REQUEST FOR PROPOSAL
CITY OF PHILADELPHIA, PENNSYLVANIA
DIRECT PAY LETTERS OF CREDIT

City of Philadelphia
General Obligation Refunding Bonds, Series 2009B

The City of Philadelphia, Pennsylvania (the “City”), via a competitive process, is hereby seeking proposals for the provision of an Irrevocable Direct Pay Letter of Credit (the “LOC”) to provide credit enhancement for the City’s General Obligation Refunding Bonds, Series 2009B (the “2009B Bonds”).

The 2009B Bonds were issued simultaneously with the City’s General Obligation Fixed Rate Refunding Bonds, Series 2009A (together with the 2009B Bonds, the "2009 Bonds") in the aggregate principal amount of $337,025,000 for the purpose of (i) refunding the City's outstanding General Obligation Multi-Modal Refunding Bonds, Series 2007B, (ii) payment of the costs relating to the issuance of the 2009 Bonds, and (iii) cost related to the termination payment due with respect to a portion of a related swap. The 2009B Bonds were originally issued as variable rate demand bonds initially in a weekly mode.

On December 6, 2007 the City entered into a Swap with RBC evidenced by an ISDA Master Agreement, Schedule and Confirmation (collectively the “Swap Agreement”) in connection with the Series 2007B Bonds. Upon issuance of the 2009 Bonds, the notional amount of the swap is $100,000,000. Pursuant to the terms of the swap, the City makes a fixed payment of 3.829% to RBC and received the SIFMA Index Rate.

DESCRIPTION OF THE BONDS

The 2009B Bonds are dated the date of their original delivery, August 13, 2009. Interest on the 2009B Bonds is payable monthly on the first Business Day of each month. The 2009B Bonds mature on August 1, 2031 and are subject to annual mandatory sinking fund redemption commencing August 1, 2027. In addition, while in the weekly mode, the Bonds are subject to optional redemption on any business day at a redemption price equal to the principal amount thereof, plus accrued interest, to the redemption date.
For rating agency press releases, official statements and other information regarding the City, please see the City’s investor website at www.phila.gov/investor.

Certain of City’s preferred Credit Agreement provisions are attached as Exhibit B and prospective providers have the opportunity to submit comments (see Exhibit A - “Fee Proposal Form”, specifically Sections 3.3 and 3.4, therein).

Both current and new bank facility providers are strongly encouraged to participate.

**Anticipated Schedule of Events**

The preliminary Schedule of Events for the proposals solicited hereby is set forth below:

<table>
<thead>
<tr>
<th>Issue REP</th>
<th>December 24, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deadline to Submit Questions</td>
<td>January 19, 2016</td>
</tr>
<tr>
<td>Proposal Submission Deadline</td>
<td>February 1, 2016 (5PM Local Philadelphia Time)</td>
</tr>
<tr>
<td>Select Facility Providers</td>
<td>Week of February 8, 2016</td>
</tr>
</tbody>
</table>

*(Final award is subject to approval by the City for terms of the Facilities)*

**Proposal Information**

Please respond on behalf of your firm only. The City will not accept joint proposals.

The expenses of your proposal will not be the responsibility of the City or any of their respective counsel or advisors. The City reserves the right to waive any irregularity in any proposal, negotiate with one or more firms and to reject any or all proposals. The City reserves the right not to proceed with the execution of the Facilities.

THE CITY ENCOURAGES SUBMISSIONS BY MINORITY, WOMEN AND DISABLED OWNED FIRMS. THE CITY REQUIRES THAT ANY FIRM SELECTED TO PARTICIPATE AS PROVIDER FOR A CITY FINANCING AGREE NEITHER TO DISCRIMINATE NOR PERMIT DISCRIMINATION AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, OR SEXUAL ORIENTATION. IN THE EVENT OF SUCH DISCRIMINATION, THE CITY RESERVES THE RIGHT TO TERMINATE THE FIRM’S APPOINTMENT TO THE TRANSACTION.

**Proposal Submission & Deadline**

Please submit your proposal via e-mail by no later than 5:00 PM Local Philadelphia time on **February 1, 2016** to Andrew McCarthy, (andrew.mccarthy@phila.gov), Matthew Mazza (matthew.mazza@phila.gov), Katherine Clupper (clupperk@pfm.com), and Peter Nissen (pnissen@acacianfin.com). The subject line should read: RFP-Submission – Direct Pay LOC – [firm name].

Your response should follow the format in Exhibit A which is attached. THE CITY ANTICIPATES NEGOTIATING COMPLETE TERM SHEETS AFTER RESPONSES HAVE BEEN RECEIVED.

Interested parties must indicate by when they would expect to be able to receive final credit approval. A form of the Direct Pay Letter of Credit and Reimbursement Agreement to be entered into by the City and
the Facility provider must be made available to the City promptly upon notice to the respondent that they are the apparent choice of the City. A form of Reimbursement Agreement containing terms preferred by the City is attached to this RFP as **Exhibit C**.

**Questions**

The City will accept written questions about this RFP from prospective providers. Questions will be accepted only by email to Andrew McCarthy and Matthew Mazza at the email addresses provided previously in this RFP. **The deadline for written questions is Tuesday, January 19, 2015 at 5:00 PM Local Philadelphia Time.**

**NO QUESTIONS ARE TO BE DIRECTED TO THE MAYOR’S OFFICE OR TO ANY OTHER CITY DEPARTMENT, AGENCY, OR PERSONNEL.**

Answers to all substantive questions that are not clearly specific to the requester only will be posted on the City’s website: [www.phila.gov/RFP](http://www.phila.gov/RFP).

**Note:** Any and all amendments to the RFP, including updates and answers to any general questions asked, will be posted on the City’s website. The final award to the selected facility provider(s) will also be posted on the City’s website.

**Evaluation Criteria and Selection**

Selection shall be made to the responsive and responsible provider(s) whose submission is deemed to be the most advantageous to the City, along with any relevant performance data and other information available to the City. Proposals will not be opened publicly.

**Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be posted on the City’s website: [www.phila.gov/RFP](http://www.phila.gov/RFP). Amendments made after the due date for proposals will be sent only to those providers who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the provider’s proposal in the transmittal letter accompanying the proposal. Acknowledgment of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the provider from complying with all terms of any such amendment.

**Reservations of Rights**

The City reserves the right to cancel this RFP, accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities and to conduct discussions with any or all qualified or potentially qualified providers in any manner necessary to serve the best interests of the City. The City also reserves the right to award a contract based upon the written proposals received without discussions or negotiations. In the event negotiations with any provider(s) are not satisfactory to the City, the City reserves the right to discontinue such negotiations at any time; to enter into or continue negotiations with other providers; and/or to solicit new responses from providers that did not respond to this RFP. The City reserves the right to enter into any contract with any provider with or without the re-issuance of this RFP, if the City determines that such action is in the City’s best interest.
interest. The City retains the right to change the details of this RFP at any time. Nothing in this RFP shall bind the City to enter into any agreements pursuant to this solicitation.

THANK YOU FOR YOUR INTEREST IN SERVING THE CITY.
Exhibit A

CITY OF PHILADELPHIA, PENNSYLVANIA
General Obligation Refunding Bonds, Series 2009B

RFP for Direct Pay Letter of Credit

Fee Proposal Form

Proposers must complete this form or include responses to all items on this form in order to be considered

SECTION 1 – GENERAL INFORMATION

Full Legal Name of Provider: ________________________________

Contact Person: ____________________________ Phone: ____________________________

Fax: ____________________________ E-mail: ____________________________

Bank’s Ratings and Outlooks:

Moody’s: Long Term _____ Short Term _____ Outlook _____ Last Rating Action/Date ______

Standard & Poor’s: Long Term _____ Short Term _____ Outlook _____ Last Rating Action/Date ______

Fitch: Long Term _____ Short Term _____ Outlook _____ Last Rating Action/Date ______

1.1 Please indicate if your firm has overall limits for providing credit and/or liquidity to the City, including City enterprise funds (Water, Airport and PGW).

1.2 Timeframe for Credit Approval ________________________________

SECTION 2 – PRICING

2.1 Complete the fee table below. Separately, provide a downgrade pricing grid.

<table>
<thead>
<tr>
<th>Facility Length</th>
<th>LOC FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years</td>
<td></td>
</tr>
<tr>
<td>3 years</td>
<td></td>
</tr>
<tr>
<td>4 years</td>
<td></td>
</tr>
<tr>
<td>5 years</td>
<td></td>
</tr>
</tbody>
</table>

2.2 List any and all additional fees for which you would expect reimbursement (e.g., Draw, Amendment, Origination, etc.) and any expenses other than Legal Counsel.

2.3 List and describe additional fees, if any, for reduction in size or early termination of LOC. Are these fees waived if City’s action is due to a downgrade of Provider’s long or short term ratings?

2.4 Provide a description of Term-Out Provisions including interest rates and all conditions
2.5 Bank Counsel: 
Firm: ____________________________
Primary Contact: ________________
Legal Fees and Expenses (Estimate): ________________
Capped at: ___________________

SECTION 3 – COVENANTS

3.1 Itemize and describe all required Security Covenants

3.2 List all Termination Events and Events of Default

3.3 Provide alternative language for any provisions you would propose to change in the attached Preferred Credit Agreement provisions.

3.4 Identify any key terms, conditions, covenants or other restrictions that you would propose to add to the attached Preferred Credit Agreement provisions.
Exhibit B

Certain Preferred Credit Agreement Provisions

1. No early termination or reduction fee.
2. No most favored lender covenant.
3. No most favored pricing provision.
4. Increased cost provision applies only in instances where the increased cost is a result of new regulations and shall not apply to instances of reinterpretation of existing laws or regulations.
5. Increased Cost provision would apply to participants, but limit the amount payable to such participant to the amount which would have been payable to the bank had there been no participation.
6. No maximum interest rate “clawback” provision.
7. Bank Rate at Base Rate for at least 180 days.
Exhibit C

Form of Reimbursement Agreement
REIMBURSEMENT AGREEMENT

between

CITY OF PHILADELPHIA, PENNSYLVANIA

and

[BANK]

Dated as of __________ __, 20__

Relating to:

City of Philadelphia, Pennsylvania
__________________ Bonds,
Series ______
# TABLE OF CONTENTS

## REIMBURSEMENT AGREEMENT

- BACKGROUND .................................................................................................................. 1
- ARTICLE I DEFINITIONS 
  - Section 1.1 Definitions ................................................................................................. 1
  - Section 1.2 Other Defined Terms .................................................................................. 10
  - Section 1.3 Accounting Matters ................................................................................... 10
  - Section 1.4 Interpretation ............................................................................................. 10
  - Section 1.5 Substitution of Letter of Credit for Purposes of Resolution and Ordinance 11
- ARTICLE II LETTER OF CREDIT .................................................................................. 11
  - Section 2.1 Issuance of the Letter of Credit ................................................................. 11
  - Section 2.2 Letter of Credit Drawings ......................................................................... 11
  - Section 2.3 Interest on Advances and Other Amounts ............................................... 11
  - Section 2.4 Reimbursement and Repayment of Advances ........................................... 12
  - Section 2.5 Prepayment of Advances ......................................................................... 13
  - Section 2.6 Pledged Bonds and other Collateral ......................................................... 14
  - Section 2.7 Maximum Rate of Interest ....................................................................... 16
  - Section 2.8 Fees ........................................................................................................... 16
  - Section 2.9 Method of Payment, Etc ........................................................................... 16
  - Section 2.10 Alternate Facility ...................................................................................... 17
  - Section 2.11 Computation of Interest and Fees ............................................................. 17
  - Section 2.12 Payment Due on Non-Business Day to Be Made on Next Business Day 17
  - Section 2.13 Source of Funds ....................................................................................... 17
  - Section 2.14 Extension of the Letter of Credit Expiration Date ................................... 17
  - Section 2.15 Amendments upon Extension .................................................................. 18
  - Section 2.16 Increased Costs ....................................................................................... 18
  - Section 2.17 Taxes ...................................................................................................... 19
- ARTICLE III CONDITIONS OF ISSUANCE ................................................................. 20
  - Section 3.1 Conditions Precedent to Issuance of the Letter of Credit ....................... 20
- ARTICLE IV REPRESENTATIONS AND WARRANTIES ............................................. 22
  - Section 4.1 Representations of the City ....................................................................... 22
- ARTICLE V COVENANTS .............................................................................................. 25
  - Section 5.1 Affirmative Covenants ............................................................................. 25
  - Section 5.2 Negative Covenants .................................................................................... 30
- ARTICLE VI DEFAULTS .................................................................................................. 31
  - Section 6.1 Events of Default ....................................................................................... 31
  - Section 6.2 Remedies ................................................................................................... 31
  - Section 6.3 Remedies Not Exclusive ............................................................................ 34
- ARTICLE VII MISCELLANEOUS .................................................................................... 34
  - Section 7.1 Jury Trial; Submission to Jurisdiction; Waiver of Immunity .................... 34
  - Section 7.2 Indemnity .................................................................................................. 36
  - Section 7.3 Obligations Absolute .................................................................................. 37
Section 7.4 Liability of the Bank ................................................................. 38
Section 7.5 Participants ........................................................................... 38
Section 7.6 Survival of this Agreement ..................................................... 38
Section 7.7 Amendments, Waivers, Etc ..................................................... 39
Section 7.8 Waiver of Rights by the Bank ................................................ 39
Section 7.9 Severability .......................................................................... 39
Section 7.10 Governing Law .................................................................... 39
Section 7.11 Notices ................................................................................. 39
Section 7.12 Successors and Assigns .......................................................... 40
Section 7.13 Taxes and Expenses ............................................................... 41
Section 7.14 No Third Party Rights ............................................................ 41
Section 7.15 Headings .............................................................................. 41
Section 7.16 Counterparts ....................................................................... 41
Section 7.17 Patriot Act ........................................................................... 41
Section 7.18 Compliance with OFAC Sanctions Programs ......................... 42
Section 7.19 Entire Agreement .................................................................. 42

EXHIBIT A – FORM OF LETTER OF CREDIT
REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT, dated as of __________ __, 20__, is between the CITY OF PHILADELPHIA, PENNSYLVANIA, a city of the first class and political subdivision existing under the laws of the Commonwealth of Pennsylvania, and [BANK], a ____________ banking corporation.

