

**\$9,980,000**  
**CITY OF VENICE, FLORIDA**  
**UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**

**Dated: June 1, 2012**

**CLOSING DOCUMENT LIST**

1. Resolution No. 2012-05 adopted May 22, 2012, authorizing, awarding and approving form of the Series 2012 Note
2. Officers' Certificate
3. Non-Arbitrage and Tax Certificate  
Exhibit A: Rebate Memorandum  
Exhibit B: IRS Form 8038  
Exhibit C: Change in Use Requirements  
Exhibit D: Tax and Non-Arbitrage Certificate (Refunded Obligation) Schedules
4. Specimen Note
5. Opinion of Counsel to the Issuer
6.
  - (a) Opinion of Bond Counsel
  - (b) Defeasance Opinion
  - (c) Program Bankruptcy Opinion
7. IRS Form 8038-G with Transmittal Letter
8.
  - (a) Notice of Impending Sale
  - (b) Bond Information Form (BF 2003 and BF 2004)
9. Certification of Compliance with Maximum Interest Rate
10. Negotiated Sale Disclosure Statement and Truth in Bonding
11. Lender's Letter
12. Receipt for Note
13. Certificate of Program Trustee
14. Issuer's Certificate as to Issuance Expenses
15. Florida Department of Environmental Protection Consent Letter

15. Florida Department of Environmental Protection Consent Letter
16. Closing Memorandum

**RESOLUTION NO. 2012-05**

**Adopted May 22, 2012**

**CITY OF VENICE, FLORIDA  
(the “Issuer”)**

**RELATING TO:**

**NOT EXCEEDING**

**\$9,980,000**

**CITY OF VENICE, FLORIDA**

**UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**

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**A RESOLUTION OF THE CITY OF VENICE, FLORIDA, PROVIDING FOR THE ISSUANCE FROM TIME TO TIME OF UTILITY SYSTEM REVENUE OBLIGATIONS TO PAY THE COST OF FINANCING AND REFINANCING CAPITAL IMPROVEMENTS TO THE UTILITY SYSTEM OF THE ISSUER; AUTHORIZING THE ISSUANCE OF A NOT EXCEEDING \$9,980,000 UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING DEBT OF THE CITY; PLEDGING THE NET REVENUES OF THE UTILITY SYSTEM TO SECURE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE OBLIGATIONS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF OBLIGATIONS; AWARDING THE 2012 NOTE; FIXING THE DATE, DENOMINATION, MATURITY, INTEREST RATE, INTEREST PAYMENT DATES AND REDEMPTION PROVISIONS WITH RESPECT TO THE 2012 NOTE; AUTHORIZING OTHER ACTION IN CONNECTION WITH THE DELIVERY OF THE 2012 NOTE; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.**

This Resolution is adopted pursuant to the provisions of the Act (herein defined).

**SECTION 2. DEFINITIONS.**

The following terms in this Resolution shall have the following meanings unless the text otherwise expressly requires. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

**“1985 Ordinance”** shall mean Ordinance 1181-85 duly enacted by the Issuer on November 12, 1985, as heretofore amended and supplemented.

**“2001 Loan Agreement”** means the Loan Agreement dated as of June 1, 2001, among the Issuer, Gulf Breeze and the Program Trustee.

**“2012 Note”** shall mean the Issuer’s Utility System Refunding Revenue Note, Series 2012, authorized to be issued in the maximum principal amount set forth in Section 6 hereof.

**“2012 Note Interest Rate”** shall mean a rate of interest per annum equal to the Fixed Interest Rate, as such interest rate may be adjusted as provided on Schedule “II” to the form of 2012 Note attached hereto as Exhibit “A”.

**“Accreted Value”** shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital

Appreciation Bond from the date of delivery to the original purchasers thereof to the interest payment date next preceding the date of computation or the date of computation if an interest payment date, such interest to accrue at a rate not exceeding the legal rate, compounded semi-annually, plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bonds, if such date of computation shall not be an interest payment date, a portion of the difference between the Accreted Value as of the immediately preceding interest payment date and the Accreted Value as of the immediately succeeding interest payment date, calculated based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a 360 day year.

**“Act”** shall mean Chapter 166, Part II, Florida Statutes, and other applicable provisions of law.

**“Additional Parity Obligations”** shall mean any additional obligations hereafter issued in compliance with the terms, conditions and limitations contained herein and which shall have an equal lien upon the Pledged Revenues and rank equally in all respects with the 2012 Note.

**“Amortization Installments”** (i) with respect to the 2012 Note, shall mean the amounts specified in Schedule “I” to the 2012 Note, and (ii) with respect to any other Term Bonds of a series, shall mean an amount or amounts so designated which is or are established for the Term Bonds of such series, provided that (a) each such installment shall be deemed to be due on such interest or principal maturity date of each applicable year as fixed by resolution of the Issuer and shall be a multiple of \$5,000 principal amount (or \$5,000 Maturity Amount, in the case of Capital Appreciation Term Bonds), and (b) the aggregate of such installments for such series shall equal the aggregate principal amount (or Maturity Amount, in the case of Capital Appreciation Term Bonds) of Term Bonds of such series authenticated and delivered on original issuance.

**“Authorized Investments”** shall mean, unless otherwise expressly provided by resolution authorizing investments to secure a particular series of Bonds, those obligations in which surplus Issuer funds may be invested under the Issuer’s investment policy and the laws of the State of Florida, including without limitation, Section 218.415, Florida Statutes.

**“Average Bond Service Requirement”** shall mean for any series of Bonds the sum of the Bond Service Requirements in each year in which such series of Bonds is Outstanding divided by the number of years such series of Bonds is scheduled to remain Outstanding.

**“Bond Counsel”** means Richard I. Lott, McGuireWoods LLP, or any subsequent nationally recognized bond counsel acceptable to the Issuer.

**“Bond Service Requirement”** for any Fiscal Year, as applied to the Bonds of any series, shall mean the sum of:

(1) the amount required to pay the interest becoming due on the Bonds of such series during the Fiscal Year, except to the extent that such interest shall have been provided by payments on deposit in the Sinking Fund for a specific period of time. In computing the amount of interest becoming due on any series of Bonds which bear interest at a variable rate, the amount of interest to become due on such series of Bonds at such variable rate shall be assumed to be the

rate of interest per annum equal to the highest of: (A) the actual rate borne by the indebtedness on the date of calculation, or, if a qualified fixed-rate hedge has been identified in connection with the indebtedness, the rate borne by the qualified hedge; (B) if the indebtedness has been outstanding for at least twelve months, the average rate borne over the twelve months immediately preceding the date of calculation; and (C) (1) if interest is excludable from gross income or tax-exempt under the applicable provisions of the Code, the most recently published Bond Buyer 25 Bond Revenue Index, or (2) if interest is not so excludable or tax-exempt, the interest rate on direct United States Treasury obligations with comparable maturities plus two hundred (200) basis points; or such other rate as the applicable Municipal Insurers, if any, of the then Outstanding Bonds shall approve;

(2) the amount required to pay the principal of Serial Bonds of such series maturing in such Fiscal Year; and

(3) the Amortization Installments for the Term Bonds of such series for such Fiscal Year. In computing the Bond Service Requirement for any Fiscal Year for Bonds of any series, the Issuer shall assume that an amount of the Term Bonds of such series equal to the Amortization Installment for the Term Bonds of such series for such Fiscal Year will be retired by purchase or redemption in such Fiscal Year or that payment of such amount of Term Bonds at maturity will be fully provided for in such Fiscal Year. When determining the amount of principal and interest on the Bonds which mature in any year, for purposes of this Resolution or the issuance of any Additional Parity Obligations, the stated maturity date of Term Bonds shall be disregarded, and the Amortization Installment, if any, applicable to Term Bonds in such year shall be deemed to mature in such year.

The Bond Service Requirement for any Fiscal Year shall be adjusted to reflect (i) any amounts on deposit in the Sinking Fund in excess of current requirements (including deficiencies in prior requirements) and (ii) the principal and interest from Federal Securities irrevocably deposited with the Paying Agent, each to the extent available for payment of the Bond Service Requirement during such Fiscal Year.

**“Bond Year”** shall mean the annual period ending on a principal maturity date, or, with respect to the Rebate Fund, the period defined by the Code.

**“Bonds”** shall mean the 2012 Note and all Additional Parity Obligations payable from the Pledged Revenues hereafter issued under the terms, conditions, and limitations contained herein.

**“Capital Appreciation Bonds”** shall mean Bonds of any series so designated, the interest on which is payable only at maturity or earlier redemption, as determined by subsequent resolution of the Issuer duly adopted prior to the issuance of such series.

**“Capital Appreciation Term Bonds”** shall mean Capital Appreciation Bonds of a series all of which shall be stated to mature on one date, which shall be subject to retirement by operation of the Bond Amortization Account, and the interest on which is payable only at maturity or redemption.



**“Capital Charges”** shall mean amounts other than Gross Revenues or Special Connection Charges, derived by the Issuer on or after the date of issuance of any Bonds and derived from impact fees or other fees or charges, including fees and charges received pursuant to Ordinance No. 981-83 duly enacted by the Issuer on January 11, 1983, or any amendments or replacements thereof, for capital facilities constituting any portion of a Project and provided to satisfy Increased Capacity Requirements.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended and the United States Treasury regulations promulgated thereunder.

**“Consulting Engineer”** shall mean such qualified and recognized independent consulting engineer, having favorable reputations or skill and experience, with respect to the acts and duties to be provided to the Issuer, as employed or retained by the Issuer to perform the acts and carry out the duties herein provided.

**“Cost of Operation and Maintenance”** of the System shall mean all current expenses, paid or accrued, for the operation, maintenance and repair of all facilities of the System, as calculated in accordance with sound accounting practice, and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Issuer related solely to the System, labor, cost of materials and supplies used for current operation, and charges for the accumulation of appropriate reserves for current expenses not annually recurrent but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice, but excluding any reserve for renewals or replacements, for extraordinary repairs or any allowance for depreciation.

**“Default Rate”** shall mean with respect to the 2012 Note, a rate of interest per annum equal to the 2012 Note Interest Rate plus four percent (4%).

**“Defeasance Obligations”** shall mean (i) cash, (ii) Federal Securities or (iii) any other securities or investments which may be authorized by law from time to time and sufficient under such law to effect a legal defeasance of the Bonds; provided, however, so long as the Lender is a Holder, Defeasance Obligations shall only include cash or Federal Securities.

**“Depreciation Allowance”** shall mean the allocation of net asset costs (original cost less estimated salvage value) or assigned value of the assets of the System, over the estimated life of the asset.

**“Event of Default”** shall have the meaning set forth in Section 18 hereof.

**“Federal Securities”** shall mean direct obligations of the United States of America and obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, none of which permit redemption prior to maturity at the option of the obligor.

**“Fiscal Year”** shall mean the period commencing on October 1 of each year and continuing to and including the succeeding September 30, or such other annual period as may be established by law as the Issuer’s fiscal year.

**“Fitch”** shall mean Fitch Ratings, a corporation organized and existing under the laws of the State of New York, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**“Fixed Interest Rate”** shall mean, with respect to the 2012 Note, an interest rate per annum of 1.13%.

**“Governmental Unit Note”** means the Governmental Unit Note of the Issuer dated as of June 1, 2001, issued pursuant to the 1985 Ordinance and the 2001 Loan Agreement, issued in the aggregate principal amount of \$19,355,000 and currently Outstanding in the aggregate principal amount of \$9,980,000.

**“Gross Revenues”** or **“Revenues”** shall mean all moneys, received or receivable by the Issuer or accruing to it in the operation of the System, from rates, fees, rentals or other charges for the services or facilities of the System, including periodic use or consumption charges, tapping charges and service connection charges, such sums as the Issuer shall pay each year for each fire hydrant of the Issuer using the services and facilities of the System and income derived from the investment of funds held hereunder (other than amounts on deposit in the Rebate Fund), all calculated in accordance with sound accounting practice. Gross Revenues shall not be deemed to include Special Connection Charges, Capital Charges or any amounts received by the Issuer from state and Federal grants and grants in aid of construction, unless otherwise provided herein.

**“Gulf Breeze”** shall mean the City of Gulf Breeze, Florida, as the issuer of the Program Bonds and the Sponsor under the 2001 Loan Agreement.

**“Holder,” “Registered Owner”** or **“Owner”** or any similar term shall mean the owner of any registered Bond, as shown on the Bond register maintained by the Registrar and shall mean initially with respect to the 2012 Note, the Lender.

**“Increased Capacity Requirements”** means any increased demand upon or usage of the capital facilities of the System resulting from additional connections thereto, or from substantial changes to or in the use of properties connected thereto.

**“Issuer”** shall mean the City of Venice, Florida.

**“Lender”** shall mean TD Bank, N.A., a national association organized under the laws of the United States of America, the initial Holder of the 2012 Note.

**“Maturity Amount”** means the amount payable upon the stated maturity of a Capital Appreciation Bond equal to the principal amount thereof plus all accrued interest thereon from the date of issue to the date of maturity. References herein to “denominations”, shall, with respect to Capital Appreciation Bonds, be deemed to refer to Maturity Amount.

**“Maximum Bond Service Requirement”** for any and all series of Bonds shall mean, as of any particular date of calculation, the greatest amount of aggregate Bond Service Requirements for the then current or any future Fiscal Year.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**“Municipal Bond Insurance Policy”** shall mean a bond purchase agreement, letter or line of credit, surety bond, insurance policy or guaranty issued by a Municipal Insurer insuring the scheduled payment of principal of and interest on a series of Bonds.

**“Municipal Insurer”** shall mean any nationally recognized financial institution or insurer of principal and interest on a series of the Bonds whose bond purchase agreement, letter or line of credit, surety bond, insurance policy or guaranty results, at the date of issuance thereof, in such Bonds being rated in one of the highest two categories (without regard to gradients within a category) by S&P or Moody’s.

**“Net Revenues”** shall mean Gross Revenues less (i) cost of Cost of Operation and Maintenance and (ii) amounts required to be deposited in the Rebate Fund as provided herein.

**“Outstanding”** when used with reference to any Bonds, shall mean, at any date as of which the amount of Outstanding Bonds is to be determined, the aggregate of all Bonds authorized, issued, authenticated and delivered under this Resolution, except:

- (1) Bonds paid, cancelled or surrendered to the Registrar for cancellation on or prior to such date;
- (2) Bonds for the payment of which cash shall have been theretofore deposited with the Paying Agent in an amount equal to the principal amount thereof and interest thereon to maturity;
- (3) Bonds for the redemption of which cash shall have been theretofore deposited with the Paying Agent in an amount equal to the principal amount thereof, and premium, if any, thereon, and interest thereon to the date of such redemption; provided that notice of such redemption shall have been given as provided herein or provision satisfactory to the Registrar shall have been made therefore;
- (4) Bonds otherwise deemed to be paid as provided in Section 19 hereof;
- (5) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Sections 9 and 10 hereof; and
- (6) Bonds for which Federal Securities shall be on deposit as provided herein.

**“Outstanding Subordinated Indebtedness”** shall mean the Clean Water State Revolving Fund Loan Agreement WWG12066115L dated July 26 2002, and Clean Water State Revolving Fund Loan Agreement CS12066115P dated September 12, 2001, each between the Issuer and the Florida Water Pollution Control Financing Corporation, as amended as of the date hereof.

**“Paying Agent”** shall mean an officer of the Issuer or the bank or trust company which the Issuer may from time to time designate to serve as Paying Agent.

**“Permitted Lender”** shall mean any bank, trust company, savings institution, insurance company, dealer, investment company or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes, that is engaged as a regular part of its business in making loans and is authorized to do business in the State.

**“Pledged Revenues”** shall mean the Net Revenues and until otherwise applied as provided herein, the moneys held in the funds and accounts hereunder (except the Rebate Fund) and the income on investment thereof.

**“Policy Costs”** shall mean the amounts, if any, required to be paid to Municipal Insurers for reimbursement of draws (including any required interest thereon and expenses of the Municipal Insurer) on any Reserve Account Insurance Policy used to pay such Bonds.

**“Program Bonds”** shall mean the Floating Rate Demand Revenue Bonds Local Government Loan Program, Series 1985E, remarketed by Gulf Breeze in connection with the funding of the loan to the Issuer pursuant to the 2001 Loan Agreement.

**“Program Bonds Mandatory Purchase Date”** shall mean, with respect to the Program Bonds, July 2, 2012, being the first date upon which the Program Bonds may be tendered for purchase at the option of Gulf Breeze after giving required notice.

**“Program Trustee”** shall mean U.S. Bank National Association, as successor trustee, under a Trust Indenture dated as of December 1, 1985, as amended and supplemented, by and between Gulf Breeze and the Program Trustee, as amended and restated as of July 1, 1986.

**“Project”** shall mean the construction, acquisition or equipping of additions, extensions or improvements to the System as shall from time to time be authorized pursuant to subsequent resolution duly adopted by the Issuer prior to the issuance of the applicable series of the Bonds.

**“Rating Agency”** shall mean Fitch, Moody’s or S&P.

**“Rebate Fund”** shall mean the fund as designated and created pursuant to Section 16S hereof.

**“Refunded Obligation”** shall mean all of the remaining principal amount Outstanding of the Governmental Unit Note, together with the redemption premium on the Program Bonds and interest accrued thereon to the Program Bonds Mandatory Purchase Date.

**“Registrar”** shall mean an officer of the governing body of the Issuer or an officer of the bank or trust company which the Issuer may from time to time designate to perform the duties herein set forth for the Registrar of the Bonds.

**“Reserve Account Insurance Policy”** shall mean, with respect to any series of Bonds, a policy of insurance, surety bond, line of credit or letter of credit issued by a Municipal Insurer providing for the payment of amounts in respect of the Reserve Requirement to the Paying Agent in lieu of payment from the Reserve Account (defined herein).

**“Reserve Requirement”** shall mean an amount, if any, established for a series of Bonds by resolution duly adopted by the Issuer prior to the issuance of such series of Bonds; provided, however, that such Reserve Requirement shall not exceed as to any series of Bonds the lesser of (i) the Maximum Bond Service Requirement on all Bonds with respect to which such Maximum Bond Service Requirement is computed in the current or any subsequent Fiscal Year, (ii) one hundred twenty-five percent (125%) of the Average Bond Service Requirement on such series of Bonds, or (iii) ten percent (10%) of the proceeds of such series of Bonds, all within the meaning of Section 147 of the Code. The Reserve Requirement with respect to the 2012 Note shall mean Zero Dollars (\$0.00).

**“Revenue Fund”** shall mean the fund as designated and created pursuant to Section 16A hereof.

**“Serial Bonds”** shall mean the Bonds of a series which shall be stated to mature in annual installments.

**“Sinking Fund”** shall mean the fund so designated, created pursuant to Section 16B hereof.

**“Special Connection Charges”** shall mean amounts derived by the Issuer from special connection charges, main extension fees or other charges, imposed to recover all or a portion of the cost of adding or extending water and sewer lines.

