

**EXHIBIT D**

**FORM OF REIMBURSEMENT AGREEMENT**

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REIMBURSEMENT AGREEMENT

by and between

CITY OF CAPE CORAL, FLORIDA

and

BANK OF AMERICA, N.A.

Relating to:

CITY OF CAPE CORAL, FLORIDA  
COMMERCIAL PAPER NOTES  
SERIES A (TAX-EXEMPT) AND SERIES B (TAXABLE)

Dated as of August 1, 2024

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## REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT, dated as of August 1, 2024, is made by and between the CITY OF CAPE CORAL, FLORIDA, a municipality duly organized and existing under and pursuant to the provisions the Constitution of the State of Florida (the “City”), and BANK OF AMERICA, N.A., and its successors and assigns (the “Bank”).

### WITNESSETH:

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Note Resolution adopted July [ ], 2024 by the City Council (as supplemented, amended or otherwise modified in accordance with its terms and the terms hereof, the “*Note Resolution*”) and Ordinance No. 23-04 adopted by the Council on February 24, 2004, as amended by Ordinance No. 56-07 adopted by the City Council on June 4, 2007, as further amended by Ordinance No. [ ] adopted by the City Council on July [ ], 2024 (as supplemented, amended or otherwise modified in accordance with its terms and the terms hereof, the “*Ordinance*”).

WHEREAS, the City shall have the power to borrow money, from time to time, for the purposes listed in the Note Resolution, and further provides that the City may issue notes, or other forms of debt instruments, payable from the Pledged Funds (as defined herein) of the City;

WHEREAS, pursuant to the Note Resolution and the Ordinance the City established a continuous short-term financing program for the City with respect to providing short term funding for the Projects (as defined in the Note Resolution) by providing for the issuance, from time to time, of commercial paper obligations, payable by the City from the Pledged Funds; and

WHEREAS, in compliance with the terms of the Note Resolution and the Ordinance, for the purpose of providing money to finance the Projects, the City and U.S. Bank Trust Company, National Association (the “*Paying Agent*”) have executed and delivered that certain Issuing and Paying Agent Agreement dated [ ], 2024 (as supplemented, amended or otherwise modified in accordance with its terms and the terms hereof, the “*Agency Agreement*”) for the purpose of issuing, from time to time, commercial paper obligations, including, but not limited to, its City of Cape Coral, Florida, Commercial Paper Notes, Series A (Tax-Exempt) and Series B (Taxable) (together, the “*Commercial Paper Notes*”); and

WHEREAS, the City has requested, and the Bank has agreed, subject to and upon the terms and conditions set forth herein, to issue its Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#] dated the Effective Date (the “*Letter of Credit*”) to the Paying Agent, as beneficiary, in an original stated amount of \$161,095,891 in order to assure the payment at maturity of the principal of and interest on Commercial Paper Notes issued in accordance with their terms and to provide such liquidity in the form of a Drawing (as herein defined) under the Letter of Credit; and

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and in order to induce the Bank to issue the Letter of Credit, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the City and the Bank agree as follows:

## ARTICLE I

### DEFINITIONS

As used in this Agreement:

*“Advance”* has the meaning set forth in Section 2.03(a) hereof.

*“Affiliate”* means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

*“Agency Agreement”* has the meaning set forth in the recitals hereof.

*“Agreement”* means this Reimbursement Agreement, as amended, supplemented and otherwise modified from time to time in accordance with the terms hereof.

*“Budget”* means the annual budget of the City, as approved by the City Council.

*“Amortization Commencement Date”* means, with respect to any Drawing, the earlier to occur of (i) the ninety-first (91<sup>st</sup>) day after the related Advance and (ii) the Termination Date.

*“Amortization End Date”* means, with respect to any Advance, the earliest to occur of: (i) the third (3<sup>rd</sup>) anniversary of the date on which the related Advance was made, (ii) the third (3<sup>rd</sup>) anniversary of the Termination Date (as in effect on the date on which the related Advance was made), (iii) the date on which a substitute Liquidity Facility becomes effective in substitution of the Letter of Credit with respect to the Commercial Paper Notes, (iv) the date on which the Stated Amount is permanently reduced to zero or the Letter of Credit is otherwise terminated in accordance with its terms (other than as a result of the Letter of Credit terminating on the Letter of Credit Expiration Date), including as a result of the occurrence of an Event of Default, and (v) the end of the term of the Commercial Paper Program in respect of the Commercial Paper Notes as determined in accordance with the Note Resolution, the Ordinance or any other resolution or ordinance of the City Council.

*“Authorized Issuer Officer”* has the meaning set forth in the Note Resolution.

*“Bank”* has the meaning set forth in the introductory paragraph hereof.

*“Bank Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase (other than in connection with a public offering) or



provide credit enhancement for, bonds or notes of the City secured by or payable from Pledged Funds.

*“Bank Note”* has the meaning set forth in Section 2.03(d) hereof.

*“Bank Rate”* means the rate of interest per annum with respect to an Advance (a) for any day commencing on the date such Advance is made to and including the 90th day next succeeding the date such Advance is made, equal to the Base Rate from time to time in effect; and (b) for any day commencing on the 91st day next succeeding the date such Advance is made, and, at all times thereafter, equal to the sum of the Base Rate from time to time in effect plus 1.00%; *provided, however,* that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, *“Bank Rate”* shall mean the Default Rate; and *provided further* that, at no time shall the Bank Rate be less than the applicable rate of interest on any outstanding Commercial Paper Notes.

*“Bank’s Counsel”* has the meaning set forth in Section 4.01 hereof.

*“Base Rate”* means, for any day, the rate of interest per annum equal to the highest of (i) the Prime Rate *plus* one percent (1.00%), (ii) the Federal Funds Rate *plus* two percent (2.00%), and (iii) seven percent (7.00%). Each determination of the Base Rate by the Bank shall be conclusive and binding on the City absent manifest error.

*“Bond Counsel”* means Nabors, Giblin & Nickerson, P.A. or another nationally recognized bond counsel firm selected by the City.

*“Business Day”* has the meaning set forth in the Letter of Credit.

*“Capital Lease Obligations”* of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

*“Change in Law”* means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline 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, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a *“Change in Law”*, regardless of the date enacted, adopted or issued.

“City” has the meaning set forth in the recitals hereof.

“City Council” means the City Council of the City, or any successor entity performing its functions.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“Commercial Paper Notes” has the meaning set forth in the recitals hereof.

“Commercial Paper Program” has the meaning set forth in the Note Resolution.

“Controlled Group” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the City or any subsidiary, are treated as a single employer under Section 414 of the Code.

“Dealer” means, BofA Securities, Inc. or its successors and assigns.

“Dealer Agreement” means the Dealer Agreement, dated as of August [ ], 2024, by and between the City the Dealer, and any and all modifications, alterations, amendments and supplements thereto.

“Debt” of any Person means at any date and without duplication, (i) all obligations of such Person for borrowed money, and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all direct or contingent obligations of such Person arising under letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (iii) Capital Lease Obligations, (iv) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including, without limitation, accounts payable to construction contractors and other professionals for services rendered), (v) all indebtedness of others secured by a lien on any asset of such Person, whether or not such indebtedness is assumed by such Person, (vi) all indebtedness of others guaranteed by, or secured by any of the revenues or assets of, such Person and (vii) payment obligations of such Person under any Swap Contract.

“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.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means a fluctuating interest rate per annum equal to the sum of the Base Rate from time to time in effect plus four percent (4.00%).

*“Designated Jurisdiction”* means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

*“Drawing”* has the meaning assigned to that term in the Letter of Credit.

*“DTC”* means The Depository Trust Company and any successor or replacement thereto as securities depository.

*“Effective Date”* means August [ ], 2024, which, subject to the satisfaction or waiver in the sole discretion of the Bank of the conditions precedent set forth in Section 4.01 hereof, is the date on which the execution and delivery of the Letter of Credit shall occur.

*“Environmental Laws”* means any and all federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

*“ERISA”* means the Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations from time to time promulgated thereunder, or any successor statute.

*“Event of Default”* has the meaning set forth in Section 7.01 hereof.

*“Federal Funds Rate”* means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank.

*“Fee Letter”* means that certain Fee Letter dated August [ ], 2024, between the City and the Bank, as amended, supplemented, modified or restated from time to time in accordance with its terms.

*“Final Drawing Notice”* has the meaning set forth in the Letter of Credit.

*“Fiscal Year”* means the period of time beginning on October 1 of each given year and ending on September 30 of the immediately subsequent year, or such other period designated by the City Council as the City’s fiscal year.

*“Fitch”* means Fitch Ratings, Inc., and any successor rating agency.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*GAAP*” means generally accepted accounting principles in the United States as in effect from time to time, applied by the City on a basis consistent with the City’s most recent financial statements furnished to the Bank pursuant to Section 5.12 hereof.

“*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 (including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“*Governmental Approval*” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to any Governmental Authority.

“*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 Debt or other obligation of any other Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including, without limitation, 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 Debt 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 Debt 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 Debt or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Debt or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“*Interest Payment Date*” means the first Business Day of each calendar month.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Letter of Credit*” means the irrevocable transferable direct-pay letter of credit issued by the Bank on the Effective Date for the account of the City in favor of the Paying Agent supporting

the Commercial Paper Notes, in the form of Appendix I hereto with appropriate insertions, as from time to time amended and supplemented pursuant to its terms.

*“Letter of Credit Expiration Date”* has the meaning set forth in the Letter of Credit, as the same may be extended pursuant to Section 2.12 hereof.

*“Letter of Credit Fees”* has the meaning set forth in the Fee Letter.

*“Lien”* on any asset means any mortgage, deed of trust, lien, pledge, charge, security interest, hypothecation, assignment, deposit arrangement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital or finance lease or other title retention agreement relating to such asset.

*“Liquidity Facility”* has the meaning set forth in the Ordinance.

*“Material Adverse Change”* or *“Material Adverse Effect”* means the occurrence of any event or change which results in a material and adverse change in the business, condition (financial or otherwise) or operations of the City or which materially and adversely affects (a) the enforceability of this Agreement, the Bank Note, the Fee Letter or any of the other Program Documents, (b) the ability of the City to perform its obligations hereunder or thereunder or (c) the rights, security, interest or remedies available to the Bank under this Agreement or the other Program Documents.

*“Maximum CP Rate”* means the lesser of (a) 10% per annum, and (b) the maximum rate of interest permitted by applicable law.

*“Maximum Rate”* means the maximum rate of interest on the relevant obligation permitted by applicable law.

*“Moody’s”* means Moody’s Investors Service, Inc., and any successor rating agency.

*“Non-Ad Valorem Revenues”* has the meaning set forth in the Amending Ordinance.

*“Notes”* means the Commercial Paper Notes and the Bank Note.

*“Note Resolution”* means, the Commercial Paper Program Resolution adopted by the City Council on July [ ], 2024, as the same may be supplemented, amended or otherwise modified from time to time in accordance with the terms hereof and thereof.

*“Obligations”* means the Reimbursement Obligations (which includes amounts payable to the Bank evidenced by the Bank Note), the Letter of Credit Fees, the obligations of the City to pay all fees, charges and expenses payable hereunder, under the Fee Letter and under the Bank Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the City of any proceeding under any Debtor Relief Laws naming

the City as the debtor in such proceeding, and all other payment obligations of the City owed to the Bank arising under or in relation to this Agreement, the Fee Letter and the Bank Note.

“*OFAC*” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“*Offering Memorandum*” means the Commercial Paper Offering Memorandum dated [July 29], 2024, relating to the Commercial Paper Notes, among others, and any supplements and amendments thereto.

“*Ordinance*” means, collectively, (i) Ordinance No. 23-04 adopted by the City Council on February 24, 2004, as amended by (ii) Ordinance No. 56-07 adopted by the City Council on June 4, 2007, as amended by (iii) Ordinance No. [\_\_\_\_\_] adopted by the City Council on [\_\_\_\_\_] 2024, and (iv) as the same may be supplemented, amended or otherwise modified from time to time in accordance with the terms hereof and thereof.

“*Parity Debt*” means any other debt of the City that is secured by the Pledged Funds on a parity basis with the Obligations.

“*Participant*” has the meaning set forth in Section 8.04(b) hereof.

“*Patriot Act*” has the meaning set forth in Section 8.15 hereof.

“*Payment Office*” means Bank of America, N.A., New York, Attention: Scranton Standby, ABA Number: [\_\_\_\_\_] , Account Number: [\_\_\_\_\_] , L/C# [LC#], or such other office as the Bank may designate from time to time.

“*Person*” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“*Plan*” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the City or any ERISA Affiliate or any such Plan to which the City or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“*Pledged Funds*” has the meaning set forth in the Note Resolution.

“*Prime Rate*” means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its “prime rate.” The “*prime rate*” is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

*“Program Documents”* means this Agreement, the Letter of Credit, the Fee Letter, the Bank Note, the Dealer Agreement, the Agency Agreement, the Commercial Paper Notes, the Ordinance, the Note Resolution and any documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*“Rating Agencies”* means Fitch, Moody’s and S&P.

*“Rating Documentation”* has the meaning set forth in Section 4.01(i) hereof.

*“Reduction in Amount”* has the meaning set forth in Section 2.14 hereof.

*“Reimbursement Obligations”* means any and all obligations of the City to reimburse the Bank for any Drawings under the Letter of Credit and all obligations to repay the Bank for any Advance, including in each instance all interest accrued thereon.

*“Sanction(s)”* means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury or other relevant sanctions authority.

*“S&P”* means S&P Global Ratings, and any successor rating agency.

*“Secured Debt”* has the meaning set forth in Section 7.01(d) hereof.

*“State”* means the State of Florida.

*“Stated Amount”* means, as of any date, the maximum amount which by the terms of the Letter of Credit is available to be drawn under the Letter of Credit as of such date.

*“Stop Issuance Instruction”* means the written instruction, in the form attached as Exhibit A hereto, given by the Bank to the City and the Paying Agent pursuant to Section 3.02(b) hereof or Section 7.02(b) hereof.

*“Swap Contract”* means (a) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and

conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Tax-Exempt Commercial Paper Notes*” means Commercial Paper Notes for which an opinion of Bond Counsel relating to the exclusion of the interest thereof from gross income for purposes of federal income taxation has been delivered. Tax-Exempt Commercial Paper Notes includes the City of Cape Coral, Florida, Commercial Paper Notes, Series A (Tax-Exempt).

“*Termination Date*” has the meaning set forth in the Letter of Credit.

“*Termination Date*” has the meaning set forth in Section 3.02(a) hereof.

“*Paying Agent*” has the meaning set forth in the recitals hereof.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Ordinance, Note Resolution or Agency Agreement, as applicable. All references in this Agreement to times of day shall be references to New York City time (daylight or standard, as applicable) unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Program Document, and either the City or the Bank shall so request, the Bank and the City shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided that*, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the City shall provide to the Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

## ARTICLE II

### LETTER OF CREDIT

*Section 2.01. Execution and Delivery of Letter of Credit.* Upon fulfillment of all of the conditions precedent set forth in Section 4.01 hereof and on the terms and conditions set forth herein and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit substantially in the form of Appendix I hereto in the Stated Amount on the Effective Date. The Letter of Credit shall be in the original stated amount of \$161,095,891 (calculated as the sum of the maximum principal amount of the Commercial Paper Notes supported by the Letter of Credit (*i.e.*, \$150,000,000) plus



interest thereon at a maximum rate of ten percent (10%) per annum for a period of two hundred seventy (270) days calculated on the basis of a year of 365 days) (the “*Stated Amount*”).

*Section 2.02. Letter of Credit Drawings.* The Paying Agent is authorized to make Drawings under the Letter of Credit in accordance with its terms. The City hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The City hereby irrevocably approves reductions and reinstatements of the Stated Amount with respect to the Letter of Credit as provided in the Letter of Credit.

*Section 2.03. Reimbursement of Certain Drawings Under the Letter of Credit; Mandatory Prepayment; Interest.* (a)(i) If the conditions precedent set forth in Section 4.02 hereof are satisfied at the time of payment by the Bank of any Drawing and on any Amortization Commencement Date, each Drawing made under the Letter of Credit shall constitute an advance (“*Advance*”) to the City.

(ii) The City promises to pay to the Bank the interest portion of each Advance on the date of the related Drawing.

(iii) The City promises to pay or cause to be paid to the Bank the principal portion of each Advance on the earliest to occur of (A) the third (3<sup>rd</sup>) anniversary of the date on which the related Advance was made, (B) the third (3<sup>rd</sup>) anniversary of the Termination Date of the Letter of Credit as in effect on the day on which the related advance was made, (C) the date on which a substitute Liquidity Facility becomes effective in substitution of the Letter of Credit with respect to the Commercial Paper Notes, (D) the date on which the Stated Amount is permanently reduced to zero or the Letter of Credit is otherwise terminated in accordance with its terms (other than as a result of the Letter of Credit terminating on the Letter of Credit Expiration Date), including as a result of the occurrence of an Event of Default and (E) the end of the term of the Commercial Paper Program in respect of the Commercial Paper Notes as determined in accordance with the Note Resolution, the Ordinance or any other resolution or ordinance of the City Council.

(iv) Subject to Section 2.10 hereof, the City also promises to pay to the Bank interest on the unpaid principal amount of each Advance from the date such Advance is made until it is paid in full as provided herein, at a rate per annum equal to the Bank Rate from time to time in effect, and such interest shall be payable monthly in arrears on the first Business Day of each calendar month for the immediately preceding calendar month (commencing on the first Interest Payment Date to occur after the making of the related Advance), and on the date that the final principal or interest portion of such Advance is payable as herein provided.

(v) Unless otherwise paid in full on one of the dates provided above, the principal portion of each Advance shall be payable by the City in equal semi-annual installments (“*Semi-Annual Principal Payments*”) commencing on the Amortization Commencement Date, and on the first Business Day of each sixth (6<sup>th</sup>) calendar month thereafter, with the final installment in an amount equal to the entire then outstanding principal amount of such Advance due and payable on the Amortization End Date (the

period commencing on the Amortization Commencement Date and ending on the Amortization End Date is referred to as the "*Amortization Period*"). Each Semi-Annual Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Semi-Annual Principal Payments over the applicable Amortization Period.

(vi) Notwithstanding anything to the contrary herein, in the event that the City elects not to issue Commercial Paper Notes up to the Maximum CP Rate or otherwise limits the interest rate on Roll-Over Obligations (as defined in the Note Resolution) to a rate of interest less than the Maximum CP Rate and, as a result of these actions the Bank is not reimbursed for an Advance, then the total amount of the Commercial Paper Program and the Stated Amount of the Letter of Credit shall be reduced permanently by the amount of such Advance and the City shall repay the outstanding Advance within 30 days.

(b) Any Advance may be prepaid in whole or in part on the day such Advance is made. Any Advance created pursuant to paragraph (a)(i) above may be prepaid in whole or in part without premium or penalty on any other Business Day upon one Business Day's prior written notice to the Bank.

(c) Upon the Bank's receipt of any payment or prepayment of any Advance, the amount of such Advance shall be reduced by the amount of such payment or prepayment.

(d) All Reimbursement Obligations shall be made against and evidenced by the City's promissory note payable to the order of the Bank in the principal amount of the Stated Amount, such note to be executed by the City and delivered by the City to the Bank on the Effective Date in the form of Exhibit B attached hereto with appropriate insertions (the "*Bank Note*"). All Reimbursement Obligations due and owing to the Bank and all payments and prepayments on the account of the principal of and interest on each Reimbursement Obligation by or on behalf of the City shall be recorded by the Bank on its books and records, which books and records shall, absent manifest error, be conclusive as to amounts due and owing by the City hereunder, under the Fee Letter and under the Bank Note. Any failure to so record or any error in doing so shall not, however, limit, extinguish or in any way modify or otherwise affect the obligation of the City hereunder to pay any amount owing with respect to the Reimbursement Obligations. The City shall pay principal and interest on the Bank Note on the dates and at the rates provided for in Sections 2.03 and 2.04 hereof. The City's obligations to repay the Reimbursement Obligations and to pay interest thereon as provided herein shall be evidenced and secured by the Bank Note, and the City shall, without duplication (i) make a principal payment on the Bank Note on each date on which the City is required to make a principal payment on Reimbursement Obligations in an amount equal to the principal payment due on such date and (ii) pay interest on the Bank Note on each date on which the City is required to make an interest payment with respect to Reimbursement Obligations in an amount equal to the interest payment due on such date. The payment of the principal of and interest on the Bank Note shall constitute payment of the principal of and interest on the related Reimbursement Obligations and the payment of the principal of and interest on the Reimbursement Obligations shall constitute the payment of and principal and interest on the Bank Note and the failure to make any payment on any Reimbursement Obligation when due shall be a

failure to make a payment on the Bank Note and the failure to make any payment on the Bank Note when due shall be a failure to make a payment on the related Reimbursement Obligation.

*Section 2.04. Reimbursement of Drawings Other Than Drawings Creating Advances Under the Letter of Credit.* Unless the conditions precedent contained in Section 4.02 hereof are satisfied on the date of payment by the Bank of a Drawing, the City agrees to reimburse the Bank for the full amount of such Drawing immediately upon payment by the Bank of such Drawing and on the date of each such payment. If the City does not make such reimbursement to the Bank with respect to such Drawing on such date, such Reimbursement Obligation shall bear interest at the Default Rate and be payable upon demand.

*Section 2.05. Fees.* The City hereby agrees to perform the obligations provided for in the Fee Letter, including, without limitation, the payment of any and all fees, expenses and other amounts provided for therein, on the dates, at the times and in the amounts set forth in the Fee Letter. Without limiting the generality of the foregoing, in the event that the Letter of Credit is terminated, the City shall pay to the Bank the amounts provided for under the Fee Letter, at the times and in the amounts set forth in and as required by the Fee Letter. The terms and provisions of the Fee Letter are hereby incorporated herein by reference as if fully set forth herein. The Fee Letter and this Agreement shall be construed as one agreement between the City and the Bank and any reference to this Agreement shall be deemed to include a reference to the Fee Letter. All references to amounts or obligations due hereunder or in this Agreement shall be deemed to include all amounts and obligations (including without limitation fees and expenses) under the Fee Letter and all obligations under the Fee Letter shall be construed as obligations hereunder. All fees paid under this Agreement and the Fee Letter shall be fully earned when due and nonrefundable when paid.

*Section 2.06. Method of Payment; Etc.* All payments to be made by the City under this Agreement and the Fee Letter shall be made in lawful money of the United States and in immediately available funds at the Payment Office of the Bank, not later than 2:00 p.m., New York City time, on the date when due and shall be made by wire transfer in lawful money of the United States of America in freely transferable and immediately available funds. All payments to be made by the City shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Any payment received by the Bank after 2:00 p.m., New York City time, shall be deemed to have been received by the Bank on the next Business Day and any applicable interest or fee shall continue to accrue.

*Section 2.07. Termination of Letter of Credit by the City.* Notwithstanding any provisions of this Agreement, the Letter of Credit or any Program Document to the contrary, the City agrees not to terminate the Letter of Credit except upon (i) the payment to the Bank of all fees, expenses and other Obligations payable hereunder and under the Fee Letter, including, without limitation, all principal and accrued interest due and owing on any Drawing or Advances or any amount due under the Bank Note and (ii) the City providing the Bank with ten (10) days prior written notice of its intent to terminate the Letter of Credit. All payments from the City to the Bank referred to in this Section 2.07 shall be made with immediately available funds on or before the date of termination.

*Section 2.08. Computation of Interest and Fees.* Fees payable hereunder and under the Fee Letter shall be calculated on the basis of a year of 360 days and the actual number of days elapsed. All computations of interest payable by the City under this Agreement shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual number of days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

*Section 2.09. Payment Due on Non-Business Day To Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement or the Fee Letter on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

*Section 2.10. Late Payments.* If any amount of any Obligation is not paid when due or upon the occurrence of any other Event of Default, all Obligations shall bear interest until paid in full at a rate per annum equal to the Default Rate, payable upon demand.

*Section 2.11. Source of Funds.* All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

*Section 2.12. Extension of Letter of Credit Expiration Date.* If the City on any date not earlier than one hundred twenty (120) days and not later than sixty (60) days prior to the then current Letter of Credit Expiration Date, submits to the Bank a written request for an extension of the Letter of Credit Expiration Date in the form of Exhibit C hereto for a period as specified in such written request, the Bank will make reasonable efforts to respond to such request within thirty (30) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. In the event the Bank fails to definitively respond to such request within such period of time, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing. The consent of the Bank, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance reasonably satisfactory to the Bank and consistent with this Agreement and the Letter of Credit. If such an extension request is accepted by the Bank in its sole and absolute discretion, the then current Letter of Credit Expiration Date shall be extended to the date agreed to by the City and the Bank.

*Section 2.13. Net of Taxes, Etc.* If any payments to the Bank under this Agreement are made from outside the United States, the City will not deduct any foreign taxes from any payments it makes to the Bank. If any such taxes are imposed on any payments made by the City (including payments under this paragraph), the City will pay the taxes and will also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. As soon as practicable after any payment of taxes by the City to a Governmental Authority, as provided in this Section 3.01, the City, will deliver to the Bank the original or a certificate copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank. The City

will confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date.

*Section 2.14. Increased Costs.* (a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Bank;

(ii) subject any Recipient to any taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Bank any other condition, cost or expense affecting this Agreement, the Fee Letter or the Letter of Credit or any participation therein;

and the result of any of the foregoing shall be to increase the cost to the Bank of participating in, issuing or maintaining the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Bank, the City will pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank determines that any Change in Law affecting the Bank or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity or on the capital or liquidity of the Bank's holding company, if any, as a consequence of this Agreement, the Fee Letter or the Letter of Credit issued by the Bank, to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then from time to time the City will pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the City shall be conclusive absent manifest error. The City shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided* that the City shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Bank, notifies the City of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs

or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

*Section 2.15. Maximum Rate; Payment of Fee.* If the rate of interest payable hereunder or under the Fee Letter shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period; and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Rate and (ii) the Maximum Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof or the Fee Letter, if applicable, ceases to exceed the Maximum Rate, at which time the City shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder or under the Fee Letter, as applicable, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder and under the Fee Letter, as applicable, until all Excess Interest is fully paid to the Bank. Upon the termination of the Letter of Credit, in consideration for the limitation of the rate of interest otherwise payable hereunder and under the Fee Letter, the City shall pay to the Bank a fee equal to the amount of all unpaid Excess Interest.

*Section 2.16. Security of Obligations.* The Obligations of the City hereunder are special obligations secured by a pledge of and lien on the Pledged Funds and are payable solely from the Pledged Funds budgeted and appropriated in the manner and to the extent provided in the Resolution and all moneys, including investments thereof, in certain of the funds and accounts established under the Note Resolution.

*Section 2.17. Survival.* All of the City’s obligations under this Article II shall survive termination of this Agreement, the cancellation of the Letter of Credit and the repayment, satisfaction or discharge of all other Obligations.

### **ARTICLE III**

#### **COMMERCIAL PAPER NOTES OPERATIONS**

*Section 3.01. Issuance Generally.* The City may issue Commercial Paper Notes only in accordance with the terms of and subject to the conditions set forth in the Ordinance, Note Resolution, Agency Agreement and this Agreement.

*Section 3.02. No-Issuance Instructions; Final Drawing Notice.* (a) Commercial Paper Notes may be issued from time to time prior to the Letter of Credit Expiration Date in accordance herewith and with the terms of and subject to the conditions set forth in the Ordinance and the Note Resolution so long as (i) the Paying Agent is not in receipt of a No- Issuance Instruction then in effect given by the Bank pursuant to this Section 3.02 or Section 7.02(b) hereof and not rescinded and (ii) the Paying Agent is not in receipt of a Final Drawing Notice in substantially the form attached to the Letter of Credit as Annex H-1.

(b) The Bank may deliver a No-Issuance Instruction<sup>1</sup> in the form of Exhibit A attached hereto at any time when: (i) an Event of Default shall have occurred and be continuing; or (ii) the representations and warranties of the City set forth in Article V hereof shall, in the reasonable opinion of the Bank, no longer be true and correct in any material respect. The Bank may deliver the Final Drawing Notice at any time when an Event of Default shall have occurred and be continuing. A No-Issuance Instruction or the Final Drawing Notice shall be effective when received by the Paying Agent; *provided, however*, that a No-Issuance Instruction or the Final Drawing Notice received by the Paying Agent after [12:00] noon New York City time, on any day on which Commercial Paper Notes are being issued shall be effective on the next succeeding day. A Stop Issuance Instruction or the Final Drawing Notice may be given by facsimile or electronic mail transmission, confirmed in writing within twenty-four (24) hours, but the failure to so confirm such Stop Issuance Instruction or the Final Drawing Notice in writing shall not render such Stop Issuance Instruction or the Final Drawing Notice ineffective. The Bank will furnish a copy of any Stop Issuance Instruction or the Final Drawing Notice to the City and the Dealer promptly following delivery thereof to the Paying Agent, but the failure to furnish any such copy shall not render ineffective such Stop Issuance Instruction or the Final Drawing Notice.

## ARTICLE IV

### CONDITIONS PRECEDENT

*Section 4.01. Conditions Precedent to Execution and Delivery of Letter of Credit.* As conditions precedent to the obligation of the Bank to issue the Letter of Credit, the City shall provide to the Bank on the Effective Date, each in form and substance satisfactory to the Bank and the Bank's counsel, Chapman and Cutler LLP (hereinafter, "*Bank's Counsel*"):

(a) *Approvals.* The Bank shall have received (1) executed originals of this Agreement and the Fee Letter duly executed by the City and copies of all action taken by the City (including, without limitation, the Resolution) approving the execution and delivery by the City of this Agreement, the Fee Letter and the Bank Note, in each case, certified by an authorized official of the City as complete and correct as of the date hereof and (2) executed or certified copies, as applicable, of each of the other Program Documents (except the Commercial Paper Notes) to which the City is a party, together with a certificate of the an authorized official of the City, dated the Effective Date, stating that such Program Documents and approvals are in full force and effect on the Effective Date and have not been amended, supplemented, modified or limited (or with respect to the related approvals, amended, modified, supplemented, superseded or repealed) in any manner, except for such amendments made in accordance with the express terms of such Program Documents for which the City has provided notice to the Bank prior to the Effective Date.

(b) *Certificate and Incumbency of City Officials.* The Bank shall have received (1) an incumbency and specimen signature certificate of the City in respect of each of the officials who is authorized to (i) sign this Agreement, the Fee Letter and the Bank Note on

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<sup>1</sup> The concept of a No-Issuance and Final Drawing to be added to the underlying CP documents.

behalf of the City and (ii) take actions for the City under this Agreement, the Fee Letter, the Bank Note and the other Program Documents (to which the City is a party) with respect to the Commercial Paper Notes and (2) a certificate of an Authorized Issuer Officer, dated the Effective Date, certifying that (A) each of the City's representations and warranties contained herein and the other Program Documents to which the City is a party is true and correct on and as of the Effective Date as though made on and as of such date, (B) no Default or Event of Default has occurred and is continuing or will result from the execution and delivery by the City of this Agreement, the Fee Letter or the issuance of the Letter of Credit, (C) since September 30, 2023, except as disclosed to the Bank in writing, there has been no Material Adverse Change and there has been no material adverse change in the laws, rules or regulations (or their interpretation or administration) and no material litigation is ongoing with respect to the City, in any case, that may adversely affect the consummation of the transactions contemplated hereby or by any Program Document or result in a Material Adverse Effect, (D) all conditions precedent set forth in the Ordinance and the Note Resolution with respect to issuance of the Commercial Paper Notes shall have been satisfied and (E) the City has not received notice from the Rating Agencies that the long-term unenhanced ratings of Parity Debt have been withdrawn, reduced or suspended since the dated date of the Rating Documentation.

(c) *Opinion of Bond Counsel.* The Bank shall have received a written opinion of Bond Counsel, addressed to the Bank, dated the Effective Date to the effect that (i) this Agreement, the Fee Letter and the Bank Note have been duly authorized, executed and delivered by the City and are the valid and binding obligations of the City enforceable in accordance with their respective terms, except as may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and to valid bankruptcy, insolvency, reorganization or moratorium or other similar laws applicable to the City and equitable principles relating to or affecting creditors' rights generally from time to time; (ii) the execution and delivery by the City of this Agreement, the Fee Letter and the Bank Note does not violate the constitution or laws of the State; and (iii) the City Council on behalf of the City has taken all actions, and has obtained any approvals, necessary to the authorization, execution, delivery and performance by the City of this Agreement, the Fee Letter and the Bank Note. In addition, the Bank shall have received a letter from Bond Counsel authorizing the Bank to rely on the final approving opinion of Bond Counsel delivered to the City in respect of the Commercial Paper Notes.

(d) *Opinion of City Attorney.* The Bank shall have received a written opinion of the City Attorney, addressed to the Bank, dated the Effective Date in the form and substance agreed to by the City Attorney and the Bank.

(e) *Bank Note.* The Bank shall have received an executed Bank Note payable to the Bank.

(f) *No Default, Etc.* No Event of Default shall have occurred and be continuing as of the Effective Date or will result from the execution and delivery by the City of this Agreement, the Fee Letter and the Bank Note or the issuance of the Letter of Credit. The representations and warranties and covenants made by the City in Article V hereof shall be



true and correct in all material respects on and as of the Effective Date, as if made on and as of such date.

(g) *Legality; Material Adverse Change.* The Bank shall have determined (in its sole discretion) that (i) none of the making of any Drawings or Advances, the issuance of the Letter of Credit or the consummation of any of the transactions contemplated by the Note Resolution, the Ordinance, the Commercial Paper Notes, the Bank Note, this Agreement or the Fee Letter will violate any law, rule, guideline or regulation applicable to the City, the Bank, this Agreement or any other Program Document; and (ii) no material adverse change in the ratings, financial condition, business, assets, liabilities or prospects of the City shall have occurred since September 30, 2023, except as disclosed in writing to the Bank prior to the Effective Date, which would be reasonably likely to result in a Material Adverse Effect; and (iii) there has been no material adverse change in the laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the consummation of the transactions contemplated hereby or by any Program Document.

(h) *Fees, Etc.* The Bank shall have received payment of the fees, costs and expenses to be paid on or prior the Effective Date referred to in Section 9.06 hereof and pursuant to the Fee Letter.

(i) *Ratings.* The Bank shall have received written confirmation that (i) the Commercial Paper Notes have been rated at least “P-1” (or its equivalent) by Moody’s and “A-1” (or its equivalent) by S&P and “F1+” (or its equivalent) by Fitch and (ii) the unenhanced Parity Debt has been rated “A1” (or its equivalent) by Moody’s, “A+” (or its equivalent) by S&P and “A+” (or its equivalent) by Fitch (collectively referred to herein as the “*Rating Documentation*”).

(j) *Other Documents.* The Bank shall have received such other documents, certificates and opinions as the Bank’s Counsel shall have reasonably requested.

*Section 4.02. Conditions Precedent to Advances.* Following any payment by the Bank under the Letter of Credit pursuant to a Drawing, an Advance shall be made available to the City only if, on the date of payment of such Drawing by the Bank, each of the following conditions shall be satisfied:

(a) the representations and warranties contained in Article V of this Agreement (other than those representations and warranties set forth in Section 5.12(a) hereof) are true and correct in all material respects, and deemed made, as of such date; and

(b) no event has occurred and is continuing, or would result from such payment, which constitutes a Default or Event of Default.

Unless the City shall have previously advised the Bank in writing that (i) any or all of the representations and warranties contained in Article V of this Agreement are not true and correct in all material respects as of the date the Bank honors such Drawing and/or makes such Advance or

(ii) any event has occurred and is continuing, or would result from the Bank honoring such Drawing or making such Advance, which constitutes a Default or Event of Default, then the City shall be deemed to have represented and warranted on the date the Bank honors such Drawing and/or makes such Advance that (A) the representations and warranties contained in Article V of this Agreement are true and correct in all material respects as of such date and (B) no event has occurred and is continuing, or would result from the Bank honoring such Drawing and/or making such Advance, which constitutes a Default or Event of Default.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Agreement and the Fee Letter and to issue the Letter of Credit, the City represents and warrants to the Bank as follows:

*Section 5.01. Organization; Existence.* The City is duly organized, validly existing and in good standing under the Laws of the State and its Charter and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

*Section 5.02. Power and Authority.* The City has (and had at the time of adoption, execution, delivery, issuance, sale or performance) full power, right and authority to (a) execute, deliver and perform its obligations under each of the Program Documents to which it is a party, and any and all instruments and documents required to be executed, adopted or delivered pursuant to or in connection herewith or therewith; (b) issue and sell, from time to time, the Commercial Paper Notes as provided in the Program Documents and make payment of principal and interest, if any, on the Commercial Paper Notes and to pay the Obligations at the times and in the manner set forth herein; (c) possess, manage and operate the Projects; and (d) perform each and all of the matters and things herein and therein provided for and the City has complied in all material respects with the laws of the State in all matters relating to such execution, delivery and performance.

*Section 5.03. Due Authorization, Etc.* Each of the Program Documents to which the City is a party have been duly authorized, executed, issued and delivered. This Agreement and each of the other Program Documents to which the City is a party constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms, except as such enforceability may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and to valid bankruptcy, insolvency, reorganization, moratorium, or other similar laws and equitable principles relating to or affecting creditors' rights generally from time to time in effect. The Obligations are payable from and secured by Pledged Funds as set forth herein and in the Ordinance and the Note Resolution. The City is duly authorized and licensed to own its Property and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such

Property or business activity and the departments, agencies and political subdivisions thereof, and the City has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the City to enter into this Agreement and the other Program Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the City of this Agreement or the due execution, delivery or performance by the City of the Program Documents.

*Section 5.04. Necessary Actions Taken.* The City has taken all actions necessary to be taken by it (a) for the issuance and sale of the Commercial Paper Notes upon the terms set forth in the Program Documents; (b) for the execution, adoption and delivery by the City of any and all such other instruments and the taking of all such other actions on the part of the City as may be necessary or appropriate for the effectuation and consummation of the transactions on the part of the City contemplated by the Program Documents or in connection herewith or therewith; and (c) to authorize or approve, as appropriate, the execution, issuance and delivery of, and the performance of its obligations under and the transactions contemplated by each of the Program Documents to which it is a party and the payment of the Obligations at the times and in the manner set forth.

*Section 5.05. No Contravention.* The execution and delivery of each of the Program Documents to which the City is a party and compliance with the provisions hereof and thereof, will not conflict with or result in a violation of the Constitution of the State or the laws of the State, including any debt limitations or other restrictions or conditions on the debt issuing power of the City, the City's Charter and authorizing legislation, and will not conflict with or result in a violation of, or breach of, or constitute a default under, any law (including, without limitation, Regulations T, U or X of the FRB, or any successor regulations), judgment, order, decree or administrative regulation or any of the terms, conditions or provisions of the Charter or any ordinance, judgment, decree, contract, loan agreement, note, bond, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which it or any property of the City is bound and will not, (i) except as expressly provided herein, result in the imposition or creation of any lien, charge, or encumbrance upon or invalidate or adversely affect in any way the Pledged Funds or (ii) materially and adversely affect the ability of the City to perform its obligations hereunder or under the Program Documents or the rights, security, interest or remedies available to the Bank under this Agreement or the other Program Documents. The City has not received any notice, not subsequently withdrawn, given in accordance with the remedy provisions of any bond resolution or ordinance, trust indenture, guarantee or agreement or State law pertaining to bonds or notes secured by the Pledged Funds, of any default or event of default of the City which has not been cured, remedied or waived.

*Section 5.06. Compliance.* The current collection of Pledged Funds and the accounting and recordkeeping therefor are in material compliance with all applicable state and federal laws and all applicable resolutions, ordinances and rules of the City. The City is in compliance with the terms and conditions of each of the Program Documents to which it is a party, and no breach of the terms hereof or thereof has occurred and is continuing, and no Default or Event of Default has

occurred and is continuing. The City is in material compliance with all laws, ordinances, orders, writs, injunctions, decrees, rules and regulations applicable to it (including, without limitation, ERISA and all applicable federal, state or local environmental, health and safety statutes and regulations, and the City's investment policy guidelines), except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect.

*Section 5.07. No Default.* No default by the City has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt issued by or on behalf of the City and payable from and/or secured by a pledge of and lien on the Pledged Funds. No bankruptcy, insolvency or other similar proceedings pertaining to the City or any agency or instrumentality of the City are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No "default" or "event of default" under, and as defined in any of the other Program Documents has occurred and is continuing. The City is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The City is not in violation of any material term of the Charter applicable to the City or any material term of any bond indenture or agreement to which it is a party or by which any of its property or assets is bound which could reasonably be expected to have a Material Adverse Effect.

*Section 5.08. No Public Vote or Referendum.* To the best knowledge of the City, there is no public vote or referendum pending, proposed or concluded, the results of which could in any way have a Material Adverse Effect.

*Section 5.09. No Immunity.* Under existing law, the City is not entitled to raise the defense of immunity from liability or suit in connection with any legal proceedings to enforce or collect upon this Agreement, the Fee Letter or the transactions contemplated hereby or thereby, including the payment of the Obligations; *provided, however*, that the procedural requirements applicable to commencing an action against the City differ from those provisions and requirements applicable to individuals and nongovernmental entities.

*Section 5.10. Litigation.* There is no action, suit or proceeding pending in any court, any other governmental authority with jurisdiction over the City or any arbitration in which service of process has been completed against the City or, to the knowledge of the City, any other action, suit or proceeding pending or threatened in any court, any other governmental authority with jurisdiction over the City or any arbitrator, in either case against the City or any of its properties or revenues, or any of the Program Documents to which it is a party, which if determined adversely to the City would adversely affect the legality, validity or enforceability of the any of the Program Documents to which it is a party, or the rights and remedies of the Bank under any of the Program Documents or which is reasonably likely to have a Material Adverse Effect, except any action, suit or proceeding which has been brought prior to the Effective Date as to which the Bank have received an opinion of counsel satisfactory to the Bank, in form and substance satisfactory to the Bank and the Bank's Counsel, to the effect that such action, suit or proceeding is without substantial merit.

*Section 5.11. Disclosure.* All information, reports and other papers and data with respect to the City furnished by the City to the Bank were, at the time the same were so furnished, and as

of the date of the Offering Memorandum, correct in all material respects. Any financial, budget and other projections furnished by the City to the Bank were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent (subject to the updating or supplementation of any such financial, budget or other projections by any additional information provided to the Bank in writing, the representations contained in this Agreement being limited to financial, budget or other projections as so updated or supplemented), in the judgment of the City, a reasonable, good faith estimate of the information purported to be set forth, it being understood that uncertainty is inherent in any projections and that no assurance can be given that the results set forth in the projections will actually be obtained. No fact is known to the City that materially and adversely affects or in the future may (as far as it can reasonably foresee) materially and adversely affect the security for any of the Obligations, or the ability of the City to repay when due the Obligations, that has not been set forth in the financial statements and other documents referred to in this Section 5.11 or in such information, reports, papers and data or otherwise disclosed in writing to the Bank. The documents furnished and statements made by the City in connection with the negotiation, preparation or execution of this Agreement and the Program Documents do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

*Section 5.12. Financial Information.* The most recent annual financial report of the City as of September 30, 2023, copies of which have been delivered to the Bank, fairly present the financial position and results of operation of the City as of the date and for the periods therein set forth. All such financial statements have been prepared in accordance with GAAP. There has been no material adverse change in the financial position, results of operations or projections of revenues of the City since September 30, 2023, that could reasonably be expected to result in a Material Adverse Effect and that has not been disclosed in writing to the Bank prior to the Effective Date, or otherwise disclosed in the Offering Memorandum. The City has no material contingent liabilities or other material contracts or commitments payable from Pledged Funds which are not reflected in such financial statements previously delivered to the Bank or in the notes thereto or otherwise as disclosed to the Bank in writing.

*Section 5.13. Official Signatures.* The Authorized City Officer has and had full power and authority to execute, deliver and perform under each of the Program Documents to which the City is a party. Any agreement, certificate or request signed by or on behalf of any Authorized City Officer and delivered to a Dealer, the Paying Agent or the Bank shall be deemed a representation and warranty by the City to the Bank as to the truth, accuracy and completeness of the statements made by the City therein.

*Section 5.14. Incorporation of Representations and Warranties by Reference.* The City hereby makes to the Bank the same representations and warranties made by the City in each Program Document to which the City is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or

defined terms made pursuant to any Program Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

*Section 5.15. Environmental Matters.* The operations of the City are in material compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action would have a Material Adverse Effect.

*Section 5.16. Security.* The Note Resolution creates, for the benefit of the owners of the Commercial Paper Notes and, with respect to the Bank Note and the Obligations, the Bank, the legally valid, binding and irrevocable lien on and pledge of the Pledged Funds. There is no lien on the Pledged Funds other than the lien created by the Note Resolution. The City will not permit the issuance or incurrence of any Debt secured by the Pledged Funds to rank senior to the Commercial Paper Notes, the Bank Note or the Obligations. The payment of the Obligations ranks on a parity with the payment of the principal and purchase price of and interest on the Parity Debt and is not subordinate to any payment secured by a lien on the Pledged Funds or any other claim, and is prior as against all other Persons having claims of any kind in tort, contract or otherwise, whether or not such Persons have notice of such lien. No filing, registration, recording or publication of the Note Resolution or Ordinance or any other instrument is required to establish the pledge provided for thereunder or to perfect, protect or maintain the lien created thereby on the Pledged Funds to secure the Commercial Paper Notes and the Obligations. The Letter of Credit constitutes a “Liquidity Facility” and a “Commercial Paper Instrument” under the Note Resolution. All Obligations constitute “Obligations” under the Ordinance and the Note Resolution.

*Section 5.17. Investment Company Act.* The City is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

*Section 5.18. Employee Benefit Plan Compliance.* The City has no funding liability or obligation currently due and payable with respect to any employee benefit plan which could reasonably be expected to materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Program Document. The City is otherwise in compliance with the terms of any such plan in which the City participates to the extent any such failure to comply could reasonably be expected to materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Program Document. Neither the City nor any employee benefit plan maintained by the City is subject to ERISA. The City is not subject to ERISA and maintains no Plans.

*Section 5.19. Pending Legislation and Decisions; No Public Vote or Referendum.* There is no amendment, or to the knowledge of the City, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely

affect the issuance of any of the Commercial Paper Notes, the security for any of the Commercial Paper Notes, the Bank Note, any Obligations or the City's obligations hereunder or under any of the Program Documents, the creation, organization, or existence of the City or the titles to office of any officers executing this Agreement or any Program Documents to which the City is a party or the City's ability to repay when due its obligations under this Agreement, any of the Commercial Paper Notes, the Bank Note, any Obligations or the Program Documents. There is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.20. Usury.* None of the terms of this Agreement, the Bank Note, the Fee Letter or the Obligations are usurious.

*Section 5.21. Margin Regulations.* No portion of the proceeds of any Drawings under the Letter of Credit or Advances hereunder shall be used by the City (or the Paying Agent or any other Person on behalf of the City) for the purpose of "purchasing" or "carrying" any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U or X of the Board of Governors of the Federal Reserve System or any other regulation of the City or to violate the Securities Exchange Act of 1934, as amended, in each case as in effect on the date or dates of such Drawings or Advances and such use of proceeds.

*Section 5.22. Paying Agent; Dealer.* U.S. Bank Trust Company, National Association is the duly appointed and acting Paying Agent and BofA Securities, Inc. is the duly appointed and acting Dealer.

*Section 5.23. Tax Status of Interest on Tax-Exempt Commercial Paper Notes.* It is the intention of the City and the Bank that the interest on the Tax-Exempt Commercial Paper Notes be excluded from the gross income of the owners thereof for federal income tax purposes by reason of the provisions of Section 103 of the Code, or any substantially similar successor provision hereafter enacted. To that end, the City represents to the Bank that it has not taken any action, and knows of no action that any other Person has taken, which would cause interest on such Tax-Exempt Commercial Paper Notes to be includable in the gross income of the recipients thereof for federal income tax purposes.

*Section 5.24. Sanctions and Anti-Corruption Laws.* Neither the City, nor to the knowledge of the City any director, officer, employee or agent of the City, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The City is in compliance with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.) The City is in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

*Section 5.25. Insurance.* The City currently maintains a system of self-insurance or insurance coverage with insurance companies believed by the City to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to the City (as determined in its reasonable discretion) and in full compliance with and Section 6.23 hereof.

*Section 5.26. Title to Assets.* The City has good and marketable title to its assets except where the failure to have good and marketable title to any of its assets would not have a Material Adverse Effect.

*Section 5.27. Solvency.* The City is solvent and able to pay its debts as they become due.

*Section 5.28. No Immunity.* The City is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or its revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any Program Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or the Pledged Funds might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Program Document, and no such immunity (whether or not claimed) may be attributed to the City or the Pledged Funds.

*Section 5.29. Swap Contracts.* The City has not entered into any Swap Contract relating to Parity Debt (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the Commercial Paper Notes or the other Obligations or (b) which requires the City to post cash collateral to secure its obligations thereunder.

## **ARTICLE VI**

### **COVENANTS**

The City will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement and/or the Fee Letter, unless the Bank shall otherwise consent in writing:

*Section 6.01. Maintenance of Existence.* To the fullest extent permitted by law, the City, (a) shall maintain its existence pursuant to the Charter and the laws of the State and (b) shall not liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, merge or consolidate with or into any other entity or change the use of facilities or assets that generate Pledged Funds.



*Section 6.02. Reports, Certificates and Other Information.* The City shall furnish or cause to be furnished to the Bank copies of:

(a) *Annual Report.* As soon as available, but no later than two hundred and seventy (270) days after the end of the Fiscal Year, the annual audited financial statements for the City together with the opinion of the City's independent accountants and stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(b) *Budget.* As soon as available, but in any event within 30 days following the approval thereof, the Budget (including the provisions of the Budget with respect to annual appropriations).

(c) *Paying Agent Notices.* As soon as available all notices, certificates, instruments, letters and written commitments in connection with the Commercial Paper Notes provided to the Paying Agent other than those notices, certificates, instruments, letters and written commitments that relate solely to the routine issuance and payment of the Commercial Paper Notes.

(d) *Notices of Resignation of the Paying Agent and Dealer.* As promptly as practicable, written notice to the Bank of any resignation of any Paying Agent or Dealer immediately upon receiving notice of the same; and such notice, in any event, shall not be less than 60 days written notice prior to any resignation by the Dealer.

(e) *Offering Memorandum and Material Event Notices.* (A) Within ten (10) days after the issuance of any securities by the City with respect to which a final official statement or other offering or disclosure document has been prepared by the City, (1) provide the Bank with a copy of such official statement or offering circular or (2) provide the Bank with notice that such information has been filed with EMMA and is publicly available; and (B) during any period of time the City is subject to continuing disclosure requirements under Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement, immediately following any dissemination, distribution or provision thereof to any Person, (1) provide the Bank with a copy of any reportable event notice (as described in b(5)(i)(C) of Rule 15c2-12) disseminated, distributed or provided in satisfaction of or as may be required pursuant to such requirements or (2) provide the Bank with notice that such event notice has been filed with EMMA and is publicly available.

(f) *Notice of Default, Event of Default or Adverse Change.* (i) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and within three (3) days thereafter, a certificate signed by an Authorized Issuer Officer specifying in reasonable detail the nature and period of existence thereof and what action the City has taken or proposes to take with respect thereto; (ii) promptly following a written request of the Bank, a certificate of an Authorized Issuer Officer as to the existence or absence, as the

case may be, of a Default or an Event of Default under this Agreement; and (iii) promptly upon obtaining knowledge of any “default” or “event of default” as defined under any Bank Agreement, notice specifying in reasonable detail the nature and period of existence thereof and what action the City has taken or proposes to take with respect thereto.

(g) *Litigation.* As promptly as practicable, written notice to the Bank of all litigation served against the City and all proceedings before any court or governmental authority which could reasonably be expected to have a Material Adverse Effect.

(h) *Additional Debt.* Within ten (10) days after the date of issuance and delivery of any additional Debt payable from and/or secured by Pledged Funds, a copy of any certificate or materials required to be provided pursuant to Section 6.13 hereof.

(i) *Other Information.* Such other information regarding the business affairs, financial condition and/or operations of the City as the Bank may from time to time reasonably request.

The City will permit the Bank to disclose the information described in this Section 6.02 to any Participants.

*Section 6.03. Maintenance of Books and Records.* The City will keep, proper books of record and account in which full, true and correct entries in accordance with the City’s budget basis accounting principles and reporting practices will be made of all dealings or transactions in relation to its activities. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the City shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 5.12 hereof.

*Section 6.04. Access to Books and Records.* To the extent permitted by law, the City will permit any Person designated by the Bank (at the expense of the Bank, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the City) to visit any of the offices of the City to examine the books and financial records (except books and financial records the examination of which by the Bank is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the City with their principal officers, employees and independent public accountants, all at such reasonable times and as often as the Bank may reasonably request.

*Section 6.05. Compliance With Documents.* The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Ordinance, Note Resolution and each of the other Program Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by

reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against the City. To the extent that any such incorporated provision permits the City, the holders of one or more Commercial Paper Notes or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the City, the holders of one or more Commercial Paper Notes or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the written approval by the Bank of the same. Except as permitted by Section 6.15 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the City with respect thereto made pursuant to the Ordinance, the Note Resolution, or any of the other Program Documents to which the City is a party, shall be effective to terminate or amend such covenants and agreements and defined terms or release the City with respect thereto in each case as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of the Ordinance, the Note Resolution or any such other Program Document to which the City is a party, the City shall continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

*Section 6.06. Compliance With Law.* The City shall comply with all Laws applicable to it and its Property, except where non-compliance could not reasonably be expected to result in a Material Adverse Effect, such compliance to include, without limitation, paying all taxes, assessments and governmental charges imposed upon it or its property before the same become delinquent, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and reserves are provided therefor that in the opinion of the City are adequate.

*Section 6.07. Further Assurances.* From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Program Documents to which the City is a party or for the purpose of more fully perfecting or renewing the rights of the Bank with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the City which may be deemed to be a part thereof). Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to the Program Documents to which the City is a party which requires any consent, approval, registration, qualification or authorization of any governmental authority or instrumentality, the City will, to the fullest extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization. At any time, and from time to time, upon request by the Bank, the City will, at the City's expense, correct any defect, error or omission which may be discovered in the form or content of any of the Program

Documents to which the City is a party or protect the Bank's interests, security, rights and remedies with respect to the Pledged Funds or its security under the Note Resolution or hereunder. At all times, the City will defend, preserve and protect the pledge of certain funds pursuant to the Note Resolution and all the rights of the Bank hereunder and under the Note Resolution against all claims and demands of all Persons whosoever.

*Section 6.08. No Impairment.* The City will neither take any action, nor cause the Paying Agent to take any action, under the Agency Agreement or any Program Document which would materially adversely affect the rights, interests, remedies or security of the Bank under this Agreement or any other Program Document or which could result in a Material Adverse Effect.

*Section 6.09. Application of Note Proceeds.* (a) The City will not take or omit to take any action, which action or omission will in any way result in the proceeds from the sale of the Commercial Paper Notes being applied in a manner other than as provided in the Ordinance and the Note Resolution.

(b) The City agrees not to authorize, instruct or permit the Paying Agent to authenticate and deliver Commercial Paper Notes at any time when any Advance is outstanding unless the proceeds of the sale of such Commercial Paper Notes are to be applied on the sale date to repay either (i) such Advance (together with all accrued and unpaid interest thereon), or (ii) principal of and accrued interest on concurrently maturing Commercial Paper Notes.

*Section 6.10. Application of Drawings.* The City will not take or omit to take any action, which action or omission will in any way result in the proceeds of the Drawings or the Advances being applied for any purpose other than to pay principal of and interest on Commercial Paper Notes on their respective maturity dates.

*Section 6.11. Paying Agent and Dealers.* The City will not, without the prior written consent of the Bank, which consent shall not be unreasonably withheld, (a) remove, or seek to remove, the Paying Agent; or (b) appoint or consent to the appointment of any successor Paying Agent or Dealer thereto. The City shall at all times maintain a Paying Agent pursuant to the terms of the Note Resolution and the Ordinance that is acceptable to the Bank. The City will at all times maintain a Dealer under the Note Resolution and the Dealer Agreement that is acceptable to the Bank. The City agrees to (x) issue Commercial Paper Notes and (y) cause the applicable Dealers (subject to the terms of the applicable Dealer Agreements) to use their best efforts to sell Commercial Paper Notes, in each case, up to the Maximum CP Rate applicable to the Commercial Paper Notes in order to repay maturing Commercial Paper Notes. If any Advance remains outstanding for a period of thirty (30) consecutive calendar days or any Dealer fails to sell Commercial Paper Notes, the proceeds of which are intended to be used to pay the Advance, after being directed to do so by the City (subject to the provisions of the applicable Dealer Agreement) at the written direction of the Bank the City shall cause the related Dealer (that has been unable to sell Commercial Paper Notes or fails to perform its duties) to be replaced with a Dealer satisfactory to the Bank within sixty (60) calendar days of the receipt of such written direction. Each Dealer Agreement shall provide that the related Dealer may not resign until the earlier of (a) the related Dealer providing at least sixty (60) days' prior written notice to the City, the Paying Agent and the

Bank, and (b) provided the City has decided to replace the related Dealer with a new dealer, the date on which a successor dealer has been appointed and accepted its appointment.

*Section 6.12. Maintenance of Tax-Exempt Status of Commercial Paper Notes.* The City will not take any action or omit to take any action which, if taken or omitted, would adversely affect the exclusion of interest on any Commercial Paper Notes which are designated as Tax-Exempt Commercial Paper Notes (subject to the inclusion of any exception contained in the opinion delivered upon the original issuance of such Tax-Exempt Commercial Paper Notes, from gross income for purposes of federal income taxation or the exemption of such interest from State of Florida personal income taxes; *provided, however*, that the failure to maintain the tax-exempt status of any Commercial Paper Notes which are designated as Tax-Exempt Commercial Paper Notes (referred to herein as “*Adversely Affected Commercial Paper Notes*”) shall not constitute an Event of Default hereunder so long as the City issues taxable Commercial Paper Notes (i.e., the interest of which is taxable to the holders thereof) and applies the proceeds thereof to pay principal of and interest on the Adversely Affected Tax-Exempt Commercial Paper Notes on their respective maturity dates, and/or uses other available moneys (except proceeds of Tax-Exempt Commercial Paper Notes) of the City to pay principal of and interest on the Adversely Affected Tax-Exempt Commercial Paper Notes on their respective maturity dates.

*Section 6.13. Amendments to Note Resolution, Ordinance and Program Documents.* The City will not amend or modify, or permit to be amended or modified in any manner whatsoever the Ordinance or the Note Resolution or any other Program Document, in each case, without the prior written consent of the Bank.

*Section 6.14. Ratings.* (a) The City covenants and agrees that it shall at all times maintain (i) at least two unenhanced long-term ratings from any of Fitch, Moody’s or S&P on its Parity Debt (other than the Commercial Paper Notes and the Bank Note) and (ii) at least one short-term rating on the Commercial Paper Notes by any Rating Agency. The City covenants and agrees that it shall not at any time withdraw any long-term unenhanced rating on its Parity Debt (other than the Commercial Paper Notes and the Bank Note) from any of Fitch, Moody’s or S&P if the effect of such withdrawal would solely be to cure a Default or an Event of Default under this Agreement or to decrease the amount of any fee owed hereunder or under the Fee Letter.

(b) The City covenants and agrees that at the request of the Bank, and at the City’s expense, the City shall obtain at least one long-term rating for the Bank Note from any Rating Agency.

*Section 6.15. Liens.* The City shall not, directly or indirectly, incur, create or permit to exist any Lien on all or any part of the security provided by the Ordinance and the Note Resolution that is senior to or on a parity with the Lien created by the Note Resolution for the benefit of the Commercial Paper Notes and the Obligations, other than (i) Liens created under and in accordance with the terms of the Note Resolution or the Ordinance, respectively; (ii) the Liens created for the benefit of the Commercial Paper Notes, Bank Note, the Obligations, and Parity Debt that have heretofore or may hereafter be issued.

*Section 6.16. Book-Entry Eligibility.* The City covenants that at all times from and including the Effective Date until and including the Letter of Credit Expiration Date, the City shall cause the Commercial Paper Notes to be eligible for, and to be registered with, DTC's book-entry delivery services and that such registration with DTC shall not be discontinued without the Bank's prior written consent.

*Section 6.17. Substitute Liquidity Facility or Refinancing.*

(a) The City agrees to use its best efforts to obtain a substitute Liquidity Facility to replace the Letter of Credit or otherwise refinance, redeem or defease the Commercial Paper Notes in the event (i) the Bank decides not to extend the Letter of Credit Expiration Date or if the City fails to request such an extension (such replacement, refinancing, redemption or defeasance to occur on or before the Letter of Credit Expiration Date), (ii) the Letter of Credit is terminated, or (iii) the City terminates this Agreement in accordance with the terms hereof.

(b) The City agrees that any substitute Liquidity Facility will require, as a condition to the effectiveness of the substitute Liquidity Facility, that the provider of substitute Liquidity Facility provide funds to the extent necessary, on the date the substitute Liquidity Facility becomes effective, for payment of all Reimbursement Obligations at par plus interest (at the applicable rate pursuant to the terms hereof) through the date repaid. On the effective date of such substitute Liquidity Facility or refinancing, redemption or defeasance, as the case may be, the City shall pay in full all other amounts due under this Agreement, the Fee Letter and the Bank Note (including, without limitation, all Excess Interest and unpaid interest thereon) and the City shall provide for the surrender (and cancellation) of the Letter of Credit to the Bank.

(c) The City shall not permit a substitute Liquidity Facility to become effective with respect to less than all of the Commercial Paper Notes of a Series without the prior written consent of the Bank.

*Section 6.18. Immunity from Jurisdiction.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Program Document, the City irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceedings arising under or relating to this Agreement or any other Program Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the City hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its Revenues (irrespective of their use or intended use), all such immunity.

*Section 6.19. Swap Contracts.* The City will not enter into any Swap Contract relating to Debt (i) wherein any termination payments thereunder are senior to or on parity with the payment of the Commercial Paper Notes or any Reimbursement Obligations or (ii) which requires the City

to post collateral to secure its obligations thereunder, in each case, without the prior written consent of the Bank.

*Section 6.20. Budget and Appropriation.* To the fullest extent permitted and/or required by Florida law, the City shall cause the appropriate City official(s) to take any and all ministerial actions that may be necessary to facilitate the payment of all obligations under this Agreement, the Fee Letter and the Bank Note and to include such obligations in the annual Budget (including any necessary appropriations related thereto).

*Section 6.21. Use of Bank's Name.* The City shall not include in an offering document for the Commercial Paper Notes any information concerning the Bank (other than identifying the Bank as a party to this Agreement and the issuer of the Letter of Credit) that is not supplied in writing, or otherwise consented to in writing, by the Bank expressly for inclusion therein. Except as may be required by law (including, but limited to, federal and state securities laws), the City shall not use the Bank's name in any published materials (other than the City's staff reports, annual statements, audited financial statements, rating agency presentations) without the prior written consent of the Bank (which consent shall not be unreasonably withheld); *provided* that, without the prior written consent of the Bank, the City may identify the Bank as a party to this Agreement and as the issuer of the Letter of Credit, the stated amount of the Letter of Credit, the expiration date of the Letter of Credit and that the City's obligations under this Agreement are secured by Pledged Funds, in offering documents, so long as no other information relating to the Agreement, the Fee Letter or the Bank is disclosed in such offering documents without the prior written consent of the Bank.

*Section 6.22. Sanctions; Anti-Corruption Laws .* The City will conduct its affairs in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions. The City will not directly or indirectly, use any Advance or the proceeds of any Advance, or lend, contribute or otherwise make available such Advance or the proceeds of any Advance to any Person, to fund any activities of or business with any Person, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Bank or otherwise) of Sanctions. The City will not directly or indirectly, use any Advance or the proceeds of any Advance for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other anti-corruption legislation in other jurisdictions.