BACKGROUND

WHEREAS, the City (as hereinafter defined) has previously issued $100,000,000 in aggregate principal amount of its General Obligation Multi-Modal Refunding Bonds, Series 2009B (the “Bonds”), of which $100,000,000 in principal amount remains outstanding as of the Closing Date (as hereinafter defined), pursuant to (i) an Ordinance signed by the Mayor on June 15, 2009 (Bill No. 090324) (as amended and supplemented from time to time, the “Ordinance”), and (ii) a Bond Committee Resolution adopted on July 28, 2009 (as amended and supplemented from time to time, the “2009 Resolution”) by the Bond Committee (comprised of a majority of the Mayor, the City Solicitor (as hereinafter defined) and the City Controller (as hereinafter defined) of the City, the “Bond Committee”) of the City;

WHEREAS, pursuant to a Bond Committee Resolution adopted on __________ __ 20__ (together with the 2009 Resolution, the “Resolution”), the Bond Committee approved, among other things, the execution of this Agreement;

WHEREAS, in order to secure the payment when due of the principal of and interest on the Bonds and the purchase price with respect thereto, at the request and for the account of the City, ____________ has issued its letter of credit no. __________ (the “Prior Letter of Credit”) to the Fiscal Agent (as hereinafter defined); and

WHEREAS, in substitution for the Prior Letter of Credit, in order to secure the payment when due of the principal of and interest on the Bonds and the purchase price with respect thereto, the City has requested, and the Bank (as hereinafter defined) is willing to agree, upon the terms and conditions set forth herein, to issue for the account of the City, and the benefit of the Fiscal Agent, the Letter of Credit (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the City and the Bank hereby agree as follows.

DEFINITIONS

Definitions. As used in this Agreement:

“A Drawing” means a drawing under the Letter of Credit made pursuant to Section 2.08(a)(i) of Exhibit C to the 2009 Resolution for the payment of the principal of Eligible Bonds at maturity or prior redemption pursuant to a certificate in the form of Annex __ or Annex __ to the Letter of Credit.
“Accelerated Maturity Date” means, with respect to each Term Loan after the occurrence of any Event of Default (whether then outstanding or made in connection with a mandatory purchase pursuant to a Mandatory Tender Notice issued as a result of the occurrence of such Event of Default), (a) if, at the time of occurrence of such Event of Default, all Outstanding Bonds are Pledged Bonds, the second anniversary of the occurrence thereof (subject to declaration by the Bank pursuant to Section 6.2(c)), and (b) otherwise, if the Bank has issued a Mandatory Tender Notice as the result of such Event of Default, the second anniversary of the applicable Mandatory Purchase Date.

“Acceleration” means the coming due of all or any portion of any payment obligation on a date that is earlier than scheduled prior to such acceleration (other than any prepayment at the option of the obligor), whether or not such payment obligation becomes immediately due and payable, and includes, without limitation, an obligation to prepay, purchase, refinance, or redeem such obligation on such earlier date. The term “Accelerate” has a correlative meaning. For the avoidance of doubt, the terms “acceleration” and “accelerate” mean the coming immediately due of, or causing to become immediately due, as the case may be, any payment obligation.

“Accounting Standards” has the meaning set forth in 0.

“Advance” means any Credit Advance, Liquidity Advance, or Term Loan.

“Affiliate” means, with respect to a Person, any Person (whether for-profit or not-for-profit) which “controls” or is “controlled” by, or is under common “control” with, such Person. For purposes of this definition, a Person “controls” another Person when the first Person possesses or exercises directly, or indirectly through one or more affiliates or related entities, the power to direct the management and policies of the other Person, whether through the ownership of voting rights, membership, the power to appoint members, trustees or directors, by contract, or otherwise.

“Agreement” means this Reimbursement Agreement.

“Alternate Facility” means a letter of credit or other facility delivered in substitution for the Letter of Credit. For purposes of the Resolution, an “Alternate Facility” shall be deemed an “Alternate Credit Facility” or an “Alternate Liquidity Facility” (as each such term is defined in Exhibit A to the Resolution).

“Anti-Terrorism Laws” means any of the laws relating to terrorism or money laundering, including Executive Order No. 13224, the PATRIOT Act, the Bank Secrecy Act, the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), the laws administered by OFAC, and all laws comprising or implementing these laws.

“Applicable Law” means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, treaties, rules, regulations, orders, decisions, judgments and decrees of Governmental Authorities, including the Charter, and (ii) Governmental Approvals and Governmental Registrations.

“B Drawing” means a drawing under the Letter of Credit made pursuant to Section 2.08(a)(i) of Exhibit C to the 2009 Resolution for the payment of the interest on Eligible Bonds.
payable on an Interest Payment Date at maturity or upon redemption pursuant to a certificate in the form of Annex __ to the Letter of Credit.

“Bank” means ______________, a __________ banking corporation, together with its successors and assigns.

“Bank Rate” means, for any day (subject to Section 2.3(c)) the rate per annum required to be borne by all Pledged Bonds so that the aggregate interest accrual on the Pledged Bonds for such day is equal to the aggregate interest accrual on the Advances for such day.

“Base Rate” means, for any day, the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus ___%, and (c) ___%.

“Bond Committee” has the meaning set forth in the recitals.

“Bond Counsel” means __________, or other nationally recognized bond counsel selected by the City.

“Bonds” has the meaning set forth in the recitals and, for the avoidance of doubt, includes Pledged Bonds.

“Book Entry Bonds” means the Bonds so long as the book entry system with DTC is used for determining beneficial ownership of the Bonds.

“Business Day” means any day other than a Saturday or Sunday or other day on which the New York Stock Exchange is closed or on which banks are authorized or required to be closed in the City, New York, New York, or Pittsburgh, Pennsylvania, or any other city in which the principal office of the Fiscal Agent, the Tender Agent, or the Remarketing Agent is located.

“C Drawing” means any drawing under the Letter of Credit made pursuant to Section 2.03(c) of Exhibit C to the 2009 Resolution for the payment of the portion of the purchase price of Eligible Bonds tendered pursuant to Section 2.01 or Section 2.02 of Exhibit C to the 2009 Resolution equal to the principal amount of such Bonds pursuant to a certificate in the form of Annex __ to the Letter of Credit.

“Change of Law” means the adoption, after the date hereof, of any rule, regulation, guideline, order, request (whether or not having the force of law) or statute of any Governmental Authority or the application or requirements thereof, or any change in the interpretation, after the date hereof, of any rule, regulation, guideline, order, request (whether or not having the force of law) or statute by any Governmental Authority.


“City” means the City of Philadelphia, Pennsylvania. Any notice or requests by the City hereunder may be made by the Treasurer or the Director of Finance of the City.

“City Controller” means the duly elected or validly appointed Controller of the City.
“City Solicitor” means the validly appointed City Solicitor of the City.

“Closing Date” means _______ __, 20__, or such later date as to which the City and the Bank may agree.

“Collateral” means the Pledged Bonds and all products and proceeds thereof.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Conversion Date” means the date on which none of the Bonds shall bear interest at the Weekly Rate.

“Council” means the duly elected Council of the City of Philadelphia.

“Credit Advance” has the meaning assigned that term in Section 2.4(a).

“D Drawing” means any drawing under the Letter of Credit made pursuant to Section 2.03(c) of Exhibit C to the 2009 Resolution for the payment of the portion of the purchase price of Eligible Bonds tendered pursuant to Section 2.01 or Section 2.02 of Exhibit C to the 2009 Resolution equal to the amount of accrued and unpaid interest on such Bonds to the date of such purchase pursuant to a certificate in the form of Annex __ to the Letter of Credit.

“Debt” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) 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, (d) all obligations of such Person as lessee under capital leases, (e) all Debts of others secured by a lien on any asset of such Person, whether or not such Debts are assumed by such Person, (f) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit, whether or not representing obligations for borrowed money, and (g) all Guarantees by such Person of Debts of other Persons, other than Guarantees pursuant to financial guaranty insurance policies or similar instruments.

“Default” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or giving of notice, would constitute an Event of Default.

“Default Rate” means the Base Rate plus ____% per annum.

“Differential Interest Amount” means, with respect to any Pledged Bonds sold on any date pursuant to Section 2.03 of the 2009 Resolution, the excess, if any, of (a) the aggregate amount of interest accrued and unpaid on such Pledged Bonds as of such date over (b) the portion of the Sale Price for such Pledged Bonds in excess of the principal amount thereof.

“Dollars,” “US$,” and “U.S. Dollars” mean the lawful currency of the United States of America.

Error! Unknown document property name.
Error! Unknown document property name.
“Drawing” means an A Drawing, a B Drawing, a C Drawing, or a D Drawing under the Letter of Credit in accordance with its terms.

“DTC” means The Depository Trust Company and its successors and assigns.

“Eligible Bonds” means any Outstanding Bonds bearing interest at the Weekly Rate other than Bonds owned by, for the account of, or on behalf of, the City or any Affiliate of the City, and Pledged Bonds.

“ERISA” means the Employee Retirement Income Security Act of 1974 and all regulations thereunder, as and to the extent applicable to the City, as amended from time to time.

“Event of Default” has the meaning set forth in Section 6.1.

“Facility Fee” means the facility fee payable to the Bank pursuant to the Fee Letter.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) 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 overnight federal funds transactions as determined by the Bank. Each determination of the Federal Funds Rate by the Bank will be conclusive and binding on the City absent manifest error.

“Fee Letter” means the letter agreement from the Bank to the City, dated the Closing Date, and acknowledged and agreed to by the City, specifying the method of determining the Facility Fee and specifying other fees and rates of interest payable with respect to the transactions referred to herein, together with any amendments to the Fee Letter agreed to in writing by the Bank and the City’s Director of Finance.

“Fee Obligations” means all obligations of the City to the Bank as set forth in the Fee Letter and Section 2.16, Section 2.17, and Section 7.2.

“Fiscal Agent” has the meaning set forth in Exhibit A to the 2009 Resolution.

“Fiscal Agent Agreement” has the meaning set forth in Exhibit A to the 2009 Resolution.

“Fiscal Year” means a period of twelve months beginning July 1 of a year and ending June 30 of the following year.

“Fitch” means Fitch, Inc. and any successor thereto (other than Moody’s or S&P).
“Governmental Approval” means any authorization, consent, approval, license (or the like), or exemption (or the like) of, or other action by, any Governmental Authority.

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, agency, regulatory body, tribunal, authority, bureau, court or entity (including the Board of Governors of the Federal Reserve System, any central bank or any comparable authority), or any arbitrator with authority to bind a party to this Agreement at law.

“Governmental Registration” means any registration or filing (or the like) with, or report or notice (or the like) to, any Governmental Authority.

“Guarantee” means, of any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangement, by agreement to keep well, to purchase assets, goods, securities, or services, to take-or-pay, or to maintain financial statement condition or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided that the term “Guarantee” does not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Holder” means “Registered Owner,” as such term is defined in Exhibit A to the 2009 Resolution.

“Interest Component” has the meaning set forth in the Letter of Credit.

“Interest Payment Date” means “Series 2009B Interest Payment Date,” as such term is defined in Exhibit A to the 2009 Resolution.

“Investment Grade” means a long-term rating assigned by S&P or Fitch of at least “BBB-” (or any equivalent rating then in use by S&P or Fitch) or greater and a long-term rating assigned by Moody’s of at least “Baa3” (or any equivalent rating then in use by Moody’s) or greater.

“Letter of Credit” means the irrevocable transferable direct pay letter of credit to be issued by the Bank for the account of the City in favor of the Fiscal Agent in the form of Exhibit A hereto, with appropriate insertions, as amended.

“Liquidity Advance” means a payment under the Letter of Credit pursuant to a C Drawing or a D Drawing.