**“S&P”** means Standard & Poor’s Ratings Services, a business of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**“State”** shall mean the State of Florida.

**“State Revolving Fund”** shall mean the state revolving loan fund established by the State under the Federal Clean Water Act.

**“State Revolving Fund Indebtedness”** shall mean a loan of moneys from the State Revolving Fund to the Issuer for the purpose of paying all or any part of the cost of constructing or acquiring improvements permitted to be financed with State Revolving Fund moneys under the Federal Clean Water Act.

**“Subordinated Indebtedness”** shall mean bonds, notes or other forms of indebtedness, the payment of the principal, premium and interest on which are payable solely from moneys which may from time to time be on deposit in the Subordinated Indebtedness Fund under this Resolution and which is designated as Subordinated Indebtedness by the Issuer in the resolution authorizing the issuance thereof.

**“System” or “Utility System”** shall mean the complete and combined water and sewer system now owned, operated and maintained by the Issuer, together with any and all improvements, extensions and additions thereto hereafter constructed or acquired by the Issuer, together with all lands or interests therein, including plants, buildings, machinery, franchises, pipes, mains, fixtures, equipment and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith, and including any undivided or partial ownership interests therein.

**“Term Bonds”** shall mean the Bonds of a series all of which shall be stated to mature on one date and which shall be subject to retirement by operation of the Bond Amortization Account (as defined herein).

### **SECTION 3. FINDINGS.**

It is hereby ascertained, determined and declared that:

A. The Issuer now owns, operates and maintains the System and is empowered to maintain, operate, improve and extend such System and derives revenues from rates, fees, rentals and other charges made and collected for the services of the System.

B. The Pledged Revenues are not now pledged or encumbered in any manner, except (i) to the payment of the Refunded Obligation, as to which the Issuer has made or will make “provision for payment” (within the meaning of Section 21 of the 1985 Ordinance) as of the date of issuance of the 2012 Note, and (ii) to the payment of the Outstanding Subordinated Indebtedness, provided, that the lien upon the Pledged Revenues securing such Subordinated Indebtedness is and shall be in all respects junior and subordinate to the lien and pledge of the Pledged Revenues securing the Bonds.

C. It is necessary and desirable to refund the Refunded Obligation in order to (i) realize the advantages of current interest rates, (ii) achieve a reduction in annual Bond Service Requirements to repay such obligations, (iii) take advantage of historically low fixed interest rates available in the bond market, and (iv) permit revisions more favorable to the Issuer in covenants made to Holders regarding the System.

Amounts sufficient to effect the refunding of the Refunded Obligation will be irrevocably deposited with the Program Trustee in an account established for such purpose and held for the benefit of the owner of the Refunded Obligation, in accordance with Section 21 of the 1985 Ordinance. Such amounts will be sufficient to make timely payments of all principal of, premium and interest on the Refunded Obligation to the Program Bonds Mandatory Purchase Date and to prepay and retire such Refunded Obligation on the date of delivery of the 2012 Note.

D. The principal of and interest on the Bonds and all required Sinking Fund, Reserve Account, if any, and other payments shall be limited obligations of the Issuer, payable solely from and secured by an irrevocable lien upon and pledge of the Pledged Revenues, as provided herein. The Bonds shall not constitute an indebtedness, liability, general or moral obligation, or a pledge of the faith, credit or taxing power of the Issuer or the State or any political subdivision thereof, within the meaning of any constitutional or statutory provisions. Neither the State nor any political subdivision thereof nor the Issuer shall be obligated (1) to levy ad valorem taxes on any property to pay the principal of the Bonds, the interest thereon, the reserves therefore, if any, or other costs incidental thereto or (2) to pay the same from any other funds of the Issuer except from the Pledged Revenues, in the manner provided herein.

The Bonds shall not constitute a lien upon the System or any part thereof, or on any other property of the Issuer, but shall constitute a lien only on the Pledged Revenues in the manner provided herein.

E. The estimated Pledged Revenues to be derived by the Issuer will be sufficient to pay all principal of and interest on the 2012 Note to be issued hereunder, as the same become due, and to make all required Sinking Fund and other payments required by this Resolution.

#### **SECTION 4. REFUNDING AUTHORIZED.**

The Issuer deems it necessary and in its best interest to provide for the refunding of the Refunded Obligation. There is hereby authorized the refunding of the Refunded Obligation in the manner provided herein. The proper officers of the Issuer are hereby directed to take all action and steps deemed necessary to refund the Refunded Obligation, which are not inconsistent with the terms and provisions of this Resolution.

#### **SECTION 5. RESOLUTION TO CONSTITUTE CONTRACT.**

In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Registered Owners thereof and the Municipal Insurer, if any. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided therein and herein.

#### **SECTION 6. AUTHORIZATION OF 2012 NOTE.**

Subject and pursuant to the provisions hereof, an obligation of the Issuer to be known as the "Utility System Refunding Revenue Note, Series 2012," herein defined as the "2012 Note," is authorized to be issued in the aggregate principal amount not exceeding the amount set forth in the title of this Resolution.

#### **SECTION 7. DESCRIPTION OF 2012 NOTE.**

The 2012 Note shall be dated as of its date of initial issuance and delivery and issued in a single denomination in an amount not exceeding the principal amount authorized herein and

shall have such other terms as are set forth in the form of 2012 Note described and referred to in Section 12 hereof. The 2012 Note shall bear interest at the 2012 Note Interest Rate, payable semi-annually on each June 1 and December 1, commencing December 1, 2012, with interest calculated on the Outstanding balance of the 2012 Note on the basis of a 360 day year of twelve 30-day months, subject to adjustment as provided on Schedule "II" to the form of 2012 Note. The 2012 Note shall evidence a loan from the Lender but will be treated in the same manner as a Term Bond with Amortization Installments required over the life of the 2012 Note, on the dates and in the amounts set forth on Schedule "I" attached to the 2012 Note.

A late charge shall be due and payable on any scheduled payment of principal of and, to the extent legally enforceable, interest on, the 2012 Note that shall not have been paid by the fifteen (15th) day following the date such scheduled payment is due and payable, in an amount equal to six percent (6%) of such scheduled payment. The foregoing right to a late charge is in addition to, and not in limitation of, any other rights which the Lender may have upon the Issuer's failure to make timely payment of such principal and/or interest.

Any payment required to be made with respect to the 2012 Note which is not paid on its due date shall bear interest from such due date at a rate equal to the Default Rate.

If the date for payment of the principal of, premium, if any, or interest on the 2012 Note shall be a Saturday, Sunday, legal holiday or a day on which the banking institutions in the city where the Lender is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

#### **SECTION 8. EXECUTION OF 2012 NOTE.**

The 2012 Note shall be executed in the name of the Issuer by the manual signature of the Mayor or Vice-Mayor and attested by the manual signature of the City Clerk or Deputy Clerk, and the official seal of the Issuer shall be affixed thereto. In case any officer whose signature shall appear on the 2012 Note shall cease to be such officer before the delivery of such 2012 Note, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The 2012 Note may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such 2012 Note shall hold the proper office with the Issuer, although at the date of adoption of this Resolution such person may not have held such office or may not have been so authorized.

#### **SECTION 9. REGISTRATION, EXCHANGE AND TRANSFER.**

The transfer and exchange of the 2012 Note shall be registered in the registration books of the Issuer. The City Clerk of the Issuer is hereby designated as Registrar for the 2012 Note.

The 2012 Note may not be transferred except in whole. In the event the remaining principal amount Outstanding of the 2012 Note is less than \$100,000, no transfer is permitted. Further, the transfer of any 2012 Note shall be restricted to Permitted Lenders. The 2012 Note



shall contain a legend that provides that the Registered Owner thereof shall not transfer or authenticate the 2012 Note except to Permitted Lenders.

Upon surrender for transfer or exchange of the 2012 Note, the Issuer shall execute and the Registrar shall authenticate and deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered 2012 Note of authorized denomination of the same maturity and interest rate for the aggregate principal amount which the Registered Owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Resolution.

Notwithstanding the above, the 2012 Note shall not be transferred unless the transferee shall execute and deliver to the Registrar and to the Issuer a purchaser's letter in substantially the form set forth in Schedule III to the 2012 Note hereinafter set forth or a sophisticated investor letter in form satisfactory to the Issuer and providing evidence to the Issuer that such purchase is a Permitted Lender; provided, however, the Lender shall provide a purchaser's letter in substantially the form set forth in Exhibit "B" hereof.

#### **SECTION 10. 2012 NOTE MUTILATED, DESTROYED, STOLEN OR LOST.**

In case any 2012 Note shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new 2012 Note of like tenor and effect as the 2012 Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated 2012 Note upon surrender and cancellation of such mutilated 2012 Note or in lieu of and substitution for the 2012 Note destroyed, stolen or lost, and upon the Holder furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur.

#### **SECTION 11. PROVISIONS FOR REDEMPTION.**

The 2012 Note shall be subject to redemption prior to maturity at the option of the Issuer, in whole or in part, on any date at a price equal to the principal amount redeemed plus accrued interest to the date of redemption. Upon any sale or disposition of substantially all of the assets of the System as permitted in the first paragraph of Section 16J hereof, the Bonds shall be subject to extraordinary redemption on the interest payment date next succeeding such sale of the assets of the System at one hundred percent (100%) of the principal amount then Outstanding plus accrued interest to date of redemption; provided, however, that if payment of all Bonds then Outstanding shall have been provided for as permitted herein, nothing in this Section 11 shall be deemed to require the Issuer to redeem the Bonds prior to their scheduled maturity or redemption date.

Any partial redemption shall be applied to the last maturing principal or Amortization Installment, unless otherwise specified by the Issuer in its notice of redemption.

## **SECTION 12. FORM OF 2012 NOTE.**

The text of the 2012 Note shall be substantially in the form attached hereto as Exhibit "A" with such changes, omissions, insertions and variations as may be necessary and desirable and authorized and permitted by this Resolution. Execution and delivery of the 2012 Note and any other document in connection with the issuance of the 2012 Note shall be conclusive evidence of the approval of any changes, insertions, omissions or variations.

## **SECTION 13. DETAILS OF ADDITIONAL PARITY OBLIGATIONS.**

The Issuer may provide by subsequent resolution adopted prior to the issuance of any Additional Parity Obligations the details of such Additional Parity Obligations, including but not limited to, the maturity, payment, registrar and registration, execution and other provisions set forth in Sections 7 through 12 of this Resolution, which provisions may differ from the provisions of such Sections as herein provided and be as provided in such subsequent resolution.

## **SECTION 14. APPLICATION OF 2012 NOTE PROCEEDS; AUTHORIZATION AS TO APPLICATION OF OTHER LEGALLY AVAILABLE MONIES OF ISSUER.**

A. All moneys received from the sale of the 2012 Note shall be deposited in a special account in a bank or trust company and shall be applied by the Issuer simultaneously with the delivery of such 2012 Note to the purchaser thereof, as follows:

(1) Simultaneously with the delivery of the 2012 Note to the original purchaser thereof, the Issuer shall deposit with the Program Trustee an amount which, together with other available monies of the Issuer, is sufficient to pay as of the Program Bonds Mandatory Purchase Date the outstanding principal of, premium and accrued interest on the Refunded Obligation and other costs due in respect of the Refunded Obligation, which amount shall be used by the Program Trustee to prepay and retire the Refunded Obligation on the date of delivery of the 2012 Note.

(2) The balance of the proceeds of the 2012 Note, if any, shall be deposited into a separate fund hereby created and established to be known as the "Utility System Refunding Revenue Note, 2012 Project Fund" and shall be used to pay costs of capital improvements to the System.

B. To the extent not reimbursed or paid by the original purchaser of the 2012 Note, the Issuer shall pay all costs and expenses in connection with the preparation, issuance and sale of such 2012 Note from other monies of the Issuer legally available for such purpose.

The Issuer shall further deposit with the Program Trustee other legally available monies sufficient to pay as of the Program Bonds Mandatory Purchase Date, together with the deposit described in Section 14A above from proceeds of the 2012 Note, the outstanding principal and premium of, and accrued interest on the Refunded Obligation and other costs due in respect of the Refunded Obligation.

## **SECTION 15. SPECIAL OBLIGATIONS OF THE ISSUER; SECURITY FOR THE BONDS.**

A. SPECIAL OBLIGATIONS OF THE ISSUER. The Bonds shall be special obligations of the Issuer, payable solely from the Pledged Revenues as herein provided. The Bonds do not constitute an indebtedness, liability, general or moral obligation or a pledge of the faith, credit or taxing power of the Issuer or of the State or any political subdivision thereof, within the meaning of any constitutional or statutory provisions. Neither the State nor any political subdivision thereof nor the Issuer shall be obligated (i) to levy ad valorem taxes on any property to pay the principal of the Bonds, the interest thereon, the reserves therefore or other costs incident thereto, or (ii) to pay the same from any other funds of the Issuer except from the Pledged Revenues, in the manner provided herein. The acceptance of the Bonds by the Owners from time to time thereof shall be deemed an agreement between the Issuer and such Owners that the Bonds and the indebtedness evidenced thereby shall not constitute a lien upon the System, or any part thereof, or any other property of the Issuer, but shall constitute a lien only on the Pledged Revenues, in the manner and to the extent hereinafter provided.

B. SECURITY FOR THE BONDS. The payment of the principal of and the interest on the Bonds shall be secured forthwith equally and ratably by an irrevocable lien on the Pledged Revenues. The Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of and the interest on the Bonds, for the reserves therefore, if any (including Policy Costs, if any), and for all other required payments; provided, however, that the lien upon and pledge of the Pledged Revenues to pay Policy Costs shall, however, be subordinate to the payments from Pledged Revenues to the Holders, as provided herein.

## **SECTION 16. COVENANTS OF THE ISSUER.**

For as long as any of the principal of and interest on any of the Bonds shall be Outstanding and unpaid, or until payment has been provided for as herein permitted, or until there shall have been set apart in the Sinking Fund, herein established, including the Reserve Account therein, a sum sufficient to pay when due the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon and all amounts due to the Municipal Insurers have been paid, the Issuer covenants with the Holders of any and all Bonds and the Municipal Insurers as follows:

A. REVENUE FUND. The entire Gross Revenues, except the income from investments (hereinafter provided for), shall upon receipt thereof be deposited in the "City of Venice, Florida, Utility System Revenue Bonds Revenue Fund" (hereinafter called the "**Revenue Fund**"), hereby created and established. Such Revenue Fund shall constitute a trust fund for the purposes herein provided and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner herein provided.

B. SINKING FUND. There is hereby created and established a separate fund to be designated "City of Venice, Florida, Utility System Revenue Bonds Sinking Fund" (hereinafter called "**Sinking Fund**"). There are also hereby created and established in the Sinking Fund four accounts to be known as the "**Interest Account**," "**Principal Account**," "**Reserve Account**," and "**Bond Amortization Account**."

C. DISPOSITION OF REVENUES. All funds at any time remaining on deposit in the Revenue Fund shall be disposed of on or before the fifteenth (15<sup>th</sup>) day of each month, commencing in the month immediately following the delivery of the Bonds, first to deposit to the Rebate Fund established under Section 16S of this Resolution an amount estimated to be sufficient to timely provide for any rebate amount required thereunder, and then only in the following manner and in the following order of priority:

(1) Revenues shall first be used to deposit in the “City of Venice, Florida, Utility System Revenue Bonds Operation and Maintenance Fund” (hereinafter called the **“Operation and Maintenance Fund”**) which fund is hereby created and established, such sums as, together with the money then on deposit therein, will be sufficient for the Cost of Operation and Maintenance, as hereinabove defined, for the next ensuing month.

(2) Revenues shall next be used for deposit into the Interest Account, such sums as will be sufficient to pay one-sixth (1/6) of all interest becoming due on each series of the Bonds on the next applicable semiannual interest payment date; provided, however, deposits into the Interest Account for the purpose of meeting interest payments for any series of Bonds shall be adjusted, as appropriate, to reflect the frequency of interest payment dates applicable to such series.

(3) Revenues shall next be used for deposit into the Principal Account, in any Bond Year in which a Serial Bond matures, such sums as will be sufficient to pay one-twelfth (1/12) of the principal maturing on Serial Bonds in such Bond Year; provided, however, deposits into the Principal Account for the purpose of meeting principal payments for any series of Bonds shall be adjusted, as appropriate, to reflect the frequency of principal payment dates applicable to such series.

(4) On a parity basis with the deposits under paragraph (3), above, Revenues shall next be used for deposit into the Bond Amortization Account, in any Bond Year in which an Amortization Installment is due, such sums as will be sufficient to pay one-twelfth (1/12) of the Amortization Installment required to be made in such Bond Year. Such payments shall be credited to a separate special account for each series of Term Bonds Outstanding, and if there shall be more than one stated maturity for Term Bonds of a series, then into a separate special account in the Bond Amortization Account for each such separate maturity of Term Bonds. The funds and investments in each such separate account shall be pledged solely to the payment of principal of the Term Bonds of the series or maturity within a series for which it is established and shall not be available for payment, purchase or redemption of Term Bonds of any other series or within a series, or for transfer to any other account in the Sinking Fund to make up any deficiencies in required payments therein. Upon the sale of any series of Term Bonds, the Issuer shall by resolution, establish the amounts and maturities of such Amortization Installments for each series, and if there shall be more than one maturity of Term Bonds within a series, the Amortization Installments for the Term Bonds of each maturity. In the event the moneys deposited for retirement of a maturity of Term Bonds are required to be invested, in the manner provided below, then the Amortization Installments may be stated in terms of either the principal amount of the investments to be purchased on, or the cumulative amounts of the principal amount of investments required to have been purchased by, the payment date of such Amortization Installment.

Moneys on deposit in each of the separate special accounts in the Bond Amortization Account shall be used for the open market purchase or the redemption of Term Bonds of the series or maturity of Term Bonds within a series for which such separate special account is established or may remain in said separate special account and be invested until the stated date of maturity of the Term Bonds. The resolution establishing the Amortization Installments for any series or maturity of Term Bonds may limit the use of moneys to any one or more of the uses set forth in the preceding sentence.

The required deposits to the Principal Account, Interest Account and Bond Amortization Account shall be adjusted in order to take into account the amount of money currently on deposit therein.

(5) (a) Revenues shall next be applied by the Issuer to maintain in the Reserve Account a sum equal to the Reserve Requirement established for any series of Bonds, which sum shall initially be deposited therein from the proceeds of the sale of each series of the Bonds unless a Reserve Account Insurance Policy has been established therefore as provided herein, or unless a different method of initial funding is specified for a particular series. The amount required to be on deposit in the Reserve Account shall be recomputed not less than annually, and any surplus may be transferred to the Revenue Fund. In the event any separate subaccounts have been created in the Reserve Account as provided in paragraph (d) below, the Revenues shall be applied *pro rata* to the Reserve Account and the subaccounts therein in proportion to the deficiencies (including outstanding Policy Costs) therein.

