25.2 million in subordinated notes in 2017. The proceeds of those subordinated note issuances were made available to OPRHP. See Note 6 “Long-Term Debt” of the notes to the consolidated financial statements.

(g) **St. Lawrence-FDR Relicensing – Local Task Force Agreement**

In 2003, FERC approved a Comprehensive Relicensing Settlement Agreement (“Relicensing Agreement”) reached by the Authority and numerous parties and issued the Authority a new 50-year license for the St. Lawrence-FDR Project (“St. Lawrence-FDR License”).

The St. Lawrence-FDR Power Project No. 2000 Relicensing Agreement (“LGTFSA”) between the Authority and the Local Government Task Force (“LGTF”) provided for a review of the LGTFSA every ten years to discuss issues not contemplated at the time of relicensing in 2003. The first such review commenced in December 2013. The Authority and the LGTF entered into an agreement in 2015 in which the Authority agreed to commit and the Trustees authorized up to $45.1 million over 10 years for certain actions, including to: (1) fund an economic development strategic marketing study (the “Marketing Study”); (2) temporarily reduce electricity costs for certain farms and businesses (the “Discount Program”); (3) initiate an energy efficiency and renewable energy program for the LGTF communities; and (4) enhance certain recreational facilities in the LGTF communities.

In 2016, the Authority’s Trustees approved a proposal to terminate the Discount Program early and repurpose funding to be used to support a collaborative marketing effort between the Authority and North Country communities through the St. Lawrence County Economic Development Study Advisory Board created in connection with the Marketing Study at the rate of $2 million/year for five years ($10 million total) commencing in 2017. In 2017, the Authority’s Trustees approved: (1) a new temporary business incentive program consisting of a monetary discount or rebate that would be payable to eligible private business applicants who agree to establish new business operations in certain North Country counties (“Business Incentive Discount Program”); and (2) the repurposing of funds previously approved for the marketing effort to include funding for the Business Incentive Discount Program. Funding repurposed for the marketing effort, including the Business Incentive Discount Program, would not exceed a total of $10 million.

As of December 31, 2021, the Authority has spent approximately $31.1 million of the $45.1 million authorized by the Trustees for the purpose of implementing the commitments in the LGTF 10-Year Review Agreement. As of December 31, 2021, the balance in the recorded liability associated with the St. Lawrence-FDR Project relicensing on the consolidated statement of net position is $32 million ($3 million in current and $29 million in other noncurrent liabilities).

(h) **Relicensing of Blenheim-Gilboa Pumped Storage Power Project**

FERC issued a new 50-year operating license, effective May 1, 2019, to the Power Authority for the Blenheim-Gilboa Pumped Storage Power Project. In 2019, the Power Authority’s Trustees accepted the new license and approved the settlement package with state and federal resource agencies, the towns of Gilboa and Blenheim, and Schoharie County. The Trustees also authorized $37.1 million in capital expenditures for the period 2019-2069 for all compliance, implementation and settlement activities. The Authority has spent approximately $6.6 million through December 31, 2021. The Authority has established a Recreation Fund in the amount of $4 million (total commitment under the settlement package is $6 million) of which $2.4 million has been disbursed and an Ecological Fund in the amount of $2 million (total commitment under the settlement package is $3.5 million) of which $1 million has been disbursed. As of December 31, 2021, the balance in the recorded liability associated with the Blenheim-Gilboa Pumped
Storage Power Project relicensing on the consolidated statement of net position is $21 million ($1 million in current and $20 million in other noncurrent liabilities).

(i) **Construction Contracts and Net Operating Leases**

Estimated costs to be incurred on outstanding contracts in connection with the Authority’s construction programs aggregated approximately $996 million at December 31, 2021.

Noncancelable operating leases primarily include leases on real property (office and warehousing facilities and land) utilized in the Authority’s operations. Rental expense for year ended December 31, 2021 was $6.3 million. Commitments under noncancelable operating leases are as follows:

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(j) **Other Developments**

**Central East Energy Connect (Marcy to New Scotland Upgrade Project)**

The Authority executed a Memorandum of Understanding (“MOU”) with North America Transmission (“NAT”) to develop and submit proposals to the solicitation. The MOU provided that, if any of the Authority/NAT proposals are accepted, the Authority, at its sole discretion, may elect to purchase an ownership share in the project(s) or operate and maintain the project(s). In December 2016, the Authority’s Trustees’ approved funding in the amount of approximately $1 million for the Authority’s share of expenses pursuant to the MOU.

In June 2018, the Authority and NAT entered into a Participation Agreement that supersedes the MOU, which granted the Authority the option to secure an ownership interest of up to 37.5% in the jointly proposed projects. In April 2019, the NYISO board selected the project proposed by LS Power Grid New York, LLC (formerly known as NAT) and the Authority for Segment A (also known as the Marcy to New Scotland Upgrade Project) to increase transfer capability from central to eastern New York.

In June 2018, the Authority and NAT entered into a Participation Agreement that supersedes the MOU, which granted the Authority the option to secure an ownership interest of up to 37.5% in the jointly proposed projects. In April 2019, the NYISO board selected the project proposed by LS Power Grid New York, LLC (formerly known as NAT) and the Authority for Segment A (also known as the Marcy to New Scotland Upgrade Project) to increase transfer capability from central to eastern New York.

The NYISO estimated the total cost of the Segment A project to be about $750 million (in 2018 dollars, including 30 percent contingency). In August 2019, LS Power and the Authority submitted an Article VII application to the PSC and the Authority filed a petition for incentive rate treatment with the Federal Energy Regulatory Commission (“FERC”) pursuant to FERC’s regulations Section 219 of the Federal Power Act. FERC granted the Authority’s its requested incentive rates effective November 21, 2019 inclusive of a 9.45% return on equity. The Commission approved the Article VII Certificate and first EM&CP on January 21, 2021. Ultimately, the upgraded transmission lines and new substations as part of the Segment A project are expected to be energized as part of the New York electrical system by the end of 2023.

In January 2021, the Authority’s Trustees approved a capital expenditure of approximately $208.3 million for Segment A. Prior to this the Trustees approved a total of $31 million in capital expenditures for the Project. In December 2019, the Authority’s Trustees approved a capital commitment of $275 million for the Segment A project. As of December 31, 2021, the Authority has spent approximately $75 million.

In July 2020, the Trustees approved the Authority’s request to exercise its 37.5% purchase option. LS Power transferred its project assets and assigned the participation agreement to LS Power Grid New York
Corporation I (LS Corp.) on January 27, 2020. A development agreement relating to Segment A among the NYISO, LS Corp. and the Authority was executed on February 3, 2020, filed with FERC on March 4, 2020 and accepted for filing by FERC on April 16, 2020. The Authority expects its costs of the Segment A project to be recovered through FERC’s cost-recovery mechanism outlined in the NYISO tariff.

**Smart Path (Moses Adirondack Smart Path Reliability Project)**

The Authority is moving forward with its plans to update a major section of the Moses Adirondack Line, one of the Authority’s backbone transmission facilities. The project covers 78 miles of 230 kV transmission line from Massena to the Town of Croghan in Lewis County. In July 2017, the Authority received authorization under the NYISO tariff to include the costs of this project in its NYPA Transmission Adjustment Charge (NTAC) mechanism for cost recovery of the Authority’s transmission system costs, which means that the costs will be allocated to all ratepayers in the State. The project includes the update of obsolete wood pole structures with higher, steel pole structures, as well as update of failing conductor with new conductor and insulation. The line will operate at its current 230 kV level, but the conductor and insulation design will accommodate future 345 kV operation. The Authority anticipates that the Moses Adirondack line will support the transmission of growing levels of renewable generation located in upstate New York and Canada, such as wind and hydroelectricity, and assist in meeting the State’s renewable energy goals. The rebuilt line is also expected to enhance grid reliability by supporting the NYISO’s black start plan.

All Environmental Management and Construction Plans for the 78 miles of transmission line rebuild have been approved by the PSC and construction is currently underway. As of December 31, 2021, the Authority has spent approximately $311 million of the project’s estimated cost of $484 million. Construction commenced in 2020 with completion in 2023.

**Smart Path Connect**

In meeting the advancement of the State’s energy goals and supporting the Authority’s VISION2030 goals, in 2020, the New York State Public Service Commission’s (“NYSPSC”) approved the Smart Path Connect Project (“Project”) as a Priority Transmission Project with an in-service date of December 2025. The Project will be developed in cooperation with a third-party co-participant. Together the Authority and co-participant will rebuild approximately 100 miles of 230kV and 345kV transmission lines, construct three new substations, and expand and/or upgrade eight existing substations. The goal of the Project is to allow for renewable generation from northern New York regions to be transmitted down-state, improving the NYS renewable energy consumption, as well as the efficiency of energy pricing throughout the state. Construction on a portion of the Project, which will require an Article VII certificate, is anticipated to begin in mid-2022. In 2021, the Authority’s Trustees authorized capital expenditures for the Authority’s portion of the Project in the amount of $605 million. As of December 31, 2021, the Authority has spent approximately $22 million.

**Build Smart 2025**

Build Smart 2025 is New York State’s program for aggressively pursuing energy efficiency savings in New York State owned and occupied buildings of 11 tBTUs by December 31, 2025 while advancing economic growth, environmental protection, and energy security in New York State. Build Smart 2025 expands and continues the requirements of Build Smart NY to assist State entities in meeting statutory requirements established by the Climate Leadership and Community Protection Act (CLCPA), that “all state agencies shall assess and implement strategies to reduce their greenhouse gas emissions”. The Authority manages the Build Smart 2025 program and monitors New York State agency performance. Since July 2021, the program has achieved 5.114 tBTUs towards the 11 tBTU goal.
Clean Energy Standard

In 2016, the NYPSC issued an order establishing a Clean Energy Standard (the “CES Order”) to implement the clean energy goals of the State Energy Plan. Pursuant to the CES Order, load serving entities identified in the order are required to purchase Zero Emission Credits (“ZECs”) from the New York State Energy Research Development Authority (“NYSERDA”) to support the preservation of existing at-risk zero emissions nuclear generation. The Authority is not subject to NYPSC jurisdiction for purposes of the CES Order but has assumed an obligation to purchase ZECs consistent with the terms of the CES Order and intends to seek recovery of such costs from the Authority’s customers. In January 2017, the Authority’s Trustees authorized (a) participation in the NYPSC’s ZEC program and (b) execution of an agreement with NYSERDA to purchase ZECs associated with the Authority’s applicable share of energy sales. The Authority and NYSERDA executed an agreement covering a two-year period from April 1, 2017 to March 31, 2019 under which the Authority committed to purchase ZECs in a quantity based on its proportional load in the New York control area. The Authority and NYSERDA executed an additional agreement covering a nine-year period from April 1, 2020 to April 1, 2029 under which the Authority committed to purchase ZECs in a quantity based on its proportional load in the New York control area, subject to certain adjustments. As of December 31, 2021, the Authority estimates that it will incur ZEC purchase costs associated with participation in the ZEC program of approximately $355.6 million in aggregate over the 2022-2025 period, of which approximately $3.5 million is not expected to be recovered under customer contracts that predate the adoption of the CES Order. As of December 31, 2021, the Authority has paid $271.3 million in ZEC purchase costs.

The current Clean Energy Standard set by the NYPSC requires that 70% of the State’s electricity come from renewable sources by 2030. In support of the Clean Energy Standard goal for the State, in September 2021, the Authority entered into an agreement with the New York State Energy Research Development Authority (“NYSERDA”) under which the Authority will be able to purchase renewable energy credits (“RECs”) for certain of its customers starting in 2024. The Authority intends to seek recovery of costs associated with the agreement through sales of RECs by the Authority to the Authority’s customers. The Authority is collaborating with its customers to help them achieve the Clean Energy Standard goals in ways that best meet their needs, which may include purchases of RECs from NYSERDA or from large-scale renewable projects contracted by the Authority in future procurements.

Niagara Parkway Redevelopment

The State plans to replace an underutilized two-mile stretch of the Robert Moses Parkway North in Niagara Falls with open space, scenic overlooks and recreational trails. Construction commenced in 2018 and is expected to take approximately three years to complete with funding to be provided by the Authority. As of December 31, 2021, the Authority had approved up to $46.3 million in funding and has disbursed approximately $46.3 million to complete the project.

Electric Vehicle Acceleration

In 2018, the Authority’s Trustees approved an overall allocation of up to $250 million to be used through 2025 for an electric vehicle charging acceleration initiative of which $43 million was authorized for the first phase of the initiative. The Authority will operate a charging network of up to 800 DC fast chargers across the State by 2025. As of December 31, 2021, 60 fast chargers were in operation with approximately $25.6 million has been spent.
(14) Canal Corporation

The Canal Transfer Legislation enacted April 4, 2016, authorized, but does not require, the Authority, to the extent that the Authority’s Trustees deem it feasible and advisable as required by the Resolution, to transfer moneys, property and personnel to the Canal Corporation.

The Canal Corporation operates at a loss and is expected to require substantial operating and maintenance support and capital investment. The Canal Corporation’s expenses are expected to be funded by transfers of funds from the Authority. Any transfer of funds would be subject to approval by the Authority’s Board of Trustees and compliance with the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented. Certain expenses eligible for reimbursement are expected to be reimbursed to the Authority by moneys held in the Canal Development Fund maintained by the State Comptroller and the Commissioner of Taxation and Finance. For the year ended December 31, 2021, the Canal Corporation recognized $2 million in revenues, $69 million in operations and maintenance expenses and $32 million in depreciation expense.

(15) Impact of COVID-19 Pandemic

In March 2020, the World Health Organization declared the novel strain of the coronavirus (COVID-19) a global pandemic and recommended containment and mitigation measures worldwide. As COVID-19 accelerated throughout New York State the Authority paused all non-essential efforts temporarily and focused on maintaining core operations, keeping its workforce safe and preserving cash. As the year progressed and safety precautions implemented, the Authority methodically un-paused in field construction efforts. Significant construction was able to continue on many of the Authority’s major capital projects.

To support the resiliency of the generation and transmission facilities of the Authority for the people of the State and power system generally, the Authority has entered into mutual aid agreements with other utility providers in the State and in Canada and is offering assistance to such other utilities through the exchange of employees as well as the sharing of expertise, equipment and materials. These agreements are currently expected to remain in effect through September 2022.

Because of the evolving nature of the outbreak and federal, state and local responses thereto, the Authority cannot predict the extent or duration of the outbreak or what impact it may have on the Authority’s financial condition or operations. There can be no assurances that the spread of the Coronavirus and COVID-19 or other highly contagious or epidemic diseases will not have an adverse impact on the Authority’s, financial position, results of operations, supply chains and customers. The effects of the pandemic on the Authority’s financial performance or operations could be material.

As of December 31, 2021, the Authority incurred costs totaling $31 million in response to the pandemic ranging from critical employee sequestration and sanitization/cleaning supplies to facility protective measures and equipment for a remote workforce. The Authority will pursue eligible federal reimbursement through the State Department of Homeland Security.
REQUIRED SUPPLEMENTARY INFORMATION
(UNAUDITED)
# Schedule of Changes in the New York Power Authority’s Net OPEB Liability and Related Ratios

($ in millions, except percentages)

## Total OPEB liability

<table>
<thead>
<tr>
<th></th>
<th>June 30, 2021</th>
<th>December 31, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service cost</td>
<td>$20</td>
<td>$6</td>
</tr>
<tr>
<td>Interest</td>
<td>42</td>
<td>18</td>
</tr>
<tr>
<td>Change of benefit terms</td>
<td>(2)</td>
<td>–</td>
</tr>
<tr>
<td>Differences between expected and actual experience</td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Change of assumptions</td>
<td>(153)</td>
<td>(3)</td>
</tr>
<tr>
<td>Canal transfer to the Power Authority OPEB Plan</td>
<td>218</td>
<td>–</td>
</tr>
<tr>
<td>Benefit payments</td>
<td>(34)</td>
<td>(12)</td>
</tr>
<tr>
<td>Net change in total OPEB liability</td>
<td>90</td>
<td>(43)</td>
</tr>
<tr>
<td>Total OPEB liability – beginning</td>
<td>524</td>
<td>517</td>
</tr>
<tr>
<td>Total OPEB liability – ending</td>
<td>$614</td>
<td>$524</td>
</tr>
</tbody>
</table>

## Plan Fiduciary Net Position

<table>
<thead>
<tr>
<th></th>
<th>June 30, 2021</th>
<th>December 31, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions – employer</td>
<td>34</td>
<td>12</td>
</tr>
<tr>
<td>Net investment income</td>
<td>136</td>
<td>(36)</td>
</tr>
<tr>
<td>Benefit payments</td>
<td>(34)</td>
<td>(12)</td>
</tr>
<tr>
<td>Administrative expense</td>
<td>–</td>
<td>(1)</td>
</tr>
<tr>
<td>Net change in plan fiduciary net position</td>
<td>136</td>
<td>(37)</td>
</tr>
<tr>
<td>Plan fiduciary net position – beginning</td>
<td>649</td>
<td>686</td>
</tr>
<tr>
<td>Plan fiduciary net position – ending</td>
<td>$785</td>
<td>$649</td>
</tr>
<tr>
<td>Net OPEB liability / (asset) – ending</td>
<td>$171</td>
<td>$(125)</td>
</tr>
</tbody>
</table>

## Plan fiduciary net position as a percentage of the total OPEB liability

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered-employee payroll</td>
<td>$227</td>
<td>$200</td>
<td>$200</td>
<td>$177</td>
<td>$177</td>
</tr>
</tbody>
</table>

## Net OPEB liability / (asset) as a percentage of covered-employee payroll

|                                      | 75%  | 63%  | 85%  | 3%   | 38%  |

Notes to schedule:

The amounts presented for the Authority’s 2021 net OPEB liability (asset) was measured as of June 30, 2021 based on valuation results as of December 31, 2019 for the Power Authority’s plan and May 1, 2020 for the Canal plan, projected to the measurement date on a no gain/loss basis.

This schedule is intended to present 10 years of data. Additional years will be presented prospectively.

The 2021 amount includes the Canal Corporation transfer to the Power Authority OPEB Plan (merged plan).
**New York Power Authority**

Required Supplementary Information

(Unaudited)

Schedule of the New York Power Authority’s OPEB Contributions

($ in millions, except percentages)

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>(a) Contractually / Actuarially determined contribution</th>
<th>(b) Contributions made</th>
<th>(c) Contribution deficiency / (excess)</th>
<th>Covered employee payroll</th>
<th>Contributions as a percent of covered employee payroll column (b ÷ c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2021</td>
<td>$ 34</td>
<td>$ 34</td>
<td>$ -</td>
<td>$ 227</td>
<td>15%</td>
</tr>
<tr>
<td>December 31, 2020</td>
<td>25</td>
<td>25</td>
<td>-</td>
<td>200</td>
<td>13%</td>
</tr>
<tr>
<td>June 30, 2020</td>
<td>12</td>
<td>12</td>
<td>-</td>
<td>200</td>
<td>8%</td>
</tr>
<tr>
<td>December 31, 2019</td>
<td>25</td>
<td>25</td>
<td>-</td>
<td>200</td>
<td>13%</td>
</tr>
<tr>
<td>December 31, 2018</td>
<td>25</td>
<td>25</td>
<td>-</td>
<td>177</td>
<td>14%</td>
</tr>
<tr>
<td>December 31, 2017</td>
<td>40</td>
<td>22</td>
<td>18</td>
<td>177</td>
<td>12%</td>
</tr>
<tr>
<td>December 31, 2016</td>
<td>39</td>
<td>24</td>
<td>15</td>
<td>161</td>
<td>15%</td>
</tr>
<tr>
<td>December 31, 2015</td>
<td>38</td>
<td>38</td>
<td>-</td>
<td>149</td>
<td>25%</td>
</tr>
<tr>
<td>December 31, 2014</td>
<td>33</td>
<td>39</td>
<td>(1)</td>
<td>145</td>
<td>27%</td>
</tr>
<tr>
<td>December 31, 2013</td>
<td>41</td>
<td>42</td>
<td>(1)</td>
<td>147</td>
<td>29%</td>
</tr>
</tbody>
</table>

**Notes to schedule:**

Contributions: The Power Authority made contributions on a pay as you go basis in 2021 and did not contribute any amount beyond the contractually / actuarially required amounts.

Valuation date: 12/31/2019 for the Power Authority; 5/1/2020 for Canal

Methods and assumptions used to determine contributions:

Actuarial cost method: Entry Age Normal, Level Percent of Salary

Amortization period: Five-year period for differences between the expected earnings on plan investments and actual returns. Differences in assumptions and experience from expected are recognized over the average remaining service lives of all participants in the plan. Changes in benefit terms are recognized immediately.

Asset Valuation: Market Value


Salary increases: Varies by service, 8.0 percent for first year of service, 4.5 percent for 5 years of service, 3.8 percent for 10 years of service, 3.3 percent for 15 years of service, and 3.0 percent for 20 years or more of service.

Participation rates: Assumed 100% of future retirees who meet the eligibility requirements will participate in the OPEB plan.

Discount rate: 7.0%

Mortality: The General Pub-2010 headcount weighted tables were used for active employees and healthy retirees and dependents, while the corresponding Contingent Survivor mortality tables were used for current surviving spouses and the corresponding Disabled Retiree mortality tables were used for disabled participants. To project mortality improvement for years after 2010, the MP-2020 Projection Scale is applied on a fully- generational basis to the base rates.
New York Power Authority

Required Supplementary Information
(Unaudited)

Schedule of Investment Returns for the New York Power Authority OPEB Trust

<table>
<thead>
<tr>
<th>Year Ending December 31,</th>
<th>Annual money-weighted rate of return, net of investment expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2021</td>
<td>21.00%</td>
</tr>
<tr>
<td>December 31, 2020</td>
<td>6.53%</td>
</tr>
<tr>
<td>June 30, 2020</td>
<td>(5.30)%</td>
</tr>
<tr>
<td>December 31, 2019</td>
<td>21.40%</td>
</tr>
<tr>
<td>December 31, 2018</td>
<td>(6.30)%</td>
</tr>
<tr>
<td>December 31, 2017</td>
<td>16.70%</td>
</tr>
<tr>
<td>December 31, 2016</td>
<td>7.00%</td>
</tr>
<tr>
<td>December 31, 2015</td>
<td>0.41%</td>
</tr>
<tr>
<td>December 31, 2014</td>
<td>3.99%</td>
</tr>
<tr>
<td>December 31, 2013</td>
<td>20.41%</td>
</tr>
</tbody>
</table>

Note:
This schedule is intended to present 10 years of data.