“Liquidity Advance Date” with respect to each Liquidity Advance, the date such Liquidity Advance is made.
“Liquidity Advance Margin” means, with respect to each Liquidity Advance, (a) during the period from and including the related Liquidity Advance Date, to but excluding the one hundred eighty first (181st) day thereafter, ____%, and (b) from and after such one hundred eighty first (181st) day, ____%.

“Mandatory Purchase Date” means the date on which all Outstanding Bonds are subject to mandatory purchase in accordance with Section 2.02 of Exhibit C to the 2009 Resolution following delivery of a Mandatory Tender Notice to the Fiscal Agent in accordance with Section 6.2(a).

“Mandatory Tender Notice” has the meaning set forth in Section 6.2(a).

“Material Adverse Change” or “Material Adverse Effect” means (a) with respect to the City, any change or event that has a material adverse effect (i) on or in the business, condition (financial or otherwise), or operations of the City or (ii) on the ability of the City to perform its obligations under this Agreement or any other Related Document, and (b) with respect to this Agreement or any other Related Document, any change or event that has a material adverse effect on the validity or the enforceability of this Agreement or such Related Document or the rights or remedies of, or for the benefit of, the Bank hereunder or thereunder.

“Maturity Date” means, with respect to any Term Loan, the earliest to occur of (a) the __________ anniversary of the Term Loan Start Date of such Term Loan, (b) the Accelerated Maturity Date, and (c) close of business on the date that an Alternate Facility becomes effective.

“Maximum Rate” means, with respect to interest payable on any amount, the rate of interest on such amount that, if exceeded, could, under Applicable Law, result in (a) civil or criminal penalties being imposed upon the payee or (b) the payee’s being unable to enforce payment of (or, if collected, retain) all or any part of such amount or the interest payable thereon.

“Moody’s” means Moody’s Investors Service Inc. and any successor thereto (other than S&P or Fitch).

“Obligations” means the Reimbursement Obligations, the Fee Obligations, and the obligation of the City to pay Pledged Bonds (including any Excess Interest) and all other payment or other obligations of the City to the Bank arising under or in relation to this Agreement, whether now existing or hereafter arising and howsoever evidenced.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control, or any successor thereto.

“OFAC Lists” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to any of the rules and regulations of OFAC or pursuant to any applicable executive orders, including Executive Order No. 13224, as that list may be amended from time to time.

“OFAC Sanctions Programs” means all Anti-Terrorism Laws, regulations, and executive orders administered by OFAC and all economic and trade sanction programs administered by OFAC.
“Ordinance” has the meaning set forth in the recitals.

“Organizational Document” means any agreement, document or instrument relating to the organization and operation of the City pursuant to the Charter, the Constitution of the Commonwealth, and any regulatory or statutory provisions of each Governmental Authority having jurisdiction over the City and its business.

“Other Taxes” has the meaning set forth in Section 2.17(a).

“Outstanding” means, when used with reference to the Bonds, as at any particular date, the aggregate of all Bonds authenticated and delivered under the 2009 Resolution, except: (a) Bonds cancelled or surrendered to the Fiscal Agent for cancellation at or prior to such date; (b) Bonds for the payment of which cash or direct obligations of, or obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by, the United States of America shall have been theretofore deposited with the Fiscal Agent in an amount equal to the principal amount thereof and interest thereon to maturity; (c) Bonds otherwise deemed to be paid in accordance with the 2009 Resolution; and (d) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the 2009 Resolution.

“Parity Debt” means all bonds, debentures, notes or other similar instruments issued by the City that constitute general obligations of the City for the payment of which the full faith, credit, and taxing power of the City are pledged (excluding the Bonds).

“Participant” means any financial institution which acquires a participation in the Letter of Credit as provided in Section 7.5.

“Patriot Act” has the meaning set forth in Section 7.17.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“Pledged Bond” means any Bond during the period from and including the date of its purchase with the proceeds of a Liquidity Advance to but excluding the date on which such Bond is purchased by any Person as a result of a remarketing of such Bond pursuant to the Remarketing Agreement and the Resolution or the date on which the principal amount of such Bond is otherwise repaid in full pursuant to the Resolution.

“Prime Rate” means the prime commercial lending rate of ________________, as publicly announced to be in effect from time to time. The Prime Rate shall be adjusted automatically, without notice, on the effective date of any change in such prime commercial lending rate. The Prime Rate is not necessarily ______________’s lowest rate of interest.

“Principal Component” has the meaning set forth in the Letter of Credit.

“Prior Bank” has the meaning set forth in the recitals hereof.
“Prior Letter of Credit” has the meaning set forth in the recitals hereof.

“Purchase Notice” has the meaning set forth in Section 2.6(c).

“Purchaser” has the meaning set forth in Section 2.6(c).

“Quarterly Installment Amount” means, with respect to each Term Loan on any Term Loan Payment Date (including the Maturity Date of such Term Loan), an amount (rounded upward to the next integral multiple of $100,000) equal to the quotient obtained by dividing the outstanding principal amount of such Term Loan on such Term Loan Payment Date (without giving effect to any payment of principal of such Term Loan made on such date) by the number of Term Loan Payment Dates (including the Term Loan Payment Date as to which the Quarterly Installment Amount is being determined) remaining until, and including, the Maturity Date.

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

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

“Related Documents” means, collectively, this Agreement, the Fee Letter, the Resolution, the Ordinance, the Fiscal Agent Agreement, the Bonds, the Remarketing Memorandum, the Remarketing Agreement, and all other documents required to be delivered by the City pursuant hereto or in connection herewith.

“Remarketing Agent” means ____________________ and its permitted successors and assigns, or any alternate remarketing agent appointed for the Bonds.

“Remarketing Agreement” means the Remarketing Agreement, dated as of ____________, 20__, between the City and the Remarketing Agent.

“Remarketing Memorandum” means the Remarketing Memorandum, dated __________, 20__, prepared in connection with the remarketing of the Bonds upon delivery of the Letter of Credit, as supplemented or amended.

“Resolution” has the meaning set forth in the recitals.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor thereto (other than Moody’s or Fitch).

“Sale Date” has the meaning set forth in Section 2.6(c).

“Sale Price” has the meaning set forth in Section 2.6(c).

“Stated Amount” has the meaning set forth in the Letter of Credit.

“Stated Expiration Date” means, at any time, the date on which the Letter of Credit is then scheduled to expire in accordance with the terms of the Letter of Credit.
“Substitution Date” has the meaning set forth in Section 5.1(f).

“Taxes” has the meaning set forth in Section 2.17(a).

“Termination Date” means the last day a Drawing is available in accordance with the terms of the Letter of Credit.

“Term Loan” has the meaning set forth in Section 2.4(c).

“Term Loan Payment Date” means, with respect to any Term Loan, (a) the first Business Day of the third month immediately following the related Term Loan Start Date and the first Business Day of each third consecutive month thereafter occurring prior to the Maturity Date, and (b) the Maturity Date.

“Term Loan Rate” means the Base Rate from time to time in effect plus ___ percent (___%) per annum.

“Term Loan Start Date” means, with respect to each Liquidity Advance and any Term Loan into which such Liquidity Advance is converted in accordance with Section 2.4(c), the earliest to occur of: (a)(i) if no Event of Default shall have occurred prior to the one hundred eighty first (181st) day immediately following the related Liquidity Advance Date (assuming such Liquidity Advance has not been fully reimbursed to the Bank), the date of such one hundred eighty first (181st) day; and (ii) otherwise, the date of the occurrence of such Event of Default, and (b) the Stated Expiration Date.

“Weekly Rate” has the meaning set forth in Exhibit A to the 2009 Resolution.

“Written” or “in writing” means any form of written communication or a communication by means of telex or facsimile device.

Other Defined Terms.

Each capitalized term used herein and not defined herein shall have the meaning provided therefor in the Ordinance and the Resolution, unless the context otherwise requires.

Accounting Matters. All accounting terms used herein without definition shall be interpreted in accordance with governmental accounting standards, in each case applied on a basis consistent (except for changes approved by the City Controller, and, in the case of financial statements prepared as of a date other than the end of a Fiscal Year, except for the absence of certain notes and subject to normal year-end adjustments) with the most recent audited financial statements of the City delivered or required to be delivered to the Bank pursuant to this Agreement (the “Accounting Standards”), and, except as otherwise expressly provided herein, all accounting determinations required to be made pursuant to this Agreement shall be made in accordance with said Accounting Standards.

Interpretation. All words used herein shall be construed to be of such gender or number as the circumstances require. Reference to any document means such document as amended, supplemented or otherwise modified from time to time as permitted pursuant to its
Substitution of Letter of Credit for Purposes of Resolution and Ordinance. For all purposes of the Resolution and the Ordinance, the City hereby agrees that this Agreement, the Fee Letter, and the Letter of Credit comprise an “Alternate Credit Facility” and an “Alternate Liquidity Facility”, as such terms are defined in Exhibit A to the 2009 Resolution, and, accordingly, the Bank is entitled to all of the rights and benefits under the Resolution and the Ordinance accorded a “Credit Provider” and a “Liquidity Provider,” as such terms are defined in Exhibit A to the 2009 Resolution.

LETTER OF CREDIT

Issuance of the Letter of Credit. Upon the terms, subject to the conditions 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 (in substantially the form set forth in Exhibit A hereto).

Letter of Credit Drawings. The Fiscal Agent is authorized to make Drawings under the Letter of Credit in accordance with its terms. 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. If the Fiscal Agent shall have prepared and delivered a request for a Drawing, in the form required by, and by the time, in the manner and delivered to the office of the Bank specified in, the Letter of Credit, which request shall be duly completed and executed by an authorized representative of the Fiscal Agent, the Bank shall make the Credit Advance or the Liquidity Advance, as the case may be, to the Fiscal Agent in the amount of moneys set forth in the Drawing.

Interest on Advances and Other Amounts.

Subject to 0, each Liquidity Advance shall bear interest for each day at a per annum rate equal to the Base Rate plus the Liquidity Advance Margin for such day, payable in arrears, on the first Business Day of each month, commencing on the first such day after the date of such Liquidity Advance, until paid in full or converted into a Term Loan pursuant to Section 2.4(d); provided that the Differential Interest Amount, if any, owing to the Bank pursuant to Section 2.6(c) shall be payable on the applicable Sale Date; and, provided further that no interest shall be payable with respect to the reimbursement of any Drawing which is paid in full to the Bank by 3:00 p.m. (New York time) on the date on which such Drawing is paid.
Subject to 0, each Term Loan shall bear interest at the Term Loan Rate, payable in arrears on the first Business Day of each month and on the date that the final principal payment of said Term Loan is made.

For each day on which an Event of Default shall be continuing, the principal of, and interest on, the Advances and all other Obligations shall, until paid in full, bear interest at a rate per annum equal to the Default Rate for such day, which such interest being payable upon demand, subject, in the case of amounts due on a date that is not a Business Day, to Section 2.12.

Reimbursement and Repayment of Advances.

The City shall reimburse or cause to be reimbursed to the Bank an amount equal to each payment under the Letter of Credit pursuant to an A Drawing or a B Drawing (each such payment being a “Credit Advance”) on the same Business Day as the date of such Drawing.

On each Interest Payment Date, the City shall repay to the Bank an amount equal to the aggregate outstanding principal amount, if any, of all Liquidity Advances made pursuant to a D Drawing under the Letter of Credit. The Interest Component shall be subject to reinstatement as and to the extent provided in the Letter of Credit.

On each Sale Date of any Pledged Bonds, the City shall repay the outstanding principal amount of the Liquidity Advances (which have not been converted to a Term Loan pursuant to Section 2.4(d)) the proceeds of which were used to purchase such Pledged Bonds equal to the Sale Price of such Pledged Bonds. The Available Amount shall be subject to reinstatement as and to the extent provided in the Letter of Credit.

Each Liquidity Advance shall automatically, and without any action on the part of the City or the Bank be converted into a term loan (each such loan, a “Term Loan”) on the applicable Term Loan Start Date. Subject to Section 2.4(e), the City shall, on each Term Loan Payment Date, repay the principal amount of such Term Loan in installments, each of which shall be equal to the Quarterly Installment Amount on such Term Loan Payment Date; provided, however, that all principal due in connection with each Term Loan shall be paid in full no later than the Maturity Date. Unless the City shall have otherwise notified the Bank to the contrary, the City shall be deemed to have represented to the Bank that each representation and warranty set forth or incorporated by reference in Article IV is true and correct in all material respects as of, and no Default or Event of Default has occurred and is continuing on, each Term Loan Start Date (determined under clause (a)(i) or clause (b) of the definition thereof) of each Term Loan. The amount of the Letter of Credit and the amounts available to be drawn thereunder by the Fiscal Agent by any Drawing shall not be reinstated with respect to the conversion of a Liquidity Advance to a Term Loan.

If on any Term Loan Start Date an Event of Default shall have occurred and be continuing, the City shall repay the Term Loan into which the related Liquidity Advance is converted on such Term Loan Start Date in two approximately equal annual installments
payable on the first Business Day of the first month that begins on or after the first anniversary of such Liquidity Advance and the other of which is payable on the Maturity Date.