(b) Notwithstanding the foregoing, the Issuer may, at any time, deposit a Reserve Account Insurance Policy with the Paying Agent. The amount available under such Reserve Account Insurance Policy shall be treated as a credit toward the amount required to be held on deposit in the Reserve Account pursuant to the terms hereof. If the terms of any Reserve Account Insurance Policy provide that the moneys available thereunder for payment of principal and interest on the Bonds may only be applied to the particular series of Bonds for which such Reserve Account Insurance Policy was established, the Issuer shall maintain a separate subaccount within the Reserve Account for such series of Bonds.

(c) Any withdrawals from the Reserve Account and the subaccounts, if any, therein which reduce the balance below the then applicable Reserve Requirement (including payment of Policy Costs in respect of any Reserve Account Insurance Policies) shall be subsequently restored within the next ensuing twelve months following such withdrawal from the first moneys available in the Revenue Fund after all required current payments for the Operation and Maintenance Fund and Sinking Fund (other than the Reserve Account) (including all deficiencies in prior payments to such funds) have been made in full.

(d) Moneys in the Reserve Account and any subaccounts, if any, therein shall be used only for the purpose of the payment of maturing principal of or interest on the applicable Bonds, or maturing Amortization Installments, if any, when the other moneys in the Sinking Fund are insufficient therefore, and for no other purpose except set forth herein. Payment of Policy Costs and reimbursement of amounts with respect to other credit facilities shall be made on a *pro rata* basis prior to replenishment of any cash drawn from the Reserve Account.

(e) The Issuer may establish within the Reserve Account separate subaccounts for any series of Bonds for which a Reserve Requirement is established. The moneys and/or Reserve Account Insurance Policies on deposit in each subaccount shall be held and applied in the manner determined by the Issuer but solely for the payment of the principal or redemption of, or interest on such series of Bonds for which it is established and such series of Bonds shall have no claim upon or lien for payment from the other moneys and/or Reserve Account Insurance Policies in the Reserve Account. If a Reserve Account has been established for one or more separate series of Bonds, and such series of Bonds is redeemed in whole and no Bonds of such series remain Outstanding, the amounts in such Reserve Account shall be applied in accordance with clause (a) of this subsection (5).

(f) The Issuer may, at its option, provide upon issuance of any series of Additional Parity Obligations that such Bonds shall not be secured by a Reserve Account. In this event such Bonds shall not be entitled to share in the Reserve Account for other series of Bonds, and the deposits into any separate subaccount in the Reserve Account which the Issuer may elect to establish for such series of Additional Parity Obligations shall be made on the same basis as deposits would be made to other subaccounts of the Reserve Account.

(6) Upon the issuance of any Additional Parity Obligations under the terms, limitations and conditions as are herein provided, the payments into the several accounts in the Sinking Fund shall be increased in such amounts as shall be necessary to make the payments for the principal of, interest on and reserves for such Additional Parity Obligations and, if Term Bonds are issued, the Amortization Installments, on the same basis as hereinabove provided with respect to the 2012 Note.

The Issuer shall not be required to make any further payments into the Sinking Fund when the aggregate amount of money in the Sinking Fund is at least equal to the total Bond Service Requirement of the Bonds then Outstanding, plus the amount of redemption premium, if any, then due and thereafter to become due on such Bonds then Outstanding by operation of the Bond Amortization Account.

(7) The Issuer shall next apply and deposit the moneys in the Revenue Fund into a special account to be known as the "City of Venice, Florida Utility System Renewal and Replacement Fund" (hereinafter called the "**Renewal and Replacement Fund**"), which fund is hereby created and established. The Issuer shall deposit into such Renewal and Replacement Fund an amount equal to one-twelfth (1/12) of five percent (5%) of the Gross Revenues for the immediately preceding Fiscal Year or such greater amount as may be determined and approved by the governing body of the Issuer, provided that no deposit shall be required to be made so long as there is an amount in the Renewal and Replacement Fund equal to \$1,000,000. The moneys in the Renewal and Replacement Fund shall be used only for the purpose of paying the cost of extensions, enlargements or additions to or the replacement of capital assets of the System and emergency repairs thereto. Such moneys on deposit in such fund shall also be used to supplement the Reserve Account if necessary in order to prevent a default in the payment of the principal or Amortization Installments of and interest on the Bonds.

(8) The Issuer shall next apply the moneys in the Revenue Fund to pay any amount owed to the Municipal Insurers if not paid above.

(9) The Issuer shall next apply and deposit the moneys in the Revenue Fund into a special fund to be known as the “City of Venice, Florida, Utility System Subordinated Indebtedness Fund” (hereinafter called the “**Subordinated Indebtedness Fund**”), which fund is hereby created and established. The Issuer shall deposit into the Subordinated Indebtedness Fund a monthly installment amount sufficient to accumulate adequate moneys to pay, when due, the payments in respect of Subordinated Indebtedness, including in particular the Issuer’s State Revolving Fund Indebtedness. The insufficiency of Net Revenues to make any required payments under this paragraph (9) shall not constitute a default hereunder.

(10) The balance of any moneys remaining in the Revenue Fund after the above required payments have been made may be used by the Issuer for any lawful purpose.

(11) The Operation and Maintenance Fund, the Sinking Fund, the Renewal and Replacement Fund, and the Revenue Fund and all accounts therein and any other special funds herein established and created shall constitute trust funds for the purposes provided herein for such funds. All such funds shall be continuously secured in the same manner as deposits of governmental funds are authorized to be secured by the laws of the State.

The cash required to be accounted for in each of the foregoing funds established herein may be deposited in a single bank account and funds allocated to the various accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein for the various purposes of such funds as herein provided.

The designation and establishment of the various funds in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the System for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided.

(12) Moneys on deposit in the Revenue Fund and the Sinking Fund (except the Reserve Account therein) may be invested and reinvested in the manner provided by law provided such investments either mature or are redeemable at not less than par at the option of the Issuer not later than the dates on which the moneys on deposit therein will be needed for the purpose of such fund. The moneys in the Reserve Account in the Sinking Fund and in the Renewal and Replacement Fund may be invested and reinvested only in Authorized Investments, in the manner provided by law; provided that investments purchased with moneys in the Reserve Account shall have a term to maturity of not greater than seven (7) years. All income on such investments shall be deposited into the Revenue Fund, except however that investment income earned in the Bond Amortization Account shall remain therein or be transferred to the Principal Account or the Interest Account and used to pay maturing principal, Amortization Installments and interest on the Bonds.

If any investment held in any fund or account hereunder shall cease to meet the criteria set forth in the definition of Authorized Investments hereunder and such investment, together with all other non-conforming investments hereunder exceeds ten percent (10%) of the

aggregate funds invested hereunder, such investment shall be sold or liquidated unless otherwise approved in writing by each applicable Municipal Insurer, if any.

Authorized Investments (except investment agreements and United States Treasury Obligations, State and Local Government Series) in the funds and accounts under this Resolution shall be valued at the market value thereof, exclusive of accrued interest, by the Issuer (1) as frequently as reasonably deemed necessary by the applicable Municipal Insurer, if any, but not less often than annually nor more often than monthly and (2) upon any draw upon the Reserve Account. Deficiencies in the amount on deposit in any fund or account hereunder resulting from a decline in market value shall be restored within one year of the valuation date.

The Issuer shall terminate any repurchase agreement investment hereunder upon a failure of the counterparty thereto to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in Federal funds against transfer of the repurchase securities, liquidate the collateral. The Issuer shall give notice to any provider of a repurchase or investment agreement in accordance with the terms thereof so as to receive funds thereunder with no penalty or premium paid.

The Issuer shall, upon actual knowledge of a default under a repurchase or investment agreement or the withdrawal or suspension of either of the ratings of a repurchase or investment agreement provider or a drop in the ratings thereon below "A" by any Rating Agency, so notify each applicable Municipal Insurer, if any, and, if so directed by such Municipal Insurer, shall demand further collateralization of the agreement or termination thereof and liquidation of the collateral.

(13) The gross amount required to pay principal or interest and Amortization Installments on the Bonds on any payment date shall be deposited in trust for such purposes and held and invested in Authorized Investments by the Paying Agent at least five (5) business days prior to such payment date.

(14) Nothing herein shall be deemed to create a lien upon, or pledge of, receipts by the Issuer from Capital Charges or Special Connection Charges levied with respect to the System.

D. OPERATION OF BOND AMORTIZATION ACCOUNT. Moneys held for the credit of the Bond Amortization Account shall be applied to the retirement of Term Bonds as follows:

(1) Subject to the provisions of subparagraph (2) below, the Issuer may purchase Term Bonds then Outstanding, at the most advantageous price obtainable with reasonable diligence, such price not to exceed the principal of such Term Bonds plus the amount of the premium, if any, which would be payable on the next redemption date to the Holders of such Term Bonds if such Term Bonds should be called for redemption on such date from moneys in the Bond Amortization Account plus the accrued interest to the date of delivery thereof. The Issuer shall pay the interest accrued on such Term Bonds to the date of delivery thereof from the Sinking Fund and the purchase price from the Bond Amortization Account, but no such purchase shall be made by the Issuer within the period of forty-five (45) days immediately preceding any



interest payment date on which such Term Bonds are subject to call for redemption except from moneys in excess of the amounts set aside or deposited for the redemption of Term Bonds.

(2) Moneys in the Bond Amortization Account shall be applied by the Issuer in each Bond Year to the purchase or retirement of the Term Bonds of each lot, installment or series to the extent of the Amortization Installment, if any, for such Bond Year for the Term Bonds of each such lot, installment or series then Outstanding, plus the applicable premium, if any, and, if the amount available in such Bond Year shall not be sufficient therefor, then in proportion to the Amortization Installment, if any, for such Bond Year for the Term Bonds of each such lot, installment or series then Outstanding, plus the applicable premium, if any; provided, however, that if the Term Bonds of any lot, installment or series shall not then be subject to redemption from moneys in the Bond Amortization Account and if the Issuer shall at any time be unable to exhaust the moneys applicable to the Term Bonds of such lot, installment or series under the provisions of this clause in the purchase of such Term Bonds under the provisions of subparagraph (a) above, such moneys or the balance of such moneys, as the case may be, shall be retained in the Bond Amortization Account and, as soon as it is feasible, applied to the retirement of Term Bonds of such lot, installment or series.

(3) The Issuer shall deposit into the Bond Amortization Account Amortization Installments for the amortization of the principal of the Term Bonds, together with any deficiencies for prior required deposits, such Amortization Installments to be in such amounts and to be due in such years as provided in the 2012 Note with respect thereto and shall be determined by resolution of the governing body of the Issuer prior to the delivery of any Additional Parity Obligations issued hereunder.

The Issuer shall pay from the Sinking Fund all expenses in connection with any such purchase or redemption.

E. OPERATION AND MAINTENANCE. The Issuer will maintain the System and all parts thereof in good condition and will operate the same in an efficient and economical manner, making such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation and maintenance thereof.

F. RATE COVENANT. The Issuer has enacted or will enact a rate ordinance and thereby will fix, establish and maintain such rates and will collect such fees, rentals and other charges for the services and facilities of the System and revise the same from time to time whenever necessary, as will always provide Gross Revenues in each Fiscal Year sufficient to pay the Cost of Operation and Maintenance of the System in such Fiscal Year and all reserve and other payments required to be made pursuant to this Resolution, and will further be sufficient to provide an amount equal to one hundred and fifteen percent (115%) of the Bond Service Requirement becoming due in such year on all Outstanding Bonds.

The Issuer further covenants and agrees that the Issuer, within ninety (90) days after adoption of the Annual Budget described in Section 16I, will annually revise such fees, rates, rentals and other charges for the use of the product, services and facilities of the System to the extent necessary for the estimated Gross Revenues to be derived from the operation of the System during the next succeeding Fiscal Year to increase so as to be sufficient to pay the

estimated expenditures for operation and maintenance of the System during such next succeeding Fiscal Year and otherwise comply with all covenants in this Resolution.

If such annual review of the adequacy of the fees, rates, rentals and other charges as set forth above indicates that the fees, rates, rentals and other charges are, or will be, insufficient to meet the requirements of this Section 16F, the Issuer shall (i) promptly take the necessary action to cure or avoid any such projected deficiency, (ii) diligently pursue the actions necessary to cure or avoid any such deficiency, (iii) not permit any expenditure for the operation and maintenance of the System in any Fiscal Year to be made in excess of the amount provided therefore in the applicable Annual Budget without a finding and recommendation by the duly authorized officer in charge thereof, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and the Governing Body of the Issuer shall have approved such finding and recommendation or until the Issuer has met the rate requirements of this Section 16F, and (iv) retain a Consulting Engineer to promptly prepare a report or survey of the System, with respect to the management of the properties thereof, the sufficiency of the rates and charges for services, the proper maintenance of the properties of the System, and the necessity for capital improvements and recommendations therefore. Such a report or survey shall also show any failure of the Issuer to perform or comply with the covenants herein contained.

The Issuer covenants that the Consulting Engineer shall at all times have free access to all properties of the System and every part thereof for purposes of inspection and examination, and their books, records and accounts may be examined by the Consulting Engineer at all reasonable times. Copies of each report or survey shall be mailed to any Rating Agency then rating any series of the Bonds and the Municipal Insurers, if any, and shall be placed on file with the Issuer and shall be open to the inspection of any Holder or other interested parties.

The Issuer shall immediately take such reasonable steps as are necessary to comply with such requirements and recommendations.

So long as the Lender is a Holder, within ninety (90) days after the end of each Fiscal Year, the Issuer shall provide to the Lender a certificate of compliance with the provisions of this Section 16F.

G. BOOKS AND RECORDS. The Issuer shall keep books and records of the Pledged Revenues of the System which shall be kept separate and apart from all other books, records and accounts of the Issuer, and the Holders of not less than ten percent (10%) of the Bonds and the Lender, so long as the Lender is a Holder, shall have the right, upon written request with reasonable prior notice to the Issuer, to inspect all records, accounts and data of the Issuer relating thereto during normal business hours.

#### H. ANNUAL AUDIT.

(1) The Issuer shall also, at least once a year, within 180 days after the close of its Fiscal Year, cause the books, records and accounts relating to the System to be properly audited by a recognized independent firm of certified public accountants and shall make

available the report of such audits to any Holder. Such audit shall contain a complete report of the operation of the System including, but not limited to, a comparison with the current Annual Budget and the previous year, the balance sheet, a schedule of insurance in existence, a schedule of the application of all Gross Revenues of the System, a schedule of reserves and investments, a schedule showing the number of customers connection with the System at the end of the Fiscal Year, and a certificate by the auditors stating no default on the part of the Issuer of any covenant herein as it pertains to accounting matters has been disclosed by reason of the audit. The auditors selected shall be changed at any time by a written request signed by a majority of the Holders of the Bonds or their duly authorized representatives. A copy of such annual audit shall regularly be furnished to any Rating Agency then rating any series of the Bonds and to any Holders of any Bonds who shall have requested in writing that a copy of such reports be furnished them.

(2) So long as the Lender is a Holder, the Issuer shall provide to the Lender within 180 days of the end of the Issuer's Fiscal Year, a copy of the annual audit.

I. ANNUAL BUDGET. The Issuer shall annually prepare and adopt at least fifteen (15) days prior to the beginning of each of its Fiscal Years, a detailed budget (the "Annual Budget") of the estimated expenditures for operation and maintenance of the System during such next succeeding Fiscal Year. The Issuer shall mail copies of such Annual Budgets to any Rating Agency then rating any series of the Bonds and any Holder or Holders of Bonds who shall request the same in writing to the Issuer. The Issuer shall provide to the Lender so long as it is a Holder a copy of such Annual Budget within thirty (30) days after adoption by the Issuer.

J. NO MORTGAGE OR SALE OF THE SYSTEM. The Issuer irrevocably covenants, binds and obligates itself not to sell, lease encumber or in any manner dispose of the System as a whole until all of the Bonds shall have been paid in full as to both principal and interest, or payment shall have been duly provided for under this Resolution.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System which the Issuer shall hereafter determine, in the manner provided herein, to be no longer necessary, useful or profitable in the operation of the System. Prior to any such sale, lease or other disposition of said property, if the amount to be received therefore is not in excess of \$50,000, the City Manager of the Issuer or other duly authorized officer in charge thereof shall make a finding in writing determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof.

If the amount to be reviewed from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$100,000, the City Manager or other officer shall first make a finding in writing determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the governing body of the Issuer shall, by resolution duly adopted, approve and concur in the finding of the City Manager or other officer, and authorize such sale, lease or other disposition of said property.

If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$100,000 but not in excess of 10% of the value of fixed assets of the System

according to the most recent annual audit report, the City Manager or other officer shall first make a finding in writing determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Consulting Engineer shall make a finding that it is in the best interest of the System that such property be disposed of, and the governing body of the Issuer shall by resolution, duly adopted, approve and concur in the findings of the City Manager or other officer and of the Consulting Engineer, and shall authorize such sale, lease or other disposition of said property.

No sale or other disposition of said property for a sum in excess of 10% of the value of the fixed assets of the System according to the most recent annual audit and operating report shall be made unless the City Manager and the Consulting Engineer shall make in writing the finding hereinabove referred to, and they shall further find that the estimated Net Revenues to be derived by the Issuer from the System in the five Fiscal Years immediately succeeding the sale or other disposition of such property will be not less than the amount required pursuant to Section 16F above, and the governing body of the Issuer shall by resolution duly adopted, approve and concur in the finding of the City Manager and the Consulting Engineer, and shall authorize such sale or other disposition of said property.

The foregoing provision notwithstanding, the Issuer may sell or dispose of, for fair market value, any properties or parts of the System which the Consulting Engineer shall certify in writing are not necessary for the continued operation of the System and that the sale or disposal of which will not adversely affect the Gross Revenues to be derived from the System to such an extent that the Issuer will fail to comply with the covenants contained herein, including Section 16F hereof.

The proceeds derived from any sale or disposal of any properties or parts of the System as provided for in the above paragraph shall, in the discretion of the Issuer, be (1) deposited in the Renewal and Replacement Fund and used exclusively for the purpose of paying the cost of extensions, enlargements or additions to, or the replacement of capital assets of the System and for unusual or extraordinary repairs thereto, or for the construction or acquisition of additions, extensions and improvements to the System, or (2) for the purchase or retirement of the Bonds then Outstanding. However, if the Consulting Engineer certifies that proceeds are necessary for the purposes stated in part (1) above, such proceeds shall remain in the Renewal and Replacement Fund until such certified requirements are satisfied, and the proceeds shall not be used for any other purpose allowed by this Resolution.

K. INSURANCE. For so long as any of the Bonds are Outstanding, the Issuer will carry adequate fire and windstorm insurance on all buildings and structures of the works and properties of the System which are subject to loss through fire or windstorm, and will otherwise carry insurance of all kinds and in the amounts normally carried in the operation of similar facilities and properties in the State; provided, however, that in lieu of such insurance the Issuer may establish a qualified plan of self-insurance in accordance with the laws of the State. Any such insurance shall be carried for the benefit of the Holders of the Bonds. All moneys received for losses under any of such insurance, except public liability, are hereby pledged by the Issuer as security for the Bonds, until and unless such proceeds are used to remedy the loss or damage for which such proceeds are received, either by repairing the property damaged or replacing the property destroyed as soon as practicable.

