



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director
Sharon Koike, Assistant Finance Director
Henry Mitzner, Controller

DATE: May 19, 2009

SUBJECT: Consideration of a Resolution Approving an Amended and Restated Reimbursement Agreement Relating to Variable Rate Demand Refunding Certificates of Participation Series 2002 and Approval of a Two Year Renewal of the Direct Pay Letter of Credit with Bank of America for the 2002 Marine Avenue Sports Fields Variable Rate Debt

RECOMMENDATION:

The Finance Subcommittee and Staff recommend that the City Council: a) adopt Resolution No. 6188 approving the Amended and Restated Reimbursement Agreement with Bank of America, b) approve a two year renewal of the direct pay letter of credit for the 2002 Marine Avenue Sports Fields Certificates of Participation (COP) variable rate debt, and c) authorize the City Manager to negotiate and execute all documents related to this transaction.

FISCAL IMPLICATION:

The annual cost of the direct pay letter of credit (LOC) supporting the 2002 Marine Avenue Variable Rate COP's is 100 basis points (1%) of the outstanding principle (currently ~\$8.3 million). This results in an annualized cost of approximately \$83,000. This is an increase over the prior Letter of Credit of approximately \$50,000. This fee is part of the annual debt service for the fields, which is budgeted in the Parks and Recreation Department.

BACKGROUND:

The existing LOC supporting the Marine Avenue debt expires on July 2, 2009. In anticipation of this event, staff and the City's financial advisor worked with the existing LOC issuer, Bank of America, on a renewal. Pursuant to the legal bond documents the LOC must be in place at all times as long as the COP's (bonds) are outstanding. Additionally, the City is required to have a replacement LOC in place at least 30 days prior to the expiration of any existing LOC. At the April 20, 2009 Finance Subcommittee meeting, the City's financial advisor was present to discuss and review this item with the Subcommittee members. The Finance Subcommittee then made a motion

and approved the recommendation to City Council to approve a two-year renewal of the direct pay letter of credit with Bank of America for the 2002 Marine Avenue variable rate debt at a cost of 100 basis points, or 1% of the outstanding principle.

DISCUSSION:

In an effort to minimize costs for the required LOC, staff contacted not only the current LOC provider (Bank of America), but other financial institutions who typically participate in this market segment. Due to the tight credit markets, fewer institutions are offering to provide credit and liquidity, and the fees for LOC's have significantly increased. The fee charged for the prior LOC with Bank of America was 40 basis points or approximately \$33,000 on an annual basis. However, the renewal with Bank of America carries a fee of 100 basis points or \$83,000 annually. In discussions with other institutions, LOC fees were the same 100 basis points as Bank of America, but other ancillary fees such as set-up and legal fees pushed the total cost much higher than Bank of America's fees.

As an alternative to the LOC, the financial team pursued private placement loans to determine if these costs would be more advantageous to the City resulting in overall lower costs (and eliminating the need for a LOC). Staff inquired with Sun Trust, Union Bank of California and U.S. Bank as these were some of the financial institutions who offered private placement opportunities. The financial team reviewed the terms and rates provided on each private placement loan but found none of them to be favorable for the City. In addition, the private placement loans required significant bank counsel fees, had limited durations of seven years with a balloon payment due at the end of the seventh year, requiring the City to payoff the balance outstanding with cash, or seek refinancing at that time. The City's financial advisor recommended against these terms as it would put the City in an uncertain position at the end of the seventh year. Another loan, although it was offered at a twenty year term, offered a fixed rate of 7% and it too had significant bank counsel fees. Based upon the fixed rate alone, this private placement loan would result in higher costs overall and would not be advantageous for the City.

While Bank of America is offering to provide the LOC for 1-3 years at varying fees, the Finance Subcommittee and staff recommend renewing the facility for two years at 100 basis points. A one year renewal would lock in a rate for one year, incur bank legal fees of \$15,000 to \$25,000, and would provide staff with only a few months before renegotiating a renewal once more. Renewing the LOC for a three year term would lock in a rate however, we believe that the financial environment is likely to improve within three years and we do not want to be locked in at a high rate for an extended period of time. A two year renewal period allows the City time to look for other alternatives and monitor the climate of the financial market to see if rates decline. During this time, staff will also be able to look into opportunities that could help address renewing or replacing the LOC supporting the RCC dispatch facility's COP's that expires on January 31, 2010. The Amended and Restated Reimbursement agreement has been reviewed by the City's bond counsel whose comments have been incorporated into the document.

After reviewing the various terms of the LOC with Bank of America, the Finance Subcommittee and staff recommend that the City Council adopt Resolution No. 6188 approving the restated Reimbursement Agreement, approve the two year renewal of the Letter of Credit with Bank of America, and authorize the City Manager to negotiate and execute all related documents.

Agenda Item #: _____

Attachments:

- a) Resolution No. 6188
- b) Amended and Restated Reimbursement Agreement between Bank of America and City of Manhattan Beach

RESOLUTION NO. 6188

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING AN AMENDED AND RESTATED REIMBURSEMENT AGREEMENT RELATING TO VARIABLE RATE DEMAND REFUNDING CERTIFICATES OF PARTICIPATION (MARINE SPORTS FIELD CAPITAL LEASE REFINANCING) SERIES 2002

WHEREAS, the City of Manhattan Beach (the "City") has previously entered into a Reimbursement Agreement, dated April 1, 2002 (the "Reimbursement Agreement"), with Bank of America, N. A. (the "Bank"), pursuant to which the Bank issued its irrevocable direct pay letter of credit (the "Letter of Credit") with respect to the Variable Rate Demand Refunding Certificates of Participation (Marine Sports Field Capital Lease Refinancing) Series 2002 (the "Certificates");

WHEREAS, in connection with an extension of the Letter of Credit, the City and the Bank wish to amend and restate the Reimbursement Agreement;

WHEREAS, the Amended and Restated Reimbursement Agreement has been filed with the City and the members of the City Council of the City (the "Council"), with the aid of staff, have reviewed said document;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Amended and Restated Reimbursement Agreement is hereby approved, and the Mayor, the City Manager, the Finance Director, or the written designee of any such official, is hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such officials, such approval to be evidenced by the execution thereof, and the City Clerk is hereby authorized and directed to attest to such official's signature:

SECTION 2. The Mayor, the City Manager, the Finance Director, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute and/or attest such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution. This Resolution shall take effect upon its adoption by this Council.

PASSED, APPROVED and ADOPTED this 19th day of May, 2009.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

AMENDED AND RESTATED
REIMBURSEMENT AGREEMENT

between

BANK OF AMERICA, N.A.

and

CITY OF MANHATTAN BEACH

Dated as of May 1, 2009

Relating to the

Variable Rate Demand Refunding Certificates of Participation
(Marine Sports Field Capital Lease Refinancing) Series 2002

AMENDED AND RESTATED REIMBURSEMENT AGREEMENT

This AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (the "Agreement") is made as of May 1, 2009 by and between BANK OF AMERICA, N.A., a national banking association (the "Bank") and the CITY OF MANHATTAN BEACH, a municipal corporation and general law city organized under constitution and the laws of the State of California (the "City").