The City’s obligation to repay the Advances with interest in accordance with the terms of this Agreement shall be evidenced by this Agreement and the records of the Bank. The records of the Bank shall be prima facie evidence of the Advances and accrued interest thereon and of all payments made in respect thereof.

**Prepayment of Advances.**

The City may prepay any Advance, in whole or in part at any time, with accrued interest to the date of such prepayment, upon three (3) Business Days’ notice to the Bank; provided that any such prepayment shall be in the minimum principal amount of $____________ (unless the outstanding principal amount of the Liquidity Advance or Term Loan is less than $____________, in which case the prepayment shall be in the full outstanding principal amount of such Advance); and provided, further, that the City shall make only one prepayment pursuant to this Section 2.5(a) in any one calendar month. The City may redeem a corresponding amount of Pledged Bonds in connection with such a prepayment, at its option, and, notwithstanding the provisions of Section 12 of the 2009 Resolution requiring 30 days’ prior written notice of the redemption of Bonds, only three (3) Business Days’ notice of such redemption shall be required. Prepayments of Term Loans made at a particular time shall be applied to all remaining installments of the Term Loans pro rata on the basis of the principal amount of each such installment.

If at any time the aggregate principal amount of the outstanding Liquidity Advances made pursuant to a C Drawing (or any related Term Loan) shall exceed the aggregate principal amount of the Pledged Bonds, the City shall, upon demand by the Bank, immediately prepay such Liquidity Advances (or such Term Loan) to such extent. If at any time the amount of any outstanding Liquidity Advances made pursuant to a D Drawing (or any related Term Loan) shall exceed the amount of interest accrued at the time of purchase on the Pledged Bonds purchased with the proceeds of such D Drawing, the City shall, upon demand by the Bank, immediately prepay such Liquidity Advance (or such Term Loan) to such extent.

On each date that any Pledged Bonds are redeemed, repaid in whole or in part, or accelerated, and on each Conversion Date, the City shall prepay (A) the outstanding Liquidity Advances made pursuant to a C Drawing (or any related Term Loan) the proceeds of which were used to purchase such Pledged Bonds in an aggregate principal amount equal to the aggregate principal amount of such Pledged Bonds so redeemed, repaid, accelerated, or converted on such Conversion Date, and (B) to the extent not previously paid, the full amount of all outstanding Liquidity Advances made pursuant to a D Drawing (or any related Term Loan), if any, the proceeds of which were used to purchase such Pledged Bonds.

On each date that any payments are received by the Bank in respect of principal of Pledged Bonds, then, to the extent that the amount received is in excess of the aggregate outstanding amount of Liquidity Advances made pursuant to a C Drawing (or any related Term Loan) otherwise then due and payable, the City shall prepay such Liquidity Advances (or such Term Loan) in an amount equal to such excess.

- 13 -
On each date that any payments are received by the Bank in respect of interest accrued on Pledged Bonds at the time of their purchase by the Bank, then, to the extent that the amount received is in excess of the amounts of Liquidity Advances made pursuant to a D Drawing (or any related Term Loan) otherwise then due and payable, the City shall prepay such Liquidity Advances (or such Term Loan) in an amount equal to such excess.

The principal amount of each Pledged Bond to be repaid shall be rounded, if necessary, upward to the nearest $100,000.

Any amount of principal of, and interest on, the Pledged Bonds paid to the Bank shall be credited against the amount payable to the Bank pursuant to Section 2.3, Section 2.4, and this Section 2.5 in the order and as otherwise provided in Section 2.6(e).

**Pledged Bonds and other Collateral.**

To secure the timely payment and performance by the City of all of the Obligations, the City hereby grants to the Bank a security interest in any and all of its rights, title and interest whether such rights are now or hereafter existing, in and to the Collateral, whether, in the case of any item of Collateral, (a) now or hereafter existing, (b) the City now or hereafter has rights therein, (c) it is now contemplated, anticipated or foreseeable that such item would be Collateral, (d) it is subject to Article 8 or 9 of the Uniform Commercial Code or is Collateral by reason of this Section 2.6. In furtherance of the foregoing and in addition to and not in limitation of any other rights and remedies that the Bank may have (regardless of whether the same arise under this Agreement, the other Related Documents, or at law or in equity) the Bank shall have (y) with respect to any Pledged Bonds held by it, all of the rights of a Holder of “Bank Bonds” under the Resolution and the other Related Documents other than this Agreement and the Fee Letter (including all rights of a Holder of Bonds to direct the Fiscal Agent as to any matter), and (z) with respect to all Collateral, (i) the rights and remedies of a secured party under the Uniform Commercial Code, as in effect under the laws of the Commonwealth, whether or not such Uniform Commercial Code would otherwise apply to the Collateral in question, and (ii) the rights and remedies of a secured party under all other Applicable Law.

Upon the Bank’s making a Liquidity Advance, the Bank shall be deemed to have purchased the related Eligible Bonds with the proceeds of such Liquidity Advance and (i) such Eligible Bonds shall constitute Pledged Bonds and shall, from the date of such purchase and while they are Pledged Bonds, bear interest on the unpaid principal amount thereof at the Bank Rate and have other characteristics of Pledged Bonds as set forth herein and in the Resolution. Any Liquidity Advance by the Bank shall be promptly followed by delivery of Pledged Bonds by the Fiscal Agent as set forth in Section 2.05 of Exhibit C to the 2009 Resolution. As long as the Bonds are Book Entry Bonds, the Fiscal Agent shall reflect on its books and records that the Bank has made Liquidity Advances for the purchase of Pledged Bonds and the Remarketing Agent shall ensure that the Bank shall be shown as the beneficial owner of such Pledged Bonds on the books and records of DTC. If the Bonds are not Book Entry Bonds, the Pledged Bonds purchased by the Bank with amounts made available under the Letter of Credit shall be registered in the name of the Bank or its designee, on behalf of the Bank, and shall be held as Pledged Bonds in trust by the Fiscal Agent for the benefit of the Bank (or such designee as the Bank may elect, on behalf of the Bank), but upon the written request of
the Bank shall be promptly delivered by the Fiscal Agent to the Bank or its designee. Pledged Bonds shall be subject to mandatory redemption at par plus accrued interest on each day on which a payment of principal of a Term Loan is due and payable hereunder in an aggregate principal amount equal to aggregate principal amount of such Term Loan then due and payable.

Prior to 12:00 noon on any Business Day on which Pledged Bonds are being held by the Bank, unless the Bank has delivered a Mandatory Tender Notice pursuant to Section 6.2(a), the Remarketing Agent may deliver a notice (a “Purchase Notice”) to the Bank stating that it has located a purchaser for some or all of such Pledged Bonds (such purchaser, a “Purchaser”) and that such Purchaser desires to purchase, on the Business Day next succeeding the date of delivery of the Purchase Notice (the “Sale Date”), an authorized denomination of such Pledged Bonds at a price equal to the principal amount of such Pledged Bonds plus accrued interest thereon to the Sale Date at the interest rate then applicable to Bonds which are not Pledged Bonds (the “Sale Price”). In such event, the Bank shall deliver such Pledged Bonds to the Fiscal Agent by 10:00 a.m., on the Sale Date against receipt of the Sale Price therefor by wire transfer of immediately available funds as provided in Section 2.9). The Bonds so delivered and paid for shall no longer be considered Pledged Bonds and, upon receipt of such funds, (i) the Principal Component shall be increased by the aggregate principal amount of such Pledged Bonds and (ii) the Interest Component shall be increased by an amount equal to fifty six (56) days of interest on the initial Principal Component at an assumed rate equal to twelve percent (12%) and calculated based on a year of 365 days or 366 days, as applicable, and for the actual number of days elapsed. On the Sale Date, the Differential Interest Amount of such Bonds shall be paid or caused to be paid to the Bank by the City as provided in Section 2.3(a). Any sale of a Pledged Bond pursuant to this Section 2.6(c) shall be without recourse to the Bank and without representation or warranty of any kind by the Bank.

The City hereby agrees that (i) each Pledged Bond will be transferred to the Bank, free and clear of all liens, security interests or claims of the Bank or any Person other than the Bank, except for such consensual liens or other security interests as may be created by the Bank, (ii) the Bank shall be entitled, in connection with any Pledged Bonds held by it, to and, where necessary, shall be deemed assigned, all rights and privileges accorded Holders of Bonds, except to the extent such rights and privileges conflict with this Agreement, in which case the terms of this Agreement shall govern, (c) the City will defend the Bank’s right, title and security interest in and to the Pledged Bonds and the proceeds thereof against the claims and demands of all Persons whomsoever, and (d) the City agrees that it will not take any action, or permit any action to be taken, that would adversely affect the right, title and interest in and to the Bonds (including any Pledged Bonds) created by the Resolution.

Payments received by the Bank in respect of the principal of or interest on Pledged Bonds (whether pursuant to a scheduled payment thereof, upon redemption or acceleration, upon purchase of Pledged Bonds pursuant to a remarketing thereof, or a substitution of another liquidity facility, or otherwise) shall be applied as follows:

(a) Payments in respect of principal of Pledged Bonds shall be applied to the payment of amounts of Liquidity Advances in respect of C Drawings (or related Term Loans) then due and payable;
(b) Payments in respect of interest accrued on Pledged Bonds and unpaid on the date of purchase by the Bank shall be applied to the payment of amounts of Liquidity Advances in respect of D Drawings (or related Term Loans) then due and payable; and

(c) Payments in respect of interest accruing on Pledged Bonds from the date of purchase by the Bank shall be applied to the payment of accrued and unpaid interest on the Advances.

Any amounts remaining after application as set forth in clauses (i), (ii) and (iii) of this Section 2.6(e) shall be applied to the payment of any other Obligations then due and payable to the Bank hereunder. Any Pledged Bonds and other amounts remaining after application to the payment of such other Obligations shall be released from the lien of this Agreement and distributed to the City.

On or prior to the Closing Date, the City will provide, or cause to be provided, at its expense, a CUSIP number for Pledged Bonds different from any CUSIP number assigned to the Bonds that are not Pledged Bonds. Upon demand from the Bank, if any Pledged Bonds are outstanding, the City shall use commercially reasonable efforts to obtain, at the City’s expense, an Investment Grade rating to be assigned to the Pledged Bonds bearing the CUSIP number referenced in the immediately preceding sentence by S&P or Moody’s. Furthermore, the City will use commercially reasonable efforts to provide (at the City’s expense) that, for so long as there remain any Pledged Bonds outstanding, the long-term rating assigned to such Pledged Bonds shall be available to the Bank electronically from a third-party provider of such information, such as the Bloomberg Municipal Bond Description Screen.

**Maximum Rate of Interest.** If the rate of interest payable under Section 2.3 through Section 2.6 or under any other Section shall exceed the Maximum Rate for any period for which interest is payable, then only interest at the Maximum Rate shall be due and payable with respect to such period.

**Fees.** The City agrees to pay, or cause to be paid, to the Bank the Facility Fee and the other fees, expenses and payments described in the Fee Letter at the times and in the amounts specified in the Fee Letter and Section 2.9. Any references to the Facility Fee and such other fees, expenses and payments owed to the Bank hereunder without specific reference to the Fee Letter shall be read so as to include the Fee Letter.

**Method of Payment, Etc.** All payments to be made by the City under this Agreement, the Fee Letter, and the Pledged Bonds shall be made to the Bank as hereinafter set forth not later than 3:00 p.m. (New York time) on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. All amounts received after such time on any Business Day shall be deemed to have been paid on the next succeeding Business Day. All such payments, unless otherwise directed by the Bank in writing, shall be made through the Federal Reserve Wire System to ____________________________, Ref: ____________________________ , or such other account of the Bank as the Bank may specify in writing to the City and the Fiscal Agent. All payments by or on behalf of the City to the Bank hereunder shall be fully earned when due and nonrefundable when
paid and made in lawful currency of the United States of America and in immediately available funds. Subject to Section 2.6(e), payments made to the Bank under this Agreement and the Fee Letter shall be applied, first, to any fees, costs, charges or expenses payable to the Bank hereunder and thereunder, second, to any past due interest, third, to any current interest due, and fourth, to outstanding principal, in each such case, until such amount or amounts are paid in full.

Alternate Facility. The City may, at its option and at any time upon at least thirty (30) days’ prior notice to the Bank, replace the Letter of Credit with an Alternate Facility; provided, however, that the City shall have complied with Section 2.08(d) of Exhibit C to the 2009 Resolution and Section 5.1(f) in connection with the delivery of said Alternate Facility and termination of the Letter of Credit.

Computation of Interest and Fees. All computations of interest on the Advances, the Pledged Bonds, and any other amounts owing hereunder other than the Facility Fee and the other fees owing under Fee Letter shall be made on the basis of a year of 365/366 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. All computations of the Facility Fee and the other fees specified under the Fee Letter shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Bank of an interest amount or fee hereunder and under the Fee Letter shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

Payment Due on Non-Business Day to Be Made on Next Business Day. No interest shall accrue or be owing with respect to any Obligations that are repaid on the same day that they are borrowed or incurred. Whenever any payment under the terms of this Agreement and under the Fee Letter is due on a day which is not a Business Day, such payment shall be due and payable on the next succeeding Business Day with interest accruing and being payable by the City; provided that if the City is unable to repay the amounts(s) thereof on such next succeeding Business Day, then interest will accrue at the Default Rate and be payable from and including such original due date through and including the Business Day when said moneys are actually repaid by the City.