L. **NO FREE SERVICE.** Except to aid senior citizens, the poor or infirm or to provide for resource conservation, the Issuer will not render or cause to be rendered by its System any free services, nor will any preferential rates be established for users of the same class except to the extent provided by State law with respect to new or expanding customers where such new or expanded use would benefit the community. This covenant shall not prevent individual contracts with other governmental entities for the wholesale delivery of services of the System. Whenever the Issuer, including its departments, agencies and instrumentalities, shall avail itself of the product, facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the Issuer and any such department, agency or instrumentality. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds to the Revenue Fund sufficient sums to pay such charges. The revenues so received shall be deemed to be Gross Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Gross Revenues derived from such operation of the System.

M. **ENFORCEMENT OF COLLECTIONS.** The Issuer will diligently impose, assess, enforce and collect all fees, rentals or other charges for the services and facilities of the System herein pledged and take all reasonable steps, actions and proceedings for the imposition, assessment, enforcement and collection of such rates, fees, rentals or other charges as shall become delinquent to the full extent permitted or authorized by law and will maintain accurate records with respect thereto. All such rates, fees, rentals or other charges and revenues herein pledged shall, as collected, be held in trust to be applied as herein provided and not otherwise.

N. **MANDATORY CUT OFF.** Upon failure of any user to pay for services rendered by the System within one hundred twenty (120) days, the Issuer shall shut off the connection of such user and shall not furnish such user or permit such user to receive from the System further service until all obligations owed by such user to the Issuer on account of services shall have been paid in full. This covenant shall not, however, prevent the Issuer from causing the System connection to be shut off sooner.

O. **CONNECTIONS WITH SEWER SYSTEM.** The Issuer will, to the full extent required by law, require all lands, buildings and structures within the boundaries of the Issuer which can use the facilities and services of such sewer system of the System to connect with and use the facilities and services of such sewer system and to cease all other means and methods for the collection, purification, treatment and disposal of sewage and wastewater.

P. **NO COMPETING SYSTEM.** To the full extent permitted by law, the Issuer will not hereafter grant, or cause, consent to, or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever, for the furnishing of water or sewer services to or within the boundaries of the Issuer; provided, however, that if the Consulting Engineer renders an opinion that it would not be feasible for the Issuer to provide such services to any specific area within the three years succeeding a request to provide such service, the Issuer may authorize or allow the granting of such franchise or permit for such area upon such terms and conditions as it may approve.

Q. ISSUANCE OF OTHER OBLIGATIONS. The Issuer will not hereafter voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge nor issue any other obligations payable from the Gross Revenues of the System that have priority to or would be on a parity with the lien of the 2012 Note and the interest thereon upon the Gross Revenues except under the conditions and in the manner provided herein. Any other obligations issued by the Issuer in addition to the 2012 Note or Additional Parity Obligations provided for in Section 16R below, payable from the Pledged Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the Bonds, as to lien on and source and security for payment from the Gross Revenues.

R. ISSUANCE OF ADDITIONAL PARITY OBLIGATIONS. Additional Parity Obligations, payable on a parity from the Pledged Revenues with the 2012 Note in the manner provided herein, may be issued after the issuance of the 2012 Note for the purposes of refunding a part of any Outstanding Bonds or financing the cost of extensions, additions and improvements to the System and in the manner herein provided.

(1) There shall have been obtained and filed with the City Clerk of the Issuer a certificate of a qualified and recognized firm of independent certified public accountants stating (a) that the books and records of the Issuer relative to the System have been examined by such firm; (b) the amount of the Net Revenues derived for the Fiscal Year preceding the date of issuance of the proposed Additional Parity Obligations or for any 12 consecutive months during the 18 months immediately preceding the date of the issuance of the Additional Parity Obligations with respect to which such certificate is made, adjusted as herein below provided; (c) that the aggregate amount of such Net Revenues, as adjusted, for the period for which such Net Revenues are being certified is equal to not less than 125% of the Maximum Bond Service Requirement becoming due in any Fiscal Year thereafter in which any Bonds other than the series of Additional Parity Obligations with respect to which such certificate is made are scheduled to be Outstanding on (i) all Bonds then Outstanding, and (ii) on the Additional Parity Obligations with respect to which such certificate is made.

(2) Upon recommendation of the Consulting Engineers, the Net Revenues described in the previous paragraph may be adjusted for purposes of this Subsection by including: (a) 100% of the additional Net Revenues which in the opinion of the Consulting Engineer would have been derived by the Issuer from rate increases adopted before the Additional Parity Obligations are issued, if such rate increases had been implemented before the commencement of the period for which such Net Revenues are being certified, and (b) 100% of the additional Net Revenues estimated by the Consulting Engineer to be derived during the first full twelve month period after the facilities of the System are extended, enlarged, improved or added to with the proceeds of the Additional Parity Obligations with respect to which such certificate is made. The adjustments described in Subsection S(2)(b) may only be made if the Net Revenues as adjusted under Section 16(S)(2)(a) for the period for which such Net Revenues are being certified equals at least 1.00 times the Maximum Bond Service Requirement becoming due in any Fiscal Year thereafter on (i) all Bonds then Outstanding, and (ii) on the Additional Parity Obligations with respect to which such certificate is made.

(3) Each resolution authorizing the issuance of Additional Parity Obligations will recite that all of the covenants herein contained will be applicable to such Additional Parity Obligations.

(4) Immediately following the issuance of such Additional Parity Obligations (i) the Issuer shall not be in default in performing any of the covenants and obligations assumed hereunder, and all payments herein required to have been made into the accounts and funds, as provided hereunder, shall have been made to the full extent required and (ii) unless the applicable Municipal Insurer has otherwise agreed in writing, no Policy Costs shall be outstanding and unpaid.

(5) Notwithstanding the foregoing, the Issuer may issue Additional Parity Obligations for the purpose of refunding any Outstanding Bonds without satisfying the requirements of this Section 16R, provided that upon issuance of such Additional Parity Obligation and the defeasance of the Bonds refunded by such Additional Parity Obligations the Bond Service Requirement is not increased in any year in which Bonds are Outstanding.

(6) As to any series of Bonds the payment of principal and interest on any which is guaranteed by a Municipal Insurer, the Municipal Insurer may consent to the issuance of Additional Parity Obligations upon terms not contemplated in this Section, in the manner provided in Section 17 hereof provided all Municipal Insurers of any Bonds consent thereto. Any such consent shall be deemed the consent of the Owners of such series of Bonds to the issuance of such Additional Parity Obligations.

#### S. TAX COMPLIANCE.

(1) The Issuer at all times while the Bonds are Outstanding will comply with all applicable provisions of the Code in order to ensure that the interest on the Bonds will be excludable from gross income for Federal income tax purposes, except that the provisions of this Section shall not apply to any series of Bonds issued as taxable Bonds. The Issuer hereby covenants to the Registered Owners of the Bonds that it will make no investment or other use of the proceeds of the Bonds issued hereunder the income on which is excluded from gross income for Federal income tax purposes, which would cause such series of Bonds to be "arbitrage bonds" as that term is defined in Section 148 of the Code and regulations promulgated thereunder throughout the term of such series of Bonds.

(2) The Issuer shall establish a Rebate Fund, outside the lien of this Resolution, which shall be a separate trust fund held by the Issuer, solely for the purposes hereof and the amounts therein shall be applied solely as specified herein or in a letter of instructions in connection with the Issuer's certification of compliance with the provisions of Section 148 of the Code at the time of issuance of the Bonds. The Issuer shall engage an accountant or other person or firm of suitable experience to make such periodic calculations of the Issuer's rebate liability on the Bonds as shall be required to comply with Section 148(e) of the Code and shall deposit, for the credit of the Rebate Fund, hereby created, the full amount of the Issuer's accrued and unpaid rebate liability under Section 148(e) of the Code. The Issuer shall keep such records of the computations made pursuant to this Section as are required under Section 148(e) and other applicable provisions of the Code. The Issuer shall keep such records concerning the

investments of the gross proceeds of the Bonds and the investments of earnings from those investments as may be required in order to make the aforesaid computations. This Section 16S may be superseded or amended by new calculations accompanied by an opinion of Bond Counsel addressed to the Issuer to the effect that the use of the new calculations are in compliance with this Resolution and will not cause the interest on the Bonds to become included in gross income for Federal income tax purposes.

(3) The Issuer covenants that upon request it will make all filings of reports or other documents as may be required by Section 149(e) of the Code and regulations promulgated thereunder throughout the term of the Bonds of such series.

(4) The Issuer covenants that it will not take any action or allow any action which would cause the Bonds to become private activity bonds as described in Section 141 of the Code.

(5) The Issuer covenants to take all actions reasonable and necessary to maintain the exclusion of the interest on the Bonds of such series from gross income for Federal income tax purposes.

(6) The provisions of this Section may be modified or amended by resolution of the Issuer without the consent of any Holder, upon receipt of an opinion of nationally recognized Bond Counsel to the effect that such modification or amendment will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of Federal income taxation.

## **SECTION 17. MODIFICATION OR AMENDMENT.**

The Issuer from time to time and at any time, may amend this Resolution without the consent of the Municipal Insurer and the Owners of the Bonds for the following purposes:

A. To cure any ambiguity or formal defect or omission, and with consent of the Lender, so long as the Lender is a Holder of the 2012 Note, to correct or supplement any provisions herein that may be inconsistent with any other provision herein, or

B. To grant to or confer for the benefit of the Owners of the Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners or the Municipal Insurer, or

C. To add to the provisions of this Resolution other conditions, limitations and restrictiveness thereafter to be observed, or

D. To add to the covenants and agreements of the Issuer in this Resolution other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power therein reserved to or conferred upon the Issuer, or

E. To permit the qualification of this Resolution under any Federal statute now or hereafter in effect or under any state blue sky law, and, in connection therewith, if the Issuer so



determines, to add to this Resolution such other terms, conditions and provisions as may be permitted or required by such Federal statute or blue sky law, or

F. To provide for the issuance of the Bonds in certificate form or under a book-entry system, or

G. To modify the covenants and agreements contained herein as may be necessary to secure or retain a rating on the Bonds by a Rating Agency (but only with the consent of the Municipal Insurer, if any, and the Lender, so long as the Lender is a Holder), or

H. To incorporate provisions for the payment, on a parity with interest on the Bonds, of periodic net hedge payments in respect of an interest rate hedge matched to any series or issue of Bonds and to provide for the payment of hedge termination payments, if any, from the Subordinated Indebtedness Fund on a parity with the other payments due therefrom, or

I. To provide for the issuance of variable rate Bonds at rates not to exceed twelve percent (12%) annually and for the payment of interest on a basis more frequent than semi-annually, or

J. To provide for the issuance and payment of Capital Appreciation Bonds.

No material modification or amendment of this Resolution or any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of (1) as to any series of Bonds, the timely payment of principal and interest on which is unconditionally guaranteed by a Municipal Insurer, the written consent of such Municipal Insurer; and (2) in the case of any series of Bonds, the timely payment of principal and interest on which are not guaranteed by a Municipal Insurer, the Owners of fifty-one percent (51%) or more in principal amount of each series of the Bonds then Outstanding affected by such amendment and, if the Lender is a Holder of any of the Bonds of such series, the Lender, provided, however, that no modification or amendment shall permit a change in the maturity of such Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation or affect the unconditional promise of the Issuer to pay the principal of and interest on the Bonds as the same shall come due or reduce the percentage of the Holders of the Bonds required to consent to any material modification or amendment hereof, without the consent in writing of the Holder or Holders of all such Bonds; provided, further, that no such modification or amendment shall allow or permit any acceleration of the payment of principal of or interest on the Bonds upon any default in the payment thereof whether or not the Holders of the Bonds consent thereto.

Any Rating Agency rating any series of the Bonds must receive notice of each amendment and a copy thereof at least fifteen (15) days in advance of its execution or adoption. The Municipal Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

## **SECTION 18. EVENTS OF DEFAULT AND REMEDIES.**

A. **EVENTS OF DEFAULT.** The following events shall each constitute an Event of Default under the Bonds and this Resolution:

(1) failure to pay the principal of or interest on the Bonds when due;

(2) the dissolution or liquidation of the Issuer, or the filing by the Issuer of a voluntary petition in bankruptcy, or the commission by the Issuer of any act of bankruptcy, or adjudication of the Issuer as a bankrupt, or assignment by the Issuer for the benefit of its creditors, or appointment of a receiver for the Issuer, or the entry by the Issuer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Issuer in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may not be in effect or hereafter enacted; and

(3) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained herein or in the Bonds on the part of the Issuer to be performed, and such default shall continue for a period of thirty (30) days after written notice thereof.

B. REMEDIES. Any Holder, or any trustee acting for the Holders, may, either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State, or granted and contained herein, and may enforce and compel the performance of all duties herein required or by any applicable statutes to be performed by the Issuer or by any officer thereof. Notwithstanding the foregoing, the Holder's direction or institution of remedies upon default shall be subject to the prior written consent of the Municipal Insurers of the Bonds of such Holders and, while the Lender is a Holder, the Lender. The Municipal Insurer, acting alone, shall have the right to direct all remedies upon default with respect to the Bonds as to which it is Municipal Insurer.

Nothing herein, however, shall be construed to grant to any Holder of the Bonds any lien on the System or any real or personal property of the Issuer.

In the event the Issuer shall fail to pay Policy Costs in respect of any Reserve Account Insurance Policy, the applicable Municipal Insurer shall be entitled to exercise any and all remedies available at law or under this Resolution other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect the Holders.

For all purposes of this Section 18, except the giving of notice of default to Holders, the Municipal Insurer shall be deemed to be the sole holder of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Municipal Bond Insurance Policy. The foregoing sentence shall supersede any other provision granting such remedies to Holders of Bonds so insured.

Any payment required to be made with respect to the 2012 Note which is not paid on its due date shall bear interest from such due date at a rate equal to the Default Rate.

## **SECTION 19.        DEFEASANCE.**

A.     If, at any time, the Issuer shall have paid, or shall have made provision for payment of, the principal, interest and redemption premiums, if any, with respect to the Bonds and all unpaid Policy Costs, if any, then, and in that event, the pledge of and lien on the Pledged Revenues in favor of the Holders of the Bonds shall be no longer in effect. For purposes of the preceding sentence, deposit of Defeasance Obligations in irrevocable trust with a banking institution or trust company, for the sole benefit of the Holders, in respect to which such Defeasance Obligations, the principal of which, together with the income thereon, will be sufficient (as verified by report of a nationally recognized independent certified public accountant), to make timely payment of the principal, interest, and redemption premiums, if any, on the Outstanding Bonds to be defeased, shall be considered "provision for payment." Nothing herein shall be deemed to require the Issuer to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption.

B.     In the event of an advance refunding, (i) the Issuer shall cause to be delivered, on the deposit date and upon any reinvestment of the defeasance amount, a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity date ("**Verification**"), (ii) the escrow agreement shall provide that no (A) substitution of a Defeasance Obligation shall be permitted except with another Defeasance Obligation and upon delivery of a new Verification, and (B) reinvestment of a Defeasance Obligation shall be permitted except as contemplated by the original Verification or upon delivery of a new Verification, and (iii) there shall be delivered an opinion of a nationally recognized Bond Counsel to the effect that the Bonds are no longer Outstanding under this Resolution; each Verification and defeasance opinion shall be addressed to the Issuer, the Paying Agent and the Municipal Insurer, if any.

C.     In the event any of the principal and redemption premium, if applicable, and interest due on the Bonds shall be paid by a Municipal Insurer pursuant to an insurance policy which insures against non-payment thereof, the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Issuer to the Owners to whom or for the benefit of whom the insurer has made such payments shall continue to exist, such amounts shall not be deemed to be paid for purposes of this Resolution, such amounts shall continue to be due and owing as Policy Costs until paid by the Issuer in accordance with this Resolution and the Municipal Insurer shall be subrogated to the rights of such Owners to the full extent of such payments.

## **SECTION 20.        ISSUER OBLIGATED.**

The Issuer is hereby authorized and directed to comply with the requirements of this Resolution for the purposes set forth herein: provided that nothing herein shall be deemed to create any personal liability of the members of the Issuer or the Issuer, or their officers or employees.

**SECTION 21. DISPOSITION OF EXISTING FUNDS.**

The moneys and investments in the funds and accounts established for the benefit of the Refunded Obligation shall be transferred to one or more of the corresponding funds and accounts established in this Resolution or used for the payment of the outstanding Refunded Obligation. The distribution of such moneys and investments among the accounts and funds shall be made as determined by the Issuer or its authorized officer prior to the delivery of the 2012 Note. Any of such moneys and investments so transferred to the Sinking Fund created hereunder shall be used solely for the payment of principal and interest on the Refunded Obligation.

**SECTION 22. USE OF ADDITIONAL FUNDS FOR DEBT PAYMENT.**

Subject to the provisions of the State Constitution, nothing herein contained shall preclude the Issuer from using any legally available funds, in addition to the Pledged Revenues herein provided, which may come into its possession, including but not limited to the proceeds of sale of the Bonds, contributions or grants, for the purpose of payment of principal of and interest on the Bonds, or the payment of Amortization Installments, if any, or the purchase or redemption of such Bonds in accordance with the provisions of this Resolution.

**SECTION 23. AWARD OF 2012 NOTE.**

The Issuer hereby finds, determines and declares the rapidly changing municipal bond market conditions require that the sale of the 2012 Note be negotiated at private sale rather than offered by competitive bid at public sale in order to assure the necessary flexibility to change the maturities, redemption or prepayment features or interest rates necessary to obtain the most favorable terms in the market. The negotiated sale of the principal amount of not exceeding \$9,980,000 of the 2012 Note to the Lender is hereby authorized pursuant to Section 218.385, Florida Statutes, at the purchase price of par.

**SECTION 24. AUTHORIZATION OF ALL OTHER NECESSARY ACTION.**

The Mayor, Vice-Mayor, the City Manager, the City Clerk, the Finance Director, the City Attorney and Bond Counsel for the Issuer are each designated agents of the Issuer in connection with the issuance and delivery of the 2012 Note, and are authorized and empowered, collectively or individually, to take all action and steps to execute and deliver any and all instruments, documents or contracts on behalf of the Issuer which are necessary or desirable in connection with the execution and delivery of the 2012 Note and which are not inconsistent with the terms and provisions of this Resolution and other actions relating to the 2012 Note heretofore taken by the Issuer including, sale and purchase of investments.

**SECTION 25. SEVERABILITY.**

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be

deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Bonds issued hereunder.

**SECTION 26. REPEALING CLAUSE.**

All ordinances or resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**SECTION 27. EFFECTIVE DATE.**

This Resolution shall take effect upon adoption.