Average rate of return over ten-year period was 8.6%.
New York Power Authority

Required Supplementary Information
(Unaudited)

Schedule of Changes in the Canal Corporation’s Net OPEB Liability and Related Ratios

($ in millions, except percentages)

<table>
<thead>
<tr>
<th>Change in Net OPEB liability</th>
<th>June 30,</th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
<td>2020</td>
</tr>
<tr>
<td>Net OPEB liability - beginning</td>
<td>$ 218</td>
<td>$ 198</td>
</tr>
<tr>
<td>Service cost</td>
<td>–</td>
<td>4</td>
</tr>
<tr>
<td>Interest</td>
<td>–</td>
<td>3</td>
</tr>
<tr>
<td>Differences between expected and actual experience</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Change of assumptions</td>
<td>–</td>
<td>16</td>
</tr>
<tr>
<td>Canal transfer to the Power Authority OPEB Plan</td>
<td>218</td>
<td>–</td>
</tr>
<tr>
<td>Benefit payments</td>
<td>–</td>
<td>(3)</td>
</tr>
<tr>
<td>Net change in net OPEB liability</td>
<td>–</td>
<td>(218)</td>
</tr>
<tr>
<td>Net OPEB liability – ending</td>
<td>$ –</td>
<td>$ 218</td>
</tr>
</tbody>
</table>

Covered-employee payroll

<table>
<thead>
<tr>
<th>Covered-employee payroll</th>
<th>June 30,</th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A</td>
<td>$ 27</td>
</tr>
</tbody>
</table>

Net OPEB liability as a percentage of covered-employee payroll

<table>
<thead>
<tr>
<th>Net OPEB liability as a percentage of covered-employee payroll</th>
<th>June 30,</th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A</td>
<td>807%</td>
</tr>
</tbody>
</table>
New York Power Authority

Required Supplementary Information

(Unaudited)

Schedules Relating to the Employees’ Retirement System Pension Plan

($ in millions, except percentages)

Schedule of Proportionate Share of the Net Pension Liability

<table>
<thead>
<tr>
<th>As of March 31,</th>
<th>Proportion of the Net Pension Liability (Asset) Percentage</th>
<th>Proportionate Share of the Net Pension Liability (Asset)</th>
<th>Covered Employee Payroll</th>
<th>Proportionate Share of the Net Pension Liability (Asset) as a percentage of Covered Payroll</th>
<th>Plan Fiduciary Net Position as a percentage of the Total Pension Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>0.76%</td>
<td>$ 1</td>
<td>$ 233</td>
<td>0.4%</td>
<td>99.9%</td>
</tr>
<tr>
<td>2020</td>
<td>0.77</td>
<td>203</td>
<td>219</td>
<td>92.8</td>
<td>86.4</td>
</tr>
<tr>
<td>2019</td>
<td>0.76</td>
<td>53</td>
<td>214</td>
<td>25.0</td>
<td>96.3</td>
</tr>
<tr>
<td>2018</td>
<td>0.72</td>
<td>23</td>
<td>205</td>
<td>11.3</td>
<td>98.2</td>
</tr>
<tr>
<td>2017</td>
<td>0.72</td>
<td>67</td>
<td>193</td>
<td>35.0</td>
<td>94.7</td>
</tr>
<tr>
<td>2016</td>
<td>0.60</td>
<td>96</td>
<td>166</td>
<td>57.4</td>
<td>90.7</td>
</tr>
<tr>
<td>2015</td>
<td>0.59</td>
<td>20</td>
<td>150</td>
<td>13.3</td>
<td>97.9</td>
</tr>
<tr>
<td>2014</td>
<td>0.60</td>
<td>27</td>
<td>148</td>
<td>18.2</td>
<td>97.2</td>
</tr>
</tbody>
</table>

Schedule of Contributions

<table>
<thead>
<tr>
<th>Year Ending December 31,</th>
<th>Actuarially Required Contribution</th>
<th>Actual Contribution</th>
<th>Contribution (Excess) Deficiency</th>
<th>Covered Employee Payroll</th>
<th>Contribution as a Percentage of Covered Payroll</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$36</td>
<td>$36</td>
<td>$–</td>
<td>$233</td>
<td>15%</td>
</tr>
<tr>
<td>2020</td>
<td>30</td>
<td>30</td>
<td>–</td>
<td>219</td>
<td>14%</td>
</tr>
<tr>
<td>2019</td>
<td>29</td>
<td>29</td>
<td>–</td>
<td>214</td>
<td>14%</td>
</tr>
<tr>
<td>2018</td>
<td>28</td>
<td>28</td>
<td>–</td>
<td>205</td>
<td>14%</td>
</tr>
<tr>
<td>2017</td>
<td>28</td>
<td>28</td>
<td>–</td>
<td>193</td>
<td>14%</td>
</tr>
<tr>
<td>2016</td>
<td>24</td>
<td>24</td>
<td>–</td>
<td>166</td>
<td>15%</td>
</tr>
<tr>
<td>2015</td>
<td>25</td>
<td>25</td>
<td>–</td>
<td>150</td>
<td>17%</td>
</tr>
<tr>
<td>2014</td>
<td>28</td>
<td>28</td>
<td>–</td>
<td>148</td>
<td>19%</td>
</tr>
<tr>
<td>2013</td>
<td>29</td>
<td>29</td>
<td>–</td>
<td>146</td>
<td>20%</td>
</tr>
<tr>
<td>2012</td>
<td>27</td>
<td>27</td>
<td>–</td>
<td>146</td>
<td>19%</td>
</tr>
</tbody>
</table>
Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards

Board of Trustees
Power Authority of the State of New York:

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, the consolidated financial statements of the business-type activities and fiduciary funds of the Power Authority of the State of New York, (the Authority) and its blended component unit, as of December 31, 2021, and the related notes to the consolidated financial statements, which collectively comprise the Authority’s consolidated financial statements as listed in the table of contents, and have issued our report thereon dated March 29, 2022.

Internal Control Over Financial Reporting
In planning and performing our audit of the consolidated financial statements, we considered the Authority’s internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the consolidated financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority’s internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority’s internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters
As part of obtaining reasonable assurance about whether the Authority’s consolidated financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of consolidated financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.
Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority’s internal control or on compliance. This report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority’s internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

New York, New York
March 29, 2022

(signed) KPMG LLP
New York Power Authority  
Consolidated Net Income - Actual vs. Budgeted  
For The Year ended December 31, 2021  
($ in millions)  

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Budget</th>
<th>Variance Favorable/(Unfavorable)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Revenues</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer</td>
<td>$1,905</td>
<td>$1,845</td>
<td>$60</td>
</tr>
<tr>
<td>NYISO Market Revenues</td>
<td>836</td>
<td>696</td>
<td>140</td>
</tr>
<tr>
<td></td>
<td><strong>2,741</strong></td>
<td><strong>2,541</strong></td>
<td><strong>200</strong></td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchased Power</td>
<td>539</td>
<td>692</td>
<td>153</td>
</tr>
<tr>
<td>Fuel Consumed - Oil &amp; Gas</td>
<td>190</td>
<td>119</td>
<td>(71)</td>
</tr>
<tr>
<td>Wheeling</td>
<td>849</td>
<td>642</td>
<td>(207)</td>
</tr>
<tr>
<td>Operations &amp; Maintenance</td>
<td>743</td>
<td>678</td>
<td>(65)</td>
</tr>
<tr>
<td>Depreciation &amp; Amortization</td>
<td>281</td>
<td>258</td>
<td>(23)</td>
</tr>
<tr>
<td></td>
<td><strong>2,602</strong></td>
<td><strong>2,389</strong></td>
<td><strong>(213)</strong></td>
</tr>
<tr>
<td><strong>Operating Income</strong></td>
<td>139</td>
<td>152</td>
<td>(13)</td>
</tr>
<tr>
<td><strong>Nonoperating Revenues</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td>17</td>
<td>20</td>
<td>(3)</td>
</tr>
<tr>
<td></td>
<td><strong>17</strong></td>
<td><strong>20</strong></td>
<td><strong>(3)</strong></td>
</tr>
<tr>
<td><strong>Nonoperating Expenses</strong></td>
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<tr>
<td>Interest and Other Expenses</td>
<td>84</td>
<td>129</td>
<td>45</td>
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<td></td>
<td><strong>84</strong></td>
<td><strong>129</strong></td>
<td><strong>45</strong></td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>$72</td>
<td>$43</td>
<td>$29</td>
</tr>
</tbody>
</table>

The Authority had net income of $72 million for the year ended December 31, 2021, compared to budgeted net income of $43 million, an increase of $29 million. The 2021 increase in net income compared to budget was primarily due to higher operating revenues of $200 million resulting from higher market-based energy sales due to higher market prices, and lower interest and other expenses of $45M mainly attributable to an increase in capitalized interest, offset by higher operating expense of ($213M).
2g. Governance Committee Report: (Chair Dennis Trainor)

[Oral Report Only]
Date: March 29, 2022

To: THE BOARD OF TRUSTEES AND CANAL CORPORATION BOARD OF DIRECTORS

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Governance Committee Recommendations for Approvals

SUMMARY

The Governance Committee (the “Committee”) met on March 29, 2022 and considered and recommended the following resolutions which are now before the Board of Trustees (the “Board” or “Trustees”) for adoption.

ITEMS FOR ADOPTION

I. Procurement and Related Reports for New York Power Authority and Canal Corporation

RESOLVED, that the Procurement and Related Reports for New York Power Authority and Canal Corporation as described and discussed during the Governance committee held on March 29, 2022, is approved: and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority and Canal’s to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

II. Annual Report of Procurement Contracts, Guidelines for Procurement Contracts and Annual Review of Open Procurement Service Contracts

RESOLVED, That the Annual Report of Procurement Contracts, Guidelines for Procurement Contracts and Annual Review of Open Procurement Service Contracts as described and discussed during the Governance committee held on March 29, 2022, is approved: and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority and Canal’s to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

III. Annual Review and Approval of Guidelines for the Disposal of Personal Property and Expenditure Authorization Procedures for New York Power Authority and Canal Corporation
RESOLVED, That pursuant to Section 2879 of the Public Authorities Law, the Authority’s and Canal’s Guidelines for the Disposal of Personal Property, and the Authority’s and Canal’s Expenditure Authorization Procedures, as amended, be, and hereby are, approved; and be it further

RESOLVED, That the open service contracts exceeding one year be, and hereby are, reviewed and approved; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority and Canal’s to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

IV. Annual Review and Approval of Guidelines and Procedures for the Disposal of Real Property, Acquisition of Real Property, Annual Reports for the Disposal and Acquisition of Real Property, and Expenditure Authorization Procedures

RESOLVED, That the Annual Review and Approval of Guidelines for the Disposal of Personal Property and Expenditure Authorization Procedures for New York Power Authority and Canal Corporation as described and discussed during the Governance committee held on March 29, 2022, is approved: and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority and Canal’s to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

V. Annual Review and Approval of Certain Policies for New York Power Authority and Canal Corporation

RESOLVED, that pursuant to Section 2824 of the Public Authorities Law and Section 2 of Article II of the Authority’s and Canal Corporation’s By-laws the below-listed policies of the Authority and Canal Corporation are hereby approved:

<table>
<thead>
<tr>
<th>NYPAA Policy Name</th>
<th>Policy Number</th>
<th>Revision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Retaliation Policy (Whistleblower)</td>
<td>CP 1-7</td>
<td>09/25/2021</td>
</tr>
<tr>
<td>Code of Conduct</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent Worker Engagement Policy</td>
<td>CP 4-6</td>
<td>06/19/2021</td>
</tr>
<tr>
<td>Education Assistance Program</td>
<td>EP 3.6</td>
<td>10/20/2021</td>
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<tr>
<td>EEO Complaint Procedure</td>
<td></td>
<td>09/20/2021</td>
</tr>
<tr>
<td>Family and Medical Leave Act FMLA</td>
<td>EP 3.3</td>
<td>10/20/2021</td>
</tr>
<tr>
<td>Management Confidential Employee Handbook</td>
<td>CCP-2021-001</td>
<td>04/02/2021</td>
</tr>
<tr>
<td>Management Employee Categories and Eligibility for Benefits</td>
<td>EP 3.1</td>
<td>10/20/2021</td>
</tr>
<tr>
<td>No Smoking Policy</td>
<td>EP 4.7</td>
<td>08/03/2021</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NYPAA Policy Name</th>
<th>Policy Number</th>
<th>Revision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>OTETA Drug Alcohol Testing Accident Reporting</td>
<td>CGP-2021-001</td>
<td>03/10/2021</td>
</tr>
<tr>
<td>Reasonable Accommodation in Programs and Services for People with Disabilities</td>
<td>CP 1-4</td>
<td>05/06/2021</td>
</tr>
</tbody>
</table>
AND BE IT FURTHER RESOLVED, that the Interim President and Chief Executive Officer is authorized to modify the foregoing policies, as necessary, except in the event that any powers, duties or obligations of the Trustees and Board of Directors would be affected by such modification;

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

VI. 2021 NYPA and Canal Corporation Annual Board Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office

WHEREAS, pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the Authority and Canal Board is required to annually submit a summary of the Board Evaluation to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the Authorities Budget Office, within 90 days after the end of its fiscal year; and

WHEREAS, the Governance Committee recommends the adoption of the 2021 Annual Board Evaluation Summary to the Authority’s Board of Trustees and the Canal Corporation’s Board of Directors as required by Section C (2) of the Governance Committee Charter;

NOW THEREFORE BE IT RESOLVED, That pursuant to Sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7) of the Public Authorities Law and Guidance of the Authorities Budget Office, the 2021 Annual Board Evaluation Summary is hereby adopted and the Corporate Secretary is hereby authorized to submit to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget the adopted 2021 summary; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and Chief Financial Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
VII. Annual Review and Approval of Guidelines for the Investment of Funds and 2021 Annual Report on Investment of Authority Funds

RESOLVED, That the Annual Review and Approval of Guidelines for the Investment of Funds and 2021 Annual Report on Investment of Authority Funds as described and discussed during the Governance committee held on March 29, 2022, is approved: and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority and Canal’s to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

Justin E. Driscoll
Interim President and Chief Executive Officer
Date: March 29, 2022
To: THE TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Recharge New York Power – New, Extended and Modified Allocations

SUMMARY

The Trustees are requested to:

(a) authorize the extension of the 14 allocations of Recharge New York (“RNY”) Power awarded to the businesses listed in Exhibit “A” as described below for a term of 7 years, to commence on the expiration of each such allocation, or in the Authority’s discretion, on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the “Extended Term”), subject to the following conditions: A customer whose allocation would be extended would have to agree to provide supplemental commitments for, among other things, jobs and capital investments, as it has in its current RNY Power agreement(s) with the Authority (collectively, “Current RNY Power Agreement”) for the length of any Extended Term, through the incorporation of such supplemental commitments in the proposed final contract that is executed by the parties. With respect to capital investments, the vast majority of RNY Power customers (i.e., those who do not have project/expansion capital investment commitments) would be expected to meet a minimum capital investment commitment;

(b) approve modifications related to the previously approved RNY Power allocations, extensions, and/or related supplemental commitments for the customers listed in Exhibit “B”;

(c) award new allocations of RNY Power available for “retention” purposes to the businesses listed in Exhibit “C” in the amounts indicated therein;

(d) award new allocations of RNY Power available for “expansion” purposes to the businesses listed in Exhibit “D” in the amounts indicated therein; and

(e) award new allocations of RNY Power available for eligible small businesses and/or not-for-profit corporations to the entities listed in Exhibit “E” in the amounts indicated therein.

The sale of any extended or new allocation as proposed herein would be governed by the form of the RNY Power contract that was approved by the Trustees on March 26, 2019, and existing Authority Service Tariff RNY-1.

All the above actions have been recommended by the Economic Development Power Allocation Board (“EDPAB”) at its March 28, 2022 meeting.
BACKGROUND

On April 14, 2011, the RNY Power Program was signed into law as part of Chapter 60 (Part CC) of the Laws of 2011. The RNY Power Program is codified primarily in Economic Development Law (“EDL”) § 188-a and Public Authorities Law § 1005(13-a) (the “RNY Statutes”). The program makes available 910 megawatts (“MW”) of “RNY Power,” 50% of which will be provided by certain Authority hydropower resources and 50% of which will be procured by the Authority from other sources. RNY Power contracts can be for a term of up to 7 years in exchange for job and capital investment commitments. RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction.

As part of New York State’s initiative to foster business activity and streamline economic development, applications for all statewide economic development programs, including the RNY Power Program, have been incorporated into a single on-line Consolidated Funding Application (“CFA”) marking a fundamental shift in how State economic development resources are marketed and allocated. Beginning in September 2011, the CFA was available to applicants. The CFA continues to serve as an efficient and effective tool to streamline and expedite the State’s efforts to generate sustainable economic growth and employment opportunities. All applications that are considered for an RNY Power allocation are submitted through the CFA process.

RNY Power is available to businesses and not-for-profit corporations for job retention and business expansion and attraction purposes. Specifically, Chapter 60 provides that at least 350 MW of RNY Power shall be dedicated to facilities in the service territories served by the New York State Electric and Gas, National Grid, and Rochester Gas and Electric utility companies; and at least 200 MW of RNY Power shall be dedicated to the purpose of attracting new businesses and encouraging expansion of existing businesses statewide. In July 2021, legislation was enacted increasing the dedicated amount of RNY Power from 100 MW to no more than 150 MW for eligible not-for-profit corporations and eligible small businesses statewide.

“Eligible applicant” is defined by statute to mean an eligible business, eligible small business, or eligible not-for-profit corporation, however, an eligible applicant shall not include retail businesses as defined by EDPAB, including, without limitation, sports venues, gaming or entertainment-related establishments or places of overnight accommodations.

RNY Power allocation awards are comprised of 50% hydropower and 50% Authority-procured market power. Prior to entering into a contract with an eligible applicant for the sale of RNY power, and prior to the provision of electric service relating to the RNY power allocation, the Authority shall offer each eligible applicant the option to decline to purchase the RNY market power component of such allocation. If an eligible applicant declines to purchase the RNY market power component, the Authority has no responsibility for supplying such market power to the eligible applicant.

Under applicable law, applications for RNY Power are first considered by EDPAB. EDPAB is authorized to recommend applicants to the Authority’s Trustees that it believes should receive an award of RNY Power based on applicable statutory criteria and other pertinent considerations. The criteria provided for in the RNY Statutes are summarized in Exhibit “H” to this memorandum. An allocation recommended by EDPAB qualifies the subject applicant to enter a contract with the Authority for the purchase of the RNY Power if the Authority makes an allocation award.

In arriving at recommendations for EDPAB’s consideration, Staff, among other things, attempted to maximize the economic benefits of low-cost NYPA hydropower, the critical state
asset at the core of the RNY Power Program, while attempting to ensure that each recipient receives a meaningful RNY Power allocation.

Unless otherwise noted in Exhibits “C”, “D”, and “E” (recommendations for new RNY Power allocations), new business applicants with relatively high scores were recommended for allocations of retention RNY Power of 50% of the requested amount or average historic demand, whichever was lower. These allocations were capped at 10 MW for any recommended allocation. Not-for-profit corporation applicants that score relatively high are typically recommended for allocations of 33% of the requested amount or average historic demand, whichever is lower. These allocations are capped at 5 MW. Applicants currently receiving hydropower allocations under other Authority power programs are typically recommended for allocations of RNY Power of 25% of the requested amount, subject to the caps as stated above.

RNY Power allocation extensions have been awarded by the Trustees on thirteen prior occasions spanning from October 2018 through December 2021. These recommendations pertain to existing RNY Power customers receiving an Extended Term of 7 years.

RNY Power allocations pertaining to new applicants have been awarded by the Trustees on thirty-three prior occasions spanning from April 2012 through December 2021. Currently, approximately 25 MW of RNY Power is unallocated. This figure reflects Trustee actions taken on RNY Power applications prior to any actions the Trustees take today. If today’s recommendations are approved by the Trustees, it is anticipated that approximately 16 MW of RNY Power will remain unallocated.

EDPAB, at its meeting held on March 28, 2022, recommended that:

(a) the Trustees approve extensions for the 14 RNY Power allocations that are listed in Exhibit “A” for a term of 7 years;

(b) the Trustees approve the modifications related to the RNY Power allocations, extensions, and/or supplemental commitments listed in Exhibit “B” for the reasons discussed in Exhibit B; and

(c) each of the applicants identified in Exhibits “C”, “D”, and “E” be awarded an RNY Power allocation in the amount indicated for a term of 7 years.1

Applications for new RNY Power allocations have been considered, where applicable, under NYPA’s Green Jobs Evaluation Incentive Plan and the Diversity, Equity, and Inclusion (“DEI”) Evaluation and Incentive Plan. These plans were approved by the Trustees on December 9, 2020 and December 7, 2021, respectively.

Consistent with the RNY Statutes, EDPAB recommended that the contracts for the sale of extended and new allocations contain:

(1) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain commitments, relating to

1 EDPAB determined that the applicants listed in Exhibit “F” are not eligible to receive an RNY Power allocation for the reasons discussed in Exhibit “F”. EDPAB also terminated the application review process for the applicants listed in Exhibit “G” for the reasons discussed in Exhibit “G”. No action is required by the Trustees on these matters.
such things as employment levels, power utilization, capital investments, and/or energy efficiency measures;
(2) requirements for an agreement by the recipient of an allocation undertake at its own expense an energy audit of its facilities at which the allocation is consumed modified by the Authority on a showing of good cause by the recipient, and that the recipient provide the Authority with a copy of any such audit or a report describing the results of such audit;
(3) a requirement for an agreement by the recipient of an allocation to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform; and
(4) a recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly.

The sale of RNY Power allocations that are awarded by the Trustees today would be governed by the form of RNY Power contract that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1. The terms and conditions in the RNY Power contract form are consistent with the terms and conditions recommended by EDPAB as described above.

DISCUSSION

1. Extension of Existing RNY Power Allocations

For the current round of recommendations, Authority Staff has reviewed applications from 14 RNY Power customers listed in Exhibit “A” who are seeking extensions, and a copy of each application has been made available to the Board. Staff’s review has consisted of a review on a customer-specific basis of such issues as the amount of each allocation that would be extended, the supplemental commitments that these customers have made under their Current RNY Power Agreement and are prepared to make as consideration for an extension, and the customer’s compliance status under its Current RNY Power Agreement, including its compliance with supplemental commitments for jobs and capital investments.

In summary, the businesses listed in Exhibit “A” which are located throughout the State bring valuable benefits to the State. In total, the allocations listed in Exhibit “A” are supporting the retention of nearly 5,200 jobs and $1.9 billion in capital investments throughout New York State, and the Authority will require customers to commit to the same or substantially similar supplemental commitments for jobs and capital investments that are summarized in Exhibit “A” for the Extended Term.

Based on the foregoing discussion and EDPAB’s recommendations, Staff recommends that the Trustees extend the allocations listed in Exhibit “A” as described above and in Exhibit “A” subject to the following conditions:

(a) The sale of any allocation extended as proposed herein will be governed by the RNY Power contract form that was approved by the Trustees on March 26, 2019, and Authority Service Tariff RNY-1.

(b) In order to receive an extension of its allocation, the customer must agree, for the Extended Term, to provide the supplemental commitments for jobs and capital investments that are the same or substantially similar to those that are summarized generally in Exhibit “A” (subject to adjustments described above), through the incorporation of such supplemental commitments in the final contract that is executed by the parties. With respect to capital investments, RNY Power customers
who do not have current project/expansion capital investment commitments would be expected to meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period.

(c) Unless otherwise noted in Exhibit “A”, the customer is in compliance with its contractual obligations to the Authority under its Current RNY Power Agreement.

Staff believes that an extension of each allocation listed in Exhibit “A” is appropriate and is consistent with the applicable statutory criteria listed in Exhibit “H”. In addition, the terms and conditions in the RNY Power contract form approved by the Trustees on March 26, 2019 are consistent with the terms and conditions recommended by EDPAB.

2. Modifications to Existing Allocations, Extensions, and/or Related Supplemental Commitments

At its meeting held on March 28, 2022, EDPAB recommended that the Trustees approve modifications relating to the previously-approved RNY Power allocations, extensions, and/or related supplemental commitments listed in Exhibit “B” for the reasons presented below.

Albert Einstein College of Medicine, Inc. was previously approved for a retention-based RNY Power allocation extension in the amount of 1,320 kilowatts (“kW”) with commitments of 2,175 retained jobs and $30 million in capital spending. The customer was also previously approved for an expansion-based RNY Power allocation, specifically for its Van Etten Building, in the amount of 230 kW with commitments of 230 retained jobs, 60 new jobs, and $10 million in capital spending. In recent communications with the customer, it was determined that some of the job commitments relating to the expansion-based allocation were attributable to the retention-based allocation. Therefore, it is appropriate to modify the customer’s job commitments for the expansion allocation to reflect commitments of 2,175 retained jobs and 60 new jobs. If approved, this modification would be implemented through a modification to the customer’s power contract.

D’Addario & Company, Inc. was previously approved for a retention-based RNY Power allocation extension in the amount of 826 kW with commitments of 815 retained jobs and $9.3 million in capital spending. The customer has since requested the ability to allocate portions of its RNY Power allocation between the facility that has been receiving the allocation and another facility/account located at 590 Smith Street, Farmingdale (Nassau County) which was not identified in the customer’s application. If this change is approved, it would be implemented through a modification to the customer’s power contract.

Topiderm Inc. was previously approved for an expansion-based RNY Power allocation in the amount of 50 kW with commitments of 239 retained jobs, 75 new jobs, and $120 million in capital spending. In recent communications with the customer, it was determined that the original expansion project cost erroneously included the purchase cost of another company, and that the correct capital spending amount is $10,518,586. The customer’s capital spending commitment should be modified to reflect this corrected amount. If approved, this modification would be implemented in the customer’s power contract.

Staff has reviewed these requests and is recommending that the Trustees accept EDPAB’s recommendations and approve each of the modifications described above.

3. Retention-Based RNY Power Allocations

The Trustees are asked to address applications submitted via the CFA process for RNY Power retention-based allocations. Unless otherwise indicated in Exhibit “C”, these applications seek an RNY Power allocation for job retention purposes only.
Consistent with the evaluation process as described above, EDPAB recommended, at its March 28, 2022 meeting, that RNY Power retention allocations be awarded to the businesses listed in Exhibit “C.” Each business has committed to retain jobs in New York State and to make capital investments at their facilities in exchange for the recommended RNY Power allocations.

Staff recommends that the Trustees accept EDPAB’s recommendations and award RNY Power allocations to each of the businesses listed in Exhibit “C” in the amounts and terms indicated therein.

4. Expansion-Based RNY Power Allocations

The Trustees are also asked to address applications requesting RNY Power allocations for expansion purposes. Allocations for this purpose would be sourced from the 200 MW block of RNY Power dedicated by statute for “for-profit” businesses that propose to expand existing businesses or create new business in the State. Unless otherwise indicated in Exhibit “D”, these applications seek an RNY Power allocation to support expansion of an existing business or a new business/facility. EDPAB recommended, at its March 28, 2022 meeting, that RNY Power expansion-based allocations be made to the businesses listed in Exhibit “D.” Each such allocation would be for a term of 7 years unless otherwise indicated.

As with the evaluation process used for the retention recommendations described above, applications for the expansion-based RNY Power were scored based on the statutory criteria, albeit with a focus on information regarding each applicants’ specific project to expand or create their new facility or business (e.g., the expansion project’s cost, associated job creation, and new electric load due to the expansion).