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.

Extension of the Letter of Credit Expiration Date. The City may submit a written request to the Bank, not more than one hundred fifty (150) days nor less than sixty (60) days prior to the Stated Expiration Date, for an extension of the Stated Expiration Date for a period as specified in such written request, and the Bank will make reasonable efforts to respond to such request within thirty (30) days after receipt of such written request and related financial information. In the event the Bank fails to respond to such request prior to such thirtieth day, 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 (or accept any such proposed extension for a shorter period, if agreed to by the City), 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. If such an extension request is accepted by the Bank in its sole and absolute discretion, the then current Stated Expiration Date for the Letter of Credit shall be extended to the date agreed by the City and the Bank.

**Amendments upon Extension.** Upon any extension request of the Stated Expiration Date pursuant to Section 2.14, the Bank and the City reserve the right to re-negotiate any provision hereof.

**Increased Costs.**  
(a) If the Bank shall have determined in good faith that a Change of Law shall (A) change the basis of taxation of payments to the Bank of any amounts payable hereunder or under the Fee Letter (except for taxes on the overall net income of the Bank), (B) impose, modify or deem applicable any reserve, special deposit or similar requirement against making or maintaining its obligations under this Agreement or the Letter of Credit or assets held by, or deposits with or for the account of, the Bank or (C) impose on the Bank any other condition regarding this Agreement or the Letter of Credit, and the result of any event referred to in clause (A), (B) or (C) above shall be to increase the cost to the Bank of making or maintaining its obligations hereunder or under the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder or under the Fee Letter, then the City shall pay to the Bank, at such time as is set forth in Section 2.16(c), such additional amount or amounts as will compensate the Bank for such increased costs or reduction in amount received or receivable as reasonably relates to the Letter of Credit, this Agreement and the Fee Letter.

(b) If the Bank shall have determined in good faith that a Change of Law shall impose, modify or deem applicable any capital adequacy, liquidity or similar requirement (including a request or requirement that affects the manner in which the Bank allocates capital resources or liquidity to its commitments, including its obligations under letters of credit) that either (A) affects or would affect the amount of capital or liquidity to be maintained by the Bank or (B) reduces or would reduce the rate of return on the Bank’s capital to a level below that which the Bank could have achieved but for such circumstances (taking into consideration the Bank’s policies with respect to capital adequacy and liquidity), then the City shall pay to the Bank at such time as is set forth in Section 2.16(c), such additional amount or amounts as will compensate the Bank for such cost of maintaining such increased capital or liquidity or such reduction in the rate of return on the Bank’s capital as reasonably relates to the Letter of Credit, this Agreement and the Fee Letter.

(c) All payments of amounts referred to in Section 2.16(a) and Section 2.16(b) shall be due and payable in full on the next quarterly payment date referred to in the Fee Letter that is at least five (5) Business Days after the City’s receipt of notice thereof. Interest on the sums due as described in Section 2.16(a) and Section 2.16(b) and in the preceding sentence shall begin to accrue from the date when the payments were first due at a rate per annum equal to the Default Rate until such delinquent payments have been paid in full. A certificate as to such increased cost, increased capital, or liquidity or reduction in return incurred by the Bank as a result of any event mentioned in Section 2.16(a) or Section 2.16(b) setting forth, in reasonable detail, the basis for calculation and the amount of compensation due to the Bank shall be submitted by the Bank to the City and shall be conclusive (absent manifest error) as to the amount thereof. In making
the determinations contemplated by such certificate, the Bank may make such reasonable estimates, assumptions, allocations, and the like as the Bank in good faith determines to be appropriate.

(e) The obligations of the City under this Section 2.16 shall survive the termination of this Agreement.

Taxes. (a) Any and all payments to the Bank by the City hereunder and under the Fee Letter and the Pledged Bonds shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed thereon, excluding, however, taxes imposed on or measured by the net income or capital of the Bank by any Governmental Authority solely as a result of a connection (other than the Bank’s execution, delivery and performance of this Agreement, the Fee Letter or the Letter of Credit or receipt of any payment hereunder, thereunder or under the Pledged Bonds) between the Bank and such Governmental Authority (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being herein referred to as “Taxes”). If the City shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder or under the Fee Letter or the Pledged Bonds to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions, and (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with Applicable Law. If the City shall make any payment under this Section 2.17 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States, then the Bank shall pay to the City an amount equal to the amount by which such other taxes are actually reduced; provided that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the City with respect to such Taxes. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the Commonwealth or the State of New York from any payment made hereunder or under the Fee Letter or any Pledged Bond or from the execution or delivery or otherwise with respect to this Agreement or any other Related Document (herein referred to as “Other Taxes”). The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Taxes or Other Taxes owing by the City to the Bank hereunder or under the Fee Letter or the Pledged Bonds; provided that the Bank’s failure to send such notice shall not relieve the City of its obligation to pay such amounts hereunder or under the Fee Letter or any Pledged Bond.

The City shall, to the fullest extent permitted by law and subject to the provisions hereof, indemnify the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.17, paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that the City shall not be obligated to indemnify the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Bank’s gross negligence or willful
misconduct. The Bank agrees to give notice to the City of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided that the Bank’s failure to notify the City promptly of such assertion shall not relieve the City of its obligation under this Section 2.17. Payments by the City pursuant to this indemnification shall be made within thirty (30) days after the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank agrees to repay to the City any refund (including that portion of any interest that was included as part of such refund) with respect to Taxes or Other Taxes paid by the City pursuant to this Section 2.17 received by the Bank for Taxes or Other Taxes that were paid by the City pursuant to this Section 2.17 and to contest, with the cooperation and at the expense of the City, any such Taxes or Other Taxes which the Bank or the City reasonably believes not to have been properly assessed. This paragraph shall not be construed to require the Bank to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the City or any other Person.

Within thirty (30) days after the date of any payment of Taxes or Other Taxes by the City, the City shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof.

The obligations of the City under this Section 2.17 shall survive the termination of this Agreement.

CONDITIONS OF ISSUANCE

Conditions Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit on the Closing Date is subject to the following conditions precedent:

The City shall have provided to the Bank, on or before the Closing Date, (i) a copy of the Ordinance, certified by the Clerk of the City Council, (ii) a copy of the Resolution, certified by the City Solicitor, (iii) a copy of the executed Fiscal Agent Agreement, and (iv) copies of all other opinions (other than those described in Section 3.1(c)), certificates, and other documents delivered at the time that the Bonds were initially delivered. With respect to the items described in sub-clauses (i), (ii), and (iii), there shall be included all amendments and supplements thereto, if any, that have been executed and delivered by the parties since initial delivery of the Bonds and each of said items shall be in full force and effect on and as of the Closing Date.

The City shall have provided to the Bank, on or before the Closing Date, (i) executed originals of this Agreement, the Fee Letter, and the Remarketing Agreement and (ii) a final version of the Remarketing Memorandum prepared in connection with the substitution of the Letter of Credit for the Prior Letter of Credit.

The City shall have provided to the Bank, on or before the Closing Date, copies of the legal opinions delivered by Bond Counsel and the City Solicitor upon the original issuance and delivery of the Bonds.
The City shall have provided to the Bank, on or before the Closing Date, opinions, dated the Closing Date and addressed to the Bank, delivered by Bond Counsel and the City Solicitor, each in form and substance reasonably satisfactory to the Bank, relating to the execution and delivery of this Agreement, the Fee Letter, the Remarketing Agreement, and the Remarketing Memorandum and related matters including the opinion required for the substitution of the Letter of Credit for the Prior Letter of Credit by Section 2.08(d) of Exhibit C to the 2009 Resolution.

All legal requirements provided herein incident to the execution, delivery and performance of this Agreement, the Fee Letter, and the other Related Documents, the preparation and delivery of the Remarketing Memorandum, and the transactions contemplated hereby and thereby, shall be reasonably satisfactory to the Bank and its counsel.

S&P shall have issued short-term ratings on the Bonds of at least “A-1+”, and Moody’s shall have issued short-term ratings on the Bonds of at least “VMIG1”; the Bank shall have received a copy of the rating letters or other documents evidencing such ratings; and such ratings shall continue in effect on the Closing Date.

The City shall have provided to the Bank evidence that the City’s unenhanced general obligations bonds are rated on the Closing Date no lower than “___” by Moody’s and “___” by S&P.

The Bank shall have received certified copies or executed originals, as the Bank may request, of the Related Documents (other than those referred to in Section 3.1(a) and Section 3.1(b)) and any other documents which the Bank may reasonably request evidencing that all necessary action required to be taken by the City in connection with the authorization, execution, issuance, delivery, and performance of this Agreement, the Fee Letter, the other Related Documents, and such other documents required to be delivered by the City pursuant to or in connection with this Agreement or the transactions contemplated hereby has been taken.

(i) The representations and warranties set forth or incorporated by reference in Article IV of 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 Closing Date; (ii) on the Closing Date, no Default or Event of Default shall have occurred and be continuing; and (iii) the City shall have delivered to the Bank a certificate, dated the Closing Date, to the effect of the accuracy of the representations and warranties set forth in the foregoing clauses (i) and (ii).

The Bank shall have received certifications, dated the Closing Date, as to the incumbency of the officers of the City executing this Agreement, the Fee Letter, and the Remarketing Agreement.

The Bank’s fees and expenses payable on the Closing Date shall have been paid.

The Bank shall have received such copies of the City’s financial reports as the Bank shall have requested.
The Bank shall have received evidence satisfactory to the Bank and its counsel that no Material Adverse Change has occurred since June 30, 2015.

The Bank shall have received evidence satisfactory to the Bank and its counsel that the CUSIP number for any Bonds that become Pledged Bonds is 717813 LK3.

The Bank shall have received evidence satisfactory to the Bank that the Prior Bank has been paid in full and that the Prior Letter of Credit has been cancelled and no additional obligations owed to the Prior Bank remain outstanding on and as of the Closing Date other than those obligations to which the Bank shall have consented.

The Bank shall have received evidence that ________________ is serving as Remarketing Agent, and _______________ is serving as Fiscal Agent and Tender Agent, for the Bonds.

The Bank shall have received from the Fiscal Agent an incumbency certificate, dated the Closing Date, describing the titles of the officers or agents of the Fiscal Agent authorized to present Drawings to the Bank pursuant to the Letter of Credit.

The Bank shall have received such other documents, instruments, approvals (and, if requested by the Bank, certified duplicates of executed originals of each of the foregoing, if available) and opinions as the Bank may reasonably request.

**REPRESENTATIONS AND WARRANTIES**

**Representations of the City.** In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as of the Closing Date (which representations and warranties shall survive the execution and delivery of this Agreement) that:

The City was, at all relevant times, and is a city of the first class and political subdivision duly organized and validly existing under the laws of the Commonwealth. The City had, at all relevant times, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted, and to enter into and perform its obligations under this Agreement, the Fee Letter, and the other Related Documents and other documents contemplated hereby and thereby

The execution, delivery, and performance by the City of this Agreement, the Fee Letter, and the other Related Documents to which the City is a party (i) have been duly authorized by all necessary legal and other proper action of the City, (ii) are within the powers of the City and do not contravene any Applicable Law applicable to the City, and (iii) do not violate any indenture, mortgage, instrument, contract, agreement, or restriction binding on or affecting the City or any of its assets, or result in the creation of any mortgage, pledge, lien, or encumbrance upon any of its assets other than as provided by the terms of this Agreement, the Fee Letter, and the other Related Documents. The Council has duly enacted the Ordinance in accordance with all applicable statutory authority; the Bond Committee has duly adopted the Resolution in accordance with the Ordinance; and the Ordinance and the Resolution are in
compliance with all Applicable Law. In making the foregoing representation, the City makes no representation in the foregoing clause (ii) with respect to Section 2.7.

The City has all necessary Governmental Approvals which are required to be obtained by the City under Applicable Law to own and operate its facilities as they are currently being operated. No Governmental Approval or Governmental Registration is required for the due execution, delivery, and performance by the City of this Agreement, the Fee Letter, and the other Related Documents to which the City is a party, except such as have been obtained or are not issuable on or before the Closing Date.

This Agreement, the Fee Letter, and the other Related Documents to which the City is a party are the legal, valid, and binding obligations of the City, enforceable against the City in accordance with their terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law affecting creditors’ rights generally. Notwithstanding the foregoing, no representation is made as to the legality, validity, or enforceability of Section 2.7.

Except as set forth in the Remarketing Memorandum or disclosed by the City in writing to the Bank prior to the date hereof, there are no pending actions, suits, proceedings, or investigations before any Governmental Authority against or involving the City and, to the best knowledge of the City, there is no threatened action or proceeding affecting the City before any Governmental Authority which, in any case, might have a Material Adverse Effect.