**ADOPTED BY THE COUNCIL OF THE CITY OF VENICE, FLORIDA, THIS  
22ND DAY OF MAY, 2012.**

**CITY OF VENICE, FLORIDA**

(SEAL)

ATTEST:

City Clerk

By:

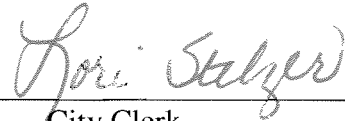
John Holic, Mayor

**STATE OF FLORIDA**

**COUNTY OF SARASOTA**

I, Lori Stelzer, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of a Resolution duly adopted by the City of Venice Council, at a meeting thereof duly convened and held on the 22<sup>nd</sup> day of May, 2012, a quorum being present.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal this 23<sup>rd</sup> day of May, 2012.



\_\_\_\_\_  
City Clerk



**EXHIBIT "A"**

**FORM OF 2012 Note**  
(Except Capital Appreciation Bonds)

**No. R-1**

**\$9,980,000**

**TRANSFER OF REGISTRATION OF THIS NOTE IS RESTRICTED. SEE SECTION 9  
OF RESOLUTION NO. 2012-05 HEREIN DESCRIBED.**

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF VENICE, FLORIDA  
UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**

Rate of Interest  
1.13%  
(as may be adjusted  
as herein provided)

Maturity Date  
December 1, 2015

Dated Date  
June 1, 2012

Registered Owner: TD BANK, N.A.

Principal Amount: NINE MILLION NINE HUNDRED EIGHTY THOUSAND DOLLARS  
(\$9,980,000)

**KNOW ALL MEN BY THESE PRESENTS**, that the City of Venice, Florida (hereinafter called "Issuer"), for value received, hereby promises to pay, solely from the sources hereafter described, the Principal Amount hereof, to the Registered Owner identified above, or registered assigns, and to pay, solely from said sources, interest on said sum from the Dated Date or from the most recent interest payment date to which interest has been paid, at the above Rate of Interest, calculated on the basis of a 360 day year of twelve 30-day months, until payment of such sum, subject to adjustment, together with such other amounts, all as provided on Schedule "II" hereto, which is hereby incorporated by reference with the same effect as if set forth herein in its entirety. Such interest shall be payable on the first day of each December and June, commencing December 1, 2012.

This Note constitutes an authorized issue in the aggregate principal amount of \$9,980,000 issued to finance the cost of refunding all of the principal amount remaining Outstanding of the Issuer's Governmental Unit Note dated as of June 1, 2001, issued pursuant to a Loan Agreement dated as of June 1, 2001, among the Issuer, the City of Gulf Breeze, Florida, and U.S. Bank National Association, as successor trustee. This Note is issued pursuant to the authority of and in full compliance with the Constitution and the laws of the State of Florida, including particularly



Chapter 166, Part II, Florida Statutes, and other applicable provisions of law, and pursuant to Resolution No. 2012-05 duly adopted by the Issuer on May 22, 2012 (the "Resolution"), and is subject to all the terms and conditions of such Resolution. Capitalized terms used herein which are defined in the Resolution shall have the meanings set forth therein unless the context hereof expressly requires otherwise.

The principal amount hereof shall be payable in installments on the dates and in the amounts set forth on Schedule "I" attached hereto, with the remaining principal balance, together with any unpaid interest accrued thereon, due and payable on December 1, 2015. All amounts due hereunder shall be paid by the Issuer by wire transfer to the account designated by the Registered Owner to the Registrar in writing from time to time. Any payment required to be made with respect to this Note which is not paid on its due date shall bear interest from such due date at a rate equal to the Default Rate. All such sums payable hereunder shall be payable in any coin or currency of the United States of America which is at the time of payment legal tender for the payment of public or private debts.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of this Note, have happened, exist, and have been performed in due time, form and manner as required by the Constitution and laws of the State of Florida applicable thereto.

This Note shall be subject to redemption prior to maturity at the option of the Issuer, in whole or in part, on any date at a price equal to the principal amount redeemed plus accrued interest to the date of redemption.

The Issuer may deem and treat the person to whom this Note is issued as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the Issuer shall not be affected by any notice to the contrary. No transfer of this Note shall be effective until the same has been surrendered to the Issuer for transfer and a new Note has been issued in the name of the transferee. The Issuer has limited transferability of this Note to banks or other qualified institutional investors in accordance with criteria established from time to time by the Issuer, and requires the delivery of a purchaser's letter in substantially the form attached hereto as Schedule "III" prior to transferring registration of this Note to a new Owner.

{Remainder of Page Left Blank Intentionally}

**IN WITNESS WHEREOF**, the City of Venice, Florida, has issued this Note and has caused the same to be signed by the Mayor and countersigned and attested by its City Clerk, and its official seal to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of the 1<sup>st</sup> day of June, 2012.

**CITY OF VENICE, FLORIDA**

(SEAL)

ATTESTED:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Clerk

## **SCHEDULE "T" TO FORM OF 2012 NOTE**

### **Principal Payment Schedule**

<b>Payment Date (December 1)</b>	<b>Amortization Installment (\$)</b>
2012	2,460,000
2013	2,480,000
2014	2,510,000
2015*	2,530,000
Total	<u>9,980,000</u>

\*Maturity Date

## **SCHEDULE “IP” TO FORM OF 2012 NOTE INTEREST RATE ADJUSTMENT**

Upon the occurrence of a Determination of Taxability and for as long as the Note remains Outstanding, the Rate of Interest on the Note shall be converted to the Taxable Rate. In addition, upon a Determination of Taxability, the Borrower shall pay to the Registered Owner (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Registered Owner as a result of the Determination of Taxability.

Payments of principal or interest hereunder not paid within fifteen (15) days of the due date shall be subject to a late payment charge of six percent (6.00%) of the amount of the late payment and any amount not paid when due shall bear interest at a rate equal to the Default Rate as defined in the Resolution. The foregoing right to a late payment charge is in addition to, and not in limitation of, any other rights which the Registered Owner may have upon the Issuer's failure to make timely payment of such principal and/or interest. Notwithstanding any provision of this paragraph or any other provision hereof to the contrary, in no event shall the Rate of Interest on the Note exceed the maximum rate permitted by applicable law.

**“Determination of Taxability”** means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on the Note is or was includable in the gross income of an owner of the Note for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the owner of a Note, and until the conclusion of any appellate review, if sought.

**“Taxable Period”** shall mean the period of time between (a) the date that interest on the Note is deemed to be includable in the gross income of the Owner thereof for Federal income tax purposes as a result of a Determination of Taxability, and (b) the date of the Determination of Taxability.

**“Taxable Rate”** shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Registered Owner with the same after tax yield that the Registered Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Registered Owner as a result of such Determination of Taxability. The Registered Owner shall provide the Borrower with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer. The Taxable Rate shall be subject to all other adjustments as provided herein.

**SCHEDULE "III" TO FORM OF 2012 NOTE  
[PURCHASER'S LETTERHEAD]**

[DATE]

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

To Whom It May Concern:

We certify that the following are true and correct in relation to the purchase by \_\_\_\_\_ (the "Purchaser") of the \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the "2012 Note") dated June 1, 2012, and issued by the City of Venice, Florida (the "Issuer") pursuant to Resolution 2012-05 duly adopted by the Issuer on May 22, 2012 (collectively, the "Resolution"):

1. The Purchaser is an "institutional accredited investor" within the meaning of Regulation D under the Securities Act of 1933 (the "1933 Act") and a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the 1933 Act.

2. The Purchaser has made its own inquiry and analysis with respect to the Issuer, the 2012 Note and the security therefor, and other material factors affecting the security for and payment of the 2012 Note.

3. The Purchaser has received the financial information requested by the Purchaser from the Issuer in connection with the 2012 Note and has been afforded the opportunity to examine such documents and receive such written information concerning the terms and conditions of the 2012 Note and the financial condition and creditworthiness of the Issuer as the Purchaser has deemed necessary to receive in connection with determining whether to purchase the 2012 Note.

4. The Purchaser has not relied upon any representations made by any officials of the Issuer, its agents, employees, counsel or representatives, in reaching its decision to purchase the 2012 Note, other than the certificates, opinions, resolutions, or other documents executed in relation to the issuance of the 2012 Note, but have relied solely upon the documentation referred to in this and the preceding paragraph.

**[NAME OF PURCHASER]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## **EXHIBIT “B”**

### **[LENDERS’S LETTERHEAD]**

June 1, 2012

Mayor and City Council Members  
City of Venice, Florida  
401 West Venice Avenue  
Venice, Florida 34285

McGuireWoods LLP  
Bank of America Tower  
50 North Laura Street, Suite 3300  
Jacksonville, Florida 32202-3661

To Whom It May Concern:

We certify that the following are true and correct in relation to the purchase by TD Bank N.A. (the “Lender”) of the \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the “2012 Note”) dated June 1, 2012, and issued by the City of Venice, Florida (the “Issuer”) pursuant to Resolution 2012-05 duly adopted by the Issuer on May 22, 2012 (collectively, the “Resolution”):

1. The Lender is an “institutional accredited investor” within the meaning of Regulation D under the Securities Act of 1933 (the “1933 Act”) and a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the 1933 Act.

2. The Lender is a banking corporation that is engaged as a regular part of its business in making loans.

3. The Lender has made its own inquiry and analysis with respect to the Issuer, the 2012 Note and the security therefor, and other material factors affecting the security for and payment of the 2012 Note.

4. The Lender has received the financial information requested by the Lender from the Issuer in connection with the 2012 Note and has been afforded the opportunity to examine such documents and receive such written information concerning the terms and conditions of the 2012 Note and the financial condition and creditworthiness of the Issuer as the Lender has deemed necessary to receive in connection with determining whether to purchase the 2012 Note.

5. The Lender has not relied upon any representations made by any officials of the Issuer, its agents, employees, counsel or representatives, in reaching its decision to purchase the 2012 Note, other than the certificates, opinions, resolutions, or other documents executed in

relation to the issuance of the 2012 Note, but have relied solely upon the documentation referred to in this and the preceding paragraph.

6. The Lender understands that the loan is evidenced by the 2012 Note, and the 2012 Note is issued in a single denomination equal to the aggregate principal amount of the 2012 Note and may not be transferred except in whole and to a Permitted Lender, as defined in the Resolution.

7. The Lender is acquiring the 2012 Note from its own capital for its own accounts for investment and not with a view to the resale or other distribution of all or any part thereof or any interest therein to others.

8. The Lender acknowledges that it is permitted to transfer the 2012 Note only upon compliance with the requirements of the Resolution and the 2012 Note.

9. The interest rate established for the 2012 Note was established at arms length between the Lender and the Issuer.

10. The Lender further represents, warrants and covenants that:

(i) it is not funding the loan represented by the 2012 Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes;

(ii) it understands that so long as it is not, in the opinion of bond counsel, required by any applicable law, regulation, rating agency standard or rule of an applicable regulatory agency, the Issuer does not intend to make any filing with respect to the loan represented by the 2012 Note with the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board's continuing disclosure site;

(iii) it understands that no CUSIP will be obtained with respect thereto;

(iv) it understands that the 2012 Note is not a municipal security, that it will not treat the 2012 Note as a municipal security for purposes of the securities laws, that it will characterize the 2012 Note as a loan and not as a municipal security for accounting purposes and will take no action inconsistent with such characterization; and

(v) the 2012 Note carries no rating from any credit rating agency.

**TD BANK, N.A.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## OFFICERS' CERTIFICATE

June 1, 2012

The undersigned officers of the City of Venice, Florida (the "Issuer"), in connection with the issuance of the hereinafter described obligation of the Issuer (the "2012 Note") pursuant to Resolution No. 2012-05 duly adopted by the Issuer on May 22, 2012 (the "Resolution"), do hereby make the following certifications. Capitalized terms herein not otherwise defined shall have the meaning ascribed in the Resolution.

(1) The names of the members of the City Council (the "City Council") of the Issuer and the dates of commencement and expiration of their current terms of office are as follows:

<u>Member</u>	<u>Title</u>	<u>Commencement of Term</u>	<u>Term Ends</u>
John Holic	Mayor	November 2010	November 2013
Kit McKeon	Vice Mayor	November 2011	November 2014
Bob Daniels	Councilmember	November 2010	November 2013
Jim Bennett	Councilmember	November 2009	November 2012
Emilio Carlesimo	Councilmember	November 2009	November 2012
Jeanette Gates	Councilmember	November 2010	November 2013
David Sherman	Councilmember	November 2011	November 2014

(2) John Holic is the duly elected Mayor of the Issuer. His current term of office as Mayor commenced in November 10, 2010, for a period of three years.

(3) Edward F. Lavallee is the duly appointed, qualified and acting City Manager of the Issuer and serves at the pleasure of the City Council.

(4) Jeff Snyder is the duly designated Finance Director of the Issuer and serves at the pleasure of the City Manager.

(5) Lori Stelzer is the duly appointed, qualified and acting City Clerk of the Issuer and serves at the pleasure of the City Council.

(5) The Mayor and the City Clerk, on the date hereof, manually executed and attested, respectively, on behalf of the Issuer the 2012 Note as described in the Resolution and on the attached Schedule "I".

(7) On the date of the signing of the 2012 Note by the undersigned Mayor and City Clerk, we were the duly chosen, qualified and acting officers authorized to execute the 2012 Note. On the date hereof, the undersigned Mayor, City Clerk and City Manager are the duly chosen, qualified and acting officers authorized to execute this Certificate.

(8) The seal impressed upon this Certificate is the legally adopted, proper and only official seal of the Issuer and said seal has been manually impressed upon the 2012 Note.



(9) The Issuer is a duly created and validly existing municipal corporation of the State of Florida (the "State") and has and had full legal right, power and authority to issue, sell and deliver the 2012 Note to TD Bank, N.A. (the "Lender"), to levy, collect and receive the Pledged Revenues (as defined in the Resolution), to own and operate the System and to carry out and consummate all other transactions contemplated by the 2012 Note and the Resolution.

(10) Pursuant to the Resolution, the Issuer has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in, the 2012 Note, and has duly authorized and approved the performance by the Issuer of its obligations contained in the Resolution and the consummation by it of all other acts contemplated to be performed by it in the 2012 Note.

(11) The Issuer is not in breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any loan agreement, note, resolution, ordinance, agreement or other instrument to which the Issuer is and will be a party or otherwise subject; and the issuance, sale and delivery of the 2012 Note, the adoption of the Resolution and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree or any agreement or other instrument to which the Issuer is a party or is otherwise subject.

(12) Since the date of adoption of the Resolution, the Issuer has not issued any bonds, notes or other obligations for borrowed money which are payable from the Pledged Revenues.

(13) The Issuer has furnished to the Lender its financial statements for the period ending September 30, 2011. The Issuer has not incurred any material liabilities, direct or contingent, nor has there been any adverse change of a material nature in the financial position, results of operations or conditions, financial or otherwise, of the Issuer since the date of such financial statements.

(14) Except as herein described, the proceeds of the 2012 Note have not been assigned or pledged in whole or in part, directly or indirectly, for the benefit of any obligations previously issued by the Issuer, and there are no outstanding obligations of the Issuer payable from the Pledged Revenues, except for the Refunded Obligation, as hereinafter defined, and the State Revolving Fund Indebtedness payable from the Subordinated Indebtedness Fund, as such terms are defined in the Resolution.

(15) The representations and warranties of the Issuer contained in the Resolution are true and correct in all material respects on and as of the date hereof as if made on the date hereof, and the Issuer has complied with all agreements and satisfied all conditions on its part to be performed or satisfied prior to the date hereof.

(16) Pursuant to the 2012 Note, the Resolution and the Act, the Issuer is lawfully obligated to collect and appropriate sufficient Pledged Revenues to pay the principal of and interest on the 2012 Note in accordance with its terms, and to apply the same to such payments at the times specified in the Resolution and the 2012 Note.

(17) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or to the best of our knowledge after due

inquiry, threatened against the Issuer in any way (i) attempting to restrain or enjoin the authorization, issuance, sale, execution, registration or delivery of the 2012 Note, contesting or affecting the legal existence of the Issuer, the covenants in the 2012 Note or the Resolution, or contesting or otherwise affecting the authority for, the validity of, or any proceedings in connection with the authorization, issuance, sale, execution, registration or delivery of the 2012 Note or the application of the proceeds of the 2012 Note; (ii) attempting to restrain, or enjoin or contest the use of the proceeds of the 2012 Note or the collection and appropriation of any Pledged Revenues or other moneys or security provided for the payment of the 2012 Note or powers of the Issuer; (iii) affecting the title of its officers to their respective offices or contesting or affecting the validity or enforceability of the 2012 Note or the Resolution or contesting the powers of the Issuer or its authority to adopt the Resolution; or (iv) in any way affecting the collection by the Issuer of the Pledged Revenues or the pledging thereof to the payment of the 2012 Note; or (v) wherein an unfavorable decision, ruling, or finding would have a materially adverse affect upon the validity of the 2012 Note, the Resolution, or the transactions contemplated therein.

(18) The Issuer has delivered the fully executed 2012 Note to the Lender, and has received the proceeds of the 2012 Note in the amount of \$9,980,000. The Issuer will apply the proceeds from the sale of the 2012 Note, together with other legally available moneys of the Issuer, to refund a Governmental Unit Note dated as of June 1, 2001, issued by the Issuer pursuant to Ordinance 1181-85 duly enacted by the Issuer on November 12, 1985, as heretofore amended and supplemented, and a Loan Agreement dated as of June 1, 2001, between the Issuer and the City of Gulf Breeze, Florida (the "Refunded Obligation"), which Refunded Obligation was issued in the aggregate principal amount of \$19,355,000 and is currently outstanding in the aggregate principal amount of \$9,980,000.

(19) The Issuer has received consent of the Florida Department of Environmental Protection as to the issuance of the 2012 Note as a senior obligation to the currently outstanding State Revolving Fund Indebtedness. No other authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State which would constitute a condition precedent to or the absence of which would materially adversely affect the ability of the Issuer to establish, levy and collect the Pledged Revenues, or to perform its obligations under the 2012 Note or the Resolution, is required.

(20) The Issuer has full power and authority to pledge the Pledged Revenues (as defined in the Resolution) to the repayment of the 2012 Note and to execute and deliver, and perform its obligations under the 2012 Note and the Resolution.

(21) The 2012 Note conforms to the authorization therefor contained in the Resolution, and the 2012 Note, when issued, executed and delivered in accordance with the Resolution and sold to the Lender as provided in the Resolution, will be a validly issued and outstanding obligation of the Issuer entitled to the benefits of the Resolution, and when duly executed and delivered, will be a binding agreement of the Issuer in accordance with its terms.

(22) The Resolution, in the form appearing elsewhere in the transcript of proceedings delivered by the Issuer in connection with the issuance of the 2012 Note, has been duly adopted and has not been amended, repealed or modified since its adoption. All official action of the

Issuer relating to the 2012 Note is in full force and effect and has not been amended, modified or supplemented.