The proposed amounts of the expansion-based allocations listed in Exhibit “D” are largely intended to provide approximately 70% of the individual expansion projects’ estimated new electric load. Because these projects have estimated new electric load amounts, and to ensure that an applicant’s overestimation of the amount needed would not cause that applicant to receive a higher proportion of RNY Power to new load, the allocations in Exhibit “D” are recommended based on an “up to” amount basis. Each of these applicants would be required to, among other commitments, add the new electric load as stated in its application, and would be allowed to use up to the amount of their RNY Power allocation in the same proportion of the RNY Power allocation to requested load as stated in Exhibit “D.”

Staff recommends that the Trustees accept EDPAB’s recommendations and award RNY Power allocations to each of the businesses listed in Exhibit “D” in the amounts indicated therein.

5. Small Business and/or Not-for-Profit-Based RNY Power Allocations

The Trustees are also asked to address applications for RNY Power for eligible small businesses and/or not-for-profit corporations.

Consistent with the evaluation process described above, EDPAB recommended, at its March 28, 2022 meeting, that RNY Power allocations be awarded to the small businesses and/or not-for-profit applicants listed in Exhibit “E.” These applicants have committed to retain or create jobs in New York State and make capital investments to the extent indicated in Exhibit “E” in exchange for the recommended RNY Power allocations as described in Exhibit “E.” The RNY Power allocations identified in Exhibit “E” are recommended for a term of 7 years unless otherwise indicated.
Staff recommends that the Trustees accept EDPAB’s recommendations and award RNY Power allocations to each of the not-for-profit entities and/or small businesses listed in Exhibit “E” in the amounts indicated therein.

6. Applicants Not Eligible

At its meeting on March 28, 2022, EDPAB determined that the applicants listed in Exhibit “F” are not eligible to receive an RNY Power allocation for the reasons listed in Exhibit “F”. No action by the Trustees is required on this matter.

7. Termination of Application/Review Process

At its meeting on March 28, 2022, EDPAB terminated the application review process for the applicants listed in Exhibit “G” for the reasons listed in Exhibit “G”. No action by the Trustees is required on this matter. In the past, some applicants in these circumstances have refiled if able to advance a more complete RNY Power application.

FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority’s finances.

RECOMMENDATION

The Senior Vice President, Clean Energy Solutions recommends that the Trustees accept the recommendations of EDPAB and:

(1) authorize the extension of each of the existing 14 allocations of RNY Power in the manner described above for the customers listed in Exhibit “A” for a term of 7 years to commence on the expiration of the allocation, or commencing on a date to be agreed upon by the parties for a term not to exceed 7 years, subject to the conditions described above;

(2) approve the modifications related to the RNY Power allocations, extensions, and/or related supplemental commitments described in Exhibit “B” for the reasons discussed above and in Exhibit “B”;

(3) award the new allocations of RNY Power for retention purposes to the businesses listed in Exhibit “C” as indicated therein;

(4) award the new allocations of RNY Power for expansion purposes to the businesses listed in Exhibit “D” as indicated therein; and

(5) award the new allocations of RNY Power to the small business and/or not-for-profit applicants identified in Exhibit “E” for retention and/or expansion purposes as indicated therein.

For the reasons stated, I recommend the approval of the above-requested actions by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer

7
RESOLUTION

RESOLVED, That the Trustees hereby accept the recommendations of the Economic Development Power Allocation Board ("EDPAB") and approve the extension of each of the existing 14 Recharge New York ("RNY") Power allocations previously awarded to the customers listed in Exhibit "A" in the manner described in the accompanying memorandum of the Interim President and Chief Executive Officer ("Memorandum") for a term of 7 years, to commence on (1) the expiration of the term of the allocation, or (2) in the Authority’s discretion, commencing on a date to be agreed upon by the Authority and the customer for a term not to exceed 7 years (collectively, the “Extended Term”), subject to the following conditions:

(a) the sale of the allocations as extended hereunder shall be made pursuant to the contract form approved by the Board on March 26, 2019, and Authority Service Tariff RNY-1; and

(b) in order to receive an extension of its allocation, the customer agrees to provide the supplemental commitments for jobs, capital investment and power utilization that are the same or determined by the Authority to be substantially similar to those contained in Exhibit “A” (subject to adjustments described above) for the Extended Term, through the incorporation of such supplemental commitments in the final contract that is executed by the parties, and RNY Power customers who do not have an ongoing project/expansion capital investment commitment shall meet a minimum capital investment commitment which may be satisfied through capital expenditures made over a five-year period; and

be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the modifications/adjustments to the RNY Power allocations, extensions, and/or related
supplemental commitments described in the Memorandum and Exhibit “B” for the reasons indicated in the Memorandum and Exhibit “B”; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention purposes to the applicants listed in Exhibit “C” in the amounts indicated therein for the reasons indicated in the Memorandum and Exhibit “C”; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for expansion purposes to the applicants listed in Exhibit “D” in the amounts indicated therein for the reasons indicated in the Memorandum and Exhibit “D”; and be it further

RESOLVED, That the Trustees hereby accept the recommendation of the EDPAB and approve the new RNY Power allocations for retention and/or expansion purposes to the small businesses and/or not-for-profit applicants listed in Exhibit “E” in the amounts indicated therein for the reasons indicated in the Memorandum and Exhibit “E”; and be it further

RESOLVED, That the Chief Commercial Officer – Commercial Operations, or such official’s designee, hereby is authorized on behalf of the Authority to provide for final terms and conditions that will be applicable to the foregoing allocations and/or projects, including without limitation progress milestones and provisions for the expiration of any allocation in the event that such milestones are not met; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any
and all actions and execute and deliver any and all agreements, certificates and other
documents to effectuate the foregoing resolution, subject to the approval of the form thereof by
the Interim Executive Vice President and General Counsel.
## Retention-Based Allocations

<table>
<thead>
<tr>
<th>Line</th>
<th>Company</th>
<th>City</th>
<th>County</th>
<th>Economic Development Region</th>
<th>IOU</th>
<th>Description</th>
<th>Current kW Amount</th>
<th>Recommended kW Amount</th>
<th>Job Commitments</th>
<th>Capital Investment Commitment ($)</th>
<th>Contract Term (Years)</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>GLOBALFOUNDRIES U.S. Inc.</td>
<td>Malta</td>
<td>Saratoga</td>
<td>Capital District</td>
<td>NGRID</td>
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<td>2,300</td>
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<td>Agrana Fruit US, Inc.</td>
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<td>Onondaga</td>
<td>Central New York</td>
<td>NGRID</td>
<td>Manufacturer of fruit preparations</td>
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<td>Central New York</td>
<td>NYSEG</td>
<td>Manufacturer of dairy products</td>
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<td>NYSERNet.org, Inc.</td>
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<td>Onondaga</td>
<td>Central New York</td>
<td>NGRID</td>
<td>Technology solutions for education &amp; research</td>
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<td>Ametek Thermal Systems, Inc.</td>
<td>Garden City</td>
<td>Nassau</td>
<td>Long Island</td>
<td>LIPA</td>
<td>Manufacturer of heat exchangers</td>
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<td>Hauppauge</td>
<td>Suffolk</td>
<td>Long Island</td>
<td>LIPA</td>
<td>Manufacturer of contract pharmaceuticals</td>
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<td>Eastern Wholesale Fence Co., Inc.</td>
<td>Calverton</td>
<td>Suffolk</td>
<td>Long Island</td>
<td>LIPA</td>
<td>Manufacturer of fence products</td>
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<td>387</td>
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<td>Globe Grinding Corp</td>
<td>Copiague</td>
<td>Suffolk</td>
<td>Long Island</td>
<td>LIPA</td>
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<td>Kedrion Biopharma Inc.</td>
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<td>Long Island</td>
<td>LIPA</td>
<td>Manufacturer of plasma-derived therapeutics</td>
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<td>CONED</td>
<td>Independent law school</td>
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<td>Potsdam Specialty Paper, Inc.</td>
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<td>St. Lawrence</td>
<td>North Country</td>
<td>NGRID</td>
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<td>Advance 2000, Inc.</td>
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<td>Western New York</td>
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<td>110</td>
<td>65</td>
<td>$50,000</td>
<td>(4) 7</td>
</tr>
</tbody>
</table>
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<tbody>
<tr>
<td>13</td>
<td>Costanzo's Bakery, LLC</td>
<td>Cheektowaga</td>
<td>Erie</td>
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<td>NYSEG</td>
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<td>14</td>
<td>Durez Corporation</td>
<td>Niagara Falls</td>
<td>Niagara</td>
<td>Western New York</td>
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<td><strong>732</strong></td>
<td><strong>256</strong></td>
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<td></td>
</tr>
</tbody>
</table>

**Totals**

24,002 24,214 5,181 $1,877,984,330

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1. The customer's Current kW Amount reflects a recent takeback of the unused portion of its original allocation.
2. The recommendation and associated commitments will apply to multiple facilities/addresses. This configuration will be implemented accordingly in the customer's power contract.
3. The customer is being recommended for an RNY Power contract extension at an increased kW amount due to its request to include additional sites not currently receiving RNY Power. Incorporating the additional sites into the RNY Power extension recommendation results in an increased level of jobs and capital investment committed as compared to the company's current contractual commitments.
4. The company's extension-related job commitment is below the evaluation threshold as compared to its original employment commitment. However, at this time, a reduction to the extension kW amount is not being recommended.
Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Replacement Power Allocations

SUMMARY

The Trustees are requested to:

1. Approve: (a) an allocation of 4,210 kilowatts ("kW") of Replacement Power ("RP") to Chocolate Delivery Systems, Inc. ("CDS") to support the company’s proposed expansion at 180 Elmwood Avenue, Buffalo (Erie County); (b) an allocation of 410 kW of RP to RubberForm Recycled Products, LLC ("RubberForm") to support the company’s proposed expansion at 75 Michigan Street, Lockport (Niagara County); and (c) an allocation of 430 kW of RP to Worksport Ltd. ("Worksport") to support the company’s development of a 222,000 square-foot manufacturing facility at 2500 North America Drive, West Seneca (Erie County). These projects are discussed in more detail below and in Exhibits “A”, “B” and “C”.

2. Authorize a public hearing, in accordance with Public Authorities Law ("PAL") § 1009, on a proposed form of contract ("Proposed Contract") with CDS and Worksport that would, along with Authority Service Tariff No. WNY-2 ("ST WNY-2"), apply to the sale of RP to CDS and Worksport. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits “A-1” and “C-1”.

BACKGROUND

Under PAL §1005(13), the New York Power Authority ("NYPA" or "Authority") may contract to allocate 250 megawatts ("MW") of firm hydroelectric power as Expansion Power ("EP") and up to 445 MW of RP to businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of power allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

Each application for an allocation of EP and RP are evaluated under criteria that include but need not be limited to, those set forth in PAL §1005(13)(a), which details general eligibility requirements. Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business’ long-term commitment to the region as evidenced by the current and/or planned capital investment in the business’ facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs to be created, as measured by wage and benefit levels, security and stability of employment, and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.
The Authority works closely with business associations, local distribution companies, and economic development entities to gauge support for the projects that would be supported with allocations of Authority hydropower. Discussions routinely occur with National Grid, New York State Electric & Gas, Empire State Development, Invest Buffalo Niagara, the Niagara County Center for Economic Development, and the Erie County Industrial Development Agency (collectively, the “Economic Development Entities”) to coordinate other economic development incentives that may help bring economic development to New York State. Staff confers with the Economic Development Entities to help maximize the value of hydropower to improve the economy of Western New York and the State of New York. Each organization has expressed support for today’s recommended RP allocations.

At this time, 18,615 kW of unallocated EP and 139,579 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

DISCUSSION

Chocolate Delivery Systems, Inc.

Established in 2005, CDS is a manufacturer of chocolate and confectionary products based in Buffalo. The company offers customizable products for chocolate chips, chunks, bars, and other chocolate varieties. CDS also provides services related to research and development, packaging, and private label contract manufacturing.

CDS is proposing to purchase manufacturing equipment to significantly increase chocolate production capabilities at its current facility. This would allow the company to produce additional chocolate in-house reducing its reliance on external suppliers. The expansion would ensure that CDS maintains the required chocolate supply needed for its current and growing customer base.

CDS’ application has been considered under the Diversity, Equity, and Inclusion ("DEI") Evaluation and Incentive Plan approved by the Trustees on December 7, 2021. The plan allows for the consideration of positive DEI impacts when evaluating power allocations. The company’s project site meets the qualifying criteria due to its location in a disadvantaged community in New York State.

The company’s expansion project would involve a capital investment expenditure of at least $25,995.987. This includes chocolate manufacturing system purchases (a capital investment expenditure of approximately $24.6 million), and machinery and production equipment purchases (a capital investment expenditure of approximately $1.4 million).

CDS is planning to complete the initial phases of the project in 2022. The company would commit to the creation of 91 new, permanent, full-time jobs, while retaining 98 current jobs, at its Buffalo facility. Average annual compensation/benefits for the new jobs are estimated to be $43,300 per job.

The company applied for a 5,781 kW allocation of hydropower in connection with the expansion. Staff recommends an RP allocation in the amount of 4,210 kW for a term of ten years.

The job creation ratio for the proposed allocation of 4,210 kW is 22 new jobs per MW. This ratio is below the historic average of 64 new jobs per MW based on allocations previously
awarded. The total investment of at least $26 million would result in a capital investment ratio of $6.2 million per MW. This ratio is below the historic average of $18 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to CDS.

**RubberForm Recycled Products, LLC**

Established in 2007, RubberForm is a manufacturer of products made from recycled rubber and plastic for use in various industries. The company produces recycled products used for parking lot safety, construction, and industrial applications. All products are made from recycled materials supporting the environment through landfill avoidance.

RubberForm is a current NYPA hydropower customer receiving a 100 kW EP allocation with associated commitments of 18 jobs and $3,000 in capital spending.

The company is proposing to bring extrusion functions currently performed in Ohio to its Lockport facility to accommodate an increased demand for recycled products. RubberForm is planning to expand into the entirety of its current facility which would provide the additional space needed to implement an extrusion production line.

RubberForm’s application has been considered under the Green Jobs Evaluation Incentive Plan approved by the Trustees on December 9, 2020. The plan allows for the consideration of green jobs impacts when evaluating power allocations. RubberForm’s project meets the qualifying criteria as a green jobs company in New York State.

The company’s expansion project would involve a capital investment expenditure of at least $2,125,000. This includes the building purchase price (a capital investment expenditure of approximately $0.8 million), construction costs (a capital investment expenditure of approximately $0.85 million), and machinery and equipment purchases (a capital investment expenditure of approximately $0.475 million).

RubberForm is planning to complete the expansion project in 2023. The company would commit to the creation of 9 new, permanent, full-time jobs, while retaining 21 current jobs, at the Lockport facility. The average compensation/benefits for the new jobs are estimated to be $60,680 per job.

The company applied for a 500 kW allocation of hydropower in connection with the expansion. Staff recommends an RP allocation in the amount of 410 kW for a term of ten years. The job creation ratio for the proposed allocation of 410 kW is 22 new jobs per MW. This ratio is below the historic average of 64 new jobs per MW based on allocations previously awarded. The total investment of at least $2.1 million would result in a capital investment ratio of $5.2 million per MW. This ratio is below the historic average of $18 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to RubberForm.

**Worksport Ltd.**

Worksport is a manufacturer of tonneau covers for trucks and vans based in Ontario, Canada. The company produces tonneau covers in a variety of panels, latches, frames, and
materials. In addition, Worksport manufactures tonneau covers with integrated solar panels within its TerraVis product line.

Worksport is proposing to establish a manufacturing facility in West Seneca to accommodate increased demand for its tonneau covers. The company requires additional manufacturing space and the project would represent Worksport’s initial expansion into the United States. The proposed West Seneca site provides strategic advantages to Worksport as it is in close proximity to ports, distribution hubs, and the Canadian border.

The company plans to produce TerraVis tonneau covers at the proposed project site which would allow consumers to charge electric vehicles or store electricity in its mobile power stations.

Worksport’s application has been considered under the Green Jobs Evaluation Incentive Plan approved by the Trustees on December 9, 2020. The plan allows for the consideration of green jobs impacts when evaluating power allocations. Worksport’s project meets the qualifying criteria as a green jobs company in New York State.

The company’s expansion project would involve a capital investment expenditure of at least $14.2 million. This includes the acquisition of the new facility (a capital investment expenditure of approximately $8.1 million), machinery and equipment purchases (a capital investment expenditure of approximately $4.8 million), and facility renovation costs (a capital investment expenditure of approximately $1.3 million).

Worksport is planning to complete the expansion project in 2023. The company would commit to the creation of 20 new, permanent, full-time jobs at its West Seneca facility. Average annual compensation/benefits are estimated to be $44,800 per job.

The company applied for a 520 kW allocation of hydropower in connection with the expansion. Staff recommends an RP allocation in the amount of 430 kW for a term of ten years.

The job creation ratio for the proposed allocation of 430 kW is 47 new jobs per MW. This ratio is below the historic average of 64 new jobs per MW based on allocations previously awarded. The total investment of at least $14.2 million would result in a capital investment ratio of $33 million per MW. This ratio is above the historic average of $18 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Worksport.

CONTRACT INFORMATION

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contract with CDS and Worksport:

- Base rates for demand and energy, an annual adjustment factor, and a minimum monthly charge which helps the Authority cover fixed costs of serving a customer even when the customer does not utilize the allocation in a billing period.

- Direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. charges, taxes and any other required assessments.
• The provision of substitute energy in the event of hydropower curtailments caused by adverse water conditions that impact power project operations.

• Basic requirements for customer metering.

• Early outreach to the customer concerning allocation extension initiatives by the Authority.

• Requirements for energy audits at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority’s New York Energy Manager which is expected to provide considerable savings for customers who select it.

• Periodic communications to customer about energy-related projects, programs and services offered by the Authority.

• Compliance provisions that allow the Authority to reduce a customer’s allocation for a failure to meet supplemental commitments, with an opportunity for the customer to present a proposed plan with actionable milestones to cure deficiencies.

• The collection of a Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer’s load.

Staff intends to discuss the form of the Proposed Contract with CDS and Worksport and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibits “A-1” and “C-1”. Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the form of the Proposed Contract attached as Exhibits “A-1” and “C-1”. The form of the Proposed Contract is consistent with recently approved contracts for the sale of EP and RP. If approved, the new allocation to RubberForm would be added to the customer’s existing hydropower contract. ST WNY-2 would also apply to the sale of the allocation.

As required by PAL §1009, when the Authority believes it has reached agreement with its prospective co-party on a contract for the sale of EP or RP, it will transmit the proposed form of the contract to the Governor and other elected officials, and hold a public hearing on the contract. At least 30-days’ notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the form of the contract may be modified, if advisable. Staff will report to the Board of Trustees on the public hearing and the Proposed Contract at a later time and make any additional recommendations regarding the Proposed Contract as are appropriate.

Upon approval of the final Proposed Contract by the Authority, the Authority must “report” the Proposed Contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority is authorized to execute the final contract.

FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority’s finances.
RECOMMENDATION

The Senior Vice President, Clean Energy Solutions, recommends that the Trustees:

1. Approve an allocation of 4,210 kW of RP to CDS as described herein and in Exhibit “A” for a term of ten years; approve an allocation of 410 kW of RP to RubberForm as described herein and in Exhibit “B” for a term of ten years; and approve an allocation of 430 kW to Worksport as described herein and in Exhibit “C” for a term of ten years.

2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contract with CDS and Worksport attached as Exhibits “A-1” and “C-1”.

For the reasons stated, I recommend the approval of the above-requested actions by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That an allocation of 4,210 kilowatts of Replacement Power (“RP”) be awarded to Chocolate Delivery Systems, Inc. for a term of 10 years as detailed in the foregoing memorandum of the Interim President and Chief Executive Officer (“Memorandum”) and Exhibit “A”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 410 kilowatts of RP be awarded to RubberForm Recycled Products, LLC for a term of 10 years as detailed in the foregoing Memorandum and Exhibit “B”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 430 kilowatts of RP be awarded to Worksport Ltd. for a term of 10 years as detailed in the foregoing Memorandum and Exhibit “C”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contract with Chocolate Delivery Systems, Inc. and Worksport Ltd. for the sale of the RP allocations (the “Contract”), the current forms of which are attached as Exhibits “A-1” and “C-1”; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit a copy of the proposed Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the
Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to PAL §1009; and be it further

RESOLVED, That the Chairman, the Vice Chair, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
APPLICATION SUMMARY
Replacement Power (“RP”)

Company: Chocolate Delivery Systems, Inc. (“CDS”)
Location: Buffalo, NY
County: Erie County
IOU: National Grid
Business Activity: The company is a manufacturer of chocolate and confectionary products.
Project Description: CDS is proposing to purchase additional manufacturing equipment to enhance chocolate production capabilities at its Buffalo facility.
Existing Allocation(s): None
Power Request: 5,781 kW of RP
Power Recommended: 4,210 kW of RP
Job Commitment: 98
   Base: 98
   New: At least 91 jobs
New Jobs/Power Ratio: 22 jobs/MW
New Jobs - Avg. Wage and Benefits: $43,300
Capital Investment: At least $26 million
Capital Investment/MW: $6.2 million/MW
Other ED Incentives: The company is pursuing incentives from Empire State Development, National Grid, and the Erie County Industrial Development Agency.
Summary: CDS is proposing to significantly increase production at its Buffalo facility through the purchase of additional chocolate manufacturing equipment. This would allow the company to produce chocolate in-house without relying on external suppliers. CDS anticipates that an increased level of self-reliance, as it relates to chocolate manufacturing, would allow the company to firmly establish itself within the industry while ensuring supply for its current and growing customer base.

The project includes the purchase of automated chocolate manufacturing lines. These systems allow for the extensive mass production of chocolate and confectionary products in various forms and flavors. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize CDS to consider additional expansion opportunities at its Buffalo facility in the future.
POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Chocolate Delivery Systems, Inc.
The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Chocolate Delivery Systems, Inc. (“Customer”) with offices and principal place of business at 1800 Elmwood Avenue, Buffalo, NY 14027. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:
ARTICLE I
DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.
“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.
“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.
“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

**ARTICLE II**

**ELECTRIC SERVICE**

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.

4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).

6. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

7. The Contract Demand may not exceed the Allocation.

8. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority’s judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer’s energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer’s local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties’ obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer’s local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III
RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority’s satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer’s control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.

2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

   a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or

   b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer’s participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.

3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with
respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. Supplemental Commitments, Schedule B sets forth the Customer’s “Supplemental Expansion Power and/or Replacement Power Commitments” (“Supplemental Commitments”). The Authority’s obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer’s timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer’s Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. [Intentionally Left Blank]

   a. Proposed New or Expanded Facility; Failure to Complete.

   If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

   b. Proposed New or Expanded Facility; Partial Performance.

   If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured
by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. **Notice of Completion; Commencement of Electric Service.**

(i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.

(ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. **Other Rights and Remedies Unaffected.**

Nothing in this Article is intended to limit the Authority’s rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

**ARTICLE V**

**ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES**

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services (“Energy Services”) offered by the Authority that in the Authority’s view could provide value to the Customer and/or support the State’s Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer’s option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.
ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.

2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No.WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:

   a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;

   b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

   c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority’s approval.

2. The Authority will use good faith efforts to provide the Customer with at least one year’s advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.

3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff (“NYISO Charges”), as set forth in Service
Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer’s local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority’s discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII
BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.

2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.

3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX
HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority’s receipt the Customer’s notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer no later than the tenth business day of the month.
prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.

6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a “Load Reduction”), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days’ advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer’s failure to provide such notice.

7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer’s election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.

10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless
otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority’s provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.

2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.

3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days’ prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority’s internal procedures and requirements of the Customer’s local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:

a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
b. pursuant to any other process that the Authority establishes; or

c. with the Authority’s written consent.

2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII
NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority
New York Power Authority
123 Main Street
White Plains, New York 10601
Email: 
Facsimile: ______
Attention: Manager – Business Power Allocations and Compliance

To: The Customer
Chocolate Delivery Systems, Inc.
1800 Elmwood Avenue
Buffalo, NY 14207
Email: 
Facsimile: 
Attention:

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.

3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed
properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

ARTICLE XIII
SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.

2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV
MISCELLANEOUS

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or
for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. **Previous Agreements; Modifications; and Interpretation**

   a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

   b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

   c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. **Waiver**

   Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. **Severability and Voidability**

   If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party’s interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

**ARTICLE XV**

**EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this
Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]
AGREE:

CHOCOLATE DELIVERY SYSTEMS, INC.

By: ________________________________
Title: ______________________________
Date: ______________________________

AGREE:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ________________________________
   John R. Koelmel, Chairman
Date: ______________________________
## SCHEDULE A
### EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

<table>
<thead>
<tr>
<th>Customer: Chocolate Delivery Systems, Inc.</th>
<th>Type of Allocation</th>
<th>Allocation Amount (kW)</th>
<th>Facility and Address</th>
<th>Trustee Approval Date</th>
<th>Allocation Expiration Date</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>RP</td>
<td>4,210 kW</td>
<td>1800 Elmwood Avenue, Buffalo, New York 14207</td>
<td>March 29, 2022</td>
<td>Ten (10) years from the date of commencement of Electric Service</td>
</tr>
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</table>
SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

   a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.

   b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

   c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

   The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

   For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program
a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.

b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.

c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.

d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.
ARTICLE II

RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority’s request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority’s option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access
Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer’s compliance with the Customer’s Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer’s six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer’s Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority’s other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.
5. **Notice of Intent to Reduce Contract Demand**

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer’s scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority’s receipt of such proposed plan. It shall be within the Authority’s discretion whether or not to accept the Customer’s proposed plan, require a different plan, or implement the reduction of the Contract Demand.
APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 189 full-time, permanent employees ("Base Employment Level") at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)

   a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility ("Rolling Average") shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.

   b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.

   c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)

   a. The Customer shall make a minimum capital investment of $25,995,987 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>EXPENDITURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chocolate manufacturing system purchases</td>
<td>$ 24,554,467</td>
</tr>
<tr>
<td>Manufacturing and production equipment</td>
<td>$ 1,441,520</td>
</tr>
<tr>
<td><strong>Total Minimum Expansion Project Capital</strong></td>
<td><strong>$ 25,995,987</strong></td>
</tr>
<tr>
<td>Investment Commitment:</td>
<td></td>
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</tbody>
</table>

Total Expansion Project Capital Investment Commitment:

b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 29, 2025 (*i.e.*, within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.
SCHEDULE C
TAKEDOWN SCHEDULE
SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.
“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.

2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.

4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

   a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by
the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.

5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.

6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall
provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, “Government Action”), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.
SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.
“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.

2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.

b. The Authority will, for each month of each calendar year, calculate the total costs ("Total Monthly REC Costs") that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month ("Total Monthly EP-RP Load"). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.

c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:

i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and

ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.

4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.

5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills.
for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer’s load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer’s load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer’s Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, “Alternative REC Compliance Program”).

2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.
POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY  12207

Schedule of Rates for Sale of Firm Power Service to Expansion Power and Replacement Power Customers Located in Western New York

Service Tariff No. WNY-2
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Schedule of Rates for Firm Power Service

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Date of Issue: December 11, 2018
Date Effective: January 1, 2019
Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

Annual Adjustment Factor or AAF: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power or EP and/or Replacement Power or RP: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
**Firm Energy:** Energy (kWh) associated with Firm Power.

**Load Serving Entity** or **LSE:** This term shall have the meaning set forth in the Agreement.

**Load Split Methodology** or **LSM:** A type of billing methodology applicable to a Customer’s Allocation which determines how a Customer’s total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer’s other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer’s local electric utility. The load split methodology is often designated as “Load Factor Sharing” or “LFS”, “First through the Meter” or “FTM”, “First through the Meter Modified” or “FTM Modified”, or “Replacement Power 2” or “RP 2”.

**Project:** The Authority’s Niagara Power Project, FERC Project No. 2216.

**Rate Year** or **RY:** The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

**Rules:** The Authority’s rules and regulations set forth in 21 NYCRR § 450 et seq., as they may be amended from time to time.

**Service Tariff:** This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.
III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

<table>
<thead>
<tr>
<th>Billing Period</th>
<th>Demand ($/kW)</th>
<th>Energy ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January – June 2019</td>
<td>7.60</td>
<td>13.00</td>
</tr>
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</table>

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor (“AAF”), as described in Section V, will be applied to the demand and energy rates stated in the table above.

2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average $/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average $/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer’s Allocation.
E. Estimated Billing

If the Authority, in its discretion, determines that it lacks reliable data on the Customer’s actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage (“Estimated Bill”).

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer’s Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer’s takedown (kW) amount.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer’s takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer’s Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer’s Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer’s actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority’s discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority’s rights under the Agreement.
F. Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G. Billing Period

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer’s facilities are located.

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.
IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority’s obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority’s designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.
E. **Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

2. **Billing Demand** – The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.

3. **Billing Energy** – The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

4. With regard to LFS methodology calculations:
   a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
   b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
   c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
      i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
      ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
   d. All demand values will be adjusted for losses.
F. **Payment by Customer to Authority**

1. **Demand and Energy Charges, Taxes**

   The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

   a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Demand (as defined in Section IV.E, above) for the Billing Period; and

   b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Energy (as defined in Section IV.E, above) for the Billing Period; and

   c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. **Transmission Charge**

   The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. **NYISO Transmission and Related Charges**

   The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, “NYISO Charges”) assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

   A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

   B. Marginal losses;

   C. The New York Power Authority Transmission Adjustment Charge ("NTAC");

   D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;

   E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority’s responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO’s Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority’s discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.
G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.

2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.

4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.

5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
H. Adjustment of Charges – Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.
V. **Annual Adjustment Factor**

A. **Adjustment of Rates**

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year (“Index Value for the Measuring Year”) will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1”). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of ±5.0% (“±5% Collar”). Amounts outside the ±5% Collar shall be referred to as the “Excess.”

   **Index 1, “BLS Industrial Power Price” (35% weight):** The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

   **Index 2, “EIA Average Industrial Power Price” (40% weight):** The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT (“Selected States”) as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration (“EIA”); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

   **Index 3, “BLS Industrial Commodities Price Less Fuel” (25% weight):** The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. **Annual Adjustment Factor Computation Guide**

   **Step 1:** For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   **Step 2:** Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   **Step 3:** Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

   a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year’s AAF, up to the ±5% Collar.
b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI—Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.
B. **Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- **Index 1 - Producer Price Index, Industrial Power**

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<td>September</td>
<td>185.5</td>
</tr>
<tr>
<td>October</td>
<td>175.5</td>
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<tr>
<td>November</td>
<td>172.2</td>
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<tr>
<td>December</td>
<td>171.8</td>
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</tbody>
</table>

Average 177.2  172.8

**Ratio of MY/MY-1**  **1.03**
• Index 2 – EIA Industrial Rate

<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Measuring Year (2012)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CT</td>
<td>590,972</td>
<td>6,814,757</td>
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<tr>
<td>MA</td>
<td>1,109,723</td>
<td>13,053,806</td>
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<tr>
<td>ME</td>
<td>328,594</td>
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<tr>
<td>NH</td>
<td>304,363</td>
<td>2,874,495</td>
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<td>NJ</td>
<td>1,412,665</td>
<td>15,687,873</td>
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<td>NY</td>
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<td>OH</td>
<td>3,695,978</td>
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<tr>
<td>PA</td>
<td>3,682,192</td>
<td>63,413,968</td>
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</tr>
<tr>
<td>RI</td>
<td>152,533</td>
<td>1,652,593</td>
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<tr>
<td>VT</td>
<td>155,903</td>
<td>2,173,679</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>13,434,511</strong></td>
<td><strong>215,442,827</strong></td>
<td><strong>6.24</strong></td>
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<table>
<thead>
<tr>
<th>State</th>
<th>Revenues ($000s)</th>
<th>Sales (MWh)</th>
<th>Avg. Rate (cents/kWh)</th>
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<tbody>
<tr>
<td><strong>Measuring Year -1 (2011)</strong></td>
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<td>RI</td>
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<tr>
<td>VT</td>
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<td>2,130,205</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>13,016,880</strong></td>
<td><strong>209,059,931</strong></td>
<td><strong>6.23</strong></td>
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Ratio of MY/MY-1  1.00
• Index 3 – Producer Price Index, Industrial Commodities Less Fuel

<table>
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<tr>
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<tbody>
<tr>
<td>January</td>
<td>190.1</td>
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<tr>
<td>February</td>
<td>190.9</td>
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<tr>
<td>March</td>
<td>191.6</td>
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<td>April</td>
<td>192.8</td>
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<td>May</td>
<td>194.7</td>
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<td>June</td>
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<td>July</td>
<td>195.5</td>
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<td>August</td>
<td>196.0</td>
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<td>September</td>
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<td>November</td>
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<tr>
<td>December</td>
<td>196.7</td>
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<td>Average</td>
<td>194.4</td>
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Ratio of MY/MY-1 1.02

**STEP 2**

Determine AAF by Summing the Weighted Indices

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<thead>
<tr>
<th>Index</th>
<th>Ratio of MY to MY-1</th>
<th>Weight</th>
<th>Weighted Factors</th>
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<td>PPI Industrial Power</td>
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<td>0.361</td>
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<tr>
<td>EIA Industrial Rate</td>
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<td>0.40</td>
<td>0.400</td>
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<tr>
<td>PPI Industrial Commodities less fuel</td>
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<td>0.25</td>
<td>0.255</td>
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<tr>
<td>AAF</td>
<td>1.016</td>
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</table>

**STEP 3**

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.
**STEP 4**

Apply AAF to Calculate the New Rate Year Base Rate

<table>
<thead>
<tr>
<th></th>
<th>Demand</th>
<th>Energy</th>
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<tbody>
<tr>
<td>Current Rate Year Base Rate</td>
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<tr>
<td>New Rate Year Base Rate</td>
<td>7.68</td>
<td>13.12</td>
</tr>
</tbody>
</table>
**APPLICATION SUMMARY**
Replacement Power (“RP”)

**Company:** RubberForm Recycled Products, LLC (“RubberForm”)

**Location:** Lockport, NY

**County:** Niagara County

**IOU:** New York State Electric & Gas

**Business Activity:** The company is a manufacturer of products made from recycled rubber and plastic for use in various industries.

**Project Description:** RubberForm is proposing to bring extrusion functions currently performed out of state to its Lockport facility.

**Existing Allocation(s):** 100 kW of Expansion Power (“EP”)

**Power Request:** 500 kW of RP

**Power Recommended:** 410 kW of RP

**Job Commitment:**
- **Base:** 21
- **New:** At least 9 jobs

**New Jobs/Power Ratio:** 22 jobs/MW

**New Jobs - Avg. Wage and Benefits:** $60,680

**Capital Investment:** At least $2.1 million

**Capital Investment/MW:** $5.2 million/MW

**Other ED Incentives:** The company is pursuing incentives from Empire State Development and the Niagara County Center for Economic Development.

**Summary:** RubberForm is proposing to bring extrusion functions to its Lockport plant to accommodate an increased demand for various recycled products. The company is planning to expand into the entirety of its current facility which would provide the additional space needed to implement an extrusion production line. The expansion would include the purchase of various types of extrusion-related machinery and equipment.

The project would bring manufacturing processes currently performed in Ohio to Western New York. This would allow for in-house profile extrusion and additional rubber compression molding activities at the Lockport site. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize RubberForm to consider additional expansion opportunities at its Lockport facility in the future.
APPLICATION SUMMARY
Replacement Power ("RP")

Company: Worksport Ltd. ("Worksport")
Location: West Seneca, NY
County: Erie County
IOU: New York State Electric & Gas
Business Activity: The company is a manufacturer of truck tonneau covers with an integrated solar panel product line.

Project Description: Worksport is proposing to establish a manufacturing facility in West Seneca to accommodate increased demand resulting in the need for additional space.

Existing Allocation(s): None
Power Request: 520 kW of RP
Power Recommended: 430 kW of RP

Job Commitment:
Base: 0
New: At least 20 jobs

New Jobs/Power Ratio: 47 jobs/MW

New Jobs -
Avg. Wage and Benefits: $44,800

Capital Investment: At least $14.2 million
Capital Investment/MW: $33 million/MW

Other ED Incentives: The company is pursuing incentives from Empire State Development and the Erie County Industrial Development Agency.

Summary: Worksport is proposing to purchase a 222,000 square-foot facility in West Seneca to serve a manufacturing site for tonneau covers. Based in Ontario, Canada, the company is planning to expand operations into the United States and has selected the Western New York region as its proposed project site. The location would provide strategic advantages to Worksport as it is in close proximity to ports, distribution hubs, and the Canadian border.

The project includes facility acquisition costs in addition to machinery and equipment purchases. The company’s expansion would result in the increased production of tonneau covers, with integrated solar panels, supporting electric vehicle charging and electricity storage. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Worksport to consider additional expansion opportunities in West Seneca in the future.
POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Worksport Ltd.
The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Worksport Ltd. (“Customer”) with offices and principal place of business at 2500 North America Drive, West Seneca, NY 14224. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:
ARTICLE I
DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.
“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.
“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.
“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II
ELECTRIC SERVICE

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.

4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer’s local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).

6. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

7. The Contract Demand may not exceed the Allocation.

8. The Customer’s Facility must be metered by the Customer’s local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, “Metering Arrangement”). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility’s Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority’s requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days’ prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority’s judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer’s energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer’s local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties’ obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer’s local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.

11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, “Service Information”) that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer’s local electric utility. The Customer’s failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III
RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority’s satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer’s control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.

2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

   a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or

   b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer’s participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.

3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority’s competitive position with
respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority’s bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV
SUPPLEMENTAL COMMITMENTS

1. **Supplemental Commitments.** Schedule B sets forth the Customer’s “Supplemental Expansion Power and/or Replacement Power Commitments” (“Supplemental Commitments”). The Authority’s obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer’s timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer’s Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.

2. [Intentionally Left Blank]

3. **Special Provisions Relating to a New or Expanded Facility.**

   a. **Proposed New or Expanded Facility; Failure to Complete.**

      If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

   b. **Proposed New or Expanded Facility; Partial Performance.**

      If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured
by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

(i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.

(ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority’s rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

ARTICLE V

ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services (“Energy Services”) offered by the Authority that in the Authority’s view could provide value to the Customer and/or support the State’s Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer’s option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.
ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.

2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:

   a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;

   b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

   c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority’s approval.

2. The Authority will use good faith efforts to provide the Customer with at least one year’s advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.

3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority’s behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff (“NYISO Charges”), as set forth in Service
Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer’s local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority’s discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII
BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a “load factor sharing” basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer’s local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.

2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.

3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX
HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority’s receipt the Customer’s notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.

3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer no later than the tenth business day of the month.
prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.

5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.

6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a “Load Reduction”), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days’ advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer’s failure to provide such notice.

7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority’s judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.

9. Notwithstanding the Customer’s election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.

10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless
otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority’s provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X
EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.

2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.

3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days’ prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority’s internal procedures and requirements of the Customer’s local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI
EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:

   a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
b. pursuant to any other process that the Authority establishes; or
c. with the Authority’s written consent.

2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.

3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII
NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email:
Facsimile: ______
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Worksport Ltd.
2500 North America Drive
West Seneca, NY 14224
Email:
Facsimile:
Attention:

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.

3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed
properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

ARTICLE XIII
SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.

2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV
MISCELLANEOUS

1. **Choice of Law**

   This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. **Venue**

   The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or
for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.

b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party’s interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

ARTICLE XV
EXECUTION

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this
Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]
AGREED:

WORKSPORT LTD.

By: __________________________

Title: __________________________

Date: __________________________

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: __________________________

John R. Koelmel, Chairman

Date: __________________________
# SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

<table>
<thead>
<tr>
<th>Type of Allocation</th>
<th>Allocation Amount (kW)</th>
<th>Facility and Address</th>
<th>Trustee Approval Date</th>
<th>Allocation Expiration Date</th>
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</thead>
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<tr>
<td>RP</td>
<td>430 kW</td>
<td>2500 North America Drive West Seneca, New York 14224</td>
<td>March 29, 2022</td>
<td>Ten (10) years from the date of commencement of Electric Service</td>
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</table>
SCHEDULE B
SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER COMMITMENTS

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments
   a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
   b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.
   c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments
   The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization
   For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program
a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.

b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.

c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.

d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.
ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer’s Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority’s request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority’s option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access
Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer’s compliance with the Customer’s Supplemental Commitments specified in this Schedule B.

ARTICLE III
COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer’s six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer’s Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority’s other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.
5. **Notice of Intent to Reduce Contract Demand**

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction. Before implementing any reduction, the Authority may consider the Customer’s scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority’s receipt of such proposed plan. It shall be within the Authority’s discretion whether or not to accept the Customer’s proposed plan, require a different plan, or implement the reduction of the Contract Demand.
APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least 20 full-time, permanent employees ("Base Employment Level") at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)

   a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility ("Rolling Average") shall total not less than N/A (the "Annual Capital Investment Commitment"). For purposes of this provision, "Rolling Average" means the three-year average comprised of (1) the total amount of capital investments ("Annual CI Expenditures") made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.

   b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.

   c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)

   a. The Customer shall make a minimum capital investment of $14,200,000 to construct, furnish and/or expand the Facility ("Expansion Project Capital Investment Commitment"). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>EXPENDITURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase of new facility</td>
<td>$ 8,125,000</td>
</tr>
<tr>
<td>Machinery and equipment purchases</td>
<td>$ 4,775,000</td>
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<tr>
<td>Facility renovations</td>
<td>$ 1,300,000</td>
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<tr>
<td><strong>Total Minimum Expansion Project Capital Investment Commitment:</strong></td>
<td><strong>$ 14,200,000</strong></td>
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</table>

Total Expansion Project Capital Investment Commitment:

b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than March 29, 2025 (i.e., within three (3) years of the date of the Authority’s award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.
SCHEDULE C
TAKEDOWN SCHEDULE
SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.
“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.

2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).

3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.

4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

   a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by
the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).

c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.

5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.

6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall
provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, “Government Action”), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.
SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.
“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” means: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E.

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.

2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.

3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.

b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.

c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:

i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and

ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.

4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.

5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills
for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer’s load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer’s load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.

7. Nothing in this Schedule shall limit or otherwise affect the Authority’s right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer’s Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, “Alternative REC Compliance Program”).

2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.
POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY  12207

Schedule of Rates for Sale of Firm Power Service to Expansion Power and Replacement Power Customers Located in Western New York

Service Tariff No. WNY-2
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Date of Issue: December 11, 2018

Date Effective: January 1, 2019

Issued by Keith T. Hayes, Vice President
Power Authority of the State of New York
30 South Pearl Street, Albany, NY 12207
Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

Annual Adjustment Factor or AAF: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power or EP and/or Replacement Power or RP: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.
**Firm Energy:** Energy (kWh) associated with Firm Power.

**Load Serving Entity** or **LSE:** This term shall have the meaning set forth in the Agreement.

**Load Split Methodology** or **LSM:** A type of billing methodology applicable to a Customer’s Allocation which determines how a Customer’s total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer’s other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer’s local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer’s local electric utility. The load split methodology is often designated as “Load Factor Sharing” or “LFS”, “First through the Meter” or “FTM”, “First through the Meter Modified” or “FTM Modified”, or “Replacement Power 2” or “RP 2”.

**Project:** The Authority’s Niagara Power Project, FERC Project No. 2216.

**Rate Year** or **RY:** The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

**Rules:** The Authority’s rules and regulations set forth in 21 NYCRR § 450 et seq., as they may be amended from time to time.

**Service Tariff:** This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.
III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

<table>
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<th>Billing Period</th>
<th>Demand ($/kW)</th>
<th>Energy ($/MWh)</th>
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<tr>
<td>January – June 2019</td>
<td>7.60</td>
<td>13.00</td>
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1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor (“AAF”), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average $/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average $/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer’s Allocation.
E.  **Estimated Billing**

If the Authority, in its discretion, determines that it lacks reliable data on the Customer’s actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage (“Estimated Bill”).

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer’s Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer’s takedown (kW) amount.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer’s takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer’s Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer’s Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.

- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer’s actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority’s discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority’s rights under the Agreement.
F. **Adjustments to Charges**

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G. **Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H. **Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. **Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. **Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement.
IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority’s obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority’s designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.
E. **Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing ("LFS") in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

2. Billing Demand – The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.

3. Billing Energy – The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.

4. With regard to LFS methodology calculations:
   a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
   b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
   c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
      i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
      ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
   d. All demand values will be adjusted for losses.
F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

   The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

   a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Demand (as defined in Section IV.E, above) for the Billing Period; and

   b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer’s Billing Energy (as defined in Section IV.E, above) for the Billing Period; and

   c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

   The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

   The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, “NYISO Charges”) assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

   A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;

   B. Marginal losses;

   C. The New York Power Authority Transmission Adjustment Charge ("NTAC");

   D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;

   E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority’s responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and
F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO’s Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority’s discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.
G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.

2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.

4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.

5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.

6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.
H. Adjustment of Charges – Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.
V. **Annual Adjustment Factor**

A. **Adjustment of Rates**

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year (“Index Value for the Measuring Year”) will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1”). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of ±5.0% (“±5% Collar”). Amounts outside the ±5% Collar shall be referred to as the “Excess.”

   Index 1, “BLS Industrial Power Price” (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”) electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

   Index 2, “EIA Average Industrial Power Price” (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT (“Selected States”) as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration (“EIA”); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

   Index 3, “BLS Industrial Commodities Price Less Fuel” (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, “Producer Price Index Detailed Report”. For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. **Annual Adjustment Factor Computation Guide**

   Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   Step 3: Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

   a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year’s AAF, up to the ±5% Collar.
b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI—Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.
B. **Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- **Index 1 - Producer Price Index, Industrial Power**

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>January</td>
<td>171.2</td>
<td>167.8</td>
</tr>
<tr>
<td>February</td>
<td>172.8</td>
<td>167.6</td>
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<tr>
<td>March</td>
<td>171.6</td>
<td>168.2</td>
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<tr>
<td>April</td>
<td>173.8</td>
<td>168.6</td>
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<tr>
<td>May</td>
<td>175.1</td>
<td>171.6</td>
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<tr>
<td>June</td>
<td>185.7</td>
<td>180.1</td>
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<tr>
<td>July</td>
<td>186.4</td>
<td>182.7</td>
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<tr>
<td>August</td>
<td>184.7</td>
<td>179.2</td>
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<tr>
<td>September</td>
<td>185.5</td>
<td>181.8</td>
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<tr>
<td>October</td>
<td>175.5</td>
<td>170.2</td>
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<tr>
<td>November</td>
<td>172.2</td>
<td>168.8</td>
</tr>
<tr>
<td>December</td>
<td>171.8</td>
<td>166.6</td>
</tr>
</tbody>
</table>

Average: 177.2 172.8

**Ratio of MY/MY-1**

1.03
### Index 2 – EIA Industrial Rate

<table>
<thead>
<tr>
<th>State</th>
<th>Measuring Year (2012)</th>
<th>Measuring Year -1 (2011)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Revenues ($000s)</td>
<td>Sales (MWh)</td>
</tr>
<tr>
<td>CT</td>
<td>590,972</td>
<td>6,814,757</td>
</tr>
<tr>
<td>MA</td>
<td>1,109,723</td>
<td>13,053,806</td>
</tr>
<tr>
<td>ME</td>
<td>328,594</td>
<td>4,896,176</td>
</tr>
<tr>
<td>NH</td>
<td>304,363</td>
<td>2,874,495</td>
</tr>
<tr>
<td>NJ</td>
<td>1,412,665</td>
<td>15,687,873</td>
</tr>
<tr>
<td>NY</td>
<td>2,001,588</td>
<td>26,379,314</td>
</tr>
<tr>
<td>OH</td>
<td>3,695,978</td>
<td>78,496,166</td>
</tr>
<tr>
<td>PA</td>
<td>3,682,192</td>
<td>63,413,968</td>
</tr>
<tr>
<td>RI</td>
<td>152,533</td>
<td>1,652,593</td>
</tr>
<tr>
<td>VT</td>
<td>155,903</td>
<td>2,173,679</td>
</tr>
<tr>
<td>TOTAL</td>
<td>13,434,511</td>
<td>215,442,827</td>
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</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Measuring Year -1 (2011)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>579,153</td>
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<tr>
<td>MA</td>
<td>1,076,431</td>
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<tr>
<td>ME</td>
<td>310,521</td>
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<tr>
<td>NH</td>
<td>298,276</td>
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<tr>
<td>NJ</td>
<td>1,370,285</td>
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<tr>
<td>NY</td>
<td>1,891,501</td>
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<td>OH</td>
<td>3,622,058</td>
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<td>PA</td>
<td>3,571,726</td>
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<tr>
<td>RI</td>
<td>144,144</td>
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<tr>
<td>VT</td>
<td>152,785</td>
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<tr>
<td>TOTAL</td>
<td>13,016,880</td>
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</table>

Ratio of MY/MY-1: 1.00
### Index 3 – Producer Price Index, Industrial Commodities Less Fuel

<table>
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<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>190.1</td>
<td>187.2</td>
</tr>
<tr>
<td>February</td>
<td>190.9</td>
<td>188.0</td>
</tr>
<tr>
<td>March</td>
<td>191.6</td>
<td>188.7</td>
</tr>
<tr>
<td>April</td>
<td>192.8</td>
<td>189.9</td>
</tr>
<tr>
<td>May</td>
<td>194.7</td>
<td>191.8</td>
</tr>
<tr>
<td>June</td>
<td>195.2</td>
<td>192.3</td>
</tr>
<tr>
<td>July</td>
<td>195.5</td>
<td>192.3</td>
</tr>
<tr>
<td>August</td>
<td>196.0</td>
<td>193.1</td>
</tr>
<tr>
<td>September</td>
<td>196.1</td>
<td>193.2</td>
</tr>
<tr>
<td>October</td>
<td>196.2</td>
<td>193.8</td>
</tr>
<tr>
<td>November</td>
<td>196.6</td>
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<tr>
<td>December</td>
<td>196.7</td>
<td>194.0</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td>194.4</td>
<td>191.5</td>
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</tbody>
</table>

Ratio of MY/MY-1

**1.02**

### STEP 2

Determine AAF by Summing the Weighted Indices

<table>
<thead>
<tr>
<th>Index</th>
<th>Ratio of MY to MY-1</th>
<th>Weight</th>
<th>Weighted Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>PPI Industrial Power</td>
<td>1.03</td>
<td>0.35</td>
<td>0.361</td>
</tr>
<tr>
<td>EIA Industrial Rate</td>
<td>1.00</td>
<td>0.40</td>
<td>0.400</td>
</tr>
<tr>
<td>PPI Industrial Commodities less fuel</td>
<td>1.02</td>
<td>0.25</td>
<td><strong>0.255</strong></td>
</tr>
<tr>
<td><strong>AAF</strong></td>
<td></td>
<td></td>
<td><strong>1.016</strong></td>
</tr>
</tbody>
</table>

### STEP 3

Apply Collar of ±5.0% to Determine the Maximum/Minimum AAF.

-5.0% < 1.6% < 5.0%; collar does not apply, assuming no cumulative excess.
**STEP 4**

Apply AAF to Calculate the New Rate Year Base Rate

<table>
<thead>
<tr>
<th></th>
<th>Demand $/kW-mo.</th>
<th>Energy $/MWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Rate Year Base Rate</td>
<td>7.56</td>
<td>12.91</td>
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<tr>
<td>New Rate Year Base Rate</td>
<td>7.68</td>
<td>13.12</td>
</tr>
</tbody>
</table>
Memorandum

Date:   March 29, 2022

To:     THE TRUSTEES

From:   THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Recommenement and Extension of Hydropower Contract with National Grid for the Benefit of Rural and Domestic Consumers and Notice of Public Hearing

SUMMARY

The Trustees are requested to approve: (1) recommencement and extension of an allocation totaling 175 megawatts ("MW") of firm “peaking” hydropower for a term through December 31, 2023, to Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"); and (2) associated contract that would recommence and extend the contract between the Authority and National Grid to provide for the sale of the recommenced and extended allocation (the “2022 Agreement”). The 2022 Agreement, entitled “2022 Agreement to Recommence Service Under 1990 Service Agreement, As Amended,” is attached as Exhibit “A”. The 175 MW peaking power allocation and the contract providing for the sale to National Grid expired on December 31, 2020.

The proposed 2022 Agreement is subject to the public hearing and gubernatorial review process in Public Authorities Law (“PAL”) § 1009. Accordingly, the Trustees are further requested to authorize: (1) a public hearing on the proposed 2022 Agreement; (2) transmittal of the 2022 Agreement to the Governor and legislative leaders as provided for in PAL § 1009; and (3) if necessary, the execution of the 2022 Agreement to provide for the sale of the allocation on a short-term, month-to-month basis pending completion of the public hearing and gubernatorial approval process.

BACKGROUND

In accordance with the hydropower contract signed with National Grid in 1990 (“1990 Service Agreement”) and certain extensions of such contract, National Grid has purchased both firm power and firm peaking power from the St. Lawrence/FDR and Niagara Power Projects.

National Grid has purchased such power at the Authority’s cost-based hydropower rate, the benefits of which have been passed on to National Grid’s residential and small farm customers (also referred to as their rural and domestic or “R&D” consumers) without markup, through the electric service provided by National Grid under its retail tariff(s).

Chapter 60 (Part CC) of the Laws of 2011 created the Recharge New York Power Program (“RNY Program”). This law authorized the Authority to redeploy firm hydropower previously allocated to National Grid, New York State Electric and Gas Corporation (“NYSEG”), and Rochester Gas and Electric Corporation (“RGE”) for use in the RNY Program. See PAL § 1005(13-a).
Effective August 1, 2011, the Authority withdrew the firm power allocations from National Grid, NYSEG and RGE in accordance with the 1990 Hydro Contracts that the Authority had with each of them (“1990 Hydro Contracts”) and Part CC, and terminated the firm power allocations of 189 MW for National Grid, 167 MW for NYSEG and 99 MW for RGE. The Authority continued to sell the firm peaking power to National Grid, NYSEG and RGE.

Beginning in 2014, the Authority extended the peaking power allocations and term of each of the 1990 Hydro Contracts for 3-year terms. The 1990 Hydro Contracts except with National Grid, as extended, provides for the sale of the peaking power through December 31, 2023.

DISCUSSION

The proposed 2022 Agreement would recommence and extend the sale of 175 MW of firm peaking hydropower to National Grid. This peaking power allocation would allow the Authority to pass on the benefits of the firm peaking power to National Grid’s R&D consumers.

The Authority has negotiated the recommencement and extension terms with National Grid. The parties have agreed to recommence and extend the term of the 1990 Service Agreement covering the sale of the firm peaking power through December 31, 2023, with NYPA having the right to terminate the contract upon thirty days’ written notice to National Grid and National Grid having the right to terminate the contract after December 31, 2022, upon thirty days’ written notice to the Authority.

As noted, the proposed 2022 Agreement is subject to the public hearing and gubernatorial review process provided for in PAL § 1009. Accordingly, staff further recommends that the Trustees authorize a public hearing on the final proposed 2022 Agreement. In addition, because the 2017 extension of the 1990 Service Agreement expired on December 31, 2020 and in furtherance of the goal to recommence the allocation and agreement as soon as possible, staff recommends that the Authority be authorized to execute the 2022 Agreement providing for the sale of the peaking power allocation on a month-to-month basis pending completion of the public hearing and gubernatorial approval process. In the unlikely event that gubernatorial approval is not received, the recommencement and extension would expire on the last day of the month following disapproval or the date by which the Governor is required to act on the contracts.

FISCAL INFORMATION

The proposed 2022 Agreement would provide that National Grid pay for firm peaking hydropower at the cost-based rates that are charged to the Authority’s preference customers in accordance with the Authority’s rate-setting methodologies and principles. Accordingly, there will be no fiscal impact to the Authority associated with this contract recommencement and extension.

RECOMMENDATION

The Senior Vice President – Clean Energy Solutions recommends that the Trustees: (i) approve recommencement and extension of the peaking power allocation for a term through December 31, 2023; (ii) approve the proposed 2022 Agreement, which is attached hereto as Exhibit “A”; (iii) authorize the Corporate Secretary to convene a public hearing on the final negotiated 2022 Agreement and transmit copies of such recommencement and extension to the Governor and legislative leaders pursuant to PAL § 1009; and (iv) authorize staff to execute the
final negotiated 2022 Agreement which would provide for the sale of firm peaking power on a month-to-month basis, if necessary, pending completion of the public hearing and gubernatorial approval process.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLVED, That a recommencement and extension of a 175 megawatts allocation of firm peaking power for Niagara Mohawk Power Corporation d/b/a National Grid through December 31, 2023 is hereby approved; and be it further

RESOLVED, That the “2022 Agreement to Recommence Service Under the 1990 Service Agreement, As Amended” attached to the foregoing memorandum of the Interim President and Chief Executive Officer hereto as Exhibit “A” (the “2022 Agreement”), is hereby approved; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed 2022 Agreement to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to Public Authorities Law (“PAL”) § 1009; and be it further

RESOLVED, That the Corporate Secretary be and hereby is authorized to convene a public hearing on the proposed 2022 Agreement in accordance with the procedures set forth in PAL § 1009; and be it further

RESOLVED, That the Senior Vice President – Clean Energy Solutions or his designee be, and hereby is, authorized, subject to approval of the form thereof by the Interim Executive Vice President and General Counsel, to negotiate and execute any and all documents necessary or desirable to implement the final 2022 Agreement on a month-to-month basis, if necessary, pending gubernatorial approval of the 2022 Agreement as set forth in the foregoing
memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chair, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
This 2022 Agreement to Recommence Service Under 1990 Service Agreement, as Amended ("2022 Agreement" or "Agreement") is entered this ___ day of ____, 2022 ("Effective Date") by and between Niagara Mohawk Power Corporation, d/b/a National Grid ("Company") and the Power Authority of the State of New York ("Authority").

WHEREAS, Company and Authority were parties to an agreement dated February 22, 1989 under which the Authority has sold certain quantities of hydroelectric power and energy in accordance with Authority Service Tariff ("ST") No. 41 and ST. No. 42 from Authority’s Niagara and St. Lawrence Projects to Company for resale to its Company’s rural and domestic consumers (the “1990 Service Agreement”); and

WHEREAS, Company and Authority have from time to time extended and modified the 1990 Service Agreement; and

WHEREAS, by letter to the Company dated June 29, 2011, Authority withdrew all 189 megawatts ("MW") of Firm Hydroelectric Power and Energy allocated for sale in accordance with ST No. 41, and terminated service under the 1990 Service Agreement under ST No. 41 with respect to all 189 MW of Firm Hydroelectric Power and Energy, effective August 1, 2011, for use in the Recharge New York Power Program created pursuant to Chapter 60 (Part CC) of the Laws of 2011 (the “Firm Power and Energy Withdrawal/Termination”); and

WHEREAS, Company and Authority thereafter modified and extended the 1990 Service Agreement, including most recently by the “2017 Amendment to 1990 Service Agreement” dated January 11, 2018 (the “2017 Amendment”), to provide for the sale solely of Firm Peaking Hydroelectric Power and Firm Hydroelectric Peaking Energy (collectively, “Firm Peaking Hydroelectric Power Service”) to Company; and

WHEREAS, the 2017 Amendment to 1990 Service Agreement expired as of December 31, 2020, terminating the sale of Firm Peaking Hydroelectric Power Service; and

WHEREAS, Company and Authority desire, for the benefit of the Company’s rural and domestic customers, to recommence the sale of Firm Peaking Hydroelectric Power Service under the 1990 Service Agreement Service Agreement, as amended in accordance with the terms and conditions provided for in this 2022 Agreement.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises as set forth herein, the Parties agree that service under the 1990 Service Agreement shall recommence under the 1990 Service Agreement as amended by this 2022 Agreement as follows:

1) As a result of the Firm Power and Energy Withdrawal/Termination, the amount of Firm Hydroelectric Power and Energy allocated to Company under ST No. 41 is zero (0) MW, and as of the Effective Date of this 2022 Agreement, the Firm Peaking Power allocated to Company under ST No. 42 is 175 MW. For avoidance of doubt, the Parties agree that the
Company is not entitled to any Firm Peaking Hydroelectric Power Service for the period from the date of expiration of the 2017 Amendment until the Recommencement Date as such term is defined in the 1990 Service Agreement, as amended by this 2022 Agreement.

2) Article E - Rates. The current text is deleted in its entirety and is replaced with the following text.

“The rates charged by the Authority under this Agreement shall be established in accordance with this Article.

The Authority shall charge and Company shall pay the preference power rates in effect, as such rates may be revised from time to time. Company waives any and all objections, suits, appeals or other challenges to the preference power rates adopted by the Authority, except as otherwise provided for below.

Company waives any challenges to any of the following methodologies and principles used by the Authority to set future preference power rates, numbers (i) through (vii) as set forth in the “January 2003 Report on Hydroelectric Production Rates” as modified by the April 2003 “Staff Analysis of Public Comments and Recommendations”:


(ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.

(iii) Treatment of sales to third parties, including the New York Independent System Operator.

(iv) Allocation of Indirect Overheads.

(v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

(vi) Post-employment benefits other than pensions (i.e., retiree health benefits).

(vii) Rate Stabilization Reserve (RSR) methodology.

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Company shall have the right to take any
position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority."

3) Article F - Transmission. The current text is deleted in its entirety and is replaced with the following text.

“In accordance with the terms of the existing transmission service agreement, which by its terms will expire on August 31, 2007, Company will cease taking transmission service from Authority and will instead take transmission service under the New York Independent System Operator's (“NYISO”) Open Access Transmission Tariff. Company agrees to settle any outstanding transmission charges that may apply prior to September 1, 2007 including any subsequent NYISO true up settlements.”

4) Article G - Notification. In the contact address for Authority replace “10 Columbus Circle, New York, NY 10019” with “123 Main Street, White Plains, NY 10601”.

5) Article J - Cancelation or Reduction. The following sentence is added at the end of Article J:

Company may also cancel or reduce such service during the period from January 1, 2023 through December 31, 2023, for any reason upon thirty (30) days’ prior written notice to the Authority.

6) Article K - Restoration of Withdrawn Power and/or Energy, previously deleted by the 2017 Amendment, is deleted in its entirety.

7) Article L - Term of Service, is revised to read as follows:

“Service under this contract shall recommence within a reasonable time after the Effective Date of the 2022 Agreement to Recommence Service Under 1990 Service Agreement, as Amended, that amended this contract, subject to applicable operating procedures of the Authority and the NYISO (the “Recommencement Date”), and shall continue unless cancelled as provided for in the “Withdrawals of Power and/or Energy” or the “Cancellation or Reduction” provisions until December 31, 2023, subject to earlier termination by the Authority at any time with respect to any or all of the quantities of power and energy provided hereunder on at least thirty (30) days’ prior written notice to Company. Authority shall notify Company at least ten (10) business days prior to the anticipated Recommencement Date.”

8) Article M - Availability of Energy - Firm and Firm Peaking Hydroelectric Power Service. In the third paragraph, line 1, starting with the words “In the event that...” through “...minimize the impact of such reductions.” on line 10, replace with the following:
“The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Company under Service Tariff No. 42 if such reductions are necessary due to low flow (i.e. hydrologic) conditions at the Authority's Niagara Project hydroelectric generating station. In the event that hydrologic conditions require the Authority to reduce the amount of energy provided to Company, percentage reductions applied to the otherwise required energy deliveries will be the same for all firm Niagara Project customers. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Company in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Company. The Authority shall provide reasonable notice to Company of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.”

9) This Agreement shall be referred to as the “2022 Agreement to Recommence Service Under 1990 Service Agreement, as Amended”.

10) Continuation of service under this 2022 Agreement shall be subject to approval of this 2022 Agreement by the Governor of the State of New York pursuant to Public Authorities Law § 1009. If the Governor disapproves this 2022 Agreement, service will cease on the last day of the month following the month during which the Governor disapproved this 2022 Agreement.

11) Except as expressly provided in this 2022 Agreement, the 1990 Service Agreement shall remain unchanged and in full force and effect.

12) This 2022 Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts and to be performed in such state, without regard to conflict of laws principles.

13) This 2022 Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

14) Upon approval of the Governor of the State of New York pursuant to Public Authorities Law § 1009, and upon execution by the Chairman of the Authority, this 2022 Agreement shall come into full force and effect, provided however that pending such gubernatorial approval and execution, this 2022 Agreement shall take effect upon the Effective Date and continue on a month to month basis.
15) This 2022 Agreement may be amended or modified by written agreement signed by the Authority and the Company.

AGREED:

**Niagara Mohawk Power Corporation, d/b/a National Grid**

By: ____________________
Name: ____________________
Title: ____________________
Date: ____________________

**Power Authority of the State of New York**

By: ____________________
Name: John R. Koelmel
Title: Chairman
Date: ____________________
Date: March 29, 2022
To: THE TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Transfer of RNY Power Allocations

SUMMARY

The Trustees are requested to approve the transfer of the following Recharge New York ("RNY") Power allocations awarded by the New York Power Authority ("Authority"):  

1. Transfer of a 3,476 kilowatt ("kW") RNY Power allocation, awarded to DB USA Core Corporation ("DB"), for use at its 60 Wall Street, New York, New York facility, to a facility located at 1 Columbus Circle, New York, New York.¹  

2. Transfer of a 10,000 kW RNY Power allocation awarded to Huron Real Estate Associates, LLC ("Huron"), for use at its 1701 North Street, Endicott, New York facilities, to Phoenix Endicott Industrial Investors, LLC ("Phoenix"), which has assumed ownership of Huron’s assets at this site.  

3. Transfer of a 130 kW RNY Power allocation awarded to Producto Corporation ("Producto") for use at its facility located at 2980 Turner Road, Jamestown, New York to Juniper Ring Acquisitions, LLC ("Juniper"), to address organizational changes.

The Economic Development Power Allocation Board ("EDPAB"), at its March 28, 2022 meeting, approved the transfer of these RNY Power allocations. Transfers of RNY Power are subject to EDPAB review and approval. The Trustees have previously approved transfers of Authority power allocations in similar circumstances.

DISCUSSION

The following discussion describes the facts relating to the recommended transfers.

1) DB USA Core Corporation

DB was awarded a 3,476 kW RNY Power allocation for use at its facility at 60 Wall Street, New York. This facility has been the United States headquarters for Deutsche Bank.

¹ Under the Authority’s Temporary Power Assistance ("TPA") component of its larger Economic Development Customer Assistance Program ("EDCAP"), DB applied for and received a temporary supplemental increase to this allocation in the amount of 1,100 kW. The transfer of the 3,476 kW RNY Power allocation would include the right to receive supplemental increase on applicable terms and conditions.
In late 2021, DB relocated to its new headquarters located at 1 Columbus Circle, New York.

DB requests that its 3,476 kW RNY Power allocation be transferred for use at its 1 Columbus Avenue facility. The company has indicated that it will honor all commitments made under its RNY Power sale agreement with the Authority if the transfer is approved.

2) Huron Real Estate Associates, LLC

Huron was awarded a 10,000 kW RNY Power allocation for use at its campus facilities at 1701 North Street, Endicott, where it has owned and operated office and manufacturing space.

In February 2021, Phoenix purchased Huron’s real and personal property at the site, including the facilities that receive the power allocation. Phoenix has assumed the operations Huron previously conducted at this site using the work force that Huron employed.

Both companies have asked that the 10,000 kW RNY Power allocation be transferred to Phoenix to support Phoenix’s operations at the site. Phoenix has indicated it will honor all terms and commitments made by Huron under its RNY Power sale agreement with the Authority.

3) Producto Corporation

Producto was awarded a 130 kW RNY Power allocation, for use at its facilities at 2980 Turner Road, Jamestown, where Producto manufactures rings, die springs and die parts at this location.

On December 31, 2021, Producto sold its Ring Precision Components business located at its Jamestown facilities to Juniper.

Both companies have requested that the 130 kW RNY Power allocation be transferred from Producto to Juniper for use by Juniper at the Turner Road facility. Juniper has indicated it will honor all commitments including employment, power utilization, and capital investment commitments associated with Producto’s 130 kW RNY Power allocation.

RECOMMENDATION

Staff recommends that the Trustees approve the transfers discussed above, subject to the following conditions: (1) there be no material reductions in the base employment level or capital investment commitment associated with the allocations that would be transferred; and (2) the transfers are addressed in contract documents containing such terms and conditions determined by the Authority to be appropriate to effectuate the transfers.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the transfer of a 3,476 kilowatt ("kW") Recharge New York ("RNY") Power allocation, including the supplemental increase under Authority’s Temporary Power Assistance program, awarded to DB USA Core Corporation, for use at its facility located at 60 Wall Street, New York, New York for use at the company’s new headquarters located at 1 Columbus Avenue, New York, New York, as described in the foregoing memorandum of the Interim President and Chief Executive Officer ("Memorandum") be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are required by the New York Power Authority ("Authority") in contract documents prepared by the Authority in order to effectuate the transfers; and be it further

RESOLVED, That the transfer of the 10,000 kW RNY Power allocation awarded to Huron Real Estate Associates, LLC for use at its facility located at 1701 North Street, Endicott, New York, to Phoenix Endicott Industrial Investors, LLC for use at the same facilities, as described in the foregoing Memorandum be, and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the transfer of a 130 kW RNY Power allocation awarded to Producto Corporation, for use at its facility at 2980 Turner Road, Endicott, New York, to Juniper Ring Acquisitions, LLC for use at the same facility, as described in the foregoing Memorandum be,
and hereby is, approved subject to (i) such terms and conditions as are set forth in the foregoing Memorandum, and (ii) such terms and conditions as are contained in contract documents prepared by the Authority to effectuate the transfer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President/General Counsel.
Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Release of Funds in Support of the Western New York Power Proceeds Allocation Act

SUMMARY

The Trustees are requested to authorize the release of up to $2.0 million in funds into the Western New York Economic Development Fund (“WNYEDF”) representing “net earnings” from unallocated Expansion Power and Replacement Power sold into the wholesale energy market for the period January 1, 2022 through December 31, 2022 as set forth in Chapter 58 of the Laws of 2012. The request for authorization is based on current projections for 2022, however, the release of funds will be based on the actual “net earnings.”

BACKGROUND

The Western New York Power Proceeds Allocation Act (the “Act”), signed into law on March 30, 2012, authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit into the WNYEDF net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority’s Niagara Power Project. The Act repealed Chapter 436 of the Laws of 2010, which amended the Public Authorities Law and the Economic Development Law, to create a somewhat similar program authorizing unallocated Expansion Power and Replacement Power to be utilized for WNYEDF benefits.

The effective date for calculating the net earnings is August 30, 2010, the original effective date of Chapter 436 of the Laws of 2010. Net earnings are defined as “the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion power or replacement power customer under the applicable tariff or contract.”

The net earnings deposited into the WNYEDF will be utilized to fund economic development projects ("eligible projects") by private businesses, including not-for-profits, which are physically located within New York State and within a thirty-mile radius of the Niagara power project. Eligible projects are to support the growth of business in the state and thereby lead to increased tax revenues and job creation or retention. Eligible projects may include capital investment in buildings, equipment and associated infrastructure; research and development that benefits New York State; support for tourism and marketing and advertising for Western New York State tourism and business; and energy related projects as authorized under §1005(17) of Public Authorities Law.

The Act also established the Western New York Power Proceeds Allocation Board (“Allocation Board”) which consists of five members appointed by the Governor.
Board’s responsibilities include establishing written procedures for reviewing applications and making recommendations to the Authority for the allocation of fund benefits to eligible projects. In reviewing applications for benefits, the Allocation Board shall employ the same criteria used for determining eligibility for Expansion, Replacement and Preservation Power allocations as provided in §1005 of the Public Authorities Law including, but not limited to, the number of jobs and type of jobs created as measured by wage and benefit levels; business’ long-term commitment to the region; amount of capital investment; and impact on competitiveness in the region. Upon recommendation of the Allocation Board, the Authority shall award fund benefits to an applicant, provided however, that upon a showing of good cause, the Authority shall have the discretion as to whether to adopt the Allocation Board’s recommendation, or to award benefits in a different amount or on different terms and conditions.

DISCUSSION

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature; (2) be approved by the Trustees “as feasible and advisable,” and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented (“Bond Resolution”). Further, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

The Bond Resolution’s requirements to withdraw monies “free and clear of the lien and pledge created by the Bond Resolution” are such that withdrawals (a) must be for a “lawful corporate purpose as determined by the Authority,” and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt or (iv) payment of interest and principal on subordinate debt.

The Trustees have already authorized the release of up to $66 million in net earnings from the Operating Fund to the WNYEDF representing the then-estimated net earnings from inception through December 31, 2021. Actual net earnings deposited into the WNYEDF rough this period totaled $41.7 million.

Staff is seeking authorization to deposit into the WNYEDF net earnings for the period January 1, 2022 through December 31, 2022 of up to a total of $2.0 million. While it is estimated that approximately $0.58 million in net earnings will be generated based upon current levels of unallocated Expansion Power and Replacement Power from the Authority’s Niagara power project and presently projected wholesale energy prices, the recommendation for up to $2.0 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the WNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.

Staff has reviewed the effect of releasing up to $2.0 million in funding at this time on the Authority’s expected financial position and reserve requirements. In accordance with the Board’s Policy Statement, adopted May 24, 2011, staff calculated that the impact of this release, together with the last 12 months’ releases, meets all board requirements including maintaining the debt service coverage ratio of 2.0. Based on the Authority’s Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2022-2025. Given the current financial condition of the Authority, its estimated future
revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to $2.0 million for deposit into the WNYEDF for net earnings calculated for the period January 1, 2022 through December 31, 2022, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s Bond Resolution. Provisions for the Authority’s fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in March 2022. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2022 into the WNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to $2.0 million into the WNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2022 through December 31, 2022, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the WNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the Trustees hereby authorize the release of up to $2.0 million from the Operating Fund to the Western New York Economic Development Fund ("WNYEDF"), to the extent such amount of net earnings is generated for the period from January 1, 2022 through December 31, 2022, as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to $2.0 million to be released to the WNYEDF for the purposes authorized by Chapter 58 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.
Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Release of Funds in Support of the Northern New York Power Proceeds Allocation Act

SUMMARY

The Trustees are requested to authorize the release of up to $1.0 million in funds into the Northern New York Economic Development Fund ("NNYEDF") representing “net earnings” from the sale of unallocated St. Lawrence County Economic Development Power into the wholesale energy market for the period January 1, 2022 through December 31, 2022, as authorized by Chapter 545 of the Laws of 2014. The request for authorization is based on current projections for 2022, however, the release of funds will be based on the actual “net earnings.”

BACKGROUND

1. Program Structure

The Northern New York Power Proceeds Allocation Act (the “Act”), signed into law on December 14, 2014, created a program to support economic development by providing financial support for eligible economic development projects located, or proposed to be located, in St. Lawrence County by eligible applicants.

The program is to be administered by the Authority, with assistance from the five-member Northern New York Power Proceeds Allocation Board ("NNYPPAB") which the Act creates. The NNYPPAB, whose members are appointed by the Governor, is authorized to solicit applications from “eligible applicants” for financial assistance known as “fund benefits” to support “eligible projects;” evaluate applications based on eligibility requirements and applicable criteria; and make recommendations to the Trustees for awards of fund benefits. The Trustees are authorized to consider whether to make awards of fund benefits to support eligible projects that are recommended by the NNYPPAB.

The Act defines “eligible applicant” as a private business, including a not-for-profit corporation. “Eligible projects” are defined as economic development projects that are or would be physically located within St. Lawrence County that will support the growth of business in St. Lawrence County and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, “infrastructure”) owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for St. Lawrence County tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public...
interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by NNYPPAB, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Applications will be evaluated using the following criteria specified in the Act:

1. whether the eligible project would occur in the absence of an award of fund benefits;

2. the extent to which an award of fund benefits will result in new capital investment in the State by the eligible applicant and the extent of such investment;

3. other assistance the eligible applicant may receive to support the eligible project;

4. the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;

5. the eligible applicant’s payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;

6. the number of jobs that will be created or retained within St. Lawrence County and any other parts of the State in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;

7. whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence County and other parts of the State, relocating facilities or operations out of St. Lawrence County and other parts of the State, or losing a significant number of jobs in St. Lawrence County and other parts of the State, in the absence of an award of fund benefits;

8. the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and

9. for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

The Act provides that the NNYPPAB shall also consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any Regional Economic Development Council having responsibility for the region in which the eligible project would be located, and authorizes the NNYPPAB to solicit the views of organizations that have an interest in economic development in St. Lawrence County regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

2. Program Funding

The program is funded by “net earnings” from the sale of unallocated St. Lawrence County Economic Development Power (“SLCEDP”). SLCEDP consists of up to 20 MW of hydropower from the Authority’s St. Lawrence/FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department (“MED”) for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered
into in 2012 entitled “Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town of Massena Electric Department for Economic Development Purposes” (the “Authority-TMED Contract”). The Act defines “net earnings” as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first five years after enactment, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority under the Authority-MED contract for sub-allocations. Thereafter, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated under the Authority-MED contract for sub-allocations.

The Act also authorized the Authority to create and maintain a fund known as the Northern New York Economic Development Fund (the “NNYEDF”), and deposit net earnings into the NNYEDF as determined to be feasible and advisable by the Trustees. The NNYEDF is a separate fund residing within the Authority’s Operating Fund.

DISCUSSION

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature, (2) be approved by the Trustees “as feasible and advisable,” and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (“Bond Resolution”). Further, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

The Bond Resolution’s requirements to withdraw monies “free and clear of the lien and pledge created by the Bond Resolution” are such that withdrawals (a) must be for a “lawful corporate purpose as determined by the Authority,” and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt, or (iv) payment of interest and principal on subordinate debt.

The Trustees have already authorized the release of up to $15 million in net earnings from the Operating Fund to the NNYEDF representing the then-estimated net earnings from inception through December 31, 2021. Actual net earnings deposited into the NNYEDF through this period totaled $5.1 million.

Staff is seeking authorization to deposit into the NNYEDF net earnings for the period January 1, 2022 through December 31, 2022 of up to a total of $1.0 million. While it is estimated that approximately $0.46 million in net earnings will be generated based upon current levels of unused St. Lawrence County Economic Development Power and presently projected wholesale energy prices, the recommendation for up to $1.0 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the NNYEDF on, at least, a quarterly basis. Such deposits may be made up to a fiscal quarter after the period in which the net earnings are generated.
Staff has reviewed the effect of releasing up to $1.0 million in funding at this time on the Authority's expected financial position and reserve requirements. In accordance with the Board's Policy Statement, adopted May 24, 2011, staff calculated that the impact of this release, together with the last 12 months' releases, meets all board requirements including maintaining the debt service coverage ratio of 2.0. Based on the Authority's Four-Year Budget and Financial Plan, the 2.0 reference point level is forecasted to be met at each year-end of the forecast period 2022-2025. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release such amounts from the trust estate created by the Bond Resolution consistent with the terms thereof.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to $1.0 million for deposit into the NNYEDF for net earnings generated for the period January 1, 2022 through December 31, 2022, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Provisions for the Authority's fiscal year 2021 deposits for this program were also included in the 2021 Operating Forecast subject to approval by the Trustees in December 2020. Authorization for the deposit of net earnings calculated for periods beyond December 31, 2022 into the NNYEDF will be requested of the Trustees at a later date.

RECOMMENDATION

The Executive Vice President & Chief Financial Officer recommends that the Trustees (a) affirm the deposit of up to $1.0 million into the NNYEDF, to the extent such amount of net earnings is generated during the period January 1, 2022 through December 31, 2022, is feasible and advisable and (b) authorize such amount to be released from the Operating Fund to the NNYEDF.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the Trustees hereby authorize the release of up to $1.0 million from the Operating Fund to the Northern New York Economic Development Fund (“NNYEDF”), to the extent such amount of net earnings is generated for the period from January 1, 2021 through December 31, 2022, as authorized by Chapter 545 of the Laws of 2014 (“Chapter 545”) and as discussed in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to $1.0 million to be released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is (a) affirmed by the Trustees to be feasible and advisable and (b) not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Executive Vice President and Chief Financial Officer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.
Date: March 29, 2022

To: THE TRUSTEES and CANAL CORPORATION BOARD OF DIRECTORS

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) and Other Contracts – Business Units and Facilities – Awards, Extensions and/or Additional Funding

SUMMARY

The Trustees and Board of Directors (“Board”) are requested to approve, as applicable, the award and funding of the multiyear procurement (services) contracts listed in Exhibit “A,” in support of projects and programs for the Authority’s and Canal Corporation’s Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or “best valued” bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority’s and Canal Corporation’s Guidelines for Procurement Contracts require Authority Trustee and Canal Board approval for procurement contracts involving services to be rendered for more than one year.

The Authority’s and Canal Corporation’s Expenditure Authorization Procedures (“EAPs”) require Trustee and Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts more than $10 million, as well as personal services contracts more than $10 million if low bidder or best value, or $1 million if sole-source, single-source, or other non-competitive awards.

The Authority’s and Canal Corporation’s EAPs also require Trustee and Board approval when the cumulative change order value of a personal services contract exceeds $500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of $6 million or 25% of the originally approved contract amount not to exceed $6 million.

DISCUSSION

Awards

The Trustees and Board are requested to approve the award and funding of the multiyear procurement (services) contracts, as applicable, listed in Exhibit “A,” where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, these contracts contain provisions allowing the Authority and Canal Corporation to terminate the services for the Authority’s and Canal Corporation’s convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority and Canal Corporation to a specific level of personnel resources or expenditures.
The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

Extensions

Although the firms identified in Exhibit “B” have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. Trustee and Board approval is required, as applicable, because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Authority and Canal Corporation to terminate the services at the Authority’s and Canal Corporation convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority and Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit “B” is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority and Canal Corporation or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority and Canal Corporation needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

**Authority Contract Awards in Support of Business Units/Departments and Facilities:**

**Business Services – Revenue & Pricing Analysis**

The proposed personal services contracts with CRA International, Inc. dba Charles River Associates (“CRA”), Daymark Energy Advisors, Inc. (“DEA”), Guidehouse, Inc. (“Guidehouse”), and The Brattle Group, Inc. (“Brattle”), (Q21-7252SS) would provide Production and Transmission Rate Design and Setting Consulting services. To successfully execute VISION2030, the Authority is seeking consulting services to assist in supporting the foundational pillars in the following areas – Transmission Revenue Requirement, Electric Commodity Rates and Delivery Rate Cases. Staff recommends the award of contracts to CRA, DEA, Guidehouse and Brattle which are technically and commercially qualified and meet the bid requirements based on “best value”, which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for a term of five years and an aggregate amount of $5 million. DEA is a Small Business Enterprise.

**Law – Environmental Justice & Sustainability**

The proposed personal services contracts with Alliance to Save Energy (“Alliance”), CEC Stuyvesant Cove, Inc. dba Solar One (“Solar One”), STEMKids NYC (“STEMKids”), and WhyMaker LLC (“WhyMaker”), (Q21-7233CC) would provide STEM Education Programming as part of the Environmental Justice (“EJ”) Implementation Plan (2019-2023). The Environmental Justice team intends to enhance and expand on its current STEM Education programs to eligible EJ communities throughout the state. As such the Authority requires these services to successfully implement the Environmental Justice plan and supplement in-house capability. The Authority has requested proposals from qualified educators and/or companies to build and develop age appropriate and engaging STEM programs and supplemental enrichment related to energy, statewide. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Fourteen firms/entities were listed as
having been invited to, or requested to participate in, the Ariba event. Seven proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contracts to Alliance, Solar One, STEMKids and WhyMaker which are technically and commercially qualified and meet the bid requirements based on “best value”, which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for a term of two years and an aggregate amount of $633,000. WhyMaker is a NYS certified Women-owned Business Enterprise. STEMKids and WhyMaker are Small Business Enterprises.

**Operations – Power Supply**

Due to the need to meet and maintain the Authority’s project schedule, the proposed non-personal services contract with Callahead (“Callahead”), (4600004254) for portable restrooms for the Authority’s South East New York (“SENY”) facilities became effective February 23, 2022, with an interim award amount of $300,000 subject to Trustee ratification which is hereby requested, in accordance with the Authority’s Guidelines for Procurement Contracts and EAP’s. The South East New York region has been utilizing the services of Callahead for over five years throughout all of our sites. This service provides portable restrooms for our contractors and staff provides convenience to staff during outages. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Three firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated. Staff recommends the award of contract to Callahead which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among responsive and responsible offerors. This contract is for a term of five years and an amount of $3 million.

**Operations – Project Delivery**

Due to the need to meet and maintain the Authority’s project schedule, the proposed construction services contract with Eaton Corporation (“Eaton”), (Q21-7250BS) for the RM Substation Tie Bus Isolation became effective February 22, 2022, with an interim award amount of $200,000 subject to Trustee ratification which is hereby requested, in accordance with the Authority’s Guidelines for Procurement Contracts and EAP’s. The Robert Moses Niagara Power Plant (“RMNPP”) is equipped with thirteen (13) unit substations, that provide 480VAC power to the RMPP generating unit’s auxiliary equipment. The auxiliary equipment for each generating unit is fed from one unit substation reserved for that unit which is critical to the generating unit’s operation and reliability. The scope of this project, which includes but is not limited to the installation of isolation disconnect switches between each of the Robert Moses (“RM”) substations and the tie bus which links the RM 480V Substations together. This will provide simplified and safe means to isolate the substation 480V when Operations and Maintenance personnel are servicing or racking in and out the unit substation breakers. Adding in remote isolation disconnect switches will provide improved system reliability and safer work practices through isolation of each unit from the station service tie bus. The Request for Quotations was advertised on the New York State Contract Reporter website and posted on the Procurement page of the Authority’s website. Twenty-four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. One proposal was received electronically via Ariba and was evaluated. Staff recommends the award of contract to Eaton which is technically and commercially qualified and meets the bid requirements based on “best value”, which optimizes quality, cost and efficiency among responsive and responsible offerors. This contract is for a term of two years and an amount of $3,755,094.28.

**Canal Corporation Contract Awards in Support of Business Units/Departments and Facilities:**

N/A

**Authority Extensions and/or Additional Funding Requests:**
Business Services – Risk & Resilience

On October 19, 2020, the Authority issued one-year single-source personal services contract to Carasoft Technology Corporation (“Carasoft”) (4500324490) in the amount of $150,000 for RSA Archer Expert On-Demand Services. Staff requests interim approval from October 19, 2021, through March 29, 2022, to provide consulting services relating to RSA Archer Expert On-Demand requirements as well as Trustee approval for an extension through December 31, 2022. No additional funding is being requested at this time.

Operations – Environmental, Health & Safety

On March 18, 2020, the Authority issued an emergency one-year non-personal services contract to Alliance Homecare, Inc. dba Alliance Nursing dba Alliance Homecare (“Alliance”) (4500319743) in the amount of $60,000 to perform nursing support for COVID-19. On March 17, 2021, the Authority issued an extension for an additional one-year for WPO LPN Nursing Support for COVID-19 as well as $220,000 in additional funding. Several change orders were done to increase funding due to the changing pandemic climate. The total value of the contract is currently $554,750. Alliance Healthcare was engaged to provide health assessments – evaluate and identify any underlying condition by screening employees for abnormalities; to provide information/teaching/answer questions – impart information to employees; to provide support for injuries and sudden ailments and make referrals for health services. An extension is required to continue to provide WPO LPN nursing support for COVID-19. Staff requests interim approval from March 18, 2022, through March 29, 2022, as well as Trustee approval for an extension through March 17, 2023 with an option for one additional twelve month period. Additional funds in the amount of $335,000 are also being requested. Alliance is a Small Business Enterprise.

Operations – Environmental, Health & Safety and Crisis Management

On February 19, 2018 the Authority issued a five-year personal service contracts to Burns & McDonnell Engineering Company, Inc., Deloitte and Touche, Ernst & Young LLP, Turner and Townsend AMCL, Inc. and WSP Parsons Brinckerhoff (Q17-6325MH) in the aggregate amount of $15 million to perform Asset Management Support Services in the support of the Asset Management Strategic Initiative. These contracts are set to expire on October 31, 2022. Staff requests extending Burns & McDonnell Consultants, Inc. dba Burns & McDonnell Consultants PC (“Burns & McDonnell”) (4600003450) to provide for the continuation of ISO 55001 Recertification and Surveillance Audit Services through December 31, 2024. Burns & McDonnell is a Small Business Enterprise.
Operations – Project Delivery

On April 1, 2016 the Authority issued a five-year sole source personal service contracts to Hitachi Mitsubishi Hydro Corporation (“Hitachi”) (4600003173) to provide home office engineering and technical support services for the Blenheim-Gilboa Pumped Storage Power Project (“B-G”), on an “as needed” basis in the amount of $500,000. Hitachi was the Original Equipment Manufacturer (“OEM”) of the B-G Plant, which was engineered to Japanese Industrial System standards; as the OEM, Hitachi maintains proprietary design information not available from other sources and has specialized expertise / experience with similar pumped storage equipment at other utilities that is not available elsewhere. B-G is currently undergoing motor-generator rotor repairs and modifications, which have generated specific questions regarding reassembly and plant operation. Additionally, issues arose during normal plant operation that typically require immediate technical assistance to maximize plant availability. Staff exercised the grace period from April 1, 2021 through March 31, 2022 however additional time is needed to complete the work. Staff requests Trustee approval for a term of five years including the grace period and no additional funding is being requested at this time.

Canal Corporation Extensions and/or Additional Funding Requests:

N/A

FISCAL INFORMATION

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2021 and/or 2022 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project’s Capital Expenditure Authorization Request, as applicable.

RECOMMENDATION

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Project Delivery; the Senior Vice President – EHS and Crisis Management; the Senior Vice President – Public and Regulatory Affairs; the Senior Vice President – Finance; the Vice President – Strategic Supply Management; the Vice President – Chief Risk & Resilience Officer; the Vice President – Environmental Health and Safety; the Vice President – Environmental Justice and Sustainability; the Vice President – Finance; recommend that the Trustees and Board approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit “A,” and the extension and/or funding of the procurement (services) contracts listed in Exhibit “B,” for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the award and funding of the multiyear procurement services contracts set forth in Exhibit “A,” attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and Canal Corporation, the contracts listed in Exhibit “B,” attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing memorandum of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President General Counsel.
### Proc Awards Exh A

### Procurement (Services) and Other Contracts – NYPA Awards

(For Description of Contracts See “Discussion”)

March 29, 2022

<table>
<thead>
<tr>
<th>Company Contract #</th>
<th>Start of Contract</th>
<th>Description of Contract</th>
<th>Award Basis1</th>
<th>Compensation Limit</th>
<th>Amount Expended To Date</th>
<th>Expected Expenditures For Life Of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NYPA-BUSINESS SERVICES - REVENUE &amp; PRICING ANALYSIS</strong></td>
<td></td>
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</tr>
<tr>
<td>Q21-7252SS – 4 Vendors</td>
<td>03/29/22 (on or about)</td>
<td>Provide Production and Transmission Rate Design and Setting Consulting services</td>
<td>B/P</td>
<td>$5 million*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. CRA INTERNATIONAL, INC. dba CHARLES RIVER ASSOCIATES</td>
<td>Boston, MA</td>
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<tr>
<td>2. DAYMARK ENERGY ADVISORS, INC.</td>
<td>Worcester, MA</td>
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<tr>
<td>3. GUIDEHOUSE, INC.</td>
<td>Chicago, IL</td>
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</tbody>
</table>
| 4. THE BRATTLE GROUP, INC. | Boston, MA | | | | | *

*Note: represents total for up to 5-year term

| **NYP-LAW ENVIRONMENTAL JUSTICE & SUSTAINABILITY** | | | | | | |
| Q21-7233CC – 4 Vendors | 03/29/22 (on or about) | Provide STEM Education Programming | B/P | $633,000* | | |
| 1. ALLIANCE TO SAVE ENERGY | Washington, DC | | | | | *
| 2. CEC STUYVESANT COVE, INC. dba SOLAR ONE | Long Island City, NY | | | | | *
| 3. STEMKIDS NYC | North Bergen, NJ | | | | | *
| 4. WHYMAKER LLC ♠ | Brooklyn, NY | | | | | *

*Note: represents total for up to 2-year term

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♠ M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♠ symbol after the Company Name)

1 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search

2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service
<table>
<thead>
<tr>
<th>Plant Site</th>
<th>Company Name</th>
<th>Contract #</th>
<th>Start of Contract</th>
<th>Description of Contract</th>
<th>Closing Date</th>
<th>Award Basis¹</th>
<th>Compensation Limit</th>
<th>Amount Expended To Date</th>
<th>Expected Expenditures For Life Of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATIONS – CALLAHEAD</td>
<td>POWER</td>
<td>02/23/22</td>
<td>Provide Portable Restrooms for the Authority’s SENY Facilities</td>
<td>02/22/27</td>
<td>B/S</td>
<td>$300,000</td>
<td>$3 million*</td>
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<tr>
<td>POWER SUPPLY</td>
<td>Broad Channel, NY (4600004254)</td>
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<td>*Note: represents total for up to 5-year term; interim approval from February 23, 2022 thru March 29, 2022</td>
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<td></td>
</tr>
<tr>
<td>OPERATIONS – EATON CORPORATION</td>
<td>PROJECT</td>
<td>02/22/22</td>
<td>Provide RM Substation Tie Bus Isolation to the Robert Moses Niagara Power Plant</td>
<td>02/21/24</td>
<td>B/C</td>
<td>$200,000</td>
<td>$3,755,094.28*</td>
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<tr>
<td>DELIVERY</td>
<td>Moon Township, PA (Q21-7250BS)</td>
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<td>*Note: represents total for up to 2-year term; interim approval from February 22, 2022 thru March 29, 2022</td>
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</tr>
</tbody>
</table>

**CANALS-**

N/A

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1 M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)
2 Award Basis: B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search
3 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

Page 2 of 2
### Procurement (Services) Contracts – NYPA and Canal Extensions and/or Additional Funding
(For Description of Contracts See “Discussion”)

**EXHIBIT “B”**  
March 29, 2022

<table>
<thead>
<tr>
<th>Plant Site/ Bus. Unit</th>
<th>Company</th>
<th>Contract #</th>
<th>Start of Contract</th>
<th>Description of Contract</th>
<th>Closing Date</th>
<th>Award Basis1</th>
<th>Contract Type2</th>
<th>Compensation Limit</th>
<th>Amount Expended To Date</th>
<th>Authorized Expenditures For Life Of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NYPA –</strong></td>
<td>CARASOFT TECHNOLOGY CORPORATION</td>
<td>Reston, VA</td>
<td>10/19/20</td>
<td>Provide RSA Archer Expert On-Demand services</td>
<td>12/31/22</td>
<td>Si/P</td>
<td>$150,000</td>
<td>$150,000*</td>
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<tr>
<td><strong>BUSINESS SERVICES - RISK &amp; RESILIENCE</strong></td>
<td></td>
<td>(4500324490)</td>
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<td>*Note: represents total for 2-year and 2-month; including interim approval from October 19, 2021 thru March 29, 2022 and an extension thru December 31, 2022; No additional funding</td>
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</tr>
<tr>
<td><strong>OPERATIONS - ENVIRONMENTAL HEALTH &amp; SAFETY</strong></td>
<td>ALLIANCE HOMECARE, INC. dba ALLIANCE NURSING dba ALLIANCE HOMECARE</td>
<td>New York, NY</td>
<td>03/18/20</td>
<td>Provide WPO LPN Nursing Support for COVID-19</td>
<td>03/17/2023</td>
<td>B/S</td>
<td>$554,750</td>
<td>$889,750*</td>
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<td></td>
<td>(4500319743)</td>
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<td>*Note: represents total for 3-year term, including an 1-year extension with an option for one additional 12-month period; requesting interim approval from March 18, 2022 thru March 29, 2022 and an extension thru March 17, 2023; including additional funding request of $335,000</td>
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</tr>
<tr>
<td><strong>OPERATIONS - ENVIRONMENTAL HEALTH &amp; SAFETY</strong></td>
<td>USA LAMP &amp; BALLAST RECYCLING, INC. dba CLEANLITES RECYCLING</td>
<td>Mason, MI</td>
<td>03/01/21</td>
<td>Provide Recycling services for photovoltaic equipment from Authority facilities and projects</td>
<td>02/28/23</td>
<td>B/S</td>
<td>$255,000</td>
<td>$250,000*</td>
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<td></td>
<td>(4500328625)</td>
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<td>*Note: represents total for 2-year term, including an 1-year extension; requesting interim approval from March 1, 2022 thru March 29, 2022 and an extension thru February 28, 2023; No additional funding</td>
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</tr>
<tr>
<td><strong>OPERATIONS - ENVIRONMENTAL HEALTH &amp; SAFETY &amp; CRISIS MANAGEMENT</strong></td>
<td>BURNS &amp; MCDONNELL CONSULTANTS dba BURNS &amp; MCDONNELL CONSULTANTS PC</td>
<td>Kansas City, MO</td>
<td>02/19/18</td>
<td>Provide continuation of ISO 55001 Recertification and Surveillance Audit Services</td>
<td>12/31/24</td>
<td>B/P</td>
<td>$247,717.80</td>
<td>$15 million*</td>
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<td>(4600003450)</td>
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<td>*Note: represents total for 6-year term and 10-month, including a 1-year and 2-month extension thru December 31, 2024; No additional funding</td>
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</tbody>
</table>

**M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the * symbol after the Company Name)

<p>| 1 | Award Basis: | B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source |
|   | Contract Type: | P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service |</p>
<table>
<thead>
<tr>
<th>Plant Site/Bus. Unit</th>
<th>Company Contract #</th>
<th>Start of Contract</th>
<th>Description of Contract</th>
<th>Closing Date</th>
<th>Award Basis¹</th>
<th>Contract Type²</th>
<th>Compensation Limit To Date</th>
<th>Authorized Expenditures For Life Of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATIONS - PROJECT DELIVERY</td>
<td>HITACHI MITSUBUSHI HYDRO CORPORATION Minato-Ku, Japan (460003173)</td>
<td>04/01/16</td>
<td>Provide Home Office Engineering and Technical Support services</td>
<td>03/31/26</td>
<td>$93,349.57</td>
<td></td>
<td></td>
<td>$ 500,000*</td>
</tr>
</tbody>
</table>

CANALS - N/A

† M / WBE: New York State-certified Minority / Women-owned Business Enterprise (indicated by the † symbol after the Company Name)

1 Award Basis: B= Competitive Bid; C= Competitive Search; S= Sole Source; Si = Single Source
2 Contract Type: P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; L= Legal Service
Memorandum

Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Procurement (Services) Contract – Estimating Services On-Call Contract

SUMMARY

The Trustees are requested to approve an award for a competitively bid contract in the amount of $5,000,000 for five (5) years to the following companies: AECOM USA, Inc., Chicago, IL; Burns & McDonnell, Inc. dba Burns & McDonnell Consultants, PC, Kansas City, MO; CHA Consulting, Inc., Albany, NY; Jingoli Power, LLC, Lawrenceville, NJ; Tetra Tech, Inc., Pasadena, CA; Toll International LLC, New York, NY; Trophy Point, LLC, Blasdell, NY; and WSP USA, Inc., New York, NY.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year.

This contract has been scoped such that it aligns with the goals of NYPA’s as well as New York State’s ambitions to be carbon-neutral by 2050 through enhancing internal capabilities to provide cost-estimating, value engineering, and risk evaluations in support of strategic investments in NYPA’s existing and future asset base.

The Estimating and Planning team provide internal services focused on resource planning and alignment, estimating and value engineering support, and provide key insight into the financial forecasts of the projects within the Capital portfolio. The estimates performed by the team provide the basis for the Authority’s 1-, 5- and 10-year plans, allowing the Authority to look ahead and make the appropriate financial decisions for both the well-being of the company and its customer base. The Authority continues to move forward with large initiatives for the Next Generation Niagara, Smart Path Connect, Propel NY and the Transmission Life Extension and Modernization programs. These programs and the other 200 plus projects in the Utility Operations Project Portfolio all need additional resources from the Estimating and Planning group to maintain the appropriate level of quality and support.

The portfolio continues to grow and NYPA is looking for a team of industry experts in cost estimating with specific knowledge of generation, transmission, and substation assets to provide estimating services on an on-call basis.

A Request for Proposals (“RFP”) was issued for estimating services for a one-year term and piloted in 2021 for supporting Utility Operations and other business units. After piloting the initial contracts, this RFP incorporated lessons learned and additional services to align with business needs, including, but not limited to, expanded Risk Analysis with Monte Carlo Simulations and Value Engineering.
This contract will be awarded to further VISION2030, provide more cohesive project teams, and keep project efficiency high. It will be monitored throughout the term and re-evaluated based on NYPA stakeholder requirements to ensure on-going alignment with NYPA’s strategic vision.

DISCUSSION

Pursuant to the Authority’s Guidelines for Procurement Contracts, the Authority issued an RFP for No. Q21-7241CC for Estimator Services via Ariba e-sourcing which was advertised in the New York State Contract Reporter on November 4, 2021. Twenty-two (22) supplier(s) were listed as having been invited to or requested to participate in the Ariba Event. On December 6, 2021, eleven (11) proposal(s) were received electronically via Ariba, as follows, and were evaluated, as further set forth in the Award Recommendation documents:

<table>
<thead>
<tr>
<th>SUPPLIER (Use the W9 Form)</th>
<th>M/W OR SDVOB OR NYSSBE</th>
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<tbody>
<tr>
<td>AECOM USA Inc.</td>
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<tr>
<td>Burns &amp; McDonnell Consultants, Inc d/b/a Burns &amp; McDonnell Consultants, P.C.</td>
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<tr>
<td>CHA Consulting, Inc.</td>
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<tr>
<td>Ellana, Inc.</td>
<td>WBE</td>
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<td>Hill International Inc.</td>
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<td>Jingoli Power, LLC</td>
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<td>Sherpa Construction Consulting, LLC</td>
<td>MBE</td>
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<td>Tetra Tech, Inc.</td>
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<tr>
<td>Toll International LLC</td>
<td>MBE</td>
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<tr>
<td>Trophy Point, LLC</td>
<td>SDVOB</td>
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<tr>
<td>WSP,Inc. (Parsons Brinckerhoff Inc)</td>
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The Evaluation Committee comprised of Project Delivery, OPMG, Business Development and Strategic Supply Management reviewed the proposals for quality and relevant content. The proposals were evaluated and ranked for all eleven (11) respondents based on relevant criteria including the following: technical experience and expertise in transmission, generation and general construction estimating, as well as personnel availability, pricing, and contract terms and conditions.

The top six ranking firms plus the two highest ranking firms from the MWBE/SDVOB supplier cohort are recommended for award and will provide an appropriate level of support for Generation, Transmission and General Construction projects.
SUPPLIER

<table>
<thead>
<tr>
<th>Supplier Name</th>
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<tbody>
<tr>
<td>AECOM USA Inc.</td>
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<tr>
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<tr>
<td>WSP, Inc. (Parsons Brinckerhoff Inc)</td>
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</tbody>
</table>

All suppliers can meet the following MWBE/SDVOB goals set for this procurement: MBE: 10% WBE 10% SDVOB 3%

Based on the aggregate rankings provided by the Evaluation Committee, the suppliers below rated lower and will not be part of the award. Additional details resulting in the lower scores for each non-awarded supplier are provided below:

- Ellana, Inc. received relatively low scores in the Monte Carlo analysis and showed limited Transmission experience which led to their lower ranking. Both suppliers were included as potential subcontractors to recommended awardees but will not be considered as a supplier.

- Hill International’s costs were higher than other suppliers and non-competitive. The company was also lacking in generation and transmission experience which led to its lower ranking and will not be considered as a supplier.

- Sherpa Construction Consulting, LLC had limited transmission and generation experience and additional costs for Monte Carlo software. The company was included as a potential subcontractor to recommended awardees and will not be considered as a supplier.

FISCAL INFORMATION

Payment for this work will be aligned with the projects being supported.

RECOMMENDATION

The Senior Vice President - Operations Support Services & Chief Engineer, the Vice President - Strategic Operations, the Vice President - Strategic Supply Management, the Director – Operations Portfolio Management Group and the Director – Estimating & Planning recommend that the Trustees approve a five-year personal services contract to the eight following qualified suppliers: AECOM USA, Inc., Chicago, IL Burns & McDonnell, Inc. dba Burns & McDonnell Consultants, PC, Kansas City, MO, CHA Consulting, Inc. Albany, NY, Jingoli Power, LLC, Lawrenceville, NJ, Tetra Tech, Inc., Pasadena, CA, Toll International LLC, New York, N.Y., Trophy Point, LLC, Blasdell, NY, WSP USA, Inc., New York, NY for a period of five years for a total aggregate amount of $5,000,000
For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the five-year contract to the firms listed below in the aggregate not-to-exceed amount of $5,000,000, is hereby authorized for estimating services support of the NYPA project portfolio, and as recommended in the foregoing report of the Interim President and Chief Executive Officer;

<table>
<thead>
<tr>
<th>Contractors</th>
<th>Contract Amount</th>
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<tr>
<td>AECOM USA Inc.</td>
<td>$5,000,000</td>
</tr>
<tr>
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<td>WSP, Inc. (Parsons Brinckerhoff Inc.)</td>
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AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chair, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
Date: March 29, 2022

To: THE TRUSTEES

From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Clean Path NY Project - Acquisition of 50 Acres of Real Property, Town of Delhi, County of Delaware

SUMMARY

The Trustees are requested to authorize the acquisition by purchase or eminent domain of approximately 50.92 acres of real property presently owned by The Linda S. Brodeur Revocable Trust (“Brodeur”) in the Town of Delhi, County of Delaware, for the sum of One Million Three Hundred Fifty Thousand Dollars ($1,350,000.00).

BACKGROUND

The Authority’s Expenditure Authorization Procedures governing real estate require the Trustees’ approval for the acquisition of fee interests in real property where the fair market value exceeds $250,000.

This acquisition is in support of the Clean Path NY Project (“Project”), the goal of which is to deliver renewable power from existing solar and wind generation projects in Upstate and Western New York through a newly constructed High Voltage Direct Current (“HVDC”) transmission line from Fraser, NY to New York City. The HVDC line requires the construction of two converter stations, one at each end of the line. The northern of the two converter stations, to be built on the subject property at Fraser, NY, is needed to convert the electrons flowing from the AC system to a direct current and then flow through onto the new HVDC line.

DISCUSSION

At the request of Project Development, Real Estate staff were directed to acquire real property suitable for the construction of a converter station within one mile of NYSEG’s Fraser substation and adjacent to the Marcy South Right of Way. This request was extremely time sensitive due to NYSERDA’s request for proposal submission dates. As a result of NYSEG’s existing infrastructure and the uneven terrain, suitable locations were extremely limited. Real Estate staff approached multiple landowners and were able to negotiate an agreement with Brodeur to acquire a one-year option to purchase approximately 40 acres for a total consideration of $995,000, with an upfront option fee of $80,000. On April 27, 2021, the President and Chief Executive Officer authorized entry into the option agreement and the agreement was fully executed on May 3, 2021. The Project team subsequently determined that additional land was required for the converter station and appurtenant facilities, and at their request this agreement was amended to include the entire 50.92-acre parcel for a total consideration of $1,350,000.
The purchase price represents a premium over average property values in the area, but the strategic location of the property, the limited number of feasible locations and recent acquisitions by NYSEG have significantly impacted land values in the immediate vicinity of the Fraser substation. The $80,000 option fee will be applied to the purchase price.

FISCAL INFORMATION

Funds required for the acquisition will come from the Authority’s Capital Fund.

RECOMMENDATION

The Vice President – Project and Business Development and the Vice President – Enterprise Shared Services recommend that the Trustees approve the acquisition of approximately 50.92 acres of real property presently owned by The Linda S. Brodeur Revocable Trust in the Town of Delhi, County of Delaware, for the sum of One Million Three Hundred Fifty Thousand Dollars ($1,350,000.00).

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLVED, That the Interim President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 50.92 acres of real property, presently owned by The Linda S. Brodeur Revocable Trust, located in the Town of Delhi, Delaware County, on substantially the terms set forth herein, subject to approval of documents by the Interim Executive Vice President and General Counsel or her designee; and be it further

RESOLVED, That the Vice President – Enterprise Shared Services, or designee, is hereby authorized to execute any and all other agreements, papers, or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Interim Executive Vice President and General Counsel; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
Date: March 29, 2022
To: THE TRUSTEES
From: THE INTERIM PRESIDENT and CHIEF EXECUTIVE OFFICER
Subject: Smart Path Connect Project - Acquisition of 33 Acres of Real Property, Town of Chateaugay, County of Franklin

SUMMARY

The Trustees are requested to authorize the acquisition by purchase or eminent domain of approximately 33 acres of real property presently owned by Bilow Realty Holdings, LLC (“Bilow”) in the Town of Chateaugay, County of Franklin, for the sum of Six Hundred Eighty-Seven Thousand Five Hundred Dollars ($687,500.00).

BACKGROUND

The Authority’s Expenditure Authorization Procedures governing real estate require the Trustees’ approval for the acquisition of fee interests in real property where the fair market value exceeds $250,000.

This acquisition is in support of the Smart Path Connect Project (“Project”), the goal of which is to allow for renewable generation from northern New York regions to be transmitted to higher load areas of the state, both improving the NYS renewable energy consumption, as well as increasing the efficiency of energy pricing throughout the state.

DISCUSSION

At the request of Project Development, Real Estate staff was directed to acquire real property suitable for the construction of the new Willis 230kV yard adjacent to the existing Willis substation in the Town of Chateaugay. Several landowners were approached for this purpose. Due to acreage and design constraints on the property immediately to the north, and strong landowner reluctance on the parcel to the east, the subject property was considered the best alternative. Real Estate staff was able to negotiate an agreement with Bilow to acquire a one-year option to purchase approximately 33 acres for a total consideration of $687,500, with an upfront option fee of $25,000. On August 5, 2021, the President and Chief Executive Officer authorized entry into the option agreement and Bilow executed the agreement on August 18, 2021. Authorization is now sought to proceed with acquisition of the property.

Staff believes that the price is justified due to the strategic location of the property adjacent to, and immediately east of the existing Willis substation and under the existing Massena-Plattsburgh transmission line, the limited availability of sufficient buildable land in the immediate vicinity, and the increased competition for land close to transmission assets due to the rapid expansion of independent large-scale renewable projects in the area. The $25,000 option fee will be applied to the purchase price.
FISCAL INFORMATION

Funds required for the acquisition will come from the Authority’s Capital Fund.

RECOMMENDATION

The Vice President – Project and Business Development and the Vice President – Enterprise Shared Services recommend that the Trustees approve the exercise of an option agreement to acquire approximately 33 acres of real property presently owned by Bilow Realty Holdings, LLC in the Town of Chateaugay, County of Franklin, for the sum of Six Hundred Eighty-Seven Thousand Five Hundred Dollars ($687,500.00).

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Justin E. Driscoll
Interim President and Chief Executive Officer
RESOLUTION

RESOLVED, That the Interim President and Chief Executive Officer and the Vice President – Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 33 acres of real property, presently owned by Bilow Realty Holdings, LLC, located in the Town of Chateaugay, Franklin County, on substantially the terms set forth herein, subject to approval of documents by the Interim Executive Vice President and General Counsel or her designee; and be it further

RESOLVED, That the Vice President – Enterprise Shared Services, or designee, is hereby authorized to execute any and all other agreements, papers, or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Interim Executive Vice President and General Counsel; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.
MINUTES OF THE JOINT MEETING
OF THE
POWER AUTHORITY OF THE STATE OF NEW YORK AND
NEW YORK STATE CANAL CORPORATION

January 25, 2022

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a. **Commercial Operations**  
i. Awards of Fund Benefits from the Northern New York Economic Development Fund Recommended by the Northern New York Power Proceeds Allocation Board  
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Resolution  
Resolution  
Resolution
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Minutes of the Joint Meeting of the New York Power Authority’s Trustees and Canal Corporation’s Board of Directors held via video conference at approximately 10:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Vice Chairman
Tracy McKibben
Michael A.L. Balboni
Dennis T. Trainor
Bethaida Gonzalez
Anthony J. Picente, Jr. – excused

Justin Driscoll Interim President and Chief Executive Officer
Philip Toia President – NYPA Development
Lori Alesio Interim Executive Vice President and General Counsel
Adam Barsky Executive Vice President and Chief Financial Officer
Joseph Kessler Executive Vice President and Chief Operating Officer
Kristine Pizzo Executive Vice President and Chief Human Resource & Administrative Officer
Sarah Salati Executive Vice President and Chief Commercial Officer
David Mellen Regional Manager – Canals
Daniella Piper Regional Manager and CTO
Yves Noel Senior Vice President and Chief Strategy Officer
Robert Plascik Senior Vice President – Chief Information & Technology Officer
Keith Hayes Senior Vice President – Clean Energy Solutions
Paul Tartaglia Senior Vice President – EHS & Crisis Management
Karen Delince Vice President and Corporate Secretary
Joseph Gryzlo Vice President and Chief Ethics & Compliance Officer
Adrienne Lotto Walker Vice President and Chief Risk & Resilience Officer
Emilie Bolduc Vice President – New York Energy Manager
John Canale Vice President – Strategic Supply Management
Ricardo DaSilva Vice President – Strategic Operations
Fabio Mantovani Vice President – Head of e-Mobility
Eric Meyers Vice President – Chief Information Security Officer
Anne Reasoner Vice President – Budgets & Business Controls
Lisa Wansley Vice President – Environmental Justice
James Levine Assistant General Counsel – Finance & Bonds
Victor Costanza Senior Director – Cyber Security & Deputy CISO
Earl Fauflagui Senior Director – Market & Commodities Risk
Lawrence Mallory Senior Director – Security & Crisis Manager
Joseph Rende Senior Director – Key Account Management
Dave Work Senior Director – Contract & Program Operations
Bryan Chan Director – Market Analysis & Hedging
Christopher Fry Director – Business Development
Laura Yu Director – Enterprise Change Management & Engagement
Thakur Sundeeep Controller
Christina Iwaniw R&TD Engineer II – NY Energy Manager
Carley Hume Chief of Staff – President’s Office
Mary Cahill Manager – Executive Office
Christopher Vitale Financial Performance & Reporting Manager
Lorna Johnson Senior Associate Corporate Secretary
Sheila Quatrocci Associate Corporate Secretary
Kelli Higgs Assistant Corporate Secretary
Michele Stockwell Project Coordinator – Executive Office

Chairman Koelmel presided over the meeting. Corporate Secretary Delince kept the Minutes.
Introduction

Chairman Koelmel welcomed the Trustees/Directors and NYPA and Canal staff members who were present at the meeting. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority’s Bylaws, Article III, Section 3.

1. Adoption of the January 25, 2022 Proposed Meeting Agenda

On motion made by Trustee Balboni and seconded by Trustee McKibben, the members adopted the meeting Agenda.

Conflicts of Interest

Chairman Koelmel and members, Nicandri, Picente, McKibben, Trainor and Gonzalez declared no conflicts of interest based on the list of entities previously provided for their review. Trustee Balboni declared a conflict of interest as it relates to Deloité & Touche, item #2e v.

2. DISCUSSION AGENDA

a. Strategic Initiatives

i. Interim President and Chief Executive Officer’s Report

Interim President and Chief Executive Officer, Justin Driscoll provided an update on NYPA’s performance to date. He said that the Authority is well-positioned to execute on its mission and also advance Governor Hochul’s energy policies, and, more broadly, the clean energy transition in New York State. He continued that he has been working very closely with the NYPA Executive Management team and his colleagues in the Governor’s office to achieve the Authority’s VISION2030 Strategy and is confident that the Authority will be in a position to drive its vision forward and execute on its strategy.

December 2021 – VISION2030 Scorecard

As of December 2021, the Authority is meeting or exceeding the measurements it set for VISION2030.

2021 Successes

Strategic Priorities:

- All five Strategic Priorities delivered on their goals.

The Authority launched the VISION2030 Strategy and laid out an ambitious vision and mission, along with specific goals and targets to allow it to measure its progress in five Strategic Priorities and, cross-functionally, put the Authority on track to achieve those ambitious goals. To that end, the Authority supported current and future clean energy resources; transmitting clean energy resources from where they are produced and where they are used; assisted its customers to navigate the changes in the energy industry and reinvigorated the canal communities with new economic and recreational opportunities.
Foundational Pillars:

- Each of the Foundational Pillars achieved key objectives.

The Foundational Pillars reflect the Authority’s efforts to, among other things, make enhancements to existing digital enabling productivity as well as cyber security; lead by example with its ESG and DEI Plans; and prepare for the future through its Risk and Resilience programs and career path framework within the Resource Alignment initiative.

Projects specific to NYPA’s successes in 2021 include:

- Installation of rooftop solar arrays on 47 public school and multiple wastewater treatment facilities. These projects will be in all five boroughs in New York City as well as Ulster, Delaware, and Westchester County with up to 22 megawatts of solar power. Several of these facilities are expected to include energy storage systems that will store energy for use during periods of peak electricity demand.

- Completion of lighting upgrades at Niagara Falls Housing Authority with approximately 1,000 new energy efficient fixtures at four Niagara Falls Housing Authority facilities through NYPA’s Environmental Justice Program.

- Opening of the Utica Energy Zone, a 1500 square-foot facility, which provides an immersive, interactive, state-of-the-art museum experience focused on the past, present, and future of energy in New York State.

- Awards of ten Student Scholarships to College-bound New Yorkers to help increase diversity in the Electric Utility sector. This was the first year of NYPA’s five-year “Future Energy Leaders Scholarship program. NYPA is also a Business Partner in the Pathways and Technology Early College High School (“PTECH”) program, that will offer paid internships this summer to 15 students interested in science, technology, engineering, and math.

- Achieving the first major milestone in the Next Generation Niagara Upgrade Project, a $1.1 billion, 15-year modernization and digitization program to significantly extend the operating life of the Niagara Power Project. This initiative is critical to achieving New York State’s aggressive clean energy goal to transition to 100% carbon-free electricity by 2040.

- Celebration of the lighting of the Fairport Bridge on the Canal system. This newly installed lighting through the state’s Reimagine the Canals initiative, is the first of several planned lighting projects to illuminate historic pieces of the New York Canalway infrastructure.

  New LED lighting illuminated the Fairport lift bridge in Monroe County, as well as two Oneida Lake lighthouses, one in Brewerton in Oswego County and the other at Verona Beach in Oneida County.

- Transmission Development:
  - The Smart Path Project where the Authority has started the fourth of six phases of construction on rebuilding the existing Moses-Adirondack lines which is expected to be in service in 2023.
  - The Smart Path Connect Project is NYPA’s first priority transmission project under its Accelerated Renewable Energy Growth and Community Benefit Act that was granted by the Legislature. This is a joint project with National Grid and is expected to be in service at the end of 2025.
- The Clean Path NY Project was selected by NYSERDA as a winner of the Tier 4 solicitation. This is a partnership between EnergyRe, Invenergy and NYPA. This project will be a 175-mile underground line along NYPA’s Marcy-South right-of-way. NYSERDA recently submitted the contracts for the PSC’s review and the public comment period is currently underway.

- Propel NY Energy is the SENY Public Policy Transmission Need Project. NYPA has submitted seven proposals with its partner NY Transco which is currently in the NYISO viability and assessment process. A final determination is expected in Q3 or Q4 of this year.

- Financial Management

NYPA exceeded its Financial Plan target of $40 million Net Income for the year 2021 and met or surpassed all financial metrics necessary to maintain its AA credit rating.

2021 Accomplishments:

- Merger of the Canal Corporation’s OPED liability into NYPA’s OPED Trust and converted NYPA Medicare Eligible employees into Medicare Advantage Insurance resulting in savings and an improved balance sheet.

- NYPA established a new, Green Transmission Revenue Bond, which will be a separate credit from NYPA, that will increase overall borrowing capacity and enable the Authority to fund priority projects.

- NYPA issued its first Sustainability Plan and Sustainability Report.

- Capital Portfolio

Capital spending for the year 2021 was $916 million of the $1.1 billion budgeted or 84%. This is a 35% increase over 2020 spend.

The capital budget for year 2022 is the most ambitious in NYPA’s history at $1.87M growth, an increase of $90 million or 8% over the 2021 plan.

The largest projects scheduled for 2022 Projects include Smart Path Connect ($158 million); Smart Path ($122 million); and the Central East Energy Connect ($92 million) which are aligned with Governor Hochul’s energy policies and initiatives.

2022 State of the State – New Era for New York

At the State of the State address by Governor Hochul, NYPA was mentioned seven times, including as it relates to the following:

- NYPA will work with NYSERDA and ESD to compete for available federal funding to make New York State a Green Hydrogen Hub. This will build on NYPA’s Brentwood Green Energy Demonstration Project out of the Brentwood Peaker Plant as well as the hydropower award that NYPA made to Plug Power for a facility in Upstate New York to produce Green Hydrogen.

- Harden infrastructure to improve reliability for emergency services throughout the state.

NYPA will undertake the following work at the Police and Fire Departments in 2022, pursuant to the Governor’s State of the State address:
- Commence resiliency installations, including solar storage, back-up generators and energy efficiency measures, at a minimum of 3 sites.

- Complete LED lighting retrofits in 100 precincts. NYPA will identify 5 model first responder facilities and conduct resiliency studies to determine best practices and technical requirements to be used as a blueprint for other facilities across the state.

- Beyond 2022, NYPA will focus on police precincts and 450 fire stations in New York State providing solar, storage and energy efficiency improvements.

### 2022 Goals – Building on NYPA’s Momentum in VISION2030’s Second Year:

**Preserve Hydropower** – NYPA will publish a public report on the future of hydropower based on the NYISO planning study.

**Decarbonize NG Plants** – NYPA will develop and publish a long-term SENY decarbonization plan.

**Lead Transmission** – NYPA will construct and test major projects and develop new proposals for identified NYS transmission needs.

**Serve Customers and State** – NYPA will expand customer segments served and begin voluntary REC sales.

**Reimagine the Canals** – NYPA will launch the “On the Canals” program.

### Research and Development

In the area of Research and Development, NYPA’s Cadenza battery project will become operational in 2022. This is a 50-kW/20kWh battery storage system on-site at the White Plains Office to reduce peak demand. The battery has a unique fire-suppression technology. The project is now installed and will go operational in Q1 2022 for a one-year demonstration.

Another Research and Development project is the 2022 substation robot application. The objective of this project is to inspect unmanned substation assets, such as transformers and breakers online to prevent unscheduled outages and unexpected failures. Testing on this project will resume in May 2022.

### Risk and Resilience

In the Climate Adaptation Study, NYPA is applying downscaled climate impact modeling and infrastructure risk and resilience analysis to NYPA’s current infrastructure. The deliverables will inform the Authority’s adaptation and risk mitigation strategies as well as its capital expenditure planning. The study will be finalized in Q3 2022.

### Financial Management

**Credit**

NYPA plans to execute a Green Transmission Revenue Bond by the end of Q1, execute assignment of its Energy Efficiency Loan Portfolio, and set-up a Revolving Loan Program.

**Financial Reporting**

NYPA plans to complete preparation for Integrated Reporting by year-end and go live in 2023.
Risk & Resilience
NYPA plans to raise its Risk Maturity Level to a score of “3”; strengthen its internal controls and, with legislative and regulatory approval, launch Captive Insurance Company by year-end.

Executive Budget
Governor Hochul recently announced the Executive Budget. Legislation has been proposed by the Governor that will enable NYPA to better deliver services to its customers and also protect the Authority. In that regard, the Captive Insurance Bill will again be included in this year’s budget which will allow NYPA the same ability as the MTA to access new insurance programs through insurance products and participate in federal insurance programs through the Captive Insurance Company, which would be a corporate subsidiary of NYPA.

Part DDD of the Governor’s Executive Budget, an amendment to NYPA’s 1517 Energy Efficiency authority, will allow the Authority to serve any general hospital in New York State, thus expanding the customer base for its energy services program.

Part FFF of the Governor’s Executive Budget, in connection with the Authority’s $10 million pilot, will authorize NYPA to utilize unused broadband capacities to support the Governor’s broadband initiative around the state.

Part ZZZ in 2022, the Authority will authorize $20 million in energy related projects to the State Treasury Fund.