The City is in full compliance with this Agreement, the Fee Letter and the other Related Documents. The City is in compliance with (a) all Applicable Laws and all investment policies applicable to it, and (b) any other credit agreement, indenture, mortgage, agreement, or other instrument to which it is a party or otherwise subject, in each such case except for any non-compliances which individually or in the aggregate could not have a Material Adverse Effect, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument.

There is no governmental immunity which would protect the City from service of process, from a judgment resulting from such service of process, or the enforcement of any judgment pursuant to Applicable Law rendered against it in connection with proceedings commenced by the Bank to enforce any of the Bank’s rights under this Agreement, the Fee Letter, and the other Related Documents.

The City has delivered to the Bank true, correct and complete copies of the financial statements of the City as of June 30, 2015. Those financial statements present fairly the financial position of the City as of the date thereof, and the results of the operations of the City for the period then ended, in conformity with Accounting Standards. The City has no contingent liabilities or other contracts or commitments not disclosed in the financial statements or previously disclosed to the Bank in writing. Since June 30, 2015, there has been no Material Adverse Change, except as described in the Remarketing Memorandum.
This Agreement, the exhibits hereto, and the other documents, certificates, schedules, and statements furnished to the Bank by or on behalf of the City in connection with the transactions contemplated hereby, and the other Related Documents, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made.

The City has paid or caused to be paid all taxes, assessments, and other governmental charges that are due and payable (unless the same are being contested in good faith) and has reserved funds or made adequate provision for the payment of all taxes, assessments, and other governmental charges accrued but not yet due and payable (or being contested in good faith). The City has no knowledge of any deficiency or assessment in connection with any taxes, assessments, or governmental charges with respect to the City not provided for on the books of the City, which might have a Material Adverse Effect.

The City hereby makes to the Bank the same representations and warranties as are made by the City in each Related Document (other than this Agreement and the Fee Letter), which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated in this paragraph (k) 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 in this paragraph (k) in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference in this paragraph (k) without the prior written consent of the Bank.

No Default or Event of Default has occurred and is continuing.

Except for information contained in the Remarketing Memorandum related to the Bank and the Depository Trust Company, as to which no representation is made, the Remarketing Memorandum did not, as of its date, and the Remarketing Memorandum does not, as of the date hereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. There is no fact which has come to the attention of the City which may have a Material Adverse Effect and which has not been disclosed to the Bank in writing or in the Remarketing Memorandum.

The City is not in default in payment of, or performance of its obligations under, any Debt and no petition by or against the City has at any time been filed under the United States Bankruptcy Code or any similar federal or Commonwealth statute.

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 cause interest on the Bonds to be subject to federal income taxes or to personal income taxes levied by the Commonwealth.
The City has neither made any investment nor entered into any agreements for the purpose of effecting any investment which is not permitted to it pursuant to the Resolution, the other Related Documents, or the Organizational Documents.

Except as set forth in the Remarketing Memorandum or disclosed by the City in writing to the Bank prior to the date hereof, no legislation has passed the Commonwealth legislature in the current legislative session, which has had or will have a Material Adverse Effect described in clause (a)(ii) or clause (b) of the definition thereof.

The Bonds constitute general obligations of the City to the payment of which the full faith, credit, and taxing power of the City are pledged as set forth in Section 1 of the Ordinance. Notwithstanding the foregoing, no representation is made as to the legality, validity or enforceability of Section 2.7.

No part of the proceeds of any Bonds will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended from time to time), to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose which would violate any of the regulations of said Board of Governors.

Other than with respect to matters disclosed in the Remarketing Memorandum or disclosed by the City to the Bank in writing prior to the date hereof, the City has not received notice to the effect that the any of the operations of the City are not in compliance with any of the requirements of applicable federal, state, or local environmental, health and safety statutes and regulations or are 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, which non-compliance or remedial action could have a Material Adverse Effect.

Except as set forth in Section 911(b) of Title 18 of the Pennsylvania Consolidated Statutes, the Obligations are not subject to any law, rule, or regulation of the Commonwealth prescribing a maximum rate of interest.

When Bonds are purchased with the proceeds of a Drawing and the actions called for in Section 2.6(b) have been completed, this Agreement and such actions shall be sufficient to grant to the Bank a fully perfected, first-priority security interest in the Bonds. The City has not granted or created any other lien on any Bonds which have been or may be purchased pursuant to Article II, and will not grant, create or suffer to exist any such other lien arising from or through the acts or omissions of the City.

COVENANTS

**Affirmative 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, unless the Bank shall otherwise consent in writing:
The City shall promptly pay or cause to be paid all Obligations payable by it hereunder and under the Fee Letter, and the City shall observe all covenants and perform all obligations required of it under the other Related Documents, which covenants, as well as related defined terms contained therein, are hereby incorporated by reference in this Section 5.1(a) with the same effect as if each and every such covenant were set forth in this Section 5.1(a) in its entirety and all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable by the Bank against the City. No termination of, or amendment to, such covenants or defined terms or release of the City with respect thereto made pursuant to the Related Documents shall be effective to terminate or amend such covenants and defined terms as incorporated by reference in this Section 5.1(a) or release of the City with respect thereto without the prior written consent of the Bank. Notwithstanding any termination or expiration of any other Related Document, 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 limit or be limited by the express covenants contained herein.

The City will furnish or cause to be furnished to the Bank:

(a) as soon as available but, in any case, within three hundred (300) days after the end of each Fiscal Year, the annual financial statements of the City for such Fiscal Year. Such financial statements shall present fairly the financial position of the City at the close of such Fiscal Year and the results of its operations for the Fiscal Year then ended in accordance with applicable Accounting Standards and shall be accompanied by the Independent Auditor’s Report of the City Controller, as well as a certificate from an authorized officer of the City to the effect that no Default or Event of Default exists;

(b) promptly and, in any event, within fifteen (15) days after the Director of Finance of the City, the City Solicitor and/or the City Controller obtains knowledge thereof, a certificate of the Director of Finance of the City setting forth the occurrence of any Default or Event of Default, the details thereof and the action which the City is taking or proposes to take with respect thereto;

(c) as soon as available and, in any event, within thirty (30) days after approval by the Council of the City, the budget of the City for each Fiscal Year;

(d) promptly upon obtaining knowledge thereof, written notice of any enacted legislation or litigation, legal proceeding or dispute with any Governmental Authority or with any other Person served upon the City which, if determined adversely to the City, could reasonably be expected to have a Material Adverse Effect as described in clause (a)(ii) or clause (b) of the definition thereof;
(e) promptly upon the receipt or giving thereof, copies of all notices of resignation by, or removal of, the Fiscal Agent, the Tender Agent, or the Remarketing Agent which are received, or given, by the City;

(f) promptly upon obtaining knowledge thereof, written notice of the failure by the Remarketing Agent, the Tender Agent, or the Fiscal Agent to perform any of its respective obligations under any of the Related Documents;

(g) no less than fifteen (15) Business Days prior to the prospective date for the City’s consideration of same, copies of each amendment or supplement to the Ordinance, the Resolution, the Fiscal Agent Agreement (to the extent affecting the Fiscal Agent’s performance of its duties under the Resolution), the Remarketing Memorandum, or the Remarketing Agreement;

(h) as soon as available and, in any event, not later than ninety (90) days after the close of each fiscal quarter of the City, a copy of the Quarterly City Manager’s Report; and

(i) such other financial information, governmental audits and inspection reports as the Bank may reasonably request of the City from time to time.

As and to the extent that any financial statement, audit report, or other filing described in this Section 5.1(b) has been filed on a timely basis with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system or posted on the City’s investor website, the requirements of this Section 5.1(b) with respect thereto shall be deemed satisfied.

The City will permit any Person designated by the Bank to visit its offices to examine its books and financial records and make copies thereof or extracts therefrom and to discuss the affairs, finances, and accounts of the City with its principal officials, all at such reasonable times and as often as the Bank may reasonably request (and, following the occurrence of an Event of Default, at the expense of the City). The Bank agrees to give the City reasonable notice of any such visit and to conduct such visits so as not to unreasonably interfere with the operations of the City. The Bank shall maintain the confidentiality of all such books, records, and information regarding the City, except that the Bank may disclose such information to the extent disclosure thereof is required by law or regulation or such information is otherwise publicly available.

The City shall execute and deliver to the Bank all such documents 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 this Agreement and the Fee Letter, and shall record and file all such documents and instruments, at such time or times, in such manner and at such place or places, as may be necessary or required by the Bank to validate, preserve, and protect the position of the Bank under this Agreement and the Fee Letter.
The City agrees to use its best efforts to obtain an Alternate Facility to replace this Agreement in the event that (i) the Bank shall decide not to extend the Stated Expiration Date of the Letter of Credit or the City shall not have requested an extension of the Stated Expiration Date of the Letter of Credit, in either case pursuant to Section 2.14, (ii) the Bank shall have delivered a notice to the Fiscal Agent of an Event of Default hereunder pursuant to Section 6.2(a), or (iii) the ratings on the City’s general obligation bonds shall fall below “Bal” from Moody's or “BB+” from S&P. If the City is unable to obtain an Alternate Facility as described immediately above, the City will use its best efforts to cause a Conversion Date to occur or to effect a current refunding of the Bonds.

The City agrees that any Alternate Facility will require, as a condition to the effectiveness of such Alternate Facility, that the issuer of such Alternate Facility will provide funds to the extent necessary, in addition to other funds available, on the date of delivery of such Alternate Facility (the “Substitution Date”), for the purchase of all Pledged Bonds at par plus accrued interest (at the Bank Rate) through the Substitution Date. On such Substitution Date, any and all amounts due to the Bank hereunder (including any amounts due as Excess Interest) and under the other Related Documents shall be payable in full to the Bank.

The City shall (i) at all times preserve and maintain its existence, rights, and privileges in the Commonwealth and otherwise maintain and comply with all necessary Governmental Approvals having jurisdiction over it or its properties, and (ii) comply with all Applicable Laws (including ERISA and all environmental laws) and with all investment policies applicable to it, as such policies are in effect from time to time, except for any failures to comply with clauses (i) or (ii) of this paragraph which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect as described in clause (a)(ii) or clause (b) of the definition thereof.

The City shall select, or cause to be selected, for redemption any and all Pledged Bonds prior to selecting, or causing to be selected, for redemption any Bonds that are not Pledged Bonds.

The City will promptly furnish, or cause to be furnished, to the Bank, not later than its furnishing the same to the Remarketing Agent, a copy of any written notice furnished by the City to the Remarketing Agent pursuant to the Resolution indicating a proposed conversion of the interest rate on the Bonds.

The City will pay, or cause to be paid, when due all Taxes imposed upon it or on any of its property or which it is required to withhold and pay over, except where contested in good faith by appropriate proceedings and where adequate reserves therefor have been set aside on the books of the City and will provide evidence of payment thereof to the Bank if the Bank so requests.

The City will pay or cause to be paid when due (or within applicable grace periods) all Parity Debt of the City.

The City will obtain the consent of the Bank whenever the consent of the Fiscal Agent is required to be obtained under any Related Document. The City will deliver to
the Bank, within fifteen (15) days after the receipt thereof, a copy of each notice, certificate, demand, or other writing (other than routine billing statements) given by the Remarketing Agent, the Tender Agent, or the Fiscal Agent to the City with respect to the Bonds or given or required to be given by the City to the Remarketing Agent, the Tender Agent, or the Fiscal Agent or to any Rating Agency under or in connection with the Ordinance or the Resolution or any of the other Related Documents, in each case within fifteen (15) days after the City’s receipt or giving of same (or when the City is required to give same), as the case may be.

The City agrees to take all action necessary to cause timely payment on the Bonds and the Obligations under the terms of the Ordinance and the Resolution in accordance with the terms thereof.

Pursuant to Section 4 of the Ordinance, the City hereby covenants as follows:

(a) in each year in which any Bonds (including Pledged Bonds) shall be Outstanding, there shall be appropriated from the tax and other general revenues of the City for deposit to the credit of the sinking fund established therefor a sum at least equal to the interest on and the principal of such Bonds as the same become due and payable, whether at maturity or upon redemption;

(b) in each year that the Letter of Credit or this Agreement and the Fee Letter are in effect, the City shall appropriate from the tax and other revenues of the City sufficient funds to meet the Obligations as they become due;

(c) so long as any Bonds (including Pledged Bonds) shall remain Outstanding, the City will make payments out of its sinking fund therefor or any other of its general revenues or funds at such times and in such annual amounts as shall be sufficient for the payment of interest thereon and the principal thereof when due, whether at maturity or redemption; and

(iv) the City will make payments out of its general revenues or funds at such times and in such amounts as shall be sufficient to pay the City’s Obligations.