(23) Pursuant to the Resolution, the Issuer authorized the issuance of the 2012 Note in the aggregate principal amount of \$9,980,000, to be dated as of the date of its delivery. The Issuer has duly authorized the sale of the 2012 Note to the Lender and authorized the officials of the Issuer to execute various documents and instruments indicating that the 2012 Note has been so issued, sold, and delivered.

(24) Except for the Resolution, the Issuer has not adopted or enacted any resolution or ordinance pertaining to the borrowing represented by the 2012 Note.

(25) All decisions made with respect to the 2012 Note, the security therefor and the application of the proceeds thereof, were made at public meetings of the Issuer, held after due notice to the public was given in the ordinary manner required by law and custom of the Issuer.

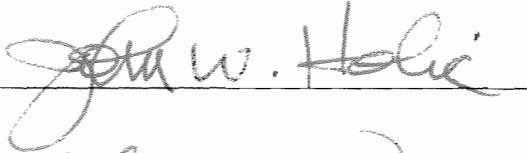
(26) The Issuer acknowledges receipt of the proceeds of the 2012 Note in the amount of \$9,980,000 and that it will apply such proceeds and other moneys as set forth in that certain Closing Memorandum related to the closing of the 2012 Note and dated the date hereof. The undersigned Finance Director hereby acknowledges that the deposit by the Issuer on this date with the Program Trustee of \$10,124,268.38 is sufficient to fully defease the Refunded Obligation as of the date hereof.

(27) The Resolution was approved by the City Council by a majority vote plus one of the members of the City Council as required by the Issuer's Charter.

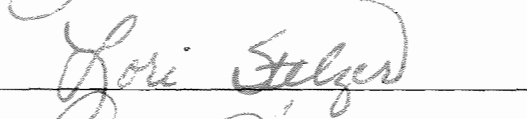
WITNESS, our hands and official seal the day and year first written above.

Signature

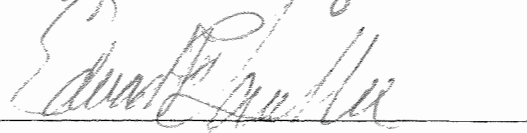
Official Title



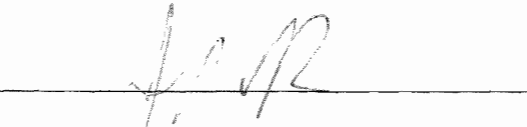
Mayor



City Clerk



City Manager



Finance Director

(SEAL)

*[Signature Page to Officers' Certificate]*

## **SCHEDULE "I"**

### **DESCRIPTION OF 2012 NOTE**

**CITY OF VENICE, FLORIDA UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**, dated June 1, 2012; in the form of one fully registered Note in the denomination of \$9,980,000; bearing interest from the date thereof (payable on the first day of each December and June commencing on December 1, 2012, at an interest rate of 1.13% (subject to adjustment as described therein), and maturing in installments on the dates and in the amounts set forth below, with all remaining principal and interest due on December 1, 2015:

<b>Payment Date (December 1)</b>	<b>Principal Amount</b>
2012	\$2,460,000
2013	2,480,000
2014	2,510,000
2015	2,530,000
Total	<u>\$9,980,000</u>

**\$9,980,000**  
**CITY OF VENICE, FLORIDA**  
**UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**

**NON-ARBITRAGE AND TAX CERTIFICATE**

**Dated June 1, 2012**

The undersigned are the Mayor and Finance Director of the City Council of the City of Venice, Florida (the "Issuer"). Simultaneously with the execution and delivery of this Non-Arbitrage and Tax Certificate (the "Certificate") the Issuer will issue and deliver its \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the "2012 Note"). The 2012 Note is issued pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (the "Act"), and Resolution No. 2012-05 duly adopted by the Issuer on May 22, 2012 (the "Resolution"). Together with other officials of the Issuer, the undersigned are charged with the responsibility of issuing the 2012 Note. Any capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed in the Resolution.

**PART A – NON-ARBITRAGE**

(1) **Schedules.** At the request of the Issuer, the Schedules attached to this Certificate (hereinafter collectively called the "Schedules"), have been prepared for purposes of detailing and verifying all relevant aspects of the financing program described in Part A, Paragraph (3) below.

(2) **Purpose of Certificate.** This Certificate is executed for the purpose of setting forth the facts and estimates upon which the Issuer bases its reasonable expectation that the 2012 Note is not an arbitrage bond in accordance with Section 1.148-2(b) of the U.S. Treasury Regulations. It is intended that this Certificate meet the requirements of Section 103, Section 148 and Section 149(d) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations Sections 1.148-0 through 1.148-11 (the "Regulations").

(3) **Financing Program.** The proceeds of the sale of the 2012 Note, together other legally available monies of the Issuer, will be used to refund within ninety (90) days of the date hereof all of the remaining amount outstanding of the Governmental Unit Note of the Issuer dated as of June 1, 2001, issued pursuant to Ordinance 1181-85 duly enacted by the Issuer on November 12, 1985, as heretofore amended and supplemented, and a Loan Agreement dated as of June 1, 2001, among the Issuer, the City of Gulf Breeze, Florida, and U.S. Bank National Association, as successor trustee (the "Program Trustee"), issued in the aggregate principal amount of \$19,355,000 and currently outstanding in the aggregate principal amount of \$9,980,000 (the "Refunded Obligation" and as originally issued, the "2001 Note"). The Issuer will use other legally available monies to pay the costs of issuance of the 2012 Note.

(4) **Purchase Price.**

(a) The principal amounts, maturity amount, maturity date, approximate yield, and debt service with respect to the 2012 Note are shown on the Schedules.

(b) The 2012 Note is being sold to TD Bank, N.A. (the “Lender”), at the price of par. The Lender has advised that it does not intend to reoffer the 2012 Note but intends to hold the 2012 Note in its own portfolio.

**(5) Use of Original Proceeds.**

(a) The receipts and disbursements with respect to the 2012 Note are detailed on the Schedules.

(b) The June 1, 2012, interest payment on the Refunded Obligation has been fully paid and discharged by the Issuer as of the date hereof. In accordance with the Schedules, 2012 Note proceeds in the amount of \$9,980,000, together with moneys described in paragraph 5(c) hereof, will be deposited on the date hereof with the Program Trustee to fully retire the Refunded Obligation. Such amount will be held by the Program Trustee in cash and used to pay principal and premium of and interest on the Refunded Obligation on July 2, 2012 (which is the first date upon which the Refunded Obligation may be prepaid after due notice thereof).

(c) In accordance with the Schedules, \$142,521.88 of other legally available moneys of the Issuer will be deposited with the Program Trustee and held in cash and used to pay the premium of and interest on the Refunded Obligation on July 2, 2012, together with \$1,746.50 for payment of accrued and unpaid fees of the Program Trustee as of such date.

(d) It is not expected that 2012 Note proceeds will be spent for costs of issuance.

**(6) Reserved.**

**(7) Yield:** As shown on the Schedules:

(a) The rate of interest on the 2012 Note is 1.13%, calculated on a 360 day year of twelve 30-day months, and the yield on the 2012 Note, based on such initial rate of interest, is not less than 1.1300% as shown on the Schedules. The yield on the 2012 Note is calculated in the manner provided in Treasury Regulations Section 1.148-4 so that costs incurred in issuing the 2012 Note are not taken into account.

**(8) Unspent Proceeds of Refunded Obligation.** There are no unspent proceeds of the Refunded Obligation or amounts treated as proceeds thereof under the Regulations.

**(9) Invested Sinking Fund.**

(a) Moneys deposited to the Sinking Fund for the 2012 Note are expected to be used to pay debt service on the 2012 Note and will be spent within a 12-month period beginning on the date of deposit. The investment earnings thereon will be retained in such fund and will be spent within twelve (12) months of receipt thereof. Moneys in the Sinking Fund will be depleted at least once a year except for a reasonable carryover amount not in excess of one-twelfth (1/12) of the annual debt service on the 2012 Note for the preceding Bond Year. Such fund is designed to achieve a proper matching of the

Issuer's revenues and debt service on the 2012 Note within each Bond Year. Such moneys will be invested without restriction as to yield.

(b) Other than the Sinking Fund, there are no other funds or accounts of the Issuer established pursuant to the Resolution or otherwise, which are reasonably expected to be used to pay debt service on the 2012 Note or which are pledged as collateral for the 2012 Note and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the 2012 Note if the Issuer encounters financial difficulties.

(10) **Replacement of Other Funds.** Except as otherwise described herein, the proceeds of the 2012 Note will not replace any funds of the Issuer invested at a yield materially higher than the yield on the 2012 Note since no funds of the Issuer have been designated for the purposes for which the 2012 Note is issued.

(11) **Reserve Account.** No reserve fund or account will be established for or funded with proceeds of the 2012 Note.

(12) **Rebate and Other Covenants.** Attached hereto as Exhibit "A" is a memorandum addressed to the undersigned (the "Rebate Memorandum") explaining the requirements relating to arbitrage rebate which must be followed to comply with the covenants in the Resolution to establish and maintain the excludability from gross income for Federal income tax purposes of the interest on the 2012 Note. The Issuer has agreed to comply with such requirements.

(13) **Excess Proceeds.** The sale proceeds and transferred proceeds of the 2012 Note allocated to refunding the Refunded Obligation and all investment earnings thereon that are not of the character of or used for the purposes set forth below, will not exceed 1% of the sale proceeds of the 2012 Note. The character and purposes referred to above are: (i) the payment of principal, interest or call premium on the Refunded Obligation; (ii) the payment of pre-issuance accrued interest on the 2012 Note; (iii) the payment of the administrative cost of repaying the Refunded Obligation, carrying and repaying the 2012 Note or purchasing, carrying and selling or redeeming obligations acquired with the proceeds of the 2012 Note; (iv) transferred proceeds used for the purpose of the Refunded Obligation; (v) amounts treated as proceeds solely because they are accumulated in the Sinking Fund; (vi) a reasonably required reserve fund for the 2012 Note; and (vii) qualified guarantee fees for the 2012 Note.

(14) **Reasonable Expectations.** To the best of our knowledge, information and belief, the above expectations are reasonable and are made in good faith.

*{END OF PART A}*



## **PART B – TAX MATTERS**

(1) **Governmental Use of Financed Facilities and Note Proceeds.** During the period the 2012 Note will be outstanding, no more than five percent (5%) of the proceeds from the sale of the 2012 Note or the 2001 Note were or will be used to acquire, construct or renovate facilities or refinance the acquisition, construction or renovation of facilities used or owned by non-exempt persons (i.e., persons or entities which are not state or local governments or subdivisions thereof), or pursuant to any lease or arrangement which either results in control over some portion of the facilities or earns the user a portion of the revenues produced by such portion of the facilities, and no more than five percent (5%) of the proceeds from the sale of the 2012 Note or the 2001 Note were or will be loaned to any non-exempt person. The foregoing describe the provisions of the private business use test and the private loan financing test of Code Section 141 for purposes of Part B, Paragraphs (9) and (10) below.

(2) **Form 8038-G.** Internal Revenue Service Form 8038-G prepared in connection herewith and attached hereto as Exhibit “B” is true, accurate and complete.

(3) **Use of Proceeds of 2001 Note.** The proceeds of the Refunded Obligation were expended as set forth in the Tax and Non-Arbitrage Certificate dated June 1, 2001, executed in connection with issuance of the Refunded Obligation and attached hereto as Exhibit “D”.

(4) **No Other Issues.** There were and are no other obligations sold or to be sold within fifteen (15) days of the date of sale of the 2012 Note which (i) were or are to be sold pursuant to a common plan of financing and (ii) are reasonably expected to be paid from substantially the same source of funds, determined without regard to guarantees from unrelated parties.

(5) **No Federal Guarantee.** Except as is permitted by Section 149(b) of the Code, the 2012 Note is not federally guaranteed within these provisions; specifically the payment of principal or interest with respect to the 2012 Note is not guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof; the 2012 Note is not issued as part of an issue and five percent (5%) or more of the proceeds of which is to be used in making loans the payment of principal or interest with respect to which is to be guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or invested directly or indirectly in federally insured deposits or accounts; and the payment of principal or interest on the 2012 Note is not otherwise indirectly guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof.

(6) **First Call Date.** The Refunded Obligation is being prepaid on July 2, 2012, the first available date on which the Refunded Obligation may be prepaid after required legal notice is provided to the holder of the Refunded Obligation.

(7) **No Advance Refunding.** The Refunded Obligation is not being advance refunded.

(8) **Management of System.** So long as the 2012 Note is outstanding, no management contract or other management arrangement may be entered into with respect to all or any portion of the System unless the management contract or other management arrangement

complies with the requirements of Revenue Procedure 97-13, as it may be updated or amended, or the Issuer receives an opinion of Bond Counsel permitting such management contract or other management arrangement. So long as the 2012 Note is outstanding, no research agreement or license agreement (relating to new technology discovered as the result of research pursuant to a research agreement) may be entered into with a private business relating to research conducted at the project refinanced with proceeds of the 2001 Note, unless the research agreement complies with the requirements of Revenue Procedure 97-14 or Revenue Procedure 2007-47, as they may be updated or amended, or the Issuer receives an opinion of Bond Counsel permitting such research agreement.

(9) **Change in Use.** Any change in use of property financed with the proceeds of the 2012 Note will meet the requirements of Exhibit "C" attached hereto.

(10) **Further Expectations.** The Issuer reasonably expects that the 2012 Note will not meet the private business tests or the private loan financing test (as those terms are used in Code § 141) for the entire term of the 2012 Note, and the weighted average maturity of the 2012 Note is not greater than one hundred twenty percent (120%) of the average reasonably expected economic life of the property refinanced with the proceeds of the 2001 Note as of the date hereof. The first call date of the 2012 Note is no more than ten and a half (10 ½) years from the date hereof.

(11) **No Private Inurement.** The Issuer will at all times conduct its business and operations, including the operation of the System, so that the Issuer's corporate income does not inure to any private person.

(12) **Issuer Certifications.** The undersigned, on behalf of the Issuer, does hereby certify that to the best of their knowledge and belief, the Issuer has complied and will comply with its obligations, covenants and representations under the 2001 Note documents to the extent such obligations affect the tax-exempt status of the Program Bonds.

(13) **Reasonable Expectations.** To the best of our knowledge, information and belief, the above expectations are reasonable and are made in good faith.

*{SIGNATURE ON PAGE FOLLOWING}*

**IN WITNESS WHEREOF**, the undersigned has caused this Non-Arbitrage and Tax Certificate to be executed as of the date first written above.

(SEAL)

**CITY OF VENICE, FLORIDA,**

By: \_\_\_\_\_

Mayor

By: \_\_\_\_\_

Finance Director

*[Signature Page to Non-Arbitrage and Tax Certificate]*

## **EXHIBIT “A”**

### **REBATE MEMORANDUM**

TO: City of Venice, Florida (the “Issuer”)

FROM: McGuireWoods LLP

RE: \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the “2012 Note”)

DATE: June 1, 2012 (the “Issue Date”)

This Memorandum explains and specifies procedures designed to comply with the provisions of Section 148(f) of the Internal Revenue Code of 1986, as amended (the “Code”) which relate to the rebate of arbitrage earnings to the United States of America. Compliance with these rebate provisions is necessary to establish and maintain the excludability of the interest on the 2012 Note issued by the Issuer from gross income for purposes of Federal income taxation. Compliance with these rebate proceedings is mandated by Resolution No. 2012-05, duly adopted by the Issuer on May 22, 2012 (the “Resolution”), pursuant to which the 2012 Note is issued. All terms and references from the Resolution and the Non-Arbitrage and Tax Certificate (the “Certificate”) delivered by the Issuer and dated as of the Issue Date relating to the 2012 Note and not otherwise defined in this Exhibit “A” are hereby incorporated by reference. References herein to the “issuer” shall be construed as referring to the Issuer.

McGuireWoods LLP has served as Bond Counsel for the 2012 Note and on the Issue Date delivered an approving opinion relating to the validity and the excludability from gross income of interest on the 2012 Note. Although that engagement did not include any obligation to monitor compliance with the Federal tax requirements found in the Code, including the rebate requirement in Section § 148(f) of the Code as described in this Exhibit “A” or in connection with any audit or examination of the 2012 Note by the Internal Revenue Service, after the delivery of the 2012 Note, we would be happy to make arrangements with the Issuer to assist with such rebate compliance or in connection with any audit or examination of the 2012 Note.

#### **Section 1. Rebate Requirements.**

As of any required computation date, the rebate amount (the “Rebate Amount”) for the 2012 Note (which must be calculated and paid to the United States of America as described in Sections 4 and 5 herein) is the excess of the future value, as of that date, of all receipts (“Nonpurpose Receipts”) on nonpurpose investments over the future value, as of that date, of all payments (the “Nonpurpose Payments”) on nonpurpose investments. For this purpose, nonpurpose investments include all nonpurpose investments allocated to the gross proceeds of the 2012 Note (as described in Section 4(b)(1) herein), until such time as such gross proceeds are allocated to expenditures (as described in Section 4(b)(2) herein). Future value is to be

determined in accordance with Treasury Regulation Section § 1.148-3(c) using the yield on the 2012 Note as the discount rate determined as described in Section 4(a) herein. Nonpurpose Receipts and Nonpurpose Payments are described more fully in Section 3(c) hereof.

Except as provided in Section 2 hereof, “nonpurpose investments” in general include (i) investments acquired with 2012 Note proceeds held prior to their expenditure to pay issuance costs and/or held prior to their expenditure in an escrow account, (ii) any amount held to pay rebate pursuant to this Exhibit “A,” and (iii) moneys held in the Sinking Fund created under the Resolution to repay the 2012 Note.

Since the proceeds of the 2012 Note deposited with the Program Trustee as more described in the Resolution will be held in cash until the date they are scheduled to be spent to retire the Refunded Obligation, the Issuer will not likely incur a rebate liability with respect thereto. Since no other proceeds are to be received by the Issuer from the sale of the 2012 Note, the Issuer may not have any rebate liability with respect to the 2012 Note.

## **Section 2. Exceptions to Rebate Requirements.**

(a) Bona Fide Debt Service Fund. Except as otherwise provided in this Section 2, earnings from the investment of amounts in the Sinking Fund are not subject to the rebate requirements of Section 1 of this Memorandum unless such Fund does not satisfy the requirements of Paragraph 9 of Part A of the Certificate. However, any amount deposited to or set aside in the Sinking Fund for the purpose of paying principal of the 2012 Note other than at its scheduled maturity (excluding mandatory redemptions) may be subject to the rebate requirements regardless of the foregoing exception.

(b) Spending Exceptions.

(1) Six-Month Spending Exception. If all of the Net Proceeds of the 2012 Note are spent for the governmental purposes for which the 2012 Note was issued on or before six months from the Issue Date, the rebate requirements of Section 1 will be considered to have been satisfied with respect to the 2012 Note. (“Net Proceeds” includes investment earnings received with respect to the investment of gross proceeds of the 2012 Note but excludes amounts or earnings after the six-month period on any other fund to the extent that all amounts so held meet the requirements of Section 148(d) of the Code and excludes amounts held in the Sinking Fund, to the extent that such amounts satisfy the requirements set forth in Paragraph 9 of Part A of the Certificate.

(2) *{Reserved}*

(3) *{Reserved}*

(c) Effect of Certain Prepayments. In determining whether gross proceeds have been properly located to expenditures, a prepayment for property or services is treated as an investment, and not as an expenditure, if a principal purpose for prepaying is to receive an investment return from the time such prepayment is made until the time payment otherwise

would be made. However, a prepayment for property or services may be treated as an expenditure, and not as an investment, if prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to that issuer but who are not beneficiaries of tax-exempt financing.

(d) Spending Exceptions Not Mandatory. Use of the spending exceptions is not mandatory. An issuer may apply the arbitrage rebate requirements set forth in the Code and Regulations to an issue that otherwise satisfies a spending exception.

(e) Accounting for Expenditures. For purposes of the six (6)-month spending exception, and for purposes of determining the dates of receipts on nonpurpose investments for the purposes described in this Memorandum, you may use any reasonable accounting method for allocating funds from different sources to expenditures, including any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method. However, an allocation of gross proceeds of the 2012 Note to an expenditure must involve a current outlay of cash occurring not later than five (5) banking days after the date as of which the allocation of gross proceeds to the expenditure is made. Generally, you must account for the allocation of proceeds to expenditures not later than eighteen (18) months after the later of the date the expenditure is paid or the date a project is placed in service. This allocation must be made in any event by the date sixty (60) days after the First Required Payment Date (as defined in this Memorandum). If you do not maintain books and records sufficient to establish that a particular allocation method was used, you will be deemed to have used a specific tracing method.

### **Section 3. Universal Cap.**

Nonpurpose investments are allocable to the 2012 Note (and remain so allocated) only to the extent that the aggregate value of the nonpurpose investments (determined as described in Section 4(c)(4) of this Memorandum) does not exceed the aggregate value of the outstanding 2012 Note (equal in this case to the stated principal amount outstanding plus accrued unpaid interest, since the 2012 Note is a “plain par bond” under the Regulations (as defined below)). The aggregate value of the outstanding 2012 Note is referred to as the “universal cap.” The universal cap must be determined and applied in accordance with Treas. Reg. § 1.148-6(b)(iii). As of each such date, the value of nonpurpose investments allocable, under a ratable or representative method, to amounts, if any, exceeding the universal cap, will be treated as a receipt as described in Section 4(c)(2) of this Memorandum, and such nonpurpose investments will no longer be allocable to gross proceeds of the 2012 Note (subject, however, to reallocation on a subsequent determination date to other bonds or to the 2012 Note, if such nonpurpose investments are described in Section 1 of this Memorandum and the universal cap is not then exceeded). For this purpose, nonpurpose investments cease to be allocated to gross proceeds of the 2012 Note in the following order of priority (and are reallocated in the reverse order): first, nonpurpose investments allocable to replacement proceeds; second, nonpurpose investments allocable to transferred proceeds; and third, nonpurpose investments allocable to sale proceeds and investment proceeds.

#### **Section 4. Computation of Rebate Amount.**

(a) Yield on the 2012 Note.

(1) Single Yield Period. The yield on the 2012 Note is computed for a single period as of the Issue Date and is not required to be recomputed unless (a) a qualified hedge (as defined in (3) below) is in effect with respect to the 2012 Note, (b) a hedge is terminated with respect to the 2012 Note pursuant to Treas. Reg. § 1.148-4(h)(4)(iii)(B), or (c) a transfer, waiver, modification or similar transaction of any right that is part of the terms of the 2012 Note occurs separate and apart from the original sale of the 2012 Note, as described in Treas. Reg. § 1.148-4(b)(4). If these exceptions apply, the yield must be recomputed as provided in such regulations.

(2) Computation of Yield. The yield on the 2012 Note is the discount rate that, when used in computing the present value as of the Issue Date of all unconditionally payable payments of principal, interest, and fees for qualified guarantees on the 2012 Note (and amounts reasonably expected to be paid as fees for qualified guarantees on the issue), if any, produces an amount equal to the present value, using the same discount rate, of the issue price of the 2012 Note as of the Issue Date. The computation of yield must take into account certain mandatory early redemption or expected contingent redemptions, as described in Treas. Reg. § 1.148-4(b)(2) and (3), and in the case of the 2012 Note is determined by assuming the 2012 Note will be retired at par on its final maturity date or pursuant to mandatory redemption requirements and will not be called for optional redemption. Yield is computed under the economic accrual method using a consistently applied compounding interval of not more than one year, calculated to at least four decimal places, and based upon standard financial conventions (such as the thirty (30) days per month/360 day per year convention). The issue price of the 2012 Note consists of the initial purchase price of the 2012 Note.

(3) Qualified Hedging Transactions. Any payments made or received under a qualified hedge, such as a qualified interest rate swap, are taken into account in computing the yield on the hedged bonds as described above. A qualified hedge is a contract that satisfies certain requirements in the Code and Regulations, such as: (i) the contract is entered into primarily to modify an issuer's risk of interest rate changes with respect to the hedged bonds; (ii) the contract does not contain a significant investment element; (iii) the contract is entered into between the Issuer and a provider that is not a related party; (iv) the contract covers, in whole or in part, all of one or more groups of substantially identical bonds of in the same issue (i.e., all of the bonds having the same interest rate, maturity and terms); (v) the contract is primarily interest based; (vi) the payments received by an issuer from the hedge provider under the contract correspond closely in time to either the specific payments being hedged on the hedged bonds or specific payments required to be made pursuant to the financing documents for the hedged bonds, regardless of the hedge, to a sinking fund, debt service fund, or similar fund maintained for the hedged bonds; (vii) payments to the hedge provider are reasonably expected to be made from the same source of funds that, absent the hedge, would be reasonably expected to be used to pay principal and interest on the hedged bonds; and (viii) the contract must be identified by an issuer on its books and records maintained for the hedged bonds not later than three (3) days after the date on which the parties enter into the contract. Each of these requirements is more particularly described at Treas. Reg. § 1.148-4(h)(2).

(b) Allocation of Nonpurpose Investments and 2012 Note Proceeds. Nonpurpose investments must be allocated to the gross proceeds of the 2012 Note as described in Section 4(b)(1). Gross proceeds of the 2012 Note must be allocated to expenditures (i.e., treated as spent and no longer subject to the rules in this Memorandum) as described in Section 4(b)(2).

(1) Allocation of Nonpurpose Investments to Gross Proceeds of the 2012 Note. Nonpurpose investments are allocated to gross proceeds of the 2012 Note pursuant to Treas. Reg. § 1.148-6 which allows an issuer to use any reasonable, consistently applied accounting method (which does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item). Gross proceeds of the 2012 Note include the sale proceeds, investment proceeds, transferred proceeds, and replacement proceeds, as defined in Treas. Reg. § 1.148-1(b) and (c). In general, nonpurpose investments are allocable to the gross proceeds of the 2012 Note when purchased with the 2012 Note proceeds. Generally, nonpurpose investments cease to be allocable to the 2012 Note only when the applicable 2012 Note proceeds are allocated to an expenditure (as described in Section 4(b)(2) below), are allocated to transferred proceeds of another issue, or at retirement of the 2012 Note or pursuant to the universal cap described in Treas. Reg. § 1.148-6(b)(2). Upon the purchase or sale of a nonpurpose investment, gross proceeds of the 2012 Note are not allocated to a Nonpurpose Payment in an amount greater than, or to a Nonpurpose Receipt in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date (for this purpose only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment). In general, the fair market value of a nonpurpose investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the nonpurpose investment becomes binding (i.e. the trade date rather than the settlement date). Except as provided below, a nonpurpose investment that is not of a type traded on an established securities market (within the meaning of Code § 1273), is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price. The following are "safe harbor" provisions for compliance with the fair market value requirements herein with respect to particular types of nonpurpose investments:

(A) Certificates of Deposit. Any certificate of deposit which has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal is treated as purchased for fair market value if the yield on the certificate of deposit is not less than (i) the yield on reasonably comparable direct obligations of the United States, and (ii) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(B) Guaranteed Investment Contracts and Investments Purchased for Yield Restricted Defeasance Escrows. The purchase price of a guaranteed investment contract (which includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply



investments on two or more future dates, e.g., a forward supply contract) and the purchase price of an investment purchased for a yield restricted defeasance escrow is treated as its fair market value of the investment if all of the following requirements are satisfied:

(i) The Issuer makes a bona fide solicitation for the purchase of the investment. A bona fide solicitation is a solicitation that satisfies all of the following requirements:

(I) The bid specifications are in writing and are timely forwarded to potential providers.

(II) The bid specifications include all material terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the investment.

(III) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the issuer or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying the requirements of clauses (I) and (II) of Section 4(b)(1)(B)(ii) below.

(IV) The terms of the bid specifications are commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment. For example, for solicitations of investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the issuer reasonably requires.

(V) For purchases of guaranteed investment contracts only, the terms of the solicitation take into account the Issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(VI) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(VII) At least three reasonably competitive providers are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.

(ii) The bids received by the Issuer meet all of the following requirements:

(I) The Issuer receives at least three bids from providers that the Issuer solicited under a bona fide solicitation meeting the requirements of clause (i) of Section 4(b)(1)(B) above and that do not have a material financial interest in the 2012 Note. The lead underwriter is deemed to have a material financial interest in the 2012 Note until fifteen (15) days after the Issue Date. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the 2012 Note. A provider that is a related party to a provider that has a material financial interest in the 2012 Note is deemed to have a material financial interest in the 2012 Note.

(II) At least one of the three bids described in clause (I) of this subparagraph above is from a reasonably competitive provider, within the meaning of Section 4(b)(1)(B)(i)(VII) above.

(III) If the Issuer uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

(iii) The winning bid meets the following requirements:

(I) *Guaranteed Investment Contracts.* If the investment is a guaranteed investment contract, the winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(II) *Other Investments in a Yield Restricted Defeasance Escrow.* If the investment is not a guaranteed investment contract, the following requirements are met:

(1) The winning bid is the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or, if the Issuer compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the Issuer from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of this subsection is taken into account in determining the lowest cost bid.

(2) The lowest cost bona fide bid (including any broker's fees) is not greater than the cost of the most efficient portfolio comprised exclusively of State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt. The cost of the most efficient portfolio of such State and Local Government Series Securities is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications.

(3) If State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt are not available for purchase on the day that bids are required to be submitted pursuant to terms

of the bid specifications because sales of those securities have been suspended, the cost comparison under (B) above is not required.

(iv) The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(v) The Issuer retains the following records with the Bond documents until three years after the 2012 Note is redeemed or prepaid:

(I) For purchases of guaranteed investment contracts, a copy of the contract, and for purchases of investments other than guaranteed investment contracts, the purchase agreement or confirmation.

(II) The receipt or other record of the amount actually paid by the Issuer for the investments, including a record of any administrative costs paid by the Issuer, and the certification under Section 4(b)(1)(B)(iv) above.

(III) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(IV) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation. For example, if the Issuer purchases a portfolio of investments for a yield restricted defeasance escrow and, in order to satisfy the yield restriction requirements of Section 148 of the Code, an investment in the winning bid is replaced with an investment with a lower yield, the Issuer must retain a record of the substitution and how the price of the substitute investment was determined. If the Issuer replaces an investment in the winning bid portfolio with another investment, the purchase price of the new investment is not covered by the safe harbor unless the investment is bid under a bidding procedure meeting the requirements of this subsection (B).

(V) For purchases of investments other than guaranteed investment contracts, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

(C) United States Treasury Obligations. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury (e.g., United States Treasury Obligations - State and Local Government Series ("SLG")) is the purchase price. There are no provisions in the current Regulations setting forth a safe harbor for the fair market value of a United States Treasury obligation that is purchased other than directly from the United States Treasury and which is not in a yield restricted defeasance escrow (as defined in Treas. Reg. § 1.148-5(d)(6)). However, the fair market value of a United States Treasury obligation that is purchased other than directly from the United States Treasury and

which is not in a yield restricted defeasance escrow meeting the following rules should be deemed to be the price of such obligation as of the purchase date if: (i) the issuer conducts in good faith a solicitation for the purchase of such Treasury obligations that meets the requirements described in subparagraph (D) below and receives at least three bona fide bids from providers that have no material financial interest in the issue (underwriters and financial advisors are considered to have a material financial interest for this purpose), (ii) the issuer purchases the highest-yielding Treasury obligations for which a qualifying bid is made, (iii) the yield on the Treasury obligations purchased is not significantly less than the yield then available from the provider on reasonably comparable Treasury obligations offered to other persons for purchase on terms comparable to those offered to the issuer from a source of funds other than gross proceeds of tax-exempt obligations, (iv) in no event is the yield on any Treasury obligation purchased less than the highest yield then available on a SLG with the same maturity, and (v) the terms of the agreement to purchase the Treasury obligations are reasonable.

(D) Bidding Requirements. A solicitation for United States Treasury obligations is within Section 4(b)(1)(B)(v)(C) if (1) any agent used by the issuer to conduct the bidding process does not bid to provide the investment, (2) all bidders have equal opportunity to bid so that, for example, no bidder is given the opportunity to review other bids (a last look) before bidding, and (3) all bidders are reasonably competitive providers of investments of the type purchased.

(2) Allocation of Gross Proceeds of the 2012 Note to Expenditures. Gross proceeds are allocated to expenditures (i.e. such proceeds cease to be subject to the rebate rules of this Memorandum) pursuant to any reasonable, consistently applied accounting method. Such methods include the following methods consistently applied: a specific tracing method, a gross-proceeds-spent-first method, a first-in, first-out method, or a ratable allocation method; provided the allocation must involve a reasonably current outlay of cash and must carry out a governmental purpose of the 2012 Note issue. For this purpose, a reasonably current outlay of cash means an outlay, by check mailed, or available funds advanced, that is reasonably expected to occur not later than five (5) banking days after the allocation to the expenditure.

(c) Nonpurpose Payments and Receipts. The Issuer should establish a bookkeeping system for recording all cash flows with respect to all nonpurpose investments allocated to gross proceeds of the 2012 Note (as described above in Section 4(b)(1)) until such gross proceeds are allocated to expenditures (as described above in Section 4(b)(2)):

(1) Nonpurpose Payments. Nonpurpose Payments are (a) amounts actually or constructively paid to acquire a nonpurpose investment, (b) the value of a nonpurpose investment on a date the investment becomes allocable to the 2012 Note if the date is after the date the investment is actually acquired by the issuer, (c) the value of a nonpurpose investment at the beginning of a computation period allocated to the 2012 Note at the end of a preceding computation date, (d) on the last day of a Bond Year during which there are amounts allocated to the 2012 Note that are subject to the rebate requirements, and on the final maturity date, a computation credit of \$1,000, and (e) any yield reduction payment pursuant to Treas. Reg. § 1.148-5(c) or payment of a Rebate Amount to the United States pursuant to this Memorandum. For this purpose, value shall be determined as described in Treas. Reg. § 1.148-5(d).

(2) Nonpurpose Receipts. Nonpurpose Receipts are (a) amounts actually or constructively received from a nonpurpose investment, such as earnings and return of principal, (b) for a nonpurpose investment that ceases to be allocated to the 2012 Note before its disposition or redemption date (or that ceases to be subject to the rebate requirements on an earlier date), the value of the nonpurpose investment on that date, and (c) for a nonpurpose investment that is held at the end of a computation period, the value of that investment at the end of that period. For this purpose, value shall be determined as described in Treas. Reg. § 1.148-5(d).

(3) Administrative Costs. Nonpurpose Payments and Nonpurpose Receipts do not include any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (i.e. administrative costs) except if such costs are qualified administrative costs. Qualified administrative costs may increase the payments for Nonpurpose Payments or decrease the receipts from Nonpurpose Receipts if they are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, record keeping, custody, and similar costs. General overhead costs and similar indirect costs such as employee salaries and office expenses and costs associated with computing the rebate amount are not qualified administrative costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds. Qualified administrative costs also include all reasonable administrative costs incurred by regulated investment companies and certain external commingled funds as described in Treas. Reg. § 1.148-5(e)(2)(ii).

(4) Value of Investments. Unless provided otherwise in the Regulations, the value of an investment (including a payment or receipt on the investment) on a date must be determined using one of the following valuation methods:

(A) Outstanding Principal Amount. A “plain par investment” may be valued at its outstanding stated principal amount, plus any accrued unpaid interest. A “plain par investment” is defined in the Arbitrage Regulations and generally includes any conventional investment not issued with an original issue discount or premium exceeding 2 percent (2%) or acquired with a market discount or premium exceeding 2 percent (2%).

(B) Present Value. A fixed rate investment may be valued at its present value. Yield-restricted investments must be valued at their present value.

(C) Fair Market Value. An investment may be valued at its fair market value on that date.

(5) Commingled Funds. Nonpurpose investments allocable to the 2012 Note invested in a commingled fund must meet the requirements of Treas. Reg. § 1.148-6(e).

## **Section 5. Rebate Procedures.**

(a) Computation Dates. The procedures for satisfying the statutory rebate requirements under Section § 148(f) of the Code described in Section 1 above are set forth in Treas. Reg. § 1.148-0 through -11, as amended (the “Regulations”). In order (i) to satisfy the minimum procedural requirements of the Regulations and (ii) to ensure that sufficient moneys will be available when needed to make the required payments to the United States, you should make a provisional calculation of the amount required to be paid to the United States as of the close of business on the last day of each Bond Year and deposit to the Rebate Fund the amount necessary to cause the amount on deposit therein to be equal to the amount required to be paid to the United States as of such date.

Under the Code and the Regulations, payments to the United States are required to be made in installments, the first of which is to be calculated as of any date within five years of the Issue Date (the “First Calculation Date”), and paid within sixty (60) days of such calculation. Each subsequent installment is to be calculated on as of any date within five years of the First Calculation Date or the next preceding calculation date, and any rebate owed paid within sixty (60) days of such subsequent calculation date.

The final payment to the United States is required to be made no later than sixty (60) days after the date on which the last of the 2012 Note is discharged. The amount of the final payment is computed as of the date on which the last of the 2012 Note is discharged (the “Final Computation Date”).

### **(b) Payments to the United States.**

(1) Amount of Payments. A rebate installment payment must be in an amount that, when added to the future value, as of any computation date, of previous rebate payments made for the issue, equals at least ninety percent (90%) of the Rebate Amount as of that date. The issuer must pay one hundred percent (100%) of the Rebate Amount within sixty (60) days of the Final Computation Date to the United States.

(2) Where and How to Make Payments. Each payment to the United States should be filed with the Internal Revenue Service Center, Ogden, Utah 84201, accompanied by Form 8038-T.

(c) Record Keeping. The Issuer should retain records of the foregoing procedures and determinations until at least six (6) years after the retirement of the 2012 Note.

## **Section 6.      Modification of Requirements.**

A requirement or a procedure of this Memorandum need not be observed if the issuer receives an opinion of a nationally recognized bond counsel, in form and substance reasonably satisfactory to the Issuer, that the failure to observe the requirements or the procedures set forth in this Memorandum will not cause the 2012 Note to become an arbitrage bond under Code 148 or otherwise adversely affect the excludability of interest on the 2012 Note from the gross income of the owners thereof for purposes of Federal income taxation. Conversely, it may become necessary in the future to follow additional or modified procedures described in writing by a nationally recognized bond counsel or the Internal Revenue Service in order to ensure that the interest on the 2012 Note will not be included in gross income for purposes of Federal income taxation.

We take no responsibility to notify the Issuer of any additional or modified procedures, as our engagement terminates as of the date the 2012 Note is issued.

**EXHIBIT “B”**  
**IRS FORM 8038-G**

[See Closing Transcript Item No. 7(a)]



## EXHIBIT “C”

### CHANGE IN USE REQUIREMENTS

The Issuer agrees that it will not sell, lease, dispose of, change in use or otherwise take any action (any of the foregoing referred to as a “deliberate action”) with respect to any property refinanced with the proceeds of the 2001 Note resulting in the private business use tests or the private loan financing tests (as described in paragraph B(1) above) to be met for the entire term of the 2012 Note except if:

- (i) the rules of Treas. Reg. § 1.141-12 (as such may be clarified, modified or superceded by Revenue Procedure, Revenue Ruling, Treasury Regulation or statute) are met as follows: (a) the Issuer meets the following conditions to taking remedial action described in Treas. Reg. § 1.141-12(a)(1)-(5): (1) the Issuer reasonably expects that the 2012 Note will not meet the private business tests or the private loan financing tests (as those terms are used in Code § 141) for the entire term of the 2012 Note, (2) the weighted average maturity of the 2012 Note is not greater than one hundred twenty (120%) percent of the average reasonably expected economic life of the property financed with the proceeds of the Refunded Obligation as of the date hereof, (3) the terms of any arrangement that results in satisfaction of either the private business tests or the private loan financing tests are bona fide and arm’s-length, and the new user pays fair market value for the use of the financed property, (4) the Issuer must treat any disposition proceeds as gross proceeds for purposes of Code § 148 (including the requirements set forth in the Rebate Memorandum), and (5) all the sale or investment proceeds of the 2012 Note must have been expended on a governmental purpose before the date of the deliberate action (except with respect to such deliberate actions meeting the remedial action of redemption of the 2012 Note as described in (b)(1) hereof), and (b) the Issuer takes a remedial action described in (1) Treas. Reg. § 1.141-12(d) (redemption or defeasance of nonqualified bonds), (2) Treas. Reg. § 1.141-12(e) (alternative use of disposition proceeds), or (3) Treas. Reg. § 1.141-12(f) (alternative use of facility), or
- (ii) the rules of Rev. Proc. 97-15 (as such may be clarified, modified or superceded by Revenue Procedure, Revenue Ruling, Treasury Regulation or statute) are met which require that the Issuer make a payment to the Internal Revenue Service of an amount in lieu of taxability of the 2012 Note pursuant to the terms of a closing agreement, or
- (iii) the Issuer obtains a written opinion of nationally recognized bond counsel, to the effect that any such deliberate action will not adversely affect the validity of the 2012 Note or any exemption from federal income taxation to which the interest on the 2012 Note would otherwise be entitled.

For purposes of (i) above, any redemption or prepayment within Treas. Reg. § 1.141-12(d) must occur within 90 days of the deliberate action, or a defeasance escrow must be established for the 2012 Note within 90 days of the deliberate action. In such cases, the Issuer must provide written notice to the Internal Revenue Service as to the establishment of such escrow within 90 days of the date the defeasance escrow is established. A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that,

together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date, and may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the 2012 Note. In addition, dispositions of personal property in the ordinary course of an established governmental program are not treated as deliberate actions for purposes of this paragraph B(3) if the weighted average maturity of the 2012 Note is not greater than 120 percent of the reasonably expected actual use of the property for governmental purposes, the Issuer reasonably expects on the date hereof that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost, and the property is no longer suitable for its governmental purposes on the date of disposition.

**EXHIBIT “D”**

**TAX AND NON-ARBITRAGE CERTIFICATE  
(REFUNDED OBLIGATION)**

[Follows]

## **TAX AND NON-ARBITRAGE CERTIFICATE**

I, the undersigned officer of the City of Venice, Florida (the "Governmental Unit"), being the person duly charged, with others, with responsibility for borrowing and issuing \$19,355,000 principal amount of the Governmental Unit Note, Series 2001 dated as of the date hereof (the "Governmental Unit Note") being issued pursuant to the Constitution of the State of Florida; Chapter 166, Part II, Florida Statutes, as amended, and other applicable provisions of law (collectively, the "Act"); Ordinance No. 1181-85 duly enacted by the Governmental Unit on November 12, 1985 (the "1985 Ordinance"), as amended and supplemented by Ordinance No. 1353-88 duly enacted by the Governmental Unit on November 8, 1988 (the "1988 Ordinance"), by Ordinance No. 91-9, duly enacted by the Governmental Unit on March 1, 1991 (the "1991 Ordinance"), Ordinance No. 92-35, duly enacted by the Governmental Unit on December 22, 1992 (the "1992 Ordinance") (the 1985 Ordinance, as amended by the 1988 Ordinance, the 1991 Ordinance, and the 1992 Ordinance being hereinafter collectively referred to as the "Original Ordinance") and Ordinance No. 2001-68, duly enacted by the Governmental Unit on May 8, 2001 (the "2001 Ordinance") (the Original Ordinance, as amended by the 2001 Ordinance being hereinafter collectively referred to as the "Ordinance"); and Resolution No. 2001-6, duly adopted by the Governmental Unit on May 8, 2001 (the "Resolution") (the Ordinance and the Resolution are herein collectively referred to as, the "Resolution"), and a Loan Agreement dated as of June 1, 2001 (the "Loan Agreement"), by and among the Governmental Unit, SunTrust Bank (the "Trustee"), and the City of Gulf Breeze, Florida (the "Sponsor") **DO HEREBY CERTIFY THAT:**

(1) Except as otherwise expressly provided herein, or unless the context clearly requires otherwise, all capitalized terms used herein shall have the meanings assigned thereto in the Loan Agreement.

(2) The Governmental Unit has prepared or caused to be prepared, certain Schedules related to the financing with the Governmental Unit Note, consisting of the Schedules attached hereto, the Schedules in the Verification Report dated as of June 1, 2001, of Causey, Demgen & Moore, Inc., and the Schedules attached to the Escrow Deposit Agreement (the "Schedules").

(3) The Governmental Unit Note is being issued in the amount of \$19,355,000, as evidence of a Loan to provide funds to finance the refunding of a portion of the Governmental Unit's Utilities Revenue Refunding Bonds, Series 1993, of which \$21,685,000 principal amount is outstanding on the date hereof (the "Refunded Bonds"). The Loan is being funded from the proceeds of the Sponsor's Local Government Loan Program Floating Rate Demand Revenue Bonds, Series 1985E (the "Bonds"). The Governmental Unit will borrow the Original Proceeds (as hereinafter defined) pursuant to the Loan Agreement.

(4) On the basis of the facts, estimates and circumstances in existence on the date hereof, I reasonably expect the following with respect to the \$19,355,000 (the "Original Proceeds") of the Governmental Unit Note:

(a) Of the Original Proceeds of the Loan, the amount of \$44,341.87 shall be used within ninety (90) days of the date hereof to pay the costs of issuing and closing the Loan, as shown on the Schedules.

(b) Of the Original Proceeds, \$19,310,658.13, together with \$463,015.63 in the Debt Service Fund for the Refunded Bonds and \$1,111,987.50 in the Debt Service Reserve Fund for the Refunded Bonds, will be deposited with the Escrow Holder, and applied as provided in the Escrow Deposit Agreement.

(c) Refunding Program. The amounts shown on the Schedules attached to the Escrow Deposit Agreement as the outstanding principal and interest on the Refunded Bonds are correct as of the date hereof. The Refunding Program will be effected by initially investing such proceeds of the Loan in United States Treasury Obligations, State and Local Government Series (the "Defeasance Securities") the maturing principal of and interest on which will be sufficient to ensure the timely payment of principal of and interest on the Refunded Bonds in accordance with the Schedules and the Escrow Deposit Agreement. The Investments made in the above mentioned Defeasance Securities will be made such that the aggregate yield will not exceed the applicable yield on the Bonds.

(d) The Loan is payable from the Pledged Revenues deposited in the Sinking Fund in the manner described in the Resolution and the Loan Agreement. Except for the Sinking Fund provided in the Resolution, there are no funds or accounts of the Governmental Unit which reasonably will be expected to be used to pay debt service on the Loan or which will secure the Governmental Unit Note and as to which there is reasonable assurance that amounts on deposit therein will be available to pay debt service on the Governmental Unit Note if the Governmental Unit encounters financial difficulties.

(e) All moneys and investment income in the Sinking Fund allocable to the Loan will be applied, within twelve (12) months of deposit therein, to the payment to the Trustee of amounts due under the Loan Agreement. Such fund is established for the purpose of matching the revenues of the Governmental Unit available for payment of the Governmental Unit Note to the debt service on the Governmental Unit Note. Any amounts in the Sinking Fund which are invested will be invested as part of a bonafide Sinking Fund for the Governmental Unit Note, without yield restriction.

(f) No portion of the proceeds of the Governmental Unit Note will be used as a substitute for other funds of the Governmental Unit which were otherwise set aside and earmarked to refund any portion of the Refunded Bonds and which will be used to acquire, directly or indirectly, obligations producing a yield in excess of the yield of the Bonds.

(5) The transaction has not been structured to cause the Governmental Unit to deliver the Governmental Unit Note in a larger principal amount than otherwise would have been necessary or to deliver the Governmental Unit Note sooner or allow it to remain outstanding longer than otherwise would have been necessary in order to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage. For purposes of this paragraph (5), the use of the proceeds of the Loan to refund the outstanding Refunded Bonds is not in and of itself deemed to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage.

(6) No other obligations are being issued by the Governmental Unit or any related entity at substantially the same time as the Governmental Unit Note, sold pursuant to a common plan of financing with the Governmental Unit Note, and will be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds) as the Governmental Unit Note.

(7) None of the Pledged Revenues will be derived directly or indirectly from the United States of America or any instrumentality thereof, in any amounts related to the Bonds or the Project being refinanced with the Loan, except to the extent of use of such Project on the same basis as use by members of the general public.

(8) (a) No more than five percent (5%) of the Original Proceeds plus investment earnings thereon will be used, directly or indirectly, in whole or in part, in any activity carried on by any person other than a state or local governmental unit.

(b) The payment of more than five percent (5%) of the principal of or the interest on the Bonds will not be, directly or indirectly (i) secured by any interest in (A) property used or to be used in any activity carried on by any person other than a state, or local governmental unit or (B) payments in respect of such property or (ii) on a present value basis, derived from payments (whether or not by or to the Governmental Unit) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit.

(c) No more than five percent of the Original Proceeds and investment earnings thereon will be used, directly or indirectly, to make or finance loans to any persons.

(d) No users of the Governmental Unit's Project financed with the Refunded Bonds, other than state or local governmental units, will use more than five percent of the Governmental Unit's Project financed with the Refunded Bonds, in the aggregate, on any basis other than the same basis as the general public; and no person other than a state or local governmental units will be users of more than five percent of the Governmental Unit's Project financed with the Refunded Bonds, in the aggregate, as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment or output contract, or (iii) any other similar arrangement, agreement or understanding, whether written or oral.

(9) The Governmental Unit has not received notice that this Certificate may not be relied upon with respect to its own issues nor has it been advised that any such adverse action by the Commissioner of Internal Revenue is contemplated.

To the best of my knowledge, information and belief, the expectations herein expressed are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the 1st day of June, 2001.

**THE CITY OF VENICE, FLORIDA**

By: Dean Calamara  
Its: Mayor

**ATTEST:**

By: Gori Stelzer  
Its: City Clerk

## **SCHEDULES**

[Follows]



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City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank**\*\* Revised Final Numbers | May 29, 2012 \*\***

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**SOURCES AND USES OF FUNDS****City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank****\*\* Revised Final Numbers | May 29, 2012 \*\***

Dated Date	06/01/2012
Delivery Date	06/01/2012

**Sources:**

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<b>Bond Proceeds:</b>	
Par Amount	9,980,000.00
<b>Other Sources of Funds:</b>	
Issuer Contribution	195,768.38
	<hr/>
	10,175,768.38

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**Uses:**

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<b>Refunding Escrow Deposits:</b>	
Cash Deposit	10,124,268.38
<b>Delivery Date Expenses:</b>	
Cost of Issuance	51,500.00
	<hr/>
	10,175,768.38

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**Notes:**

Non-Bank Qualified.

No prepayment penalty.

Interest day count method of 30/360.

## BOND SUMMARY STATISTICS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Dated Date 06/01/2012  
Delivery Date 06/01/2012  
First Coupon 12/01/2012  
Last Maturity 12/01/2015

Arbitrage Yield 1.130000%  
True Interest Cost (TIC) 1.130000%  
Net Interest Cost (NIC) 1.130000%  
All-In TIC 1.392088%  
Average Coupon 1.130000%

Average Life (years) 2.012  
Duration of Issue (years) 1.988

Par Amount 9,980,000.00  
Bond Proceeds 9,980,000.00  
Total Interest 226,904.00  
Net Interest 226,904.00  
Total Debt Service 10,206,904.00  
Maximum Annual Debt Service 2,558,875.00  
Average Annual Debt Service 2,916,258.29

Underwriter's Fees (per \$1000)  
Average Takedown  
Other Fee

Total Underwriter's Discount

Bid Price 100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	Duration	PV of 1 bp change
Term Note	9,980,000.00	100.000	1.130%	2.012	1.988	3,493.00
	9,980,000.00			2.012		3,493.00

	TIC	All-In TIC	Arbitrage Yield
Par Value	9,980,000.00	9,980,000.00	9,980,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		(51,500.00)	
- Other Amounts			
Target Value	9,980,000.00	9,928,500.00	9,980,000.00
Target Date	06/01/2012	06/01/2012	06/01/2012
Yield	1.130000%	1.392088%	1.130000%

## BOND PRICING

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

\*\* Revised Final Numbers | May 29, 2012 \*\*

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Principal Cost
Term Note:						
	12/01/2012	2,460,000	1.130%	1.130%	100.000	2,460,000.00
	12/01/2013	2,480,000	1.130%	1.130%	100.000	2,480,000.00
	12/01/2014	2,510,000	1.130%	1.130%	100.000	2,510,000.00
	12/01/2015	2,530,000	1.130%	1.130%	100.000	2,530,000.00
		9,980,000				9,980,000.00

Dated Date	06/01/2012	
Delivery Date	06/01/2012	
First Coupon	12/01/2012	
Par Amount	9,980,000.00	
Original Issue Discount		
Production	9,980,000.00	100.000000%
Underwriter's Discount		
Purchase Price	9,980,000.00	100.000000%
Accrued Interest		
Net Proceeds	9,980,000.00	

**BOND DEBT SERVICE**

**City of Venice, Florida**  
**Utility System Refunding Revenue Note, Series 2012**  
**TD Bank**

**\*\* Revised Final Numbers | May 29, 2012 \*\***

<b>Period Ending</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Annual Debt Service</b>
12/01/2012	2,460,000	1.130%	56,387.00	2,516,387.00	
06/01/2013			42,488.00	42,488.00	
09/30/2013					2,558,875.00
12/01/2013	2,480,000	1.130%	42,488.00	2,522,488.00	
06/01/2014			28,476.00	28,476.00	
09/30/2014					2,550,964.00
12/01/2014	2,510,000	1.130%	28,476.00	2,538,476.00	
06/01/2015			14,294.50	14,294.50	
09/30/2015					2,552,770.50
12/01/2015	2,530,000	1.130%	14,294.50	2,544,294.50	
09/30/2016					2,544,294.50
	9,980,000		226,904.00	10,206,904.00	10,206,904.00

**BOND DEBT SERVICE**

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Period Ending	Principal	Coupon	Interest	Debt Service
09/30/2013	2,460,000	1.130%	98,875.00	2,558,875.00
09/30/2014	2,480,000	1.130%	70,964.00	2,550,964.00
09/30/2015	2,510,000	1.130%	42,770.50	2,552,770.50
09/30/2016	2,530,000	1.130%	14,294.50	2,544,294.50
	9,980,000		226,904.00	10,206,904.00

**COST OF ISSUANCE**

**City of Venice, Florida**  
**Utility System Refunding Revenue Note, Series 2012**  
**TD Bank**

**\*\* Revised Final Numbers | May 29, 2012 \*\***

<b>Cost of Issuance</b>	<b>\$/1000</b>	<b>Amount</b>
<b>Bond Counsel</b>	<b>2.05411</b>	<b>20,500.00</b>
<b>Bankruptcy Counsel</b>	<b>0.75150</b>	<b>7,500.00</b>
<b>Financial Advisor</b>	<b>1.75351</b>	<b>17,500.00</b>
<b>Bank Counsel</b>	<b>0.50100</b>	<b>5,000.00</b>
<b>Contingency/Professional Exp</b>	<b>0.10020</b>	<b>1,000.00</b>
	<b>5.16032</b>	<b>51,500.00</b>

## PROOF OF ARBITRAGE YIELD

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Date	Debt Service	Present Value to 06/01/2012 @ 1.1300000%
12/01/2012	2,516,387.00	2,502,249.29
06/01/2013	42,488.00	42,011.92
12/01/2013	2,522,488.00	2,480,210.46
06/01/2014	28,476.00	27,841.43
12/01/2014	2,538,476.00	2,467,963.73
06/01/2015	14,294.50	13,819.36
12/01/2015	2,544,294.50	2,445,903.81
	10,206,904.00	9,980,000.00

Proceeds Summary

Delivery date	06/01/2012
Par Value	9,980,000.00
Target for yield calculation	9,980,000.00



## FORM 8038 STATISTICS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

\*\* Revised Final Numbers | May 29, 2012 \*\*

Dated Date 06/01/2012  
Delivery Date 06/01/2012

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Term Note:						
	12/01/2012	2,460,000.00	1.130%	100.000	2,460,000.00	2,460,000.00
	12/01/2013	2,480,000.00	1.130%	100.000	2,480,000.00	2,480,000.00
	12/01/2014	2,510,000.00	1.130%	100.000	2,510,000.00	2,510,000.00
	12/01/2015	2,530,000.00	1.130%	100.000	2,530,000.00	2,530,000.00
		9,980,000.00			9,980,000.00	9,980,000.00

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield
Final Maturity	