In closing, Interim President Driscoll said that the Authority continues to be a leader and is in complete alignment with Governor Hochul’s goals for the state. The Authority is in a solid financial state with a talented and engaged workforce.

b. Chief Operations Officer’s Report

Mr. Joseph Kessler, Executive Vice President and Chief Operations Officer, provided an update on the Authority’s operations to the Board.

Environment, Health & Safety (EH&S)

DART Rate

DART (Days Away, Restricted or Transferred) is the Authority’s safety metrics.

● The year-to-date DART Rate is 0.59. The target is 0.78.

For 2021, the DART rate was on target; there were no significant injuries to the workforce.

Collaboration on Health &Safety Programs Enterprise-wide

Electrical Safety Program
The safety of the Authority’s employees and contractors is important. The Authority has a significant number of contractors for projects associated with its significant capital budget and holds these contractors to the highest expectations of safety in the performance of the work to be accomplished.
Operations developed the Electrical Safety Program and worked on sharing best practices and new requirements in terms of electrical safety with employees and contractors.

**COVID-19 ICS Response**
NYPA’s Covid Incident Command Structure (“ICS”) and response has been very effective. The incident command structure team uses innovative ideas and technology to protect employees’ health; providing vaccines on site for COVID-19 as well as the flu to make sure that the employees are safe. The team is now working on ramping back on some of the restrictions, taking the effects of the Omicron variant into consideration. The members will be provided further report on the Authority’s efforts on collaborating staff’s return to the office.

**Procurement of EH&S Technical Software**
NYPA plans to procure a EH&S technical software to aid, in real time, the management of EH&S work. As it relates to VISION2030, the software will aid in meeting the group’s Digitization, Resource Alignment, Resilience, and Environmental, Social & Governance goals.

**Enhancing Job Briefings**
NYPA will continue to enhance its job briefings, an OSHA requirement to ensure that the Authority is conducting job safety analyses and briefings for all jobs, developing new policies and standardizing documentations across all sites.

**Updating Hearing Conservation Policy**
After a thorough review of the Occupational Health Program last year, staff identified an improvement opportunity associated with Hearing and Conservation. To that end, an Occupational Health Nurse Practitioner was onboarded to assist in developing Optimal Hearing Protection programs for all employees.

**Drills, Exercises and Preparedness**
In 2021, 59 drill exercises were conducted. This completed all of the regulatory required exercises. These include:
- Crescent Vischer Ferry FERC Emergency Action Plan Exercise
- The NYS Utility Mutual Assistance Exercise hosted by NYPA
- New York State Canal Corporation preemptive lifting of movable dams to prevent flooding

Going forward, the Authority will take into consideration all the lessons learned from the 59 and other exercises, evaluating and implementing improvement opportunities; conducting hazard vulnerability assessments and refresh its Regional Crisis Management plans to ensure that staff is informed on actions to be taken in those instances.

**Major Projects**
- 2021 was a record year for capital investments for the Authority the most significant being the Next Generation Niagara Project with the completion of the first controls of Robert Moses Unit 12. Other projects include the Smart Path Project which foundation work is ongoing and the Central East Energy Connect Project construction which is also ongoing; new towers and conductors are being installed to support a connection between the Authority’s Princetown substation and New Scotland substation.
- The Battery Storage project is a 20-megawatt hours storage facility located adjacent to the Authority’s Willis Substation.
- The Smart Path Connect Project’s Article 7 application was determined complete in December 2021. Settlement negotiations are currently ongoing with the agencies and the team hopes to secure approval in Q3 2022, which will allow the Authority to meet the in-service date of Q4 2025.
- The Y49 Reconductoring project repairs and remedial work have been completed. Plans are now being made to replace the entire Nassau County segment, with completion scheduled for May 2023.

c. Chief Commercial Officer’s Report

Ms. Sarah Salati, Executive Vice President and Chief Commercial Operations Officer, provided highlights of the report to the Board.

In 2021, Commercial Operations teams focused on three core revenue streams, namely, the transmission build; commercial contracting - bidding or contracting through economic development programs – hydro and generation; and the Behind the Meter and Customer facing projects with the evolution of VISION2030 and the shift to focus more on transmission with the NYPA Development units.

In 2022, Commercial Operations will focus on the commercial electricity supply P&L as well as Behind the Meter and the development of strategies for its implementation.

Electricity Supply through December 2021

2021 Merchant Gross Margin Projections
The 2021 Merchant Gross Margin is above the target of $272.4M.

Economic Development
Economic Development programs continue to support the economic growth and vitality of New York State. It is also providing stable contracting and long-term contracts for the Authority’s hydropower, supporting its VISION2030 goal of preserving and enhancing the value of hydropower. The Authority continues to contract and allocate power to support job creation and retention as well as capital investment in the State.

On the Merchant side, with the unallocated hydropower, working with the Risk and Finance departments, Commercial Operations has developed a hedging strategy to support ensuring that the Authority has less volatility in the EBIDA margin, which comes from the electricity supply; protecting the downside, but ensuring that they are taking into account the market constraints, hydro flow volumes and the ability to capture some upside relative to the wholesale market.

Economic Development Allocations
In terms of new allocations, new jobs committed and extensions to existing customers, 77 megawatts were allocated in 2021 to new companies and organizations representing 73 new customers that are taking advantage of the Authority’s economic development programs.

The Authority has created and supported the creation of more than 28,000 new jobs, predominantly in the hospital and medical areas, and $2.2 billion of new capital commitments in 2021.

Customer Business Lines:

Clean Energy Solutions
Despite being fatigued from the COVID-19 Pandemic, Commercial Operations adapted to the headwinds and was able to meet its capital spend, and have a robust pipeline for next year, well above the target of $223 million.
eMobility
NYPA is meeting a very strong market need supporting the EVolve network, building fast-charging ports across the state, as well as at its customer facing business, working and developing master plans with the major transit facilities and agencies across the state. NYPA is now the largest public facing DCFC charging network in New York State.

NY Energy Manager and DER Flexibility
Despite headwinds due to the inflationary pressures, the Authority continues its efforts towards meeting its 2025 targets in terms of installed capacity.

As it relates to New York Energy Manager, the Authority is focused on the flexibility of the grid, optimizing the energy usage of its customers.

The Authority met the target for this metric for the year 2021, supporting the opportunity for customers to reduce their energy usage, save on their energy bills, and, ultimately, reduce the amount of demands for supply side construction of renewables that is needed to reach its 2040 target.

2021 Highlights
Commercial Operations has been focused on integrating new capabilities to better structure electricity supply in an increasingly competitive and volatile market with the integration of renewables. To that end, the Authority closed a deal with two anchor customers for renewable or green products, Mohawk Fine Papers and New York Law School. Commercial Operations will report further on incremental closed transactions in 2022.

In terms of energy efficiency, Commercial Operations will continue to work with Finance to ensure that it has the financing mechanisms to support this essential work with its customers, particularly state agencies.

Commercial Operations will also continue to leverage new technology, supporting the Digitization Pillar to provide the products and services for the customers, e.g., Virtual Power Plant and integrated offerings. They will also continue to deliver on its products and services effectively and efficiently, leveraging new technology with digital remote solutions.

As it relates to NYPA Ventures, Commercial Operations will continue to support the incubation and agile scaling of the sustaining organizations.

Commercial Operations will identify opportunities for standardization processes, as well as significant process improvements for project delivery in 2022, both within the Operations department and across the organization.

Customer Satisfaction
In terms of Customer Satisfaction, NYPA is at the top quartile amongst the Electric Utility Business Index. This result was due mainly to the EDCAP of 1.0 and 2.0, which provided bill deferment as well as incremental allocations to help organizations come out of the COVID-19 pandemic. Secondly, increased efficiency in contract turn-around time as well as the communication during construction; and third, in products and services, the new marketing website and the proactive communications related to the new products and services.

2022 - Looking Forward
NYPA is a leader in executing the state’s policy across the board, including the energy sector, working closely with its customer base as well as ensuring that it is impactful in its relationships with other state agencies such as NYSERDA.
Secondly, Commercial Operations will be implementing strategies for the commercial electricity supply and behind the meter, supporting the VISION2030 Strategy.

Thirdly, in terms of getting closer to its customers, Commercial Operations plans to host a Customer Clean Energy exchange event to further enhance its relationships with its public and private sector customers and maintain the role of trusted energy advisor for the organizations it works with.

Finally, Commercial Operations will continue with its efforts to be an industry leader and deliver on its commitments in support of the VISION2030 Strategy.

d. Chief Financial Officer’s Report

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of the report to the Board. He said that the results being reported are unaudited, the Authority is currently going through the audit process and KPMG, the Authority’s auditors, will provide the official report to the Board at its meeting in March.

Year-End Actuals – (January – December 2021)

Net Income is $72.6 million against the target of $40 million. The major drivers for this result include an improvement against the EBIDA targets; the hedging strategy which minimized the downside risks; the transmission margins which exceeded the projections, driven by the New Annual Transmission Revenue Requirement that was filed on July 1st, as well as FACTS revenues that was received related to congestion revenue pricing.

Margins - Generation – revenues are ahead the Budget Plan projections

Margins - Transmission – revenues are ahead of the Budget Plan projections

Margins - Non-Utility – revenues are slightly below the Budget Plan. This was due mainly to the delays related to some energy efficiency projects.

Operating Expense

O&M is ahead of the budget of $46 million. The main drivers for this result are related to the OPED merger of Canals into the NYPA Trust as well as the implementation of the Medicare Advantage Plan for NYPA employees who have reached the age of 65 and Medicare eligible.

Mr. Barsky ended that, overall, 2021 was a successful year for the Authority, especially given the challenges from the COVID-19 pandemic which resulted in a Net Loss. The Authority is back on track for its long-term trajectory, increasing funds available for debt service so that it can continue to fund its major capital investments, going forward.

2022 Budget Plan

- The Authority is well positioned in a number of areas to meet the 2022 Budget Plan.
- Finance is looking into the impacts of the supply and inflation pressures and doing a deep dive analysis on all of the Authority’s contracts, reviewing the adequacy of contingencies and cost estimates to ensure that they are accounting for increased pricing.
- Finance is in the process of planning an extensive marketing outreach as it relates to the Green Transmission Revenue Bond issue approved by the Board, the goal of which is to inform the investment community of its major transmission investments and what is required of them.

- Finance will be working with the State Division of Budget through budget negotiations for approval of NYPA’s ability to file with the Department of Financial Services Capital Insurance Company. This will enable NYPA to manage significant risks that are currently uninsurable.

e. **Finance and Risk Committee Report**

Chair Tracy McKibben provided the following report:

“The Finance and Risk Committee met on January 12, 2022, adopted the minutes of the December 7, 2021 meeting, received one (1) staff report and considered and recommended the following six (6) resolutions which are now before the Trustees/Directors for adoption.

**Finance and Risk Committee Recommendations for Approval:**

i. **Additional Proposed Issuance of Bonds and Release of Funds in Support of Separately Financed Projects**

1. **Proposed Issuance of Transmission Project Revenue Bonds**

   RESOLVED, that the Trustees hereby confirm that (i) the Committee met on January 12, 2022, and resolved to recommend the actions below, (ii) at the time of such resolution, the Committee was composed of all Trustees and (iii) each Trustee has received and reviewed the information, documents and other materials presented at such Committee meeting; and be it further

   RESOLVED, that the Trustees hereby approve and adopt the resolution authorizing the Proposed Issuance of One or More Series of Transmission Project Revenue Bonds and Related Actions and Approvals, and the resolutions referred to therein, with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chairman or the Interim President and Chief Executive Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby, to provide for the issuance of special obligations of the Authority for the purpose of financing transmission projects and related costs; and be it further

   RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Executive Vice President and Chief Financial Officer, or Treasurer be, and each hereby are, authorized and directed by the Trustees, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel.

2. **Release of Additional Funds in Support of Separately Financed Projects**

   RESOLVED, That the Trustees authorize the release of an additional amount of up to $65 million in funding to support Separately Financed Projects of the Authority, as discussed in the report to the Committee of the Interim President and Chief Executive Officer; and be it further
RESOLVED, That the Trustees affirm the amounts presently set aside as reserves in the Operating Fund are adequate for the purposes specified in Section 503(2) of the Authority’s General Bond Resolution, that the amount of up to $65 million in funding as described in such report is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Bond Resolution, and that the release of such amount is feasible and advisable; and be it further

RESOLVED, That the Trustees affirm that as a condition to making the payments specified in such report, on the day of such payments, the Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Bond Resolution; and be it further

RESOLVED, That the Trustees affirm that the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer, the Interim Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Interim Executive Vice President and General Counsel. Without limiting the generality of the foregoing, any amount released from the General Bond Resolution may, at the direction of any such officer, be transferred to any account or fund established pursuant to a bond resolution authorizing the issuance of bonds for any Separately Financed Project.

ii. Smart Path Connect Project – Steel Pole Structures and Anchor Bolt Cages – Contract Award

RESOLVED, That the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of a five-year equipment contract to Sabre Industries Inc. of Alvarado, Texas in the amount of $91,518,671 for the Smart Path Connect Project - Steel Pole Structures and Anchor Bolt Cages, in accordance with, and as recommended, in the report to the Committee of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs for the Smart Path Connect Project; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

iii. Y49 Cable – Engineer, Procure and Construct Reconductoring – Contract Award

RESOLVED, That the Trustees approve, pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, the award of a two-year construction contract to Elecnor Hawkeye, LLC in the amount of $37,877,000 for the reconductoring of the Nassau Segment of the Y49 Transmission Line, in accordance with, and as recommended, in the report to the Committee of the Interim President and Chief Executive Officer; and be it further
RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs for the Y49 Nassau Segment Reconductoring Project; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

iv. Beechcraft King Air B350 – Transfer of Ownership to the New York State Police

RESOLVED, That the Finance and Risk Committee recommends that the Trustees, pursuant to Title 5-A of Article 9 of the Public Authorities Law, the Authority’s Guidelines for the Disposal of Personal Property, and the Power Authority Act, approve the transfer of ownership of the Authority’s King Air B350 S/N FL539, Registration Number N350NY, aircraft to the New York State Police for use by the State Police in furtherance of its mission to serve, protect and defend the people of the State of New York and in accordance with the report of the Interim President and Chief Executive Office; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

v. Enterprise Risk and Resilience Consulting Services – Contract Awards

RESOLVED, That the Trustees approve the award of Enterprise Risk and Resilience Consulting Services, pursuant to RFP No. Q21-7234SS and as described in the report to the Committee of the Interim President and Chief Executive Officer, to Aon Risk Services Northeast, Inc. (New York, NY); Customer Care Network, Inc. (Marietta, GA); Deloitte & Touche LLP (New York, NY); Ernst & Young LLP (New York, NY); Guidehouse Inc. (New York, NY); Marsh USA, Inc. (New York, NY) and The Brattle Group, Inc. (Boston, MA), in an aggregate amount of $10 million for a term of 5 years; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

On motion made by Chairman Koelmel and seconded by Vice Chair Nicandri, the foregoing resolutions, as recommended by the Interim President and Chief Executive officer, were unanimously adopted.
1. Approval of the NYPA and Canals Risk Appetite Statement

Ms. Adrienne Lotto, Vice President and Chief Risk & Resilience Officer provided highlights of staff’s recommendation to the members. She said that the purpose of the Risk Appetite Statement is to provide the New York Power Authority (NYPA) and Canal Corporation (Canals) staffs with broad-based guidance on the amount and type of risk that the Authority and Canal Corporation are willing to accept, mitigate, transfer, or avoid based on an evaluation of opportunities and threats at a corporate level, and in key risk categories to achieve the NYPA and Canals mission and objectives.

On motion made by Trustee Gonzalez and seconded by Trustee Trainor the following resolution, as recommended by the Interim President and Chief Executive officer, was unanimously adopted.

RESOLVED, That the Trustees and the Board of Directors hereby approve the NYPA and Canals Risk Appetite Statement; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and the Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canals to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

2. Historical Lookback on Hedging Strategy

Mr. Bryan Chan, Director of Market Analysis and Hedging, provided an historical lookback on the Authority’s Hedging Strategy to the members. He said the guiding principle for the hedging program is to give more stability and certainty to the NYPA revenue stream.

Hedging Dampens Price Volatility
The goal of the hedging strategy follows the concepts of the dollar-cost averaging strategy.

Without the ability to time the market, it is important to stay the course once a strategy has been adopted to stabilize revenue and minimize downside risks.

Prior Year Lookback on Hedging Cost
In 2019 and 2020, the hedges, while at very low percentages, protected NYPA from lower revenue streams.

In 2021, the market turned around and gas prices rebounded on the upside; approximately $30 million. If the rebound continues during 2022, there will be additional opportunity costs. However, if the market turns, the hedges will give the Authority the protection it is looking for; therefore, the hedging program is performing as intended. The Authority is mitigating the price exposure in some years at the expense of opportunity in other years.

Year 2021 could be considered the first full stable year of the new Hedging Strategy of a multi-year strategy, achieving the targets going into 2022. Also, in December 2021, the Executive Risk & Resilience Management Committee (ERRMC) approved the 2022 Plan.

While the overarching goal of the revenue stability has been confirmed with the strategy, the plan is to continue reviewing the data provided, along with other market data, to look for areas of improvement to build upon the current hedging program and hedging strategy.
One of the key updates to the 2022 Plan is aligning target dates with the budget snapshot dates to provide additional stability going to budget setting.

The team will continue to work with the ERRMC and provide the members with any risk updates.

f. **Cyber and Physical Security Committee Report**

Chair Michael Balboni reported that the Cyber and Physical Security Committee met earlier, and staff reported on NYPA’s cyber security posture and 2022 plans including an independent assessment of the Cyber Security program using the NIST Cyber Security Framework and how NYPA will be using the framework annually to assess and prioritize future program improvements. Staff also reported on the recently completed drills and reviews of NYPA’s FERC and NERC regulated security programs.

Chair Balboni said that this is a time of unprecedented cyber security activity. As a comparison, in the first quarter of years 2020 and 2021, ransomware went up approximately 62%; the Authority is vigilant to make sure that it understands the threat landscape and its ever-evolving nature.

3. **CONSENT AGENDA:**

On motion made by Trustee Trainor and seconded by Trustee McKibben, the Consent Agenda and the following resolutions, as recommended by the Interim President and Chief Executive Officer, were unanimously adopted.

a. **Commercial Operations**

i. **Awards of Fund Benefits from the Northern New York Economic Development Fund Recommended by the Northern New York Power Proceeds Allocation Board**

WHEREAS, The Northern New York Power Proceeds Allocation Board (“Allocation Board”) has recommended that the Authority make an award of Fund Benefits from the Northern New York Economic Development Fund (“Fund”) to the eligible applicant in the amount indicated in the report of the Interim President and Chief Executive Officer;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the Allocation Board and authorizes an award of Fund Benefits to the applicant in the amount indicated for the reasons set forth in the report and the exhibit and other information referred to therein, conditioned upon an agreement between the Authority and the applicant on the final terms and conditions that would be applicable to the award and set forth in a written award contract (“Award Contract”) between the Authority and the applicant, approved by the Interim President and Chief Executive Officer, or his designee, and approved by the Interim Executive Vice President and General Counsel or her designee, as to form; and be it further

RESOLVED, That the Executive Vice President and Chief Commercial Officer, or such official’s designee, is authorized to negotiate with the applicant concerning such final terms and conditions that will be applicable to the award; and be it further

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RESOLVED, That the Executive Vice President and Chief Commercial Officer, or such official's
designee, is authorized to execute on behalf of the Authority an Award Contract for the award subject to
the foregoing conditions; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive
Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is,
authorized on behalf of the Authority to do any and all things, take any and all actions and execute and
deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution,
subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

ii. Expansion Power Allocations

RESOLVED, That an allocation of 2,930 kilowatts of Expansion Power (“EP”) be awarded to LW1
Operator, LLC for a term of 10 years as detailed in the report of the Interim President and Chief Executive
Officer, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That an allocation of 400 kilowatts of EP be awarded to Niagara Refining LLC for a
term of 10 years as detailed in the report of the Interim President and Chief Executive Officer, be and
hereby is approved, subject to rates previously approved by the Trustees; and be it further

RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities
Law (“PAL”) §1009 on the terms of the proposed form of the direct sale contract with LW1 Operator, LLC
for the sale of the EP allocation; and be it further

RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit a copy of the
proposed Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly,
the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the
Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to PAL
§1009; and be it further

RESOLVED, That the Chairman, the Vice Chair, the Interim President and Chief Executive
Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is,
authorized on behalf of the Authority to do any and all things, take any and all actions and execute and
deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution,
subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

b. Procurement (Services) Contracts

i. Procurement (Services) and Other Contracts – Business Units
and Facilities – Awards, Extensions, and/or Additional Funding

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority
and Canal Corporation, the award and funding of the multiyear procurement services contracts are
hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as
recommended in the foregoing report of the Interim President and Chief Executive Officer; and be it
further

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority
and Canal Corporation, the contracts are hereby approved and extended for the period of time indicated,
in the amounts and for the purposes listed therein, as recommended in the foregoing report of the Interim
President and Chief Executive Officer; and be it further
RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority and Canal Corporation are, and each of them hereby is, authorized on behalf of the Authority and Canal Corporation to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

c. Real Estate

i. Smart Path Connect Project – Acquisition of 1.536 Acres of Real Property, Town of Massena, County of St. Lawrence

RESOLVED, That the Interim President and Chief Executive Officer and the Vice President - Enterprise Shared Services be, and hereby are, authorized to acquire, by purchase or eminent domain, a fee interest in approximately 1.536 acres of real property, presently owned by Bonnie-Jean E. LaPradd, located in the Town of Massena, St. Lawrence County, on substantially the terms set forth, subject to approval of documents by the Interim Executive Vice President and General Counsel or her designee; and be it further

RESOLVED, That the Vice President – Enterprise Shared Services, or designee, is hereby authorized to execute any and all other agreements, papers, or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Interim Executive Vice President and General Counsel; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates, and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

d. Ratemaking

i. Adjustment to Westchester County Governmental Customer Cost of Service and Rates – Notice of Adoption

RESOLVED, That the Senior Director - Key Account Management, or his designee, be, and hereby is, authorized to issue written notice to the affected Customers of this final action by the Trustees for a 20.6% adjustment of the Cost of Service and associated rates applicable to the Westchester County Governmental Customers as set forth in the report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the Secretary of State for publication in the New York State Register and to submit such other notice as may be required by statute or regulation concerning the Cost of Service and rates adjustment; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and
deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

e. Canal Corporation

i. Canal Corporation Weed Harvester – Transfer of Ownership for Less than Fair Market Value to the Town of Dresden, New York

RESOLVED, That pursuant to Title 5-A of Article 9 of the Public Authorities Law, the Canal Corporation’s Guidelines for the Disposal of Personal Property and the Power Authority Act, the Board of Directors hereby approve the transfer of ownership of the weed harvester and transport trailer to the Town of Dresden, New York, as recommended in the report of the Interim President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the Interim President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Interim Executive Vice President and General Counsel.

f. Governance Matters

i. Proposed 2022 Schedule of Meetings

RESOLVED, That the 2022 meeting schedule, as set forth in the report of the Vice President and Corporate Secretary, be, and hereby is, approved.

ii. Approval of the Minutes of the Joint Meeting of the New York Power Authority’s Board of Trustees and Canal Corporation’s Board of Directors held on December 7, 2021

On motion made and seconded the Minutes of the Joint Meeting of the New York Power Authority’s Board of Trustees and Canal Corporation’s Board of Directors held on December 7, 2021 were unanimously adopted.

4. Motion to Conduct an Executive Session

“Mr. Chairman, I move that the NYPA and Canal Boards conduct an executive session to discuss the financial and credit history of a particular corporation, pursuant to §105 of the Public Officers Law.”

On motion made by Trustee McKibben and seconded by Trustee Gonzalez, the members held an Executive Session.
5. **Motion to Resume Meeting in Open Session**

   “Mr. Chairman, I move to resume the meeting in Open Session.” On motion made by Trustee Trainor and seconded by Trustee McKibben, the meeting resumed in Open Session.

   Chairman Koelmel said that no votes were taken during the Executive Session.

6. **Next Meeting**

   The Annual meeting of the New York Power Authority’s Board of Trustees and the Canal Corporation’s Board of Directors will be held on March 29, 2022 unless otherwise designated by the Chairman with the concurrence of the Trustees.

   **Closing**

   On motion made by Trustee Trainor and seconded by Trustee McKibben, the meeting was adjourned at approximately 12:15 p.m.

   Karen Delince
   Karen Delince
   Corporate Secretary
4. **Motion to Conduct an Executive Session**

I move that we conduct an executive session to discuss the employment history of a particular person (pursuant to §105 of the Public Officers Law).
March 29, 2022

5. **Motion to Resume Meeting in Open Session**

   I move to resume the meeting in Open Session.
6. **Next Meeting**

   The next joint meeting of the New York Power Authority’s Board of Trustees and the Canal Corporation’s Board of Directors will be held on May 24, 2022, unless otherwise designated by the Chairman with the concurrence of the members.