If the Remarketing Agent is unable to remarket all or any material portion of the Bonds for a period of thirty (30) consecutive days, or is otherwise in default of its obligations under the Remarketing Agreement or the Resolution, then, at the written request of the Bank to the City, the City will use its best efforts to replace the existing Remarketing Agent with a Remarketing Agent that is reasonably satisfactory to the Bank.
**Negative Covenants.**

So long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding, the City will not, directly or indirectly, without the prior written consent of the Bank:

Amend, modify, terminate or waive, or consent to the amendment, modification, termination, or waiver of any provision of the Related Documents.

Take any action, or omit to take any action, under present or future Applicable Laws, or official interpretations thereof, including making payments to the United States, restricting yield on investments, and making necessary filings, which, if taken or omitted, would cause interest on any of the Bonds to become includable in the gross income of the owners thereof for federal income tax purposes.

Take any action, or cause the Fiscal Agent to take any action, under the Related Documents impairing the obligation of the City to pay the Obligations.

Include in the Remarketing Memorandum (or any other official statement, placement memorandum or other offering circular) information concerning the Bank that is not supplied in writing, or otherwise consented to in writing, by the Bank expressly for inclusion therein.

Take any action to notice or request or permit a mandatory purchase of the Bonds as described in clause (vii) of the definition of “Mandatory Purchase Date” set forth in Exhibit A to the 2009 Resolution, or take any action to redeem, at the City’s option, any of the Bonds other than Pledged Bonds prior to maturity.

Use the proceeds of the Bonds or moneys received under the Letter of Credit in violation of Regulation U, as amended, promulgated by the Board of Governors of the Federal Reserve System.

(i) Permit a conversion of the Bonds to an interest rate other than the Weekly Rate unless the City shall provide or cause to be provided funds for the purchase of all Pledged Bonds at par plus accrued interest (at the Bank Rate) through the Conversion Date and, on such Conversion Date, shall pay or cause to be paid any and all amounts due to the Bank hereunder (including any amounts due as Excess Interest) and under the Related Documents, (ii) permit the substitution of an Alternate Facility with respect to less than all of the Bonds, or (iii) refund, nor allow the refunding of, the Bonds without having contemporaneously effected the termination of the Letter of Credit and satisfied all of its Obligations hereunder and under the Fee Letter.

Appoint a successor to the Fiscal Agent or Tender Agent, without having first obtained the prior written consent (which consent shall not be unreasonably withheld) of the Bank.

Appoint or permit to be appointed any successor Remarketing Agent without the prior written consent of the Bank (which consent shall not be unreasonably withheld)
or enter into any successor Remarketing Agreement without the prior written consent of the Bank (which consent shall not be unreasonably withheld) which Remarketing Agreement shall: (i) require the Remarketing Agent that is party thereto to use its best efforts to remarket the Bonds (including any Pledged Bonds) up to and including the maximum rate permitted under the Resolution, if necessary; (ii) provide that the Remarketing Agent may resign only upon thirty (30) days’ or more prior written notice to the City and the Bank; and (iii) provide that the Bank is a third party beneficiary of such Remarketing Agreement.

Without the consent of the Bank, deliver to the Fiscal Agent any Credit Support Instrument (as hereinafter defined) to secure the payment of the principal of, interest on, redemption price of, or purchase price of all or any portion of the Bonds, except in connection with the delivery to the Fiscal Agent of an Alternate Facility supporting all of the Bonds pursuant to Section 2.08(d) of Exhibit C to the 2009 Resolution and Section 2.10. As used in this paragraph, “Credit Support Instrument” means any policy of insurance, letter of credit, line of credit, standby purchase agreement, revolving credit agreement, or other credit arrangement, in each case providing credit or liquidity support with respect to the payment of interest on, principal of, or purchase price of the Bonds.

DEFAULTS

Events of Default. The occurrence of any of the following events shall be an “Event of Default” hereunder:

failure of the City to (i) repay a Credit Advance, in full, on the date of the related Drawing or (ii) make timely payments of principal and interest on the Liquidity Advances, the Term Loans or the Pledged Bonds, in the amounts and on the dates, when due;

default in the payment of (i) any fee required to be paid when and as due as herein or in the Fee Letter provided or (ii) except as described in paragraph (a) of Section 6.1, any other Obligation required to be paid or reimbursed to the Bank under this Agreement or the Fee Letter when and as due as herein or therein provided, and such default in payment shall continue for four (4) calendar days;

any representation or warranty made by the City in (or incorporated by reference in) this Agreement or in any other Related Document or in any certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection herewith or therewith, shall prove to have been false or misleading when made or when effective or when reaffirmed, as the case may be;

any default or event of default (as defined respectively therein) shall have occurred under any of the other Related Documents, other than any such default or event of default premised on any occurrence described in paragraph (i) of Section 6.1;

default in the due observance or performance of the covenants set forth in paragraph (b)(ii), (e), (l) or (n) of Section 5.1 or in paragraph (a), (b), (c) or (f) of Section 5.2;
default in the due observance or performance of any term, covenant or agreement set forth in this Agreement or the Fee Letter (other than as described in paragraphs (a), (b), (c), (d), and (e) of this Section 6.1) for a period of thirty (30) days after written notice, specifying such default and requesting that it be remedied, is given to the City by the Bank; provided, that if such default does not entail the payment of money and cannot reasonably be cured within thirty (30) days, it shall not constitute an Event of Default if the City commences to cure such default within said thirty (30) days and diligently pursues same to completion within ninety (90) days after such written notice;

(i) this Agreement, the Fee Letter, the Ordinance, the Resolution, or the Bonds or any provision thereof relating to the obligation of the City to make payments on the Bonds (including Pledged Bonds), or any provision of any ordinance, resolution, indenture or other contract authorizing and securing any Parity Debt that if void, invalid or unenforceable would adversely affect the obligation of the City to make payments on the Advances or the Bonds (including Pledged Bonds), shall, at any time and for any reason, cease to be valid and binding on the City or shall be declared null and void or its validity or enforceability shall be contested by the City or any Governmental Authority having jurisdiction over the City, in a judicial proceeding or any official action, or (ii) any material provision of the Charter relating to the obligation of the City to make payments on the Advances or the Bonds (including Pledged Bonds) shall be declared null and void by any appellate court of the Commonwealth; or (iii)(A) the City or any Governmental Authority having jurisdiction over the City, as applicable, repudiates or otherwise denies, in writing, in a judicial or administrative proceeding that the City has any further liability or obligation hereunder or under the Fee Letter or with respect to the Bonds, (B) the City or any Governmental Authority having jurisdiction over the City, as applicable, shall have taken or permitted to be taken any action, or the Commonwealth has duly enacted any statute, which would materially adversely affect the enforceability of the Advances or the Bonds or (C) the City or any Governmental Authority having jurisdiction over the City, as applicable, contests, in a judicial or administrative proceeding, the validity or enforceability of any material provision of any Related Document (other than any Remarketing Agreement which has been amended or has been terminated in connection with the substitution of a Remarketing Agent, in each case with the consent of the Bank as required hereunder) or any provision thereof relating to the obligation of the City to make payments on the Advances or the Bonds, or any provision of any ordinance, resolution, indenture or other contract authorizing and securing any Parity Debt that adversely affects the obligation of the City to make payments on the Advances or the Bonds;

(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 Debts of the City; or (ii) the City or any Governmental Authority having jurisdiction over the City makes an assignment for the benefit of creditors, files a petition in bankruptcy, is unable generally to pay its debts as they come due, or is adjudicated insolvent or bankrupt or there is entered any order or decree granting relief in any involuntary case commenced against it under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or the City or any Governmental Authority having jurisdiction over the City petitions or applies to any tribunal for any receiver, trustee, liquidator, assignee, custodian, sequestrator or other similar official of it, or of any substantial part of its properties, or commences any proceeding in a court of law for a reorganization, readjustment of debt, dissolution, liquidation or other similar procedure under
the law or statutes of any jurisdiction, whether now or hereafter in effect; or there is commenced against the City any such proceeding in a court of law which remains undismissed or shall not be discharged, vacated or stayed within sixty (60) days after commencement; or the City or any Governmental Authority having jurisdiction over the City by any act indicates its consent to, approval of or acquiescence in any such proceeding in a court of law, or to an order for relief in an involuntary case commenced against the City under any such law, or to the appointment of any receiver, trustee, liquidator, assignee, custodian, sequestrator or other similar official for the City or a substantial part of the City’s properties; or the City or any Governmental Authority having jurisdiction over the City suffers any such receivership, trusteeship, liquidation, assignment, custodianship, sequestration or other similar procedure to continue undischarged for a period of sixty (60) days after commencement; or the City or any Governmental Authority having jurisdiction over the City takes any action for the purposes of effecting any of the foregoing;

(i) an Event of Default shall occur under the Resolution; (ii) any default in the payment when due of the principal, premium, if any, or interest payable on any Parity Debt; or (iii) any default under any provision of any ordinance, resolution, indenture or other contract authorizing and securing any Parity Debt which results in the Acceleration of such Parity Debt or which enables (or, with the giving of notice or lapse of time, or both, would enable) the holder of such Parity Debt to Accelerate the maturity of all or any portion of such Parity Debt unless all payments of Parity Debt shall, after giving effect to such Acceleration, be due after the Maturity Date as then in effect;

any amendment to the Constitution of the Commonwealth or any amendment to the Charter or any other statute is enacted which materially adversely affects the enforceability of this Agreement against the City;

the entry of one or more judgments for the payment of money and not fully covered by insurance (including self-insurance to the extent evidenced by reserves in the form of liquid assets) which, individually or in the aggregate, equal or exceed $10,000,000, which judgment or judgments shall not have been appealed or shall remain unpaid, unstayed, undischarged, unbonded or undissmissed for a period of ninety (90) days;

the long-term rating assigned by at least two of the Rating Agencies to any unenhanced long-term Parity Debt of the City shall be (i) withdrawn or suspended for credit-related reasons or (ii) reduced below Investment Grade, and, in either case, remain so withdrawn, suspended or reduced for a period of ninety (90) days; or
determination by any Governmental Authority that (i) the City’s full faith and credit and taxing power no longer support or secure payment of principal of, and interest on, the Bonds, payment of the Obligations or interest thereon or payment of any Parity Debt, or (ii) the City is not authorized to levy taxes necessary to pay principal of, and interest on, the Bonds, to pay the Obligations or interest thereon or to payment of any Parity Debt; or

**Remedies.** Upon the occurrence and continuation of an Event of Default, and notice thereof to the City and the Fiscal Agent, the Bank may, in its sole discretion, but shall not be obligated to, exercise any or all of the following remedies:

- 33 -
by written, electronic or telephonic notice (promptly confirmed in writing) give notice of such Event of Default (a “Mandatory Tender Notice”), whereupon the Fiscal Agent shall immediately declare all Bonds then outstanding subject to mandatory purchase on the earliest practicable date in accordance with Section 2.02 of Exhibit C to the 2009 Resolution. In no event shall the delivery of a Mandatory Tender Notice be deemed to extend the Maturity Date of any Term Loan;

exercise all or any of its rights and remedies as it may otherwise have under Applicable Law, this Agreement and the Resolution or otherwise by such suits, actions, or special proceedings in equity or at law, or by proceedings in the office of any board or other jurisdiction, for specific performance of any covenant or agreement contained in the Resolution or this Agreement, in aid or execution of any power therein or herein granted or for the enforcement of any proper legal or equitable remedy; and

declare the outstanding principal amount of each Term Loan to be due on the applicable Accelerated Maturity Date and declare all other amounts payable hereunder (other than principal of, or interest on, any Pledged Bonds) and under the Fee Letter to be, whereupon the same shall become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City; provided that, in the case of any Event of Default specified in Section 6.1(h), all amounts payable hereunder (other than principal of and interest on Liquidity Advances, Term Loans and the Bonds except as provided in Section 6.2(a)) and under the Fee Letter shall be immediately due and payable without the giving of any notice to the City or the taking of any other action by any Person.

**Remedies Not Exclusive.** No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given to it under this Agreement, the Fee Letter or any other Related Document, now or hereafter existing at law or in equity or by statute; provided, however, that the Bank shall not have the right to declare any amount due hereunder due and payable except as provided hereunder or to accelerate any obligation except as provided herein. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to exercise any remedy reserved to the Bank in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Agreement or in the Fee Letter should be breached by any party and thereafter duly waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Agreement or the Fee Letter shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties hereto.

**MISCELLANEOUS**

**Jury Trial; Submission to Jurisdiction; Waiver of Immunity.**
THE CITY AND THE BANK WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS, ANY OTHER DOCUMENT DELIVERED IN CONNECTION HEREWITH OR THEREWITH, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY BANK-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE CITY AND THE BANK AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, ANY OTHER RELATED DOCUMENT, OR ANY OTHER DOCUMENT DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ANY PROVISION THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENT, AND ANY OTHER DOCUMENTS DELIVERED IN CONNECTION HEREWITH OR THEREWITH.