*Section 6.23. Insurance.* **[The City shall maintain insurance with reputable insurance companies or associations]** believed by the City at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage. The City shall upon request of the Bank furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 6.23.

*Section 6.24. Maintenance of Properties.* The City shall, in all material respects, maintain, preserve and keep its property in good repair, working order and condition (ordinary wear and tear excepted), except to the extent that the failure to do so could reasonably be expected to result in a Material Adverse Effect.

*Section 6.25. Other Agreements.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement which such Bank Agreement provides such Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Bank in this Agreement, the City shall provide the Bank with a copy of each such Bank Agreement and such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein. The City shall promptly enter into an amendment to this Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; provided that the Bank shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if the City fails to provide such amendment.

*Section 6.26. Investment Policy.* All investments of the City have been and will be made in accordance with the terms of the Investment Policy.

*Section 6.27. Environmental Laws.* The City shall comply with all applicable Environmental Laws and cure any defect thereto (or cause other Persons to cure any such defect) to the extent necessary to bring such real property owned, leased, occupied or operated by the City back into compliance with Environmental Laws and to comply with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The City shall at all times use commercially reasonable efforts to render or maintain any real property owned, leased, occupied or operated by the City safe and fit for its intended uses. The City shall also immediately notify the Bank of any actual or alleged material failure to so comply with or perform, or any material breach, violation or default under any Environmental Law.

*Section 6.28. Federal Reserve Board Regulations.* The City shall not use any portion of the proceeds of the Purchase Price of the Bonds for the purpose of carrying or purchasing any Margin Stock and shall not incur any Debt which is to be reduced, retired or purchased by the City out of such proceeds.

*Section 6.29. Defeasance.* Notwithstanding anything in the Program Documents to the contrary, in the event that the principal of and/or interest due on any Commercial Paper Notes shall be paid by the Bank pursuant to the Letter of Credit, such Commercial Paper Notes shall remain outstanding for all purposes, not be defeased or otherwise satisfied and shall not be considered paid by the City, and the pledge of the Pledged Funds and any other amounts pledged to the payment of such Commercial Paper Notes pursuant to the Program Documents, and all covenants, agreements and other obligations of the City to the owners of the Commercial Paper Notes shall



continue to exist and shall run to the benefit of the Bank and the Bank shall be subrogated to the rights of such owners.

*Section 6.30. Maturity of Commercial Paper Notes.* (a) The City will use its best efforts to not permit the Paying Agent to issue, or to not permit any Dealer to market, any Commercial Paper Notes with a maturity shorter than two (2) days from their date of issuance, unless the City or the Dealer has provided three (3) Business Days prior written notice to the Bank with a copy to the Paying Agent; *provided, however*, that no written notice will be required to be provided to the Bank by the City or the Dealer in the event that (x) the Commercial Paper Notes are issued with a maturity of one (1) day and the Dealer for such Commercial Paper Notes is the registered holder of all such Commercial Paper Notes or (y) the Dealer is unable to market Commercial Paper Notes up to the Maximum CP Rate. However, failure to comply with this section shall not result in an Event of Default under Section 7.01 of this Agreement.

*Section 6.31. Anti-Dilution Test.* No additional Debt payable from or secured by Non-Ad Valorem Revenues shall be issued by the City unless the actual receipts of total Governmental Funds of the City (as specified in the City's audited financial statements) for the prior Fiscal Year, less ad valorem revenues, less Non-Ad Valorem Revenues from total Governmental Funds pledged to secure Debt that has a first lien on such Non-Ad Valorem Revenues, and less the amount required to pay for Essential Services of the City for the prior Fiscal Year equal at least 125% of such maximum annual debt service on all Debt payable from such Non-Ad Valorem Revenues. For purposes of this Section 6.31 only, "Debt" is defined as on any date (without duplication) all of the following to the extent that they are general obligations of the City or are payable in whole or in part from Non-Ad Valorem Revenues (i) all obligations of the City for borrowed money evidenced by bonds, debentures, or other similar instruments; (ii) all obligations of the City to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (iii) all obligations of the City as lessee under capitalized leases; and (iv) all indebtedness of other Persons to the extent guaranteed by, or secured by Non-Ad Valorem Revenues of the City. For purposes of this Section 6.31 only, "Essential Services" are those services identified by the City in its annual audit as general government and public safety expenditures from total Governmental Funds, less expenditures paid from ad valorem revenues. For purposes of this Section 6.31 only, Debt that has 25% or more of its aggregate principal coming due in any one year shall be assumed to amortize in up to 20 years on an annual level debt service basis, calculated from the date of issuance of such Debt.

## ARTICLE VII

### DEFAULTS

*Section 7.01. Events of Default and Remedies.* If any of the following events shall occur, each such event shall be an "Event of Default":

- (a) the City fails to pay, or cause to be paid, when due (i) any principal of or interest on any Drawing or any Advance, (ii) any Letter of Credit Fee or (iii) any other Obligation (other than the Obligations described in clause (i) or (ii) of this Section 7.01(a));

*provided* that, for the avoidance of doubt, no written notice from the Bank shall be required for any such failure to constitute an “Event of Default” hereunder;

(b) (i) any representation, warranty or statement made by or on behalf of the City herein or in any Program Document to which the City is a party or in any certificate delivered pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or (ii) the documents, certificates or statements of the City (including unaudited financial reports, budgets, projections and cash flows of the City) furnished to the Bank by or on behalf of the City in connection with the transactions contemplated hereby (collectively, the “*City Information*”), when taken as a whole, are materially inaccurate in light of the circumstances under which they were made and as of the date on which they were made; *provided, however*, if after the date such City Information is furnished to the Bank it is discovered by the City or the Bank that such Department Information contained an inaccuracy, such inaccuracy shall not be considered an Event of Default if (x) at the time the City furnished such City Information to the Bank, the City believed, to the best of its knowledge, that such City Information was accurate in all material respects, and (y) within five (5) calendar days of the City receiving notice of such discovery of the inaccuracy it provides the Bank with corrected City Information;

(c) (i) the City fails to perform or observe any term, covenant or agreement contained in Sections 6.01, 6.08, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.17(b), 6.17(c), 6.18 and 6.19 hereof; or (ii) the City fails to perform or observe any other term, covenant or agreement contained in this Agreement (other than those referred to in Sections 7.01(a) and 7.01(c)(i)) and any such failure cannot be cured or, if curable, remains uncured for thirty (30) days after the earlier of (A) written notice thereof to the City or (B) an Authorized Issuer Officer having actual knowledge thereof;

(d) the City shall (i) default in any payment of any Debt, (other than the Commercial Paper Notes, the Drawings or the Advances) secured by a charge, lien or encumbrance on any part of the Pledge Revenues with a lien on, pledge of, security interest in or priority of payment from any part of the Pledged Funds that is senior to, or on a parity with, the Commercial Paper Notes, the Drawings or the Advances (“*Secured Debt*”), beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created; or (ii) default in the observance or performance of any agreement or condition relating to any Secured Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Secured Debt (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Secured Debt to become due prior to its stated maturity (whether by acceleration, redemption, mandatory tender or otherwise);

(e) (i) a court or other Governmental Authority with jurisdiction to rule on the validity of this Agreement, the Note Resolution, the Ordinance or any other Program Document to which the City is a party shall find, announce or rule that (A) any material provision of this Agreement or any other Program Document to which the City is a party;

or (B) any provision of the Note Resolution or the Ordinance relating to the security for the Commercial Paper Notes, the Bank Note or the Obligations, the City's ability to pay the Obligations or perform its obligations hereunder or under the Fee Letter or the rights and remedies of the Bank, is not a valid and binding agreement of the City or; (ii) the City shall contest the validity or enforceability of this Agreement, any other Program Document to which the City is a party or any provision of the Note Resolution or the Ordinance, relating to the security for the Commercial Paper Notes, the Bank Note or the Obligations, the City's ability to pay the Obligations or perform its obligations hereunder or under the Fee Letter or the interests, security, rights or remedies of the Bank or the pledge of, lien on or security interest in the Pledged Funds, or shall seek an adjudication that this Agreement, any other Program Document to which the City is a party or any provision of the Note Resolution or the Ordinance relating to the security for the Commercial Paper Notes, the Bank Note or the Obligations, the City's ability to pay the Obligations or perform its obligations hereunder or under the Fee Letter or the interests, security, rights or remedies of the Bank, is not valid and binding on the City or the City shall repudiate its obligations under this Agreement or any other Program Document; or (iii) the validity, effectiveness or enforceability of the pledge of, lien on or security interest in the Pledged Funds granted to the Commercial Paper Notes under the Note Resolution or the Ordinance and the Obligations hereunder and under the Fee Letter and the Bank Note shall at any time for any reason cease to be valid, effective or binding as a result of a finding or ruling by a court or Governmental Authority with competent jurisdiction, or shall be declared, in a final non-appealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable;

(f) (A) any provision of the Note Resolution, the Ordinance or any other Program Document relating to the security for the Commercial Paper Notes, the Bank Note or the Obligations, the City's ability to pay the Obligations or perform its obligations hereunder or under the Fee Letter or the interests, security, rights or remedies of the Bank shall at any time for any reason cease to be in full force or effect, (B) any Program Document to which the City is a party, except for any Dealer Agreement which has been terminated due to a substitution of a Dealer, or any material provision of any of the foregoing documents, shall at any time for any reason cease to be in full force or effect, or (C) the City or any Person acting by or on behalf of the City shall deny or disaffirm the City's obligations under the Note Resolution, the Ordinance or any other Program Document to which the City is a party;

(g) a final judgment or order for the payment of money in excess of \$10,000,000 (in excess of the amount of proceeds of applicable insurance actually paid in satisfaction of such judgment) shall have been rendered against the City and such judgment or order shall not have been satisfied, stayed, vacated, discharged or bonded pending appeal within a period of sixty (60) days from the date on which it was first so rendered;

(h) (i) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt (including, without limitation, amounts due under any Bank Agreement) secured by a lien, charge or encumbrance upon the Pledged Funds; (ii) under any existing

or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the City seeks to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, termination, composition or other relief with respect to it or its debts (or the existence of the City is dissolved or terminated by any other means); (iii) the City seeks appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of the City's property, or the City shall make a general assignment for the benefit of its creditors; (iv) there shall be commenced against the City any case, proceeding or other action of a nature referred to in clause (ii) above and the same shall remain undismissed; (v) there shall be commenced against the City any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; (vi) a financial control board, or its equivalent, shall be imposed upon the City by a Governmental Authority; (vii) the City takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv), (v) or (vi) above; or (viii) the City shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(i) any of Fitch, Moody's or S&P shall have downgraded its rating of any Parity Debt below "BBB-" (or its equivalent), "Baa3" (or its equivalent), or "BBB-" (or its equivalent), respectively, or suspended or withdrawn its rating of the same for any credit-related reason (and such suspension or withdrawal is initiated by the respective rating agency);

(j) any provision of the Charter relating to the City is repealed, reenacted, amended or otherwise modified (including, without limitation, by legislative or judicial action but excluding any such action pursuant to Charter amendments approved by the voters prior to the date of this Agreement) or any other legislation is enacted, repealed, reenacted, amended or otherwise modified, and in the event of a repeal, reenactment, amendment, modification or enactment, such repeal, reenactment, amendment, modification or enactment, in the sole judgment of the Bank, has a material adverse effect on any right, interest, security or remedy of the Bank under this Agreement or the other Program Documents;

(k) (i) any "event of default" shall have occurred and be continuing under any Program Document beyond the expiration of any applicable grace period or (ii) any "event of default" under any Bank Agreement with respect to any Secured Debt shall have occurred and be continuing beyond the expiration of any applicable grace period; or

(l) any funds or accounts or investments on deposit in, or otherwise to the credit of, any of the funds or accounts established pursuant to the Ordinance or the Note Resolution, or the other Program Documents, that have been pledged to or a lien granted thereon to secure the Commercial Paper Notes, the Bank Note or the Obligations, shall become subject to any writ, judgment, warrant or attachment, execution or similar process

which shall not have been vacated, discharged, or stayed or bonded pending appeal within ten (10) days from the entry thereof.

*Section 7.02. Remedies.* Upon the occurrence of any Event of Default, all Obligations shall bear interest at the Default Rate and the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by notice to the City, declare all unreimbursed Drawings, Advances, the Bank Note and interest thereon, immediately due and payable, whereupon the same shall become immediately due and payable (provided that, if an Event of Default specified in Section 7.01(h) hereof shall occur, such declaration shall occur automatically without the giving of any such notice); and/or

(b) by notice of the occurrence of any Event of Default to the Paying Agent (which notice shall constitute a “Stop Issuance Instruction”) prohibit, until such time, if any, as the Bank shall withdraw (in writing) such notice, the issuance of additional Commercial Paper Notes, reduce the Stated Amount of the Letter of Credit to the amount of the then Outstanding Commercial Paper Notes supported by the Letter of Credit and interest payable thereon at maturity of such Commercial Paper Notes and/or terminate and/or permanently reduce such Stated Amount as the then Outstanding Commercial Paper Notes are paid;

(c) issue the Final Drawing Notice (the effect of which shall be to cause the Termination Date of the Letter of Credit to occur on the 15th day after the date of receipt thereof by the Paying Agent);

(d) pursue any rights and remedies it may have under the Program Documents, including, without limitation, pursuant to Section 6.25 hereof, if applicable; or

(e) pursue any other action available at law or in equity.

*Section 7.03. Solely for the Benefit of Bank.* The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the City or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder or under any of the other Program Documents.

*Section 7.04. Discontinuance of Proceedings.* In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Program Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the City and the Bank shall be restored to their former positions with respect to the Obligations, the Program Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

## ARTICLE VIII

### MISCELLANEOUS

*Section 8.01. Amendments, Waivers, Etc.* No modification, amendment or waiver of any provision of this Agreement or the Bank Note, or consent to any departure by the City 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 specific purpose for which given; *provided, however*, that no amendment, waiver or consent shall, unless in writing and signed by the Bank, affect the rights or duties of the Bank under this Agreement or any other Program Document.

*Section 8.02. Notices.* All notices and other communications provided for hereunder shall be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile transmission, or regular mail, as follows:

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| to the City: | City of Cape Coral, Florida<br>[ ]<br>Telephone: [ ]<br>Facsimile: [ ]<br>Attention: [Financial Services Director] |
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| to the Bank with<br>respect to credit<br>matters: | Bank of America, N.A.<br>9128 Strada Place, Suite 10110<br>Naples, Florida 34108<br>Telephone: (239) 598-8805<br>Attention: Holly Kuhlman<br>Email: holly.kuhlman@bofa.com |
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| to the Bank,<br>with respect to<br>Drawings under<br>the Letter of Credit: | Bank of America, N.A.<br>1 Fleet Way, PA6-580-02-30<br>Scranton, PA 18507<br>Attention: Standby Letter of Credit Department<br>Telephone: (800) 370-7519 OPT 1<br>Facsimile: (800) 755-8743 |
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to the Paying Agent: U.S. Bank Trust Company, National Association  
100 Wall Street, Suite 600  
New York, New York 10005  
Telephone: (212) 912-7226  
Facsimile: [ ]  
Attention: Corporate Trust Services

to the Dealers: BofA Securities, Inc.  
One Bryant Park, 12<sup>th</sup> Floor  
New York, New York 10036  
Telephone: [ ]  
Facsimile: [ ]  
Attention: [ ]

or, as to each Person named above, at such other address as shall be designated by such Person in a written notice to the parties hereto. All such notices and other communications shall, when delivered or sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed respectively, addressed as aforesaid, except that Drawing certificates submitted to the Bank shall not be effective until received by the Bank.

*Section 8.03. Survival of Covenants; Successors and Assigns.* (a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of any Drawing or Advance hereunder and shall continue in full force and effect and until all Obligations hereunder, under the Fee Letter and under the Bank Note shall have been paid in full. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default or Event of Default at the time of honoring a Drawing. Whenever in this Agreement and the Fee Letter any of the parties hereto and thereto is referred to, such reference shall, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement, the Fee Letter and the Bank Note shall inure to the benefit of the successors and assigns of the Bank. The City may not transfer its rights or obligations under this Agreement, the Fee Letter or the Bank Note without the prior written consent of the Bank. The Bank may transfer some or all of its rights and obligations under this Agreement and/or the Letter of Credit with the prior written consent of the City (which consent shall not be withheld unreasonably); *provided* that (i) the City has received written notice from each Rating Agency that the transfer shall not cause the lowering, withdrawal or suspension of any ratings then existing on the Commercial Paper Notes; and (ii) the Bank shall be responsible for all costs resulting from the transfer. This Agreement, the Fee Letter and the Bank Note are made solely for the benefit of the City, the Bank, and no other Person (including, without limitation, the Paying Agent, any Dealer or any holder of Commercial Paper Notes) shall have any right, benefit or interest under or because of the existence of this Agreement, the Fee Letter or the Bank Note; *provided further* that the City's liability to any Participant shall not in any event exceed that liability which the City would owe to the Bank but for such participation.

(b) Notwithstanding the foregoing, the Bank shall be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Bank's rights and benefits under this Agreement, the Fee Letter and the Bank Note on a participating basis but not as a party to this Agreement, the Fee Letter or the Bank Note (a "*Participation*") without the consent of the City. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder, and the City shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and the Bank Note. The City agrees that each Participant shall, to the extent of its Participation, be entitled to the benefits of this Agreement, the Fee Letter and the Bank Note as if such Participant were the Bank; *provided* that no Participant shall have the right to declare, or to take actions in response to, an Event of Default under Section 7.01 hereof; and *provided further* that no such Participant shall be entitled to receive payment pursuant to Section 2.14 hereof in an amount greater than the amount which would have been payable had the Bank not granted a Participation to such Participant. The City shall permit the Bank to disclose the financial information received by it pursuant to this Agreement to each Participant of the Bank pursuant to this Section, subject to confidentiality restrictions and use restrictions customary for financial institutions.

(c) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge or assign a security interest in all or any portion of its rights or interests under this Agreement, the Bank Note and the other Program Documents to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *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 8.04. Unconditional Obligations.* The obligations of the City under this Agreement, the Fee Letter and the Bank Note shall be absolute, unconditional, irrevocable and performed and payable strictly in accordance with the terms of the Note Resolution, the Ordinance this Agreement, the Fee Letter and the Bank Note, under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of this Agreement, the Fee Letter, the Letter of Credit, the Bank Note or, to the extent permitted by law, the Commercial Paper Notes, the Note Resolution, the Ordinance or any other Program Document;

(b) any amendment or waiver of or any consent to departure from the terms of the Note Resolution, the Ordinance or all or any of the other Program Documents to which the Bank have not consented in writing;

(c) the existence of any claim, counterclaim, set off, recoupment, defense, or other right which any Person may have at any time against the Bank, the City, the Paying Agent, any Dealer, or any other Person, whether in connection with this Agreement, the Fee Letter, the Bank Note, the Note Resolution, the Ordinance, the other Program Documents, or any other transaction related thereto;



(d) any statement or any other document presented pursuant hereto or pursuant to the Letter of Credit which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(e) payment by the Bank of a Drawing or an Advance against presentation of a request which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently is found not to comply with the terms of this Agreement; and

(f) any other circumstances or happening whatsoever whether or not similar to any of the foregoing.

SECTION 8.05. LIABILITY OF BANK: INDEMNIFICATION. (A) TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF THE STATE, THE CITY ASSUMES ALL RISKS OF THE ACTS OR OMISSIONS OF THE PAYING AGENT WITH RESPECT TO THE USE OF THE LETTER OF CREDIT AND THE USE OF PROCEEDS THEREUNDER; *PROVIDED* THAT THIS ASSUMPTION WITH RESPECT TO THE BANK IS NOT INTENDED TO AND SHALL NOT PRECLUDE THE CITY FROM PURSUING SUCH RIGHTS AND REMEDIES AS IT MAY HAVE AGAINST THE PAYING AGENT UNDER ANY OTHER AGREEMENTS. NEITHER THE BANK NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE OR RESPONSIBLE FOR (I) THE USE OF THE LETTER OF CREDIT, THE DRAWINGS OR ADVANCES THEREUNDER OR HEREUNDER, THE PROCEEDS OF THE COMMERCIAL PAPER NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY AND BY THE PROGRAM DOCUMENTS OR FOR ANY ACTS OR OMISSIONS OF THE TRUSTEE OR ANY DEALER; (II) 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; (III) PAYMENTS BY THE BANK AGAINST PRESENTATION OF REQUESTS FOR DRAWINGS OR REQUESTS FOR 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 THE LETTER OF CREDIT; OR (IV) ANY OTHER CIRCUMSTANCES WHATSOEVER IN MAKING OR FAILING IN GOOD FAITH TO MAKE PAYMENT HEREUNDER OR UNDER THE LETTER OF CREDIT; *PROVIDED* THAT THE CITY SHALL NOT BE REQUIRED TO INDEMNIFY THE BANK FOR ANY CLAIMS, LOSSES, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, SOLELY AND DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE BANK.

(b) TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE, THE CITY HEREBY INDEMNIFIES AND HOLDS HARMLESS THE BANK AND ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (EACH AN "*INDEMNITEE*") FROM AND AGAINST ANY AND ALL DIRECT, AS OPPOSED TO CONSEQUENTIAL OR PUNITIVE CLAIMS, DAMAGES (THE RIGHT TO RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES BEING HEREBY WAIVED), LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING SPECIFICALLY REASONABLE ATTORNEYS' FEES) WHICH THE BANK MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST THE BANK BY ANY PERSON WHATSOEVER) (COLLECTIVELY, THE "*LIABILITIES*") BY REASON OF OR IN CONNECTION WITH (I) THE EXECUTION AND DELIVERY OF THIS AGREEMENT, THE FEE LETTER, THE LETTER OF CREDIT AND THE BANK NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY; AND (II) THE STATEMENTS CONTAINED IN THE OFFERING MEMORANDUM PREPARED AND DISTRIBUTED IN CONNECTION WITH THE COMMERCIAL PAPER NOTES; *PROVIDED, HOWEVER*, THAT THE CITY SHALL NOT BE REQUIRED TO INDEMNIFY THE BANK FOR ANY

CLAIMS, DAMAGES (THE RIGHT TO RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES BEING HEREBY WAIVED), LOSSES, LIABILITIES, COSTS OR EXPENSES (1) TO THE EXTENT, BUT ONLY TO THE EXTENT, SOLELY AND DIRECTLY CAUSED BY (X) THE BANK'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE IN DETERMINING WHETHER THE DOCUMENTS PRESENTED UNDER THE LETTER OF CREDIT COMPLY WITH THE TERMS OF THE LETTER OF CREDIT; OR (Y) THE BANK'S WILLFUL OR GROSSLY NEGLIGENT FAILURE TO MAKE LAWFUL PAYMENT UNDER THE LETTER OF CREDIT AFTER THE PROPER PRESENTATION TO THE BANK BY THE PAYING AGENT OF A DRAWING STRICTLY COMPLYING WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT; OR (2) INCURRED IN CONNECTION WITH THE STATEMENTS CONTAINED IN [ ] TO THE OFFERING MEMORANDUM UNDER THE CAPTION "[ ]" AS SET FORTH IN THE OFFERING MEMORANDUM. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the City, any Dealer, the Paying Agent or any other person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

(c) Notwithstanding anything to the contrary contained in this Section 8.05, the City shall have a claim against an Indemnitee and such Indemnitee shall be liable to the City, to the extent of any direct, as opposed to special, indirect, consequential or punitive damages (the right to receive special, indirect, consequential or punitive damages being hereby waived) suffered by the City which the City proves were caused solely by such Indemnitee's gross negligence or willful misconduct, as determined by a court of competent jurisdiction.

(d) In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Section 9.05, solely with respect to disputes between the City and an Indemnitee, the City hereby agrees to pay to each Indemnitee only those Liabilities incurred by reason of or in connection with any such dispute only if the applicable court of competent jurisdiction determines that such Indemnitee did not act with gross negligence or willful misconduct with respect to such dispute.

(e) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable Law, the City shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Program Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Letter of Credit or the use of the proceeds of Drawings thereunder. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Program Documents or the transactions contemplated hereby or thereby.

(f) *Payments.* All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(g) *Survival.* The agreements in this Section survive the termination of the Letter of Credit and the repayment, satisfaction or discharge of all the other Obligations.

*Section 8.06. Expenses and Taxes.* The City will promptly pay (a) the reasonable fees and expenses of legal counsel to the Bank incurred in connection with the preparation, execution and delivery of this Agreement, the Fee Letter and the Letter of Credit as set forth in the Fee Letter; (b) the reasonable fees and disbursements of counsel to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement and the Fee Letter after the occurrence of an Event of Default; and (c) all reasonable costs and expenses, if any, in connection with the enforcement of this Agreement and the Fee Letter and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, the City shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement and the Fee Letter and the security contemplated by the Program Documents and any related documents and agrees to hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. In addition, the City agrees to pay all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the City hereunder or under the Fee Letter, including as a result of an Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement or the Fee Letter in the nature of a "workout" or of any insolvency or bankruptcy proceedings.

*Section 8.07. No Waiver; Conflict.* Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, shall operate as a waiver thereof, preclude any other or further exercise thereof nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative, and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement, the Letter of Credit, the Ordinance, the Note Resolution and any other Program Documents, this Agreement shall control solely as between the City and the Bank.

*Section 8.08. Modification, Amendment, Waiver, Etc.* No modification, amendment or waiver of any provision of this Agreement, the Fee Letter or the Bank Note shall be effective unless the same shall be in writing and signed by the parties hereto.

*Section 8.09. Severability.* Any provision of this Agreement or the other Program Documents which is prohibited or illegal, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties hereto shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.

*Section 8.10. Counterparts.* (a) This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one agreement and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement, the other Program Documents, and any separate letter agreements with respect to fees payable to the Bank, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Program Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Program Document or certificate. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Program Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

(b) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “*Communication*”), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The City agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the City to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the Bank’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank

pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

*Section 8.11. Table of Contents; Headings.* The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

*Section 8.12. ENTIRE AGREEMENT.* THIS AGREEMENT AND THE FEE LETTER, TOGETHER WITH THE BANK NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO.

*Section 8.13. Governing Law; Waiver of Jury Trial.* (a) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York, *provided* that, the obligations of the City shall be governed by and construed in accordance with the laws of the State.

(b) *Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER PROGRAM DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

*Section 8.14. Payments Set Aside; Right of Set-off.* (a) If an Event of Default shall have occurred and be continuing, the Bank and its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Bank or any such Affiliate to or for the credit or the account of the City against any and all of the obligations of the City now or hereafter existing under this Agreement or any other Program Document to the Bank or its Affiliates, irrespective of whether or not the Bank or its Affiliates shall have made any demand under this Agreement or any other Program Document and although such obligations of the City may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of the Bank different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of the Bank and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Bank or its Affiliates may

have. The Bank agrees to notify the City promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) To the extent that any payment by or on behalf of the City is made to the Bank, or the Bank exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

*Section 8.15. USA Patriot Act; Government Regulations.* The Bank hereby notifies the City 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 City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act. The City agrees to, promptly following a request by the Bank, provide all such other documentation and information reasonably requested by Bank for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

*Section 8.16. Dealing with the City, the Paying Agent, and/or the Dealer.* The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the City, the Paying Agent, and/or any Dealer regardless of the capacity of the Bank hereunder.

*Section 8.17. No Advisory or Fiduciary Responsibility.* The City acknowledges and agrees that (i) the transaction contemplated by this Agreement is an arm’s-length commercial transaction between the City and the Bank, (ii) in connection with such transaction, the Bank is acting solely as a principal and not as a financial advisor of the City, (iii) the Bank has not assumed a financial advisory responsibility in favor of the City with respect to the transaction contemplated hereby or the process leading thereto (whether or not the Bank, or any affiliate of the Bank, has advised or is currently advising the City on other matters) or any other obligation to the City except the obligations expressly set forth in this Agreement; *provided, however*, that for both subsections (ii) and (iii) herein, it is the City’s understanding that a financial advisory relationship shall not be deemed to exist when, in the course of acting as a purchaser, an underwriter, a broker, dealer or municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities, and (iv) the City has consulted with its own legal, accounting, tax and financial advisors to the extent it deemed appropriate in connection with the transaction contemplated hereby. The Bank hereby notifies the City it is not acting as a Municipal Advisor (as defined in Section 15B of the

Securities Exchange Act of 1934, as amended), it is not an agent of the City, and it does not have a fiduciary duty to the City in connection with the matters contemplated by this Agreement.

*Section 8.18. US QFC Stay Rules.*

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

*“Insolvency Proceeding”* means a receivership, insolvency, liquidation, resolution, or similar proceeding.

*“U.S. Special Resolution Regime”* means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[Remainder of page intentionally left blank; signature page follows]



IN WITNESS WHEREOF, the City and the Bank have duly executed this Agreement as of the date first above written.

CITY OF CAPE CORAL

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

[APPROVED AS TO FORM:

Date: \_\_\_\_\_

By \_\_\_\_\_  
City Attorney]

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: Holly Kuhlman  
Title: Senior Vice President

**APPENDIX I**

**FORM OF  
IRREVOCABLE TRANSFERABLE DIRECT-PAY LETTER OF CREDIT  
BANK OF AMERICA, N.A.**

**BANK OF AMERICA, N.A.**

**IRREVOCABLE TRANSFERABLE DIRECT-PAY LETTER OF CREDIT**

1 FLEET WAY  
PA6-580-02-30  
SCRANTON, PENNSYLVANIA 18507

August [ ], 2024

U.S. \$161,095,891

No. [LC#]

U.S. Bank Trust Company, National Association, as Paying Agent  
Suite 600  
100 Wall Street  
New York, NY 10005  
Attention: Global Corporate Trust

Ladies and Gentlemen:

1. At the request and for the account of our customer, the City of Cape Coral, Florida (the “City”), which has or will cause the issuance of its Commercial Paper Notes, Series A (Tax-Exempt) and Series B (Taxable) (together, the “*Commercial Paper Notes*”), Bank of America, N.A. (the “*Bank*”), hereby establishes, in favor of the Paying Agent, acting for the benefit of the holders of the Commercial Paper Notes pursuant to that certain Note Resolution adopted July [ ], 2024 by the City Council of the City (as amended, supplemented, modified or restated from time to time, the “*Note Resolution*”), that certain Ordinance No. 23-04 adopted by the City Council on February 24, 2004, as amended by Ordinance No. 56-07 adopted by the Council on June 4, 2007, dated as of March 1, 2012, as amended by Ordinance No. [ ] adopted by the City Council on July [ ], 2024 (as amended, supplemented, modified or restated from time to time, the “*Ordinance*”), and that certain Agency Agreement dated as of [ ] by and between the City and the Paying Agent, pursuant to which the Commercial Paper Notes have been or will be issued from time to time, and pursuant to that certain Reimbursement Agreement dated as of August 1, 2024 (as amended, supplemented, modified or restated from time to time, the “*Reimbursement Agreement*”), between the City and the Bank, this Letter of Credit in the maximum available amount of One Hundred Sixty-One Million Ninety-Five Thousand Eight Hundred Ninety-One Dollars (\$161,095,891) (calculated as the sum of the maximum principal amount of the Commercial Paper Notes, in an amount equal to \$150,000,000, *plus* interest thereon in an amount

equal to \$11,095,891 (calculated at the maximum rate of ten percent (10%) per annum for a period of two hundred and seventy (270) days and based upon a year of three hundred sixty-five (365) days), hereinafter, as reduced or reinstated from time to time in accordance with the provisions hereof, the “*Stated Amount*”), which may be drawn upon by the Paying Agent to pay the unpaid principal amount of Commercial Paper Notes constituting Eligible Notes on their respective stated maturity dates, together with accrued and unpaid interest thereon. The Stated Amount may be permanently reduced from time to time in accordance with paragraph 5 hereof. The Stated Amount of this Letter of Credit will be permanently reduced to the amount set forth on an Annex (Permanent Reduction of the Stated Amount of Letter of Credit) in the form of Annex B hereto from time to time delivered by you to the Bank; *provided, however*, that in no event shall the Stated Amount of this Letter of Credit be reduced to an amount less than the then outstanding principal amount of all Commercial Paper Notes outstanding plus all interest due on the stated maturity date thereof. Drawings (as herein defined) shall be made on or prior to the date any sum is due on the Commercial Paper Notes; *provided* that the Bank is not obligated to honor such Drawings until the respective stated maturity dates of such Commercial Paper Notes. “*Eligible Notes*” means Commercial Paper Notes which are not registered in the name of the City or the City or, to the best knowledge of the Paying Agent, any nominee for or any Person who owns such Commercial Paper Notes for the benefit of the City or the City.

2. This Letter of Credit shall expire at 5:00 p.m. New York City time on the date (the “*Termination Date*”) which is the earliest to occur of: (a) August [ ], 2027 (the “*Letter of Credit Expiration Date*”), as such date may be extended in a Notice of Extension from the Bank to the Paying Agent and the City in the form attached hereto as Annex F; (b) the date of payment of a Drawing, not subject to reinstatement, which when added to all other Drawings honored hereunder which were not subject to reinstatement as provided herein, in the aggregate equals the Stated Amount on the date of issuance hereof as adjusted pursuant to the terms and conditions of this Letter of Credit; (c) the date on which the Bank receives a termination certificate signed by your duly authorized officer in the form of Annex C attached hereto appropriately completed (after we honor any properly presented and conforming Drawing, if any, on such date); (d) the date on which the Bank receives a termination certificate signed by your duly authorized officer in the form of Annex D attached hereto appropriately completed; (e) the earlier of (i) the 15th calendar day (or if such date is not a Business Day, the immediately succeeding Business Day) after the date on which you receive notice from us in the form of Annex H-1 hereto (the “*Final Drawing Notice*”), and (ii) the date on which the Drawing (in the form of Annex H-2 hereto) resulting from the delivery of the Final Drawing Notice is honored hereunder. All Drawings hereunder shall be paid from immediately available funds of the Bank.

3. Funds under this Letter of Credit are available to you against your presentation of a drawing certificate in the form of Annex A or Annex H-2 hereto (a “*Drawing*”) which shall be made by facsimile to Bank of America, N.A., Scranton, Pennsylvania by facsimile (at facsimile number [(800) 755-8743], **Attention: Standby Letter of Credit Department,**) or at any other number or numbers which may be designated by the Bank by written notice delivered to you. Each Drawing so presented shall have all blanks appropriately filled in and shall be signed by a person who purports to be an authorized officer of the Paying Agent and each of the aforesaid certificates shall be either in the form of a letter on the letterhead of the Paying Agent or a communication by telecopy delivered or transmitted to the Bank. Any telecopy pursuant to which a Drawing is made

hereunder shall be promptly confirmed by you to us by telephone (but such notice shall not be a condition to drawing hereunder and you shall have no liability for not doing so).

4. The Bank hereby agrees with you that, to the extent of its liability as provided herein, all demands for payment made under and in compliance with the terms of this Letter of Credit will be duly honored upon delivery or transmission of the certificate as specified in paragraph 2 hereof and if presented at the aforesaid office on or before the Termination Date. If a Drawing is made by you hereunder at or prior to 11:30 a.m., New York City time, on a Business Day and such Drawing conforms to the terms and conditions hereof, payment shall be made in the amount specified in such Drawing in immediately available funds, no later than 2:30 p.m., New York City time, on the same Business Day. If a Drawing is made by you hereunder after 11:30 a.m., New York City time, on a Business Day and such Drawing conforms to the terms and conditions hereof, payment shall be made of the amount specified in such Drawing, in immediately available funds, not later than 2:30 p.m., New York City time, on the next succeeding Business Day. Payment under this Letter of Credit shall be made by the Bank by wire transfer of immediately available funds, to the Paying Agent at: U.S. Bank Trust Company, National Association, ABA Number [\_\_\_\_], Account Number [\_\_\_\_], Attention [\_\_\_\_], Reference: [\_\_\_\_]. Such account may be changed only by presentation to the Bank of a letter in form satisfactory to the Bank specifying a different account with the Paying Agent and executed by the Paying Agent and authenticated to our satisfaction. As used in this Letter of Credit, "*Business Day*" shall mean any day other than (a) a Saturday, Sunday, or other day on which commercial banks located in the States of New York or Florida are authorized or required by law or executive order to be closed, (b) a day on which the presentation office of the Bank for Drawings hereunder is authorized or required by law or executive order to be closed, and (c) a day on which the New York Stock Exchange is closed.

5. Demands for payment honored hereunder shall not at the time of any Drawing exceed the Stated Amount, as the Stated Amount may have been reduced or reinstated by the Bank as hereinafter provided. Subject to the preceding sentence, each Drawing honored by the Bank hereunder shall *pro tanto* reduce, by the amount of such Drawing, the Stated Amount and the amount available to be drawn hereunder by you pursuant to any subsequent Drawing, except to the extent the Stated Amount has been reinstated in accordance with the provisions of paragraph 7 of this Letter of Credit.

6. Upon receipt by the Bank of a certificate in the form of Annex B (a "*Stated Amount Reduction Certificate*") attached hereto appropriately completed and signed by your duly authorized officer, the Stated Amount shall be permanently reduced to the amount set forth therein.

7. After any Drawing, unless you shall have received notice from the Bank in substantially the form of Annex G or Annex H-1 attached hereto that an Event of Default under the Reimbursement Agreement has occurred and is continuing, the Stated Amount will be reinstated (except in the case of a Drawing resulting from the delivery of a Final Drawing Notice), but only when and to the extent amounts are received by the Bank for reimbursement of the amount of such Drawing, and will be subject to any reduction in said Stated Amount as above provided in paragraph 5, and will also be subject to any reduction in said Stated Amount as described in the immediately succeeding sentence. If at any time you shall have received notice from the Bank in

substantially the form of Annex G or Annex H-1 attached hereto: (i) you are required to acknowledge and accept such Annex(es) in accordance with such Annex(es) and return the same to the Bank, (ii) the Stated Amount shall be permanently reduced to the principal amount of Commercial Paper Notes outstanding at the time of your receipt of such Annex(es) plus interest to accrue thereon to maturity (as you shall certify to us upon your receipt of such Annexes), and (iii) the Stated Amount shall be further permanently reduced upon the Bank honoring the related Drawing(s) upon the maturity of such Commercial Paper Notes (or with respect to the Final Drawing Notice, upon the Bank honoring the final Drawing), and the Stated Amount shall no longer be reinstated following any Drawings. Any failure by you to acknowledge and accept such Annex(es) and return the same to the Bank in accordance with clause (i) of the immediately preceding sentence shall not affect the effectiveness of such Annex(es) upon your receipt thereof.

8. Only you or your successor as Paying Agent may make Drawings under this Letter of Credit. Upon the payment to you or to your account of the amount demanded hereunder, the Bank shall be fully discharged of its obligation under this Letter of Credit with respect to such demand for payment and shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payment to you or any other person who may have made to you or makes to you a demand for payment of principal of or interest on any Commercial Paper Note. By paying to you an amount demanded in accordance herewith, the Bank makes no representations as to the correctness of the amount demanded.

9. (a) Upon our receipt of a termination certificate in the form of Annex D hereto indicating that all Commercial Paper Notes are wholly defeased or otherwise no longer outstanding and that the City does not intend to issue any additional Commercial Paper Notes, this Letter of Credit shall expire as provided in paragraph 2(d) hereof. In connection with the termination of this Letter of Credit, this Letter of Credit shall be returned to us and marked "cancelled".

(b) Upon our receipt of a termination certificate in the form of Annex C hereto, this Letter of Credit shall terminate as provided in paragraph 2(c) hereof. In connection with the termination of this Letter of Credit, this Letter of Credit shall be returned to us and marked "cancelled".

10. This Letter of Credit is intended to apply only to the payment of the principal amount of the Commercial Paper Notes and interest thereon upon the maturity thereof.

11. Except as expressly stated herein, this Letter of Credit is governed by, and construed in accordance with, the terms of the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP98"). As to matters not governed by ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York, without regard to conflict of laws. Unless otherwise specified herein, communications with respect to this Letter of Credit shall be in writing and shall be addressed to Bank of America, N.A., 1 Fleet Way, PA6-580-02-30, Scranton, Pennsylvania, 18507, Attention: Standby Letter of Credit Department, specifically referring to the number of this Letter of Credit. Any communication to the Bank (other than Drawings) shall be in writing delivered to the Bank at the address set forth in this paragraph 11 hereof.

12. This Letter of Credit is transferable to any transferee who has succeeded you as Paying Agent under the Agency Agreement, and may be successively transferred in its entirety. Transfer of the available balance under this Letter of Credit to such transferee shall be effected by the presentation to us of a Transfer Request in the form of Annex E attached hereto signed by the transferor and acknowledged by the transferee (each a "*Transfer*") together with the original Letter of Credit.

13. This Letter of Credit sets forth in full the Bank's undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Commercial Paper Notes), except only the certificates, notices and annexes referred to herein; and no such reference shall be deemed to incorporate herein by reference any document, instrument or agreement.

[Signature Page Follows]

Very truly yours,

BANK OF AMERICA, N.A.

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

**ANNEX A TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Re: \_\_\_\_\_ Drawing Certificate

Ladies and Gentlemen:

U.S. Bank Trust Company, National Association (the “*Paying Agent*”), hereby certifies to Bank of America, N.A. (the “*Bank*”), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [\_\_\_], 2024 (the “*Letter of Credit*”; any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of the Paying Agent pursuant to the Reimbursement Agreement that:

1. The Paying Agent is the Paying Agent under the Note Resolution, and is acting as agent for the owners of Commercial Paper Notes.
2. The Paying Agent is making a drawing under the Letter of Credit with respect to payment of the principal amount of, and interest on, the Commercial Paper Notes due on \_\_\_\_\_.
3. The amount demanded hereby is \$\_\_\_\_\_ (of which \$\_\_\_\_\_ represents the principal amount and \$\_\_\_\_\_ represents the interest amount), to be used for payment of principal of, and interest on, the Commercial Paper Notes. Said amount does not exceed the amounts permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit.
4. The amount demanded hereunder was computed in accordance with the terms and conditions of the Commercial Paper Notes, the Note Resolution and the Agency Agreement.
5. The amount demanded hereby does not include any amount in respect of the Commercial Paper Notes registered in the name of the City or, to the best knowledge



of the Paying Agent, any nominee for or any Person who owns such Commercial Paper Notes for the benefit of the City.

6. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the principal of and interest on Commercial Paper Notes upon the stated maturity thereof, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) such amount will be deposited to the appropriate account as set forth in the Agency Agreement, and (d) except for the other amounts on deposit in the applicable account, no portion of said amount shall be commingled with other funds held by the undersigned.

7. The undersigned is the duly authorized officer of the Paying Agent.

8. Payment by the Bank pursuant to this drawing shall be made to the Paying Agent in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, the Paying Agent has executed and delivered this Annex A as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Paying Agent

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX B TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

[Date]

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Re: Permanent Reduction of the Stated Amount of Letter of Credit

Ladies and Gentlemen:

U.S. Bank Trust Company, National Association (the “*Paying Agent*”), hereby certifies to Bank of America, N.A. (the “*Bank*”), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [ ], 2024 (the “*Letter of Credit*”; any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of the Paying Agent that:

1. The Paying Agent is the Paying Agent under the Note Resolution, and is acting as the agent for the owners of the Commercial Paper Notes.
2. The Paying Agent hereby notifies you that on or prior to the date hereof the City has determined that the Stated Amount of the Letter of Credit shall be permanently reduced to \$\_\_\_\_\_ (of which \$\_\_\_\_\_ represents the principal amount and \$\_\_\_\_\_ represents the interest amount).
3. The Paying Agent hereby confirms that the aggregate principal amount of Commercial Paper Notes outstanding, together with the aggregate interest payable on such principal amount of such Commercial Paper Notes outstanding, as of the date hereof, does not exceed the Stated Amount of the Letter of Credit as so reduced.
4. If any Commercial Paper Notes are outstanding as of the date of this Annex B, the City has informed us that it will not issue additional Commercial Paper Notes unless after the issuance of such additional Commercial Paper Notes the aggregate principal amount of Commercial Paper Notes outstanding, together with the aggregate interest

payable thereon, shall be no greater than the Stated Amount of the Letter of Credit, as so permanently reduced pursuant to this Annex B.

5. The Stated Amount of the Letter of Credit is reduced to \$\_\_\_\_\_ upon receipt by the Bank of this Annex B.

6. The undersigned represents that he/she is a duly authorized officer of the Paying Agent.

IN WITNESS WHEREOF, the Paying Agent has executed and delivered this Annex B as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Paying Agent

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

cc: City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX C TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Re: Termination of Letter of Credit (Alternate Liquidity Facility)

Ladies and Gentlemen:

U.S. Bank Trust Company, National Association (the “*Paying Agent*”), hereby certifies to Bank of America, N.A. (the “*Bank*”), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [ ], 2024 (the “*Letter of Credit*”; any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of the Paying Agent that:

1. The Paying Agent is the Paying Agent under the Note Resolution.
2. As Paying Agent under the Note Resolution, the Paying Agent has accepted an alternate Liquidity Facility, in compliance with the Note Resolution, the Ordinance and the Reimbursement Agreement.
3. Upon receipt of this Annex C, the Letter of Credit shall terminate as provided in paragraph 2(c) of the Letter of Credit.
4. Accompanying this Annex C is the Letter of Credit, marked “cancelled”.
5. The undersigned is the duly authorized officer of the Paying Agent.

IN WITNESS WHEREOF, the Paying Agent has executed and delivered this Annex C as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Paying Agent

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX D TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Re: Termination of Letter of Credit  
\_\_\_\_\_  
(No Commercial Paper Notes Outstanding)

Ladies and Gentlemen:

U.S. Bank Trust Company, National Association (the “*Paying Agent*”), hereby certifies to Bank of America, N.A. (the “*Bank*”), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [ ], 2024 (the “*Letter of Credit*”; any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of the Paying Agent that:

1. The Paying Agent is the Paying Agent under the Note Resolution.
2. All the Commercial Paper Notes are wholly defeased or no Commercial Paper Notes remain outstanding under the Note Resolution.
3. The City has notified us that it does not intend to issue any additional Commercial Paper Notes and desires to terminate this Letter of Credit in accordance with terms of the Reimbursement Agreement.
4. Upon receipt by the Bank of this Annex D, the Letter of Credit shall terminate as provided in paragraph 2(d) of the Letter of Credit.
5. Accompanying this Annex D is the original Letter of Credit, marked “cancelled”.
6. The undersigned is the duly authorized officer of the Paying Agent.



IN WITNESS WHEREOF, the Paying Agent has executed and delivered this Annex D as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Paying Agent

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX E TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

[DATE]

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507  
Attention: Standby Letter of Credit Department

Re:                      Transfer of Irrevocable Transferable Direct-Pay  
                                 Letter of Credit No. [LC#]  
                                 dated August [ ], 2024

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Ladies and Gentlemen:

For value received, we, the undersigned “Beneficiary”, hereby irrevocably transfer all of our rights to draw under the above referenced Letter of Credit (the “*Letter of Credit*”) in its entirety to:

NAME OF  
TRANSFEREE

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name and complete address of the Transferee) “Transferee”

ADDRESS OF  
TRANSFEREE

\_\_\_\_\_  
\_\_\_\_\_

CITY,  
STATE/COUNTRY  
ZIP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as successor Paying Agent under the Note Resolution, as defined in the Letter of Credit, all rights of the undersigned beneficiary to draw under the Letter of Credit in its entirety.

In accordance with ISP98, Rule 6, regarding transfer of drawing rights, all rights of the undersigned Beneficiary in the Letter of Credit are transferred to the Transferee, who shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All

amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned Beneficiary.

The original Letter of Credit, including amendments to this date, is attached and the undersigned Beneficiary requests that you endorse an acknowledgment of this transfer on the reverse thereof. The undersigned Beneficiary acknowledges that you incur no obligation hereunder and that the transfer shall not be effective until you have expressly consented to effect the transfer by notice to the Transferee. The Letter of Credit is returned herewith, and the undersigned Beneficiary requests that you endorse the Letter of Credit on the reverse and forward it directly to the transferee with your customary notice of transfer, at which time (and not before) this transfer will become effective.

If you agree to these instructions, please advise the Transferee of the terms and conditions of the transferred Letter of Credit and these instructions.

Beneficiary represents and warrants that (a) the Transferee is the Beneficiary's successor trustee under the Note Resolution, (b) the enclosed Letter of Credit is original and complete, and (c) there is no outstanding demand or request for payment or transfer under the Letter of Credit affecting the rights to be transferred.

WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

This Transfer is made subject to ISP98 and is subject to and shall be governed by the laws of the State of New York, without regard to principles of conflict of laws.

(Signature Page Follows)

Sincerely yours,

---

(Print Name of Beneficiary)

---

(Beneficiary's Authorized Signature)

---

(Print Authorized Signers Name and Title)

---

(Telephone Number/Fax Number)

**ANNEX F TO  
BANK OF AMERICA, N.A.  
AMENDED AND RESTATED IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

U.S. Bank Trust Company, National Association  
as Paying Agent  
Suite 600  
100 Wall Street  
New York, NY 10005  
Attention: Commercial Paper Administration

Re: \_\_\_\_\_ Notice of Extension

Ladies and Gentlemen:

We refer to the Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#] (the "*Letter of Credit*") of Bank of America, N.A. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit

The Letter of Credit Expiration Date is extended from \_\_\_\_\_ to \_\_\_\_\_.

This Notice of Extension shall be attached to the Letter of Credit and made a part thereof.

Very truly yours,

BANK OF AMERICA, N.A, as the Bank

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX G TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

U.S. Bank Trust Company, National Association  
as Paying Agent  
Suite 600  
100 Wall Street  
New York, NY 10005  
Attention: Commercial Paper Administration

Re: Event of Default under Reimbursement Agreement-

Ladies and Gentlemen:

The undersigned, authorized officer of Bank of America, N.A. (the “*Bank*”) with reference to that certain Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [ ], 2024 (the “*Letter of Credit*”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of U.S. Bank Trust Company, National Association, as Paying Agent, hereby certify that:

1. There exists an Event of Default under Section \_\_\_\_ of the Reimbursement Agreement and such Event of Default is continuing.
2. The Bank hereby instructs the Paying Agent, effective upon receipt of this Event of Default under Reimbursement Agreement and Permanent Reduction Notice (“*Default and Reduction Notice*”), to cease issuing Commercial Paper Notes.
3. Upon receipt by you of this Annex G you are notified (i) that the Stated Amount available to be drawn under the Letter of Credit will not be reinstated in accordance with the Letter of Credit, (ii) that the Stated Amount of the Letter of Credit shall be permanently reduced to \$\_\_\_\_\_, representing the principal amount of Commercial Paper Notes currently outstanding on the date of your receipt of this Annex G and interest thereon to maturity (calculated at the maximum rate of ten percent (10%) per annum for a period of two hundred and seventy (270) days and based upon a year of three hundred sixty (360) days), and shall be further permanently reduced following the Bank honoring the related Drawing upon the maturity of any such Commercial Paper Notes (or with respect to the Final Drawing Notice, upon the Bank honoring the final Drawing), and shall be further permanently reduced from time to time as otherwise may be provided in

the Letter of Credit and (iv) that the Stated Amount shall no longer be reinstated following any Drawings.

IN WITNESS WHEREOF, the Bank has executed and delivered this Annex G as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BANK OF AMERICA, N.A., as the Bank

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

ACCEPTED AND ACKNOWLEDGED BY:

U.S. Bank Trust Company, National Association, as Paying Agent, hereby accepts this Default and Reduction Notice on \_\_\_\_\_, 20\_\_\_\_ (the "*Acceptance Date*") and acknowledges that it has ceased issuing Commercial Paper Notes as of the Acceptance Date. U.S. Bank Trust Company, National Association, as Paying Agent, hereby certifies that the Outstanding Notice Amount (which is the principal amount of Commercial Paper Notes outstanding as of the Acceptance Date plus interest thereon to maturity) equals \$\_\_\_\_\_, and therefore the Stated Amount of the Letter of Credit is hereby permanently reduced to such amount as of the Acceptance Date.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
AS PAYING AGENT

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director



**ANNEX H-1 TO  
BANK OF AMERICA, N.A.  
IRREVOCABLE TRANSFERABLE DIRECT-PAY  
LETTER OF CREDIT No. [LC#]**

**[DATE]**

U.S. Bank Trust Company, National Association  
as Paying Agent  
Suite 600  
100 Wall Street  
New York, NY 10005  
Attention: Commercial Paper Administration

Re: Final Drawing Notice

Ladies and Gentlemen:

Reference is made to the Irrevocable Transferable Direct-Pay of Letter Credit No. [LC#], dated August [ ], 2024 (the "*Letter of Credit*"; established by Bank of America, N.A. (the "*Bank*") in your favor as Beneficiary and as Paying Agent, and at the request of the account party, the City of Cape Coral, Florida (the "*City*"), any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be).

Please be advised that:

(1) An Event of Default under and as defined in the Reimbursement Agreement has occurred and is continuing.

(2) The Bank hereby instructs the Paying Agent, effective upon receipt of this Final Drawing Notice, to cease issuing Commercial Paper Notes.

(3) The Bank hereby notifies the Paying Agent that (i) effective upon receipt of this Final Drawing Notice, the Stated Amount available to be drawn under the Letter of Credit will not be reinstated in accordance with the Letter of Credit, (ii) the Paying Agent is instructed to make the final Drawing under the Letter of Credit to provide for the payment of Commercial Paper Notes issued in accordance with the Note Resolution which are outstanding and are maturing or are hereafter to mature, and (iii) the Termination Date of the Letter of Credit will occur and the Letter of Credit will expire on the earlier of (a) date which is the 15th calendar day (or if such date is not a Business Day, the immediately succeeding Business Day) after the date of receipt by the Paying Agent of this notice, and (b) the date on which the Drawing resulting from the delivery of this notice is honored by us. Notwithstanding anything in the Note Resolution to the contrary, the final Drawing under the Letter of Credit shall not provide for the payment of Commercial Paper Notes

that are issued after the receipt by the Paying Agent of this notice or a Stop Issuance Instruction (as defined in the Reimbursement Agreement) or Annex G to the Letter of Credit.

You are hereby requested under the terms of the Letter of Credit to acknowledge receipt of this notice, make certain undertakings, and certify the new Stated Amount of the Letter of Credit in the manner set forth below.

IN WITNESS WHEREOF, the Bank has executed and delivered this Annex H as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BANK OF AMERICA, N.A., as the Bank

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

ACCEPTED AND ACKNOWLEDGED BY:

U.S. Bank Trust Company, National Association, as Paying Agent, hereby accepts this Final Drawing Notice on \_\_\_\_\_, 20\_\_ (the "*Acceptance Date*") and acknowledges that it has ceased issuing Commercial Paper Notes as of the Acceptance Date. U.S. Bank Trust Company, National Association, as Paying Agent, hereby certifies that as of the Acceptance Date, the principal amount of Commercial Paper Notes currently outstanding plus interest thereon to maturity equals \$\_\_\_\_\_, and therefore the Stated Amount of the Letter of Credit is hereby permanently reduced to such amount as of the Acceptance Date.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
AS PAYING AGENT

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**ANNEX H-2**  
**TO**  
**BANK OF AMERICA, N.A.**  
**IRREVOCABLE TRANSFERABLE DIRECT-PAY**  
**LETTER OF CREDIT NO. [LC#]**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507  
Attention: Standby Letter of Credit Department

Re: Certificate for Drawing in connection with the  
Payment of Principal and Interest after  
Final Drawing Notice

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The undersigned, a duly authorized officer of the undersigned Paying Agent (the "*Paying Agent*"), hereby certifies to Bank of America, N.A. (the "*Bank*"), with reference to the Irrevocable Transferable Direct-Pay Letter of Credit No. [LC#], dated August [ ], 2024 (the "*Letter of Credit*," any other capitalized terms used herein and not defined herein having their respective meanings set forth in the Letter of Credit or the therein defined Reimbursement Agreement, as the case may be), issued by the Bank in favor of the Paying Agent, as follows:

1. The undersigned is the Paying Agent under the Note Resolution and is acting as the agent for the holders of the Commercial Paper Notes.
2. The Paying Agent has received the Final Drawing Notice in the form of a Final Drawing Notice in the form of Annex H-1 to the Letter of Credit.
3. The undersigned is making a Drawing under the Letter of Credit with respect to a payment of the principal of and accrued interest on Commercial Paper Notes issued in accordance with the Note Resolution and which mature on or after the date of the Final Drawing Notice. Notwithstanding anything in the Note Resolution to the contrary, this Drawing shall not provide for the payment of Commercial Paper Notes that are issued after the receipt by the Paying Agent of this notice or a Stop Issuance Instruction (as defined in the Reimbursement Agreement).
4. The amount of the Drawing is equal to \$\_\_\_\_\_, with \$\_\_\_\_\_ being drawn in respect of the payment of principal of maturing Commercial Paper Notes and \$\_\_\_\_\_ representing \_\_\_\_ days' interest thereon. Such amounts were computed in compliance with the terms and conditions of the Commercial Paper Notes and the Note Resolution. The amount of the Drawing being drawn in respect of the payment of principal of and interest payable to maturity of, the Commercial Paper Notes does not exceed the Stated Amount of the Letter of Credit. The amount requested for payment hereunder has

EXHIBIT A  
(to Reimbursement Agreement)

not been and is not the subject of a prior or contemporaneous request for payment under the Letter of Credit.

5. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will deposit the same directly into the [\_\_\_\_\_] **Fund** maintained by the Paying Agent pursuant to the Note Resolution and the Agency Agreement and apply the same directly to the payment when due of the principal amount of Commercial Paper Notes and the interest amount owing on account of the Commercial Paper Notes pursuant to the Note Resolution and the Agency Agreement, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) no portion of said amount shall be commingled with other funds held by the undersigned, except for amounts on deposit in the Series \_\_ Account of the [\_\_\_\_\_] **Fund** and except for other funds drawn under the Letter of Credit, and (d) when such Commercial Paper Notes have been presented for payment and paid by us, we will cancel such matured Commercial Paper Notes.

6. This Annex H-2 is being presented to the Bank on a date which is no later than the 15th calendar day (or if such date is not a Business Day, the immediately succeeding Business Day) after receipt by the Paying Agent of the Final Drawing Notice from the Bank.

7. Payment by the Bank pursuant to this drawing shall be made to the Paying Agent in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Annex H-2 as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Paying Agent

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

cc:

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

**EXHIBIT A**

**[FORM OF STOP ISSUANCE INSTRUCTION]**

**[Dated Date]**

City of Cape Coral, Florida  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990  
Attention: Financial Services Director

U.S. Bank Trust Company, National Association,  
as Paying Agent  
100 Wall Street, Suite 600  
New York, NY 10005  
Attention: Commercial Paper Administration

City of Cape Coral, Florida  
Commercial Paper Notes  
[Series \_\_\_\_]

Ladies and Gentlemen:

Pursuant to Sections 3.02(b) and 7.02(b) of that certain Reimbursement Agreement, dated as of August 1, 2024 (as amended, supplemented, modified or restated from time to time, the “*Reimbursement Agreement*”), by and between the City of Cape Coral, Florida (the “*City*”) and the undersigned, as Bank, you are hereby notified that (a) either (1) an “Event of Default” under Section 7.01( ) of the Reimbursement Agreement has occurred and is now continuing or (2) one or more of the representations and warranties of the City set forth in the Reimbursement Agreement, are in the reasonable opinion of the Bank, no longer true and correct in all material respects and; (b) upon receipt of this notice, (i) no new Commercial Paper Notes, as defined in the Reimbursement Agreement, shall be issued or authenticated (ii) the Stated Amount of the Letter of Credit shall be permanently reduced to \$ \_\_\_\_\_, representing the principal amount of Commercial Paper Notes currently outstanding and interest thereon, and shall be further permanently reduced following the maturity of any such Commercial Paper Notes, and (iii) the Stated Amount shall no longer be reinstated following payment by the Bank of any Drawings.

This Stop Issuance Instruction shall remain in effect unless you have received written notification from us that this Stop Issuance Instruction has been rescinded.

Very truly yours,

BANK OF AMERICA, N.A., as Bank

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

cc: [DEALER]  
[RATING AGENCIES]

**EXHIBIT B**

**[FORM OF BANK NOTE]**

\$161,095,891

August [ ], 2024

FOR VALUE RECEIVED, the undersigned, CITY OF CAPE CORAL, FLORIDA (the “*City*”), hereby promises to pay to the order of BANK OF AMERICA, N.A. (the “*Bank*”) at its principal office at **[9128 Strada Place, Suite 10110, Naples, Florida 34108]**, in the manner and on the dates provided in the hereinafter defined Agreement in lawful money of the United States of America and in immediately available funds, the principal amount equal to the aggregate unreimbursed amount of the Advances made by the Bank pursuant to the Agreement not to exceed One Hundred Sixty-One Million Ninety-Five Thousand Eight Hundred Ninety-One Dollars (\$161,095,891). Terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Reimbursement Agreement, dated as of August 1, 2024 (as amended, supplemented, modified or restated from time to time, the “*Agreement*”) by and between the City and the Bank, as from time to time in effect.

The City further promises to pay interest from the date hereof on the outstanding principal amount hereof and unpaid interest hereon from time to time on the dates, in the manner, at the rates and times and in all cases in accordance with the terms of the Agreement. The Bank may endorse its records relating to this Bank Note with appropriate notations evidencing the Advances under the Agreement and payments of principal hereunder as contemplated by the Agreement.

This Bank Note is issued pursuant to, is entitled to the benefits of, and is subject to, the provisions of the Agreement, Note Resolution and Ordinance (as defined in the Agreement). The principal of this Bank Note is subject to prepayment in whole or in part in accordance with the terms of the Agreement.

The parties hereto, including the undersigned maker and all guarantors, endorsers and pledgors that may exist at any time with respect hereto, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Bank Note and assent to the extensions of the time of payment or forbearance or other indulgence without notice.

This Bank Note and the obligations of the City hereunder shall for all purposes be governed by and interpreted and determined in accordance with the laws of the State of Florida (excluding the laws applicable to conflicts or choice of law).

NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY OF CAPE CORAL, THE STATE OF FLORIDA OR ANY PUBLIC AGENCY, OTHER THAN THE CITY TO THE EXTENT OF THE PLEDGED FUNDS, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BANK NOTE.



IN WITNESS WHEREOF, the City has caused this Bank Note to be signed in its name as an instrument by its duly authorized officer on the date and in the year first above written.

CITY OF CAPE CORAL, FLORIDA

By  
Name:  
Title: [Financial Services Director]

[Attest:

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

**EXHIBIT C**

**[FORM OF REQUEST FOR EXTENSION]**

Bank of America, N.A.  
9128 Strada Place, Suite 10110  
Naples, Florida 34108  
Mailcode CA5-705-11-00  
Telephone: (239) 598-8805  
Attention: Holly Kuhlman  
Email: holly.kuhlman@bofa.com

Re: Request for Extension of Irrevocable Transferable  
Direct-Pay Letter of Credit No. [LC#]

Ladies and Gentlemen:

Pursuant to Section 2.12 of that certain Reimbursement Agreement, dated as of August 1, 2024 (as amended, supplemented, modified or restated from time to time, the “*Reimbursement Agreement*”), by and between the City of Cape Coral, Florida (the “*City*”) and Bank of America, N.A. (the “*Bank*”), the City hereby requests that the Letter of Credit Expiration Date be extended for a one-year extension. All capitalized terms contained herein which are not specifically defined herein shall be deemed to have the definition set forth in the Reimbursement Agreement.

The Bank is requested to notify the City of its decision with respect to this request for extension within thirty (30) days of the date of receipt of all information necessary, in the Bank’s reasonable judgment, to permit the Bank to make an informed credit decision. If the Bank fails to notify the City of its decision within such 30-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY OF CAPE CORAL, FLORIDA

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

cc: U.S. Bank Trust Company, National Association,  
as Paying Agent