RECITALS

- A. The Beach Cities Health District ("District") and the City previously entered into a Ground Lease dated as of April 4, 2000 (the "District Lease") pursuant to which the District, as fee owner and lessor, leased to the City certain real property and park improvements located in the City (the "Property"), more particularly described in Exhibit C to the Trust Agreement, defined below;
- B. In 2002, the City prepaid the District Lease and thereby took title to the Property (collectively the Project"); and
- C. For the purpose of obtaining the moneys required to be deposited by the Corporation with U.S. Bank Trust National Association (the "Trustee") all for the purpose of enabling the City to undertake the financing of the Project, the Manhattan Beach Capital Improvements Corporation (the "Corporation") assigned and transferred certain of its rights under a Lease Agreement dated as of April 1, 2002 (the "Lease Agreement") between the Corporation as Lessor, and the City, as Lessee, to the Trustee, and the Trustee executed and delivered certificates of participation (the "Certificates"), each evidencing a direct, fractional interest in lease payments made by the City under the Lease Agreement, to provide the moneys required to be deposited by the Corporation;
- D. In order to provide a source for payment when due of the principal of and interest on and the purchase price of the Certificates, the Bank provided its letter of credit No.3048485 dated May 2, 2002 initially in the amount of \$9,688,605.00 (the "Letter of Credit") pursuant to the Reimbursement Agreement, dated as of April 1, 2002 (as amended by an Amendment to Reimbursement Agreement dated as of March 24, 2009, the "Original Agreement") between the Bank and the City;
- E. The City has requested and the Bank has agreed to extend the term of the Letter of Credit for an additional two-year period and to amend and restate the Original Agreement in its entirety upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, and in order to induce the Bank to extend the term of the Letter of Credit, the City and the Bank hereby agree as follows (capitalized terms used herein and not otherwise defined have the meaning set forth in Section 1 hereof):

ARTICLE ONE

DEFINITIONS

Section 1.1 Definitions. Capitalized terms not defined in this Agreement shall have the meanings assigned to them in the Trust Agreement. In addition to terms defined elsewhere in this Agreement, as used herein the following terms shall have the following meanings unless the context otherwise requires, and such meanings shall be equally applicable to both singular and plural forms of the terms herein defined:

"Agreement" shall mean this Reimbursement Agreement, as the same may from time to time be amended, supplemented or otherwise modified in accordance with its terms.

"Amortization Period" means, with respect to any Tender Draw, the period commencing on the date of such Tender Draw and ending on the earlier of (i) the third anniversary of the sixty-first day following the date of such Tender Draw or (ii) the third anniversary of the Expiration Date (as the same may be extended from time to time) (the earlier of (i) and (ii), the "Maturity Date").

"Authorized Representative" shall mean such person at the time and from time to time authorized by resolution to act on behalf of the City by written certificate furnished to the Bank.

"Bank" shall mean Bank of America, N.A.

"Bank Certificates" shall mean the Certificates held by the Tender Agent for the benefit of the Bank as provided in Section 4.10 of the Trust Agreement.

"Bank Rate" means on any day, (a) if such day occurs prior to the thirty-first day following the date on which the Bank honored a Tender Draw, a rate per annum equal to the Base Rate; (b) if such day occurs after the thirtieth day following the date on which the Bank honored a Tender Draw but prior to the sixty-first day following such draw, a rate per annum equal to the Base Rate plus 1.00% and (c) if such day occurs after the sixty-first day following such draw, a rate per annum equal to the Base Rate plus 2.00%.

"Base Rate" means, for any day, the highest of (a) the Prime Rate if the Bank establishes a Prime Rate or otherwise the Bank's "base rate" for such date plus 2.0%, or (b) the Fed Funds Rate plus three percent (3.0%) per annum or (c) ten percent (10.00%); provided, that in no event shall the Base Rate be less than the rate on the Bonds that are not Bank Certificates.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located.

"Certificates" means the Variable Rate Demand Refunding Certificates of Participation (Marine Sports Field Capital Lease Refinancing) Series 2002.

"City" shall mean the City of Manhattan Beach, a municipal corporation and general law city duly organized and existing under and by virtue of the constitution and the laws of the State of California.

"Default Rate" shall mean the Base Rate plus 3.0% per annum.

"Drawing" shall mean a drawing under the Letter of Credit resulting from the presentation to the Bank by the Trustee of a certificate in the form of Annex A, B, C or D to the Letter of Credit.

"Drawing Date" shall mean the date on which the Bank pays a Drawing on the Letter of Credit.

"Effective Date" shall mean the date on which the conditions to the extension of the term of the Letter of Credit set forth in Section 3.1 have been satisfied in full or waived in writing by the Bank.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demand letters, claims, Liens, notices of noncompliance or violation, investigations, or proceedings relating in any way to any Environmental Law ("claims") or any permit issued under any such Environmental Law, including (a) any and all claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to health, safety or the environment or to Hazardous Materials.

"Event of Default" shall mean any event specified in Section 6.1 of this Agreement, provided that any requirement for notice, lapse of time, or both, or any other condition has been satisfied.

"Expiration Date" shall mean the expiration date specified in the Letter of Credit, unless the Expiration Date of the Letter of Credit is extended in accordance with Section 2.1 hereof, in which case the Expiration Date shall mean the date to which the Letter of Credit has been extended.

"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 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.

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous

wastes," "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes" or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

"Lease Agreement" has the meaning assigned to such term in Recital C.

"Leased Property" shall mean the real and personal property subject to the Lease Agreement.

"Letter of Credit" shall mean irrevocable direct pay Letter of Credit no. 3048485 dated May 5, 2002 in the initial stated amount of U.S. \$9,688,605.00, issued by the Bank pursuant hereto for the account of the City in favor of the Trustee to support payment of the Certificates, as it may be amended or supplemented from time to time.

"Letter of Credit Commitment" shall mean U.S. \$9,688,605.00, which is comprised of a principal component of \$9,535,000.00 and an interest component of \$153,605.00.

"Obligations" shall mean the fees relating to the Letter of Credit, any and all obligations of the City to reimburse the Bank for a drawing under the Letter of Credit, and all other obligations of the City to the Bank arising under or in relation to this Agreement.

"Payment Office" shall mean with respect to the Bank, the office of the Bank located at the address set forth in Section 7.2 hereof or such other office as the Bank may from time to time designate.

"Permitted Encumbrances" shall mean any encumbrances of the Leased Property approved by the Bank.

"Person" means a natural person, a firm, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"Potential Default" shall mean an event which with the giving of notice or passage of time or both would constitute an Event of Default.

"Prime Rate" shall mean the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on 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. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank's Prime Rate.

"Project" shall have the meaning assigned to that term in Recital B.

"Related Documents" shall have the meaning set forth in Section 3.1(b) hereof.

"Stated Amount" shall mean the principal amount available to be drawn under each Letter of Credit.

"Tender Draw" shall mean a drawing on the Letter of Credit resulting from the presentation to the Bank by the Trustee of a certificate in the form of Annex B to the Letter of Credit.

"Trust Agreement" shall mean the Trust Agreement dated as of April 1, 2002 among the City, the Corporation and the Trustee, which provided for the execution and delivery of the Certificates.

ARTICLE TWO

LETTER OF CREDIT

Section 2.1. Extension of Letter of Credit.

(a) Extension of Term of Letter of Credit. The Bank hereby agrees, on the terms and subject to the conditions hereinafter set forth, to extend the Expiration Date of the Letter of Credit for a two-year period commencing on July 2, 2009 and ending on July 1, 2011. The extension of the term of the Letter of Credit is subject to satisfaction by the City of all conditions precedent set forth in Section 3.1 hereof.

(b) Additional Extension of Expiration Date. The Expiration Date of July 1, 2011 may be extended, for one additional period of up to three years, upon the request by the City and approval by the Bank in its sole discretion. Any request for an extension of the Letter of Credit must be in writing and accompanied by such information as the Bank may reasonably request and such request must be received by the Bank no later than 180 days and no earlier than one year prior to the Expiration Date then in effect. The Bank, in its sole and absolute discretion, may elect not to extend the term of the Letter of Credit. If the Bank has not agreed to the request for extension in writing within 60 days after the Bank received the City's written request and the other information requested by the Bank, the City's request shall be deemed to be denied. If the Letter of Credit is not extended, the City shall utilize its best efforts to refinance the Project, defease the Certificates, provide a substitute credit facility or convert the Certificates to fixed rate in accordance with the Trust Agreement prior to the Expiration Date of the Letter of Credit then in effect.

(c) Drawing on the Letter of Credit. Drawings to be made under the Letter of Credit shall be made by presentation by telecopy, in the form of a sight draft, accompanied by the appropriate annex submitted by the Trustee and no further presentation of documentation, including the original Letter of Credit, need be made; it being understood that the telecopy, shall in all events be considered to be the sole operative instrument of drawing. The Bank may rely upon any such telecopy drawing that the Bank, in good faith, believes to have been dispatched by the Trustee.

(d) Reduction and Reinstatement. The Stated Amount of the Letter of Credit shall be reduced by the amount of each Drawing, and shall be reinstated following certain Drawings, all as provided in the Letter of Credit.

Section 2.2. Reimbursement of Drawings.

Subject to the limitations set forth in Section 5.1(r), pursuant to the Lease Agreement the City hereby agrees to reimburse the Bank for any Drawing under the Letter of Credit as follows:

(a) on the same day the Bank honors a drawing drawn on the Letter of Credit, the full amount drawn except as provided in clause (d) below;

(b) upon demand, upon the occurrence of an Event of Default, interest on all Obligations, including all outstanding Drawings, at the Default Rate;

(c) subject to clause (iii) below, on the date of a Tender Draw, the amount if such Tender Draw;

(d) If on the date of any Tender Draw no Event of Default or Potential Default has occurred and is continuing and the representations and warranties of the City hereunder are true and correct as if made on such date, the City shall not be required to reimburse the Bank for such Tender Draw on the date of such drawing but rather shall be required to pay such amount to the Bank in equal installments of principal due on each February 1 and August 1 occurring during the Amortization Period for such Tender Draw, together with interest thereon at the Bank Rate payable on the first day of each month following the date of such Tender Draw, with the entire balance of such Tender Draw due on the last day of the Amortization Period; provided, however, that upon the remarketing of all or any portion of the applicable Bank Certificates purchased with amounts drawn under the Letter of Credit pursuant to such Tender Draw, the amount such Tender Draw shall be immediately due and owing to the Bank, together with interest thereon at the Bank Rate; and provided further, that all amounts owed to the Bank pursuant to this Section 2.2 shall be immediately due and payable in full (i) on the date of delivery to the Trustee of any Substitute Security (as provided in the Trust Agreement) as a substitution for the Letter of Credit or (ii) at such time as the Bonds are no longer Outstanding or (iii) on the date that the amount of the Letter of Credit is reduced to zero or the Letter of Credit is otherwise terminated prior to the Expiration Date.

(e) The City (by prepayment of Lease Payments in accordance with the terms of the Lease Agreement) may, on not less than one day's notice, prepay in whole or part the amount of any Tender Draw, together with the interest accrued with respect to such amount, to the date of prepayment, by prepaying or arranging for the purchase of the related Bank Certificates. Any prepayment of less than all outstanding Tender Draws will be applied to the outstanding Tender Draws in inverse order of maturity, and prepayment of less than all of the outstanding amount of an Tender Draw will be applied to the Bank Certificates purchased with such Tender Draw in inverse order of maturity.

(f) The Certificates purchased with the proceeds of any Tender Draft shall thereupon become Bank Certificates and shall be registered as directed by the Bank pursuant to the Trust Agreement, if possible shall be assigned a separate CUSIP number from the Certificates, and shall be held by the Trustee on behalf of the Bank or as otherwise directed by the Bank. Bank Certificates shall be entitled to all rights and privileges of Certificates set forth in the Trust Agreement except that the principal component represented by such Bank Certificates shall mature, and the interest with respect to such Bank Certificates shall accrue at the Bank Rate and shall be payable, as set forth in this Section 2.2.

(g) Interest shall accrue on each advance made pursuant to the principal component of an Tender Draw and the corresponding Bank Certificates, from the date of the applicable Tender Draw until the date due hereunder at the Bank Rate and shall be payable monthly in arrears on the first day of each calendar month following the date of such Tender Draw, and on the date of remarketing of any such Bank Certificates and on the last day of the Amortization Period. Interest shall accrue on all amounts due hereunder and on the corresponding Bank Certificates, if any, if not paid when due, at the Default Rate. Notwithstanding anything herein to the contrary, following the occurrence and during the continuance of an Event of Default, interest shall accrue on all amounts owing hereunder and on the corresponding Bank Certificates at the Default Rate and shall be payable on demand, or if no demand is made, on the first day of each calendar month following the occurrence of such Event of Default.

(h) If Bank Certificates are not assigned a separate CUSIP but remain in book-entry form held by DTC, the City (by payment of the interest component of Lease Payments) shall pay the difference between the Bank Rate and the interest rate then borne by the Certificates to the Bank as provided in this Section 2.2 and shall pay interest on the principal amount of all outstanding Certificates, including Bank Certificates, at the interest rate then borne by the Certificates other than Bank Certificates, to the Trustee for payment to the holders and the Bank through the normal DTC payment procedures.

Section 2.3. Letter of Credit Fees and Other Payments.

(a) Letter of Credit Fee. The City agrees to pay an annual Letter of Credit fee equal to (i) the number of percentage points indicated below for the then-current long-term unenhanced issuer rating or general obligation ratings by Standard & Poor's Rating Service, Moody's Investor Service Fitch Ratings on the City's general obligations multiplied by (ii) the Stated Amount of the Letter of Credit:

| <u>Rating</u> | <u>Percentage Points</u> |
|---------------|--------------------------|
| AAA/Aaa/AAA | 1.00% |

The fee shall be increased by .15% for each rating downgrade of its unenhanced issuer rating or general obligation ratings below the City's current rating of AAA/Aaa/AAA. In the event that (x) any rating should be withdrawn or suspended for any reason or (y) upon the occurrence of an Event of Default, the annual fee will be increased by 1.50%.

If either S&P, Fitch or Moody's shall rate the long-term unenhanced issuer rating or general obligation credit ratings of the City lower than the other rating agencies, the number of percentage points used to calculate the fee will be determined by reference to the lowest rating .

The initial Letter of Credit fee shall be due and payable on the Effective Date and shall include the fees for the period from the Effective Date through June 30, 2009. Thereafter, the Letter of Credit fee shall be paid quarterly in arrears on the first day of each calendar quarter commencing on October 1, 2009 (the initial quarterly payment shall include the fees for the period commencing on July 1, 2009 through September 30, 2009).

(b) Other Fees. In addition, the City shall pay to Bank upon the amendment or transfer of the Letter of Credit and upon the negotiation of each draft drawn under the Letter of Credit, fees and charges determined by Bank in accordance with Bank's standard fees and charges in effect at the time the Letter of Credit is amended or transferred or any draft is paid. The current fees charged by the Bank are \$2,500 for each amendment or transfer of the Letter of Credit plus Bank counsel fees and \$250.00 for each drawing on the Letter of Credit plus a \$45.00 wire fee.

(c) Calculation of Fees and Interest. All fees payable under this Agreement payable under this Agreement shall be calculated on the basis of a 360-day year and actual days elapsed. All interest shall be calculated on the basis of a 365/366-day year and actual days elapsed.

(d) Costs and Expenses. The City shall pay any and all reasonable fees, charges and expenses, payable or incurred by the Bank in connection with the execution, delivery,

performance and enforcement of this Agreement and the Letter of Credit, including without limitation, the fees and expenses of counsel to the Bank, together with interest on such amounts from the date such payment is due until paid at a rate per annum equal to the Default Rate, and agrees to save 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 fees and expenses.

(e) Additional Costs. The City will pay the Bank, on demand, for the Bank's costs or losses arising from any statute or regulation, or any request or requirement of a regulatory agency which is applicable to all national banks or a class of all national banks. The costs and losses will be allocated to the loan in a manner determined by the Bank, using any reasonable method. The costs include the following:

(i) any reserve or deposit requirements; and

(ii) any capital requirements relating to the Bank's assets and commitments for credit.

(f) Taxes. If any taxes are imposed on any payments made by the City (including payments under this paragraph) other than ordinary income taxes payable by the Bank, 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 (after taking into account taxes paid by the City pursuant to this paragraph) to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. 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.

(g) Payment Office. All payments to be made by the City to the Bank hereunder or in connection herewith, shall be made at the address of the Bank set forth on the signature page hereof not later than 1:00 p.m., New York time, on the date due and shall be made in lawful money of the United States of America and in immediately available funds. Any amount not received by the Bank by such time shall be deemed to have been received on the next succeeding Business Day. All such payments not received on the date due shall bear interest until payment in full at the Default Rate.

(h) Obligation Absolute. Subject to Section 5.1(r), the obligations of the City under this Agreement shall be unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

(i) the existence of any claim, set-off, defense or other rights which the City may have at any time against the Trustee, any beneficiary or any transferee of the Letter of Credit (or any persons for whom the Trustee, any such beneficiary or any such transferee may be acting) or the Bank, whether in connection with the transactions contemplated by this Agreement or any related or unrelated transactions;

(ii) any breach of contract or other dispute between the City, the Corporation, the Trustee, any beneficiary or any transferee of the Letter of Credit (or any person for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank or any other person;

(iii) any delay, extension of time, renewal, compromise or other

indulgence or modification granted or agreed to by the Bank, with or without notice to or approval by the City, in respect of any of the City's obligations to the Bank under this Agreement;

(iv) any certificate, statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, provided that payment by the Bank under the Letter of Credit against presentation of any such certificate, statement or document shall not have constituted gross negligence or willful misconduct of the Bank;

(v) any non-application or misapplication by the Trustee of the proceeds of any Drawing under the Letter of Credit;

(vi) payment by the Bank under the Letter of Credit against presentation of a certificate which does not comply with the terms of the Letter of Credit, provided that such payment by the Bank shall not have constituted gross negligence or willful misconduct of the Bank; and

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(i) Non-Business Days. If any sum becomes payable pursuant to this Agreement 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.

(j) Taxes. All payments made by the City hereunder shall be made free and clear of and without deduction for any present or future income, stamp or other taxes, levies, imposts, deductions, charges, fees, withholdings, restrictions or conditions of any nature now or hereafter imposed, levied, collected, withheld or assessed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (whether pursuant to United States Federal, state or local law or foreign law) and all interest, penalties or similar liabilities, excluding taxes on the overall net income of the Bank (such non-excluded taxes are hereinafter collectively referred to as the "Taxes"). If the City shall be required by law to deduct or to withhold any Taxes from or in respect of any amount payable hereunder, (i) the amount so payable shall be increased to the extent necessary so that after making all required deductions and withholdings (including Taxes on amounts payable to the Bank pursuant to this sentence) and decreased to give effect to any refunds or credits received by the Bank so that the Bank receives an amount equal to the sum it would have received had no such deductions or withholdings been made (ii) the City shall make such deductions or withholdings and (iii) the City shall pay the full amount deducted or withheld to the relevant taxation authority in accordance with applicable law. Whenever any Taxes are payable by the City, as promptly as possible thereafter the City shall send the Bank an official receipt or other documentation satisfactory to the Bank evidencing payment to such taxation authority.

(k) Maximum Rate. To the extent permitted by law, in the event that a rate of interest required to be paid by the City under this Agreement shall exceed a maximum rate established by law, any subsequent reduction in the rate of interest required to be paid by the City hereunder will not reduce the rate of interest below the maximum rate established by law until the total amount of interest accrued equals the amount of interest which would have accrued if the rate of interest required hereunder (without giving effect to this paragraph) had at all times been in

effect.

Section 2.4. Liability of Bank. Neither the Bank nor any of its officers or directors shall be liable or responsible for (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee and any transfer in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except only that the City shall have a claim against the Bank, and the Bank shall be liable to the City, to the extent of any damages suffered by the City by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms of the Letter of Credit or (ii) the Bank's willful failure or gross negligence in failing to pay under the Letter of Credit after the presentation to it by the Trustee of a sight draft and certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; provided, that if the Bank shall receive written notification from the Trustee and the City that sufficiently identified (in the opinion of the Bank) documents to be presented to the Bank are not to be honored, the Bank agrees that it will not honor such documents.

The Bank shall not be liable or responsible in any respect for (i) any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with the Letter of Credit or (ii) any action, inaction or omission which may be taken by it in good faith in connection with the Letter of Credit; provided that the City shall not be liable or responsible in any respect if such liability or responsibility results from the willful misconduct or gross negligence of the Bank. The City further agrees that any action taken or omitted by the Bank under or in connection with the Letter of Credit or the related draft or documents, if done in good faith without gross negligence, shall be effective against the City as to the rights, duties and obligations of the Bank and shall not place the Bank under any liability to the City.

Section 2.5. Nature of Obligations of the City. The obligations of the City under the Lease Agreement to make Lease Payments, and the obligation of the City to make payments pursuant to Section 2.3 of this Agreement shall be payable from the General Fund of the City and any other legally available funds of the City. Subject to the limitations set forth in Section 5.1(r) hereof, the obligations of the City under this Agreement to reimburse the Bank for Drawings shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of this Agreement, the Letter of Credit or any of the Related Documents;

(b) any amendment or waiver of, or any consent to or departure from this Agreement or any Related Documents;

(c) the existence of any claim, set-off, defense or other rights which the City may have at any time against the Trustee, any beneficiary or any transferee of the Letter of Credit (or any person for whom the Trustee, any such beneficiary or any such transferee may be acting), the

Bank or any other person, whether in connection with this Agreement, the Letter of Credit, the Related Documents or any unrelated transaction;

(d) any statement in any certificate or any other document presented under the Letter of Credit proving 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 under the Letter of Credit against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit;

unless any of the foregoing results from the gross negligence or willful misconduct of the Bank.

Section 2.6. Termination. The Letter of Credit may be terminated by the City upon sixty (60) days written notice to the Bank at any time, including without limitation following the imposition of any costs and expenses pursuant to Sections 2.3(e) or (f). In the event the City terminates the Letter of Credit for any reason prior to the second anniversary of the execution and delivery of this Reimbursement Agreement, the City shall pay the Bank a fee (the "Termination Fee") in an amount equal to the letter of credit fee payable pursuant to Section 2.3(a) that would have accrued had this Reimbursement Agreement been in effect for two full years (less any amounts then paid pursuant to Section 2.3(a) hereof).

ARTICLE THREE

CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Effective Date. The obligation of the Bank to extend the Expiration Date of the Letter of Credit shall be subject to the fulfillment of the following conditions precedent, in a manner satisfactory to the Bank and its counsel:

(a) The Bank shall have received an opinion of the City Attorney, in form and substance satisfactory to the Bank and its counsel;

(b) The Bank shall have received a certificate signed by an Authorized Representative of the City dated the Effective Date stating that on such date:

(i) the representations and warranties set forth in this Agreement and in any other certificate, letter, writing or instrument delivered by the City to the Bank pursuant hereto or in connection herewith, shall be true and correct as of the Effective Date;

(ii) no material adverse change shall have occurred in the condition (financial or otherwise) of the City prior to the Effective Date;

(iii) on the Effective Date no Potential Default or Event of Default shall have occurred and be continuing;

(iv) there is no lawsuit, tax claim or other dispute pending or threatened against the City which, if lost, would impair the City's financial condition or ability to repay the unreimbursed Drawings, except as have been disclosed in writing to the Bank; and

(v) as of the Effective Date, the Trust Agreement, Lease Agreement, the Certificates and the other documents executed and delivered in connection with issuance of the Certificates (collectively, the "Related Documents") remain in full force and effect, have not been modified in any way since the date of issuance of the Certificates and no Potential Default or Event of Default has occurred under the Related Documents.

(c) The Bank shall have received copies of resolutions of the City Council of the City, certified as of the Effective Date by the City Clerk, authorizing, among other things, the execution, delivery and performance by the City of this Agreement and authorizing the City to obtain the extension of the Expiration Date of the Letter of Credit pursuant to this Agreement.

(d) The Bank shall have received a certificate of an Authorized Representative of the City dated the Effective Date certifying as to the authority, incumbency and specimen signatures of the Authorized Representative of the City authorized to sign this Agreement and any other documents to be delivered by it hereunder and who will be authorized to represent the City in connection with this Agreement, upon which the Bank may rely until it receives a new such certificate.

(e) The Bank shall have received copies of the audited financial statements of the City for the three most recent years for which such statements are available, unaudited financial statements of the City for any fiscal year for which audited financial statements are unavailable and a copy of the City's 2009-2010 adopted budget.

(f) The Bank shall have received a copy of the City investment policy as well as other information with respect to the City Investment Pool, county investment strategies and related information as the Bank may request.

(g) Evidence of use and occupancy insurance, general liability and property damage insurance required to be carried by the City pursuant to the Lease Agreement satisfactory to the Bank.

(h) All other legal matters pertaining to the execution and delivery of this Agreement, the extension of the Expiration Date of the Letter of Credit shall be reasonably satisfactory to the Bank and their counsel.

(i) Payment of fees and expenses of the Bank and its counsel.

ARTICLE FOUR

REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations and Warranties. In order to induce the Bank to enter into this Agreement and to extend the Expiration Date of the Letter of Credit as provided for in this Agreement, the City represents and as of the Effective Date, warrants and covenants with respect to itself, this Agreement and certain matters:

(a) The City is a municipal corporation and general law city organized and existing by virtue of and under the Constitution and the laws of the State of California, has the requisite power to carry on its present and proposed activities, and has and had full power, right

and authority to enter into this Agreement and the Related Documents to which it is a party and to perform each and all of the matters and things herein and therein.

(b) Authorization and Validity. The execution, delivery and performance by the City of this Agreement and the Related Documents to which the City is a party have been duly authorized by all proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such Related Documents constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the City of this Agreement nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof or thereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City or the City's charter (including but not limited to the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990, Regulation U of the Federal Reserve Board and all Environmental Laws), (ii) result in any material breach of, or default under the provisions of any material indenture, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (iii) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(d) Litigation. Except as previously disclosed to the Bank in writing, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the City after due inquiry, threatened against or affecting the City or the Leased Properties (i) wherein an unfavorable decision, ruling or finding would adversely affect (A) the City's ability to perform its obligations under this Agreement and the other Related Documents or (B) the validity of this Agreement, any of the Related Documents or any other agreement or instrument to which the City is a party; or (ii) which in any way contests the existence, organization or powers of the City or the titles of the officers of the City to their respective offices.

(e) No Event of Default. No Potential Default or Event of Default has occurred and is continuing.

(f) Financial Statements. The audited statements of revenues, expenses and changes in fund balances and changes in financial position of the City for each of its fiscal years ended June 30, 2007 and June 30, 2008, including balance sheets as of June 30 of each of said years, and statements of revenue and expense as of June 30 of each of said years, all examined and reported on by independent public accountants, prepared by the City, as heretofore delivered to the Bank correctly and fairly present the financial condition of the City as of said dates and the results of the operations of the City for each of such periods, respectively, and have been prepared in accordance with generally accepted accounting principles consistently applied except as stated in the notes thereto.

(g) Lease Agreement and Site Lease. The Lease Agreement and Site Lease are in full force and effect. The City has not been granted any waiver, indulgence or postponement of any of the City's obligations under the Lease Agreement or the Site Lease. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Lease Agreement or the Site Lease.

(h) Accurate and Complete Disclosure. All factual information certified by the City in writing to the Bank (including without limitation all information contained in, or made pursuant to,

this Agreement and the Related Documents to which the City is a party) is, and all other such factual information hereafter certified by the City in writing to the Bank will be, to the knowledge of the authorized person making such certification after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified.

(i) Regulatory Approvals. On the Effective Date, each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court governmental agency or regulatory authority (federal, state or local), required in connection with the City's execution and delivery of, and performance under, this Agreement and each of the Related Documents to which the City is a party has been obtained or made and is in full force and effect; provided, however, that no representation is made as to State blue sky laws.

(j) Other Documents. Each of the Related Documents to which the City is a party is in full force and effect, and the City hereby makes to the Bank each of the representations and warranties made by the City therein as if set forth at length herein. None of the Related Documents has been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

(k) Prospective Change in Law. To the best knowledge of the City (after due inquiry), except as otherwise previously disclosed to the Bank in writing, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the ability of the City to perform its obligations under this Agreement or any of the Related Documents.

(l) Tax-Exempt Status. The City has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from the State's personal income tax.

(m) No Other Defaults. The City is not in default on any debt or financial obligation to any person or entity in excess of \$2,000,000.

(n) No Immunity. The City is subject to liability for damages in contract and in tort in the manner and to the extent provided by the laws of the State. The City is subject to claims and to suit for money or damages in connection with or under this Agreement pursuant to and in accordance with the laws of the State applicable to public entities, including, but not limited to Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California. The City is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(o) Environmental Matters. Except as otherwise previously disclosed to the Bank in writing:

(i) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(ii) Hazardous Materials have not at any time been released or disposed of on the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(iii) The City is in compliance with all applicable Environmental Laws and directives of governmental agencies thereunder with respect to the Leased Property and the requirements of any permits issued under such Laws with respect to the Leased Property.

(iv) There are no past, pending or threatened Environmental Claims against the City or any of the Leased Property.

(v) There is no condition or occurrence on the Leased Property or any property adjoining or in the vicinity of the Leased Property that could be anticipated (x) to form the basis of an Environmental Claim against the City or the Leased Property or (y) to cause the Leased Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(vi) There are not now and never have been any underground storage tanks located on the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(p) Incorporation by Reference. The representations and warranties of the City in the Lease are incorporated by reference into this Agreement.

ARTICLE FIVE

COVENANTS

Section 5.1. Affirmative Covenants. The City covenants and agrees with the Bank as follows:

(a) Subject to Section 5.1(r), the City shall reimburse the Bank for any unreimbursed Drawings under the Letter of Credit as required by Section 2.2.

(b) Notice of Default. As soon as practicable but in any event not more than five (5) Business Days after an Authorized Representative of the City shall have obtained knowledge of the occurrence of any Potential Default or an Event of Default provide to the Bank the written statement of an Authorized City Representative setting forth the details of each such Event of Default or Potential Event of Default and the action, if any, which the City proposes to take with respect thereto.

(c) Compliance With Laws. The City shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the power and authority of the City to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or to perform its obligations under the Related Documents.

(d) Related Obligations. The City shall duly perform each of its obligations under this Agreement and the other Related Documents. The City shall use its best efforts to cause the Trustee and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

(e) Inspection Rights. At any reasonable time and from time to time the City shall permit the Bank or any agents or representatives thereof to examine and make copies of the records and books of account related to the transactions contemplated by this Agreement and the Related Documents, to visit its properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

(f) Amendments. The City shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Related Document without the prior written consent of the Bank; provided that such consent shall not be required if the Bank notifies the City in writing that the Bank, in its sole discretion, has determined that any such amendment, modification or waiver does not affect its rights, duties or obligations.

(g) Official Statement. The City shall not refer to the Bank in any official statement or make any changes in reference to the Bank in any official statement without the Bank's prior written consent thereto, which the Bank shall not unreasonably withhold or delay based upon customary business practices at the time such consent is requested.

(h) Voluntary Prepayment. Without the prior written consent of the Bank, the City shall not permit the prepayment pursuant to the Trust Agreement of any Certificates (other than Bank Certificates) prior to prepaying the Bank Certificates in full.

(i) Certain Notices; Financial Statements. The City shall provide or cause to be provided to the Bank copies of:

(A) Financial Statements. The City shall provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time:

(i) Within 270 days of the City's fiscal year end, the City's annual financial statements as of June 30 of each year, certified and dated by an authorized financial officer of the City. These financial statements must be audited (with an unqualified opinion, using the accounting standards then applicable to the City) by a Certified Public Accountant.

(ii) The City shall, promptly upon its approval and upon publication of the annual budget of the City each year, deliver to the Bank a copy of such budget and within 90 days after the adoption thereof.

(iii) Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by the City to or from the City's auditor, or, if no management letter is prepared, a letter from such auditor stating that no deficiencies were noted that would otherwise be addressed in a management letter.

(iv) Together with the annual financial statements of the City delivered pursuant to Section 5.01(i)(A)(i), a compliance certificate as to whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any Potential Default or Event of Default under this Agreement and, if any such default exists, specifying the nature thereof and the action the City is taking and proposes to take with respect thereto.

(v) A copy of the annual report of the City, if any, which is delivered in accordance with the City's "continuing disclosure certificate" related to the any lease obligations or general fund obligations at the time it is delivered thereunder.

(vi) Promptly, notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency for any uninsured claim which, if adversely determined, could result in a judgment against the City of \$10,000,000 or more, or would materially and adversely affect the City's ability to pay its obligations under this Agreement.

(B) Promptly, notice of (i) any material dispute which may exist between the City or the Corporation on the one hand and the Remarketing Agent or the Trustee on the other hand or any dispute in connection with any transaction contemplated under this Agreement or any Related Document, and (ii) any matter or event which may result in a material adverse change in the City's ability to pay its obligations under this Agreement.

(j) Existence. The City shall maintain its legal existence.

(k) Incorporation of Certain Covenants. The covenants of the City set forth in the Lease Agreement are hereby incorporated by reference in this Agreement for the benefit of the Bank.

(l) Liens, etc. The City shall not create or suffer to exist any lien upon or with respect to any of the Leased Property or the security for the Certificates, except for Permitted Encumbrances.

(m) Insurance. The City shall maintain the insurance required by the Lease Agreement.

(n) Debt Limitation. The City shall not have outstanding or incur any direct or contingent liabilities or lease obligations (other than the Related Documents and the obligations of the City to the Bank under this Agreement) with respect to the Leased Property, or permit any lien or encumbrance on the Leased Property without the Bank's written consent.

(o) Transfer or Substitution of Leased Property. During the term of this Agreement, the City may not transfer or substitute any of the Leased Property without the prior written consent of the Bank.

(p) Further Assurances. The City shall execute and deliver to the Bank all such documents, consents and instruments and do all such other acts and things as may be reasonably necessary or required by the Bank to enable the Bank to exercise and enforce its rights under the Related Documents and the Related Documents and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Bank to validate, preserve and protect the position of the Bank under the Related Documents.

(q) Compliance with Laws. The City shall comply, in all material respects, with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities except where the necessity of compliance therewith is contested in good faith by appropriate proceedings, provided, however, that the foregoing shall not require compliance with any such law, ordinance, rule, regulation and/or requirement so long as failure to comply shall not have a material adverse effect on the financial condition of the City and its ability to perform its obligations under this Agreement and the Related Documents.

(r) Fair Rental Value. Section 4.4(d) of the Lease Agreement provides that the Lease Payments payable thereunder do not exceed the fair market rental value of the Property. In the event that fair rental value is not sufficient to make the Lease Payments and additional payments required pursuant to Section 2.2(d), unpaid Lease Payments and additional payments required by Section 2.2(d) shall be deferred until such time as the fair rental value will support payment of Lease Payments and additional payments required by Section 2.2(d). In the event of such a deficiency, (1) the City shall, subject to compliance with applicable debt limitations, consider seeking and utilizing, but shall not be obligated to seek or utilize, additional sources of funds and properties legally available to it in order to pay such deficiency and (2) unpaid amounts required by Section 2.2(d) shall bear interest at the Default Rate. If any Tender Draw is not paid by its Maturity Date, the City shall utilize its best efforts to take such actions as necessary to convert the interest rate applicable to the Certificates (including all outstanding Bank Certificates) to a fixed interest rate.

(s) Environmental Covenants. (i) The City will comply with all Environmental Laws applicable to ownership or use of the Leased Property, and will cause all tenants and other persons occupying the Leased Property to comply with all such Environmental Laws, will immediately pay or cause to be paid all costs and expenses incurred in such compliance, and will keep or cause to be kept all the Leased Property free and clear of any Liens imposed pursuant to such Environmental Laws.

(ii) The City will not generate, use, treat, store, Release, or dispose of, or permit the generation, use, treatment, storage, Release, or disposal of Hazardous Materials on the Leased Property, or transport or permit the transportation of Hazardous Materials to or from the Leased Property.

(iii) On the written request of the Bank, at any time and from time to time, the City will provide, at the City's sole cost and expense, an environmental site assessment report concerning the Leased Property, prepared by an environmental consulting firm approved by the Bank, indicating the presence or absence of Hazardous Materials and the potential cost of any removal or remedial action in connection with any Hazardous Materials on the Leased Property.

If City fails to provide the same within 15 days of such request the Bank may order the same, and the City shall grant and hereby grants to the Bank and its agents access to the Leased Property and specifically grants the Bank an irrevocable non-exclusive license, subject to the rights of subtenants, to undertake such an assessment; and the cost of such assessment shall be deemed to be an Additional Payment under the Lease Agreement, and shall be immediately due and payable on demand and with interest at the Default Rate.

(iv) The City will immediately advise the Bank in writing of any of the following:

(A) Any pending or threatened Environmental Claim against the City with respect to the Leased Property;

(B) Any condition or occurrence on the Leased Property that (A) results in noncompliance by the City with any applicable Environmental Law, or (B) could reasonably be anticipated to form the basis of an Environmental Claim against the City with respect to the Leased Property;

(C) Any condition or occurrence on the Leased Property or any property adjoining or in the vicinity of the Leased Property that could reasonably be anticipated to cause the Leased Property to be subject to any restrictions on the ownership, occupancy, use, or transferability of the Leased Property under any Environmental Law; and

(D) The taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on the Leased Property or the issuance of any notice to take any such action by any governmental agency.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence, or removal or remedial action and the City's response thereto. In addition, the City will provide the Bank with copies of all communications with any government or governmental agency relating to Environmental Laws, all communications with any person relating to Environmental Claims, and such detailed reports of any Environmental Claim as may be requested by the Bank.

(v) The Bank shall have the right but not the obligation to participate in, as a party if it so elects, any legal proceeding or action initiated in connection with any Environmental Claim. Without the Bank's prior written consent, the City shall not enter into any settlement, consent, or compromise with respect to any Environmental Claim that might impair the value of the Bank's interests under the Lease Agreement; provided, however, that the Bank's prior consent shall not be necessary for the City to take any removal or remedial action if ordered by a court of competent jurisdiction or if the presence of Hazardous Materials at the Leased Property poses an immediate significant threat to the health, safety, or welfare of any individual or otherwise requires an immediate removal or remedial response.

The City will conduct any investigation, study, sampling, and testing, and undertake any cleanup, removal, remedial, or other action necessary to remove and clean up all Hazardous Materials from the Leased Property in accordance with the requirements of all applicable Environmental Laws, to the satisfaction of the Bank, and in accordance with orders and directives of all governmental authorities.

(vi) The City will not change or permit to be changed the present use of the Leased Property unless the City shall have notified the Bank thereof in writing and the Bank shall have determined, in its sole and absolute discretion, that such change will not result in the presence of Hazardous Materials on the Leased Property.

(t) Amendment of Bank Documents. If the City and the Bank amend this Agreement or enter into any other agreements, any covenants additional or more restrictive covenants contained in such amendments or future credit facilities shall be deemed to be incorporated by reference into this Agreement.

(u) Investments. The use of leverage or margin with Certificate proceeds and invested funds is prohibited and the City may not, without the prior written consent of the Bank, invest Certificate proceeds or other amounts on deposit with the Trustee in derivatives.

(v) Remarketing Agent. The City shall at all times cause a Remarketing Agent to be in

place, which Remarketing Agent shall be acceptable to the Bank. At all times the City shall cause the Remarketing Agent to remarket Certificates (including, without limitation, Bank Certificates) up to the Maximum Rate, in accordance with the Remarketing Agreement. The City shall not consent to the resignation of the Remarketing Agent until a new remarketing agent meeting the requirements set forth in the Trust Agreement has been duly appointed and has accepted the duties of remarketing agent. The Bank shall be a third party beneficiary to the Remarketing Agreement.

(x) Best Efforts. In the event the City does not request an extension of the term of the Letter of Credit by the date that is 180 days prior to the then current Expiration Date or the Bank denies or fails to respond to a request to extend the term of the Expiration Date, the City shall use its best efforts to secure a Substitute Security for the Certificates, convert the Certificates to a mode of interest that does not require credit enhancement, prepay the Certificates or defease the Certificates, in any case prior to the Expiration Date of the Letter of Credit then in effect.

ARTICLE SIX

DEFAULTS

Section 6.1. Events of Defaults and Remedies. If any of the following events shall occur and be continuing, each such event shall be an "Event of Default":

(a) The City shall fail to pay when due any amount payable by the City to the Bank under this Agreement.

(b) The Certificates or any other Related Document ceases to be valid and binding against the City or the City repudiates its obligations under this Agreement or any of the Related Documents.

(c) The City files a bankruptcy petition or the City makes a general assignment for the benefit of creditors.

(d) Any judgments or arbitration awards are entered against the City, or the City enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of Five Million Dollars (\$5,000,000) or more in excess of any insurance coverage, provided that the insurer has issued a letter of responsibility for payment up to the amount of insurance coverage.

(e) Any default occurs under any agreement in connection with any credit the City has obtained from anyone else or which the City has guaranteed in the amount of Five Million Dollars (\$5,000,000) or more in the aggregate if the default consists of failing to make a payment when due or gives the other lender the right to accelerate the obligation.

(f) Any default occurs under the Lease Agreement or any other Related Document.

(g) The City fails to meet the conditions of, or fails to perform any obligation under, any term of this Agreement not specifically referred to in this Article, and with respect to any failure to perform the covenants contained in Section 5.1(b), such default is not cured within thirty (30) days after the Bank has given the City written notice of such default.

(h) The City has given the Bank false or misleading information or representations.

(i) The issuer general obligation credit ratings of the City shall fall below A- by Standard & Poor's Rating Service or A3 by Moody's Investors Service. If either S&P or Moody's shall rate the issuer general obligation credit ratings of the City lower than the other rating agency, the default will be determined by reference to the lower rating.

If an Event of Default shall have occurred and be continuing, the Bank may (i) give notice to the Trustee under the Trust Agreement of the Bank's election to cause a mandatory tender of the Certificates because of the occurrence and continuance of an Event of Default under the Reimbursement Agreement, (ii) subject to Section 5.1(r), declare all unpaid amounts drawn under the Letter of Credit and the corresponding Bank Certificates, together with all interest accrued and unpaid thereon and all other amounts payable to the Bank hereunder to be immediately due and payable, without presentment, demand, protest or any notice of any kind or (iii) exercise any and all rights and remedies available to the Bank under this Agreement or the Trust Agreement, at law or in equity. Subject to Section 5.1(r), in the event of the occurrence of an Event of Default described in Section 6.1(c), all amounts drawn under the Letter of Credit and the corresponding Bank Certificates, together with all interest accrued thereon and all other amounts owed to the Bank hereunder shall be immediately due and payable, without notice to the City and without presentment, demand, protest or further notice of any kind.

ARTICLE SEVEN

MISCELLANEOUS

Section 7.1. Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the City therefrom, shall be effective unless the same shall be in writing and signed by the Bank and no amendment, modification or waiver of any provision of the Letter of Credit shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

Section 7.2. Successors and Assigns. This Agreement is binding on the City's and the Bank's successors and assignees. The City agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign this facility, and may exchange financial information about the City with actual or potential participants or assignees; provided that such actual or potential participants or assignees shall agree to treat all financial information exchanged as confidential; and further provided that under no circumstances with such assignment or grant of participations relieve the Bank of its obligations under the Letter of Credit. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the City.

Section 7.3 Administration Costs. The City shall pay the Bank for all reasonable costs and expenses incurred by the Bank in connection with the preparation, due diligence, administration and enforcement of this Agreement and the transactions contemplated by this Agreement, including without limitation, the reasonable legal fees and expenses of counsel to the Bank, whether the Letter of Credit is issued or not.

Section 7.4 Attorneys' Fees. The City shall reimburse the Bank for any reasonable costs and attorneys' fees incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement, and in connection with any amendment, waiver, "workout" or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against the City under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute, the Bank is entitled to recover costs and reasonable attorneys' fees incurred by the Bank related to the preservation, protection, or enforcement of any rights of the Bank in such a case. As used in this paragraph, "attorneys' fees" includes the allocated costs of the Bank's in-house counsel.

Section 7.5 One Agreement. This Agreement and any related security or other agreements required by this Agreement, collectively:

- (a) represent the sum of the understandings and agreements between the Bank and the City concerning this credit;
- (b) replace any prior oral or written agreements between the Bank and the City concerning this credit; and
- (c) are intended by the Bank and the City as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

Section 7.6. Indemnification. To the extent permitted by law, the City will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (a) this Agreement or any of the Related Documents, (b) any credit extended or committed by the Bank to the City hereunder, (c) any claim, whether well-founded or otherwise, that there has been a failure to comply with any law regulating the City's operations, the Certificates or any of the Related Documents, (d) the use storage, presence, disposal or release of any Hazardous Substances on or about the Property and (e) any litigation or proceeding related to or arising out of this Agreement, any such document, any such credit, or any such claim. This indemnity includes but is not limited to attorneys' fees (including the allocated cost of in-house counsel). This indemnity extends to the Bank, its parent, subsidiaries and all of their directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive repayment of the City's obligations to the Bank. All sums due to the Bank hereunder shall be obligations of the City, due and payable immediately without demand.

Section 7.7. Notices. Unless otherwise provided in this Agreement or in another agreement between the Bank and the City, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as the Bank and the City may specify from time to time in writing. Notices and other communications sent by (a) first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail,

postage prepaid, (b) overnight courier shall be deemed delivered on the next business day, and (c) telecopy shall be deemed delivered when transmitted.

Section 7.8. Headings. Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

Section 7.9. Counterparts. This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement.

Section 7.10. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 7.11. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

Section 7.12. Set-Off. Upon the occurrence and during the continuance of any Event of Default the Bank is hereby authorized at any time and from time to time, without notice to the City (any such notice being expressly waived by the City) and to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisions or final) at any time held and other indebtedness at any time owing by the Bank, except in connection with the Letter of Credit as herein provided, 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, irrespective of whether or not the Bank shall have made any demand hereunder and although such obligations may not have matured.

Section 7.13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California.

Section 7.14. Amendment and Restatement. This Agreement amends and restates the Original Agreement and supersedes and replaces the Original Agreement in its entirety effective as of the Effective Date.

This Agreement is executed as of the date stated at the top of the first page.

BANK OF AMERICA, N.A.

CITY OF MANHATTAN BEACH

By _____
Typed Name: Andy Shin
Title: Vice President

By _____
Typed Name _____
Title _____

Address where notices to
the Bank are to be sent:

Address where notices to
the City are to be sent:

CA9-193-13-17
333 South Hope St., 13th floor
Los Angeles, CA 90071
Facsimile: 213-621-3606

1400 Highland Avenue
Manhattan Beach, CA 90266
Attn: Chief Administrative Officer
Facsimile: 310-802-5001

ATTEST:

By: _____
Typed Name _____
City Clerk

APPROVED AS TO FORM:

By: _____
Typed Name _____
Title _____