THE CITY HEREBY IRREVOCABLY (i) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE FEE LETTER MAY BE BROUGHT IN ANY FEDERAL OR STATE COURT LOCATED IN PHILADELPHIA, PENNSYLVANIA AND CONSENTS TO THE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING AND (ii) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE CITY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING OF COPIES OF SUCH PROCESS TO THE CITY AT ITS ADDRESS PROVIDED UNDER OR PURSUANT TO SECTION 7.11. THE CITY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. ALL MAILINGS UNDER THIS SECTION 7.1 SHALL BE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED. NOTHING IN THIS SECTION 7.1 SHALL AFFECT THE RIGHT OF THE BANK TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY SUIT, ACTION OR PROCEEDING AGAINST THE CITY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHERE SUCH PROPERTY IS FOUND. THE BANK AND THE CITY EACH HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.
Notwithstanding any other provision of any Related Document, to the extent permitted by Applicable Law, the City shall not claim in any action, suit, litigation, or proceeding to enforce this Agreement, the Fee Letter, or the other Related Documents any governmental immunity which would protect the City from service of process, from a judgment resulting from such service of process, or from the enforcement of any judgment pursuant to Applicable Law rendered against it in connection with any such action, suit, litigation, or proceeding.

Indemnity. To the extent permitted by law, the City agrees to indemnify and hold the Bank and its officers, directors, employees and agents (collectively, “indemnified Persons”) harmless from and against, and to pay on demand, from legally available moneys any and all claims, damages, losses, liabilities, costs and expenses whatsoever (including any costs relating to subpoenas, discovery or other matters related to litigation arising in connection with the transactions contemplated by this Agreement, the Fee Letter, the Letter of Credit, the Remarketing Memorandum, the Organizational Documents and/or the other Related Documents) which the Bank or any other indemnified Person may incur or suffer by reason of or in connection with (i) the delivery of the Remarketing Memorandum, the execution and delivery of this Agreement, the Fee Letter, the Organizational Documents, the other Related Documents and/or any other documents which may be delivered in connection with this Agreement, or (ii) the execution and delivery, or transfer of, or payment or failure to pay under, the Letter of Credit, or (iii) any breach by the City of any provision of, or any default under, this Agreement or the other Related Documents, which indemnification shall include, in each instance and without limitation, the (y) reasonable fees and expenses of counsel for the Bank and other indemnified Persons incurred with respect to any of the foregoing matters and with respect to advising the Bank as to its rights and responsibilities under this Agreement, the Fee Letter, the other Related Documents and the Letter of Credit and (z) all reasonable fees and expenses, if any, in connection with the enforcement or defense of the rights of the Bank, and other indemnified Persons in connection with this Agreement, the Fee Letter, the other Related Documents or the Letter of Credit, or the collection of any monies due under this Agreement, the Fee Letter, any Pledged Bonds or such other documents which may be delivered in connection with this Agreement; except only that the City will have no such obligation if, and to the extent that, any such claim, damage, loss, liability, cost or expense shall be caused (A) directly by any untrue statement contained in, or material omission from, the Remarketing Memorandum relating to the Bank (provided that such statement or omission was supplied or consented to by the Bank in writing), (B) the Bank’s willful misconduct or gross negligence in performing its obligations under the Letter of Credit as finally determined by a court of competent jurisdiction or (C) the Bank’s willful failure to pay under the Letter of Credit after the presentation to it by the Fiscal Agent of a draft and certificate strictly complying with the terms and conditions of the Letter of Credit, unless the Bank in good faith believes that it is prohibited by law or other legal authority from making such payment. The City, upon demand by the Bank at any time, shall reimburse the Bank and other indemnified Persons for any legal or other expenses incurred in connection with investigating or defending against any of the foregoing. Promptly after receipt by the Bank or any other indemnified Person of notice of the commencement, or threatened commencement, of any action subject to the indemnities contained in this Section 7.2, the Bank shall promptly notify the City thereof; provided, however, that the failure of the Bank to so notify the City will not affect the obligation of the City to indemnify the Bank or other indemnified Person with respect to such action or any other action pursuant to this Section 7.2. The
obligations of the City under this Section 7.2 shall survive payment of all Obligations, the termination of this Agreement and the expiration of the Letter of Credit.

**Obligations Absolute.** The reimbursement obligations of the City arising under this Agreement shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement, the Fee Letter, the Bonds and the Pledged Bonds under all circumstances whatsoever, including the following circumstances:

(a) any lack of validity or enforceability of any Related Document;

(b) any amendment or waiver of or any consent to departure from all or any of the provisions of any Related Document;

(c) the existence of any claim, set-off, defense or other rights that the City may have at any time against the Fiscal Agent, the Remarketing Agent, the Tender Agent, any Holder of any Bond, any beneficiary or any transferee of the Letter of Credit (or any Persons for whom the Fiscal Agent, any such beneficiary or any such transferee may be acting), the Bank or any other Person, whether in connection with this Agreement, the Fee Letter, the other Related Documents or any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claims by separate suit or compulsory counterclaim;

(d) any 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 whatsoever;

(e) any non-application or misapplication by the Fiscal Agent or otherwise of the proceeds of any Drawing under the Letter of Credit;

(f) payment by the Bank under the Letter of Credit against presentation of a draft or certificate that does not comply with the terms of the Letter of Credit; or

(g) any other act or omission to act or delay of any kind by the Bank or any other Person or any other event or circumstance whatsoever that might, but for the provisions of this Section 7.3, constitute a legal or equitable discharge of the City’s obligations hereunder, under the Fee Letter or under any Pledged Bond.

Nothing in this Agreement or the Fee Letter and no failure by the City to perform any of its obligations hereunder or thereunder shall affect the obligations of the Bank under the Letter of Credit subsequent to its issuance.
Liability of the Bank. As between the City and the Bank, the City assumes all risks of the acts or omissions of the Fiscal Agent, the Remarketing Agent, or any other agent of any of the foregoing and any transferee of the Letter of Credit with respect to its use of the Letter of Credit. 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 Fiscal Agent and any transferee in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents or endorsement(s) should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; provided, however, that the City shall have a claim against the Bank, and the Bank shall be liable to the City, to the extent of any direct, as opposed to consequential, damages suffered by the City which the City proves were caused by (i) the Bank’s willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit complied with the terms of the Letter of Credit or (ii) the Bank’s willful or grossly negligent failure to make lawful payment under the Letter of Credit after the presentation to the Bank by the Fiscal Agent or a successor Fiscal Agent under the Resolution of a 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. The provisions of this Section 7.4 do not govern the relationship of the City with any Person other than the Bank.

Participants. The Bank may at any time grant to one or more banks or other financial institutions (each, a “Participant”) participating interests in the Bank’s obligations under the Letter of Credit or any or all of its Pledged Bonds. Such Participant shall have the same rights and benefits against the City hereunder and under the Fee Letter as it would have had if such Participant were the Bank hereunder and thereunder; provided that no such participation shall cause the City to incur obligations, costs or expenses greater than it would have otherwise had to pay the Bank if there had been no Participant. In the event of any such grant by the Bank of a participating interest to a Participant, the Bank shall remain solely responsible for the performance of its obligations hereunder and under the Letter of Credit, and the City and the Fiscal Agent shall continue to deal solely and directly with the Bank in connection with the Bank’s rights and obligations under this Agreement, the Fee Letter and the Letter of Credit. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the City hereunder and under the Fee Letter including the right to approve any amendment, modification or waiver of any provision hereof or thereof. The Bank agrees to give to the City notice of the granting of a participating interest as provided in this Section 7.5 within a reasonable time after the granting thereof; provided that the failure to give such notice shall not affect in any way the effectiveness of the participation.

Survival of this Agreement. All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any Obligations shall be outstanding and unpaid. The obligation of the City to reimburse the Bank pursuant to the Fee Letter and Section 2.8, Section 2.16, Section 2.17, and Section 7.2 shall survive the payment of the Obligations and termination of the Letter of Credit.
**Amendments, Waivers, Etc.** No amendment, modification or waiver of any provision of this Agreement or the Fee Letter shall be effective unless the same shall be in writing and signed by the Bank, and no 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. 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.

**Waiver of Rights by the Bank.** No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Fee Letter or the Pledged Bonds shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Pledged Bonds, the Fee Letter and this Agreement are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

**Severability.** In case any one or more of the provisions contained in this Agreement or the Fee Letter should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**Governing Law.** This Agreement and the Fee Letter shall be governed by, and construed in accordance with, the law of the Commonwealth without reference to its principles of conflicts of law. The Letter of Credit shall be governed and construed as set forth in paragraph 13 thereof.

**Notices.** All notices hereunder shall be given by United States certified or registered mail, by reputable overnight delivery service or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed as follows:

The City:  
City of Philadelphia  
Office of the Director of Finance  
1401 John F. Kennedy Blvd.  
Suite 1330, MSB  
Philadelphia, Pennsylvania 19102  
Attention: Director of Finance  
Facsimile: (215) 568-1947

With copies to:
Bank:

Fiscal Agent and Tender Agent:

Remarking Agent: Such address as may be provided to the Bank by the Remarking Agent in writing

**Successors and Assigns.**

Whenever in this Agreement or the Fee Letter the Bank is referred to, such reference shall be deemed to include the successors of the Bank, and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement or the Fee Letter shall inure to the benefit of any successors of the Bank. The rights and duties of the City hereunder and under the Fee Letter, however, may not be assigned or transferred without the prior written consent of the Bank, and all obligations of the City hereunder and under the Fee Letter shall continue in full force and effect notwithstanding any assignment by the City of any
of its rights or obligations under any of the other Related Documents or any entering into, or consent by the City to, any supplement or amendment to any of the Related Documents.

Notwithstanding the foregoing, the Bank may assign and pledge all or any portion of the amounts owing to it with respect to Pledged Bonds and under this Agreement and the Fee Letter to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank. No such assignment shall release the Bank from its obligations under the Letter of Credit.

**Taxes and Expenses.** Any Taxes payable or ruled payable by any Governmental Authority in respect of this Agreement, the Fee Letter, the Pledged Bonds, the Letter of Credit or the Bonds shall be paid by the City together with interest and penalties, if any; provided, however, that the City may conduct a reasonable contest of any such Taxes with the prior written consent of the Bank, which consent shall not be unreasonably withheld. The City shall pay (a) all reasonable fees and out-of-pocket expenses of the Bank and its counsel in connection with the preparation of this Agreement, the Fee Letter, the Letter of Credit and related documents required hereby and thereby as are set forth in the Fee Letter, (b) unless otherwise specified in the Fee Letter, all reasonable out-of-pocket expenses of the Bank, including reasonable fees and disbursements of counsel, in connection with any waiver or consent hereunder or any amendment or transfer hereof, of the Letter of Credit or of any Related Document, and (c) all out-of-pocket expenses incurred by the Bank, including reasonable fees and disbursements of counsel, in connection with any Default or Event of Default, including any collection and other enforcement proceedings resulting therefrom.

**No Third Party Rights.** Nothing in this Agreement or the Fee Letter, whether express or implied, shall be construed to give to any Person other than the parties hereto, Participants and the indemnified Persons referred to in Section 7.2 any legal or equitable right, remedy or claim under or in respect of this Agreement or the Fee Letter, which is intended for the sole and exclusive benefit of the parties hereto, Participants and such indemnified Persons.

**Headings.** The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions.

**Counterparts.** This Agreement and the Fee Letter may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement and the Fee Letter may be delivered by the exchange of signed signature pages by facsimile transmission or by email with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

**Patriot Act.** 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)) (as amended from time to time, the “Patriot Act”), the Bank 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, and the City hereby agrees to take any action reasonably necessary to enable the Bank to comply with the requirements of the Patriot Act.

**Compliance with OFAC Sanctions Programs.**

Upon the request of the Bank, the City shall use reasonable efforts to provide the Bank with any information regarding the City which any Governmental Authority requires the Bank to obtain from the City in order for the Bank to comply with all applicable OFAC Sanctions Programs.

If the City (i) obtains actual knowledge or receives any written notice that the City is named on the then current OFAC SDN List or (ii) the City is convicted of, pleads *nolo contendere* to, is indicted on, or is arraigned and held over on, charges involving money laundering or predicate crimes to money laundering (such occurrence in (i) or (ii), an “OFAC Event”), the City shall promptly give written notice to the Bank of such OFAC Event. Failure to comply with this Section 7.18 shall not constitute an Event of Default hereunder.

If the City receives a request for information from the Bank under Section 7.18(a) and it determines that it cannot or will not comply with such request it will provide the Bank with a written statement signed by an Authorized Officer of the City stating the reasons that it is unable or unwilling to comply with such request not later than fourteen (14) Business Days after its receipt of such request. Failure to comply with this Section 7.18 shall not constitute an Event of Default hereunder.

**Entire Agreement.** This Agreement and the Fee Letter constitute the entire understanding of the parties with respect to the subject matter hereof and thereof, and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

[Signature page immediately following.]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first written above.

CITY OF PHILADELPHIA, PENNSYLVANIA

By: _____________________________
    MICHAEL A. NUTTER
    Mayor

By: _____________________________
    ALAN L. BUTKOVITZ
    City Controller

By: _____________________________
    SHELLEY R. SMITH
    City Solicitor

By: _____________________________
    Name:
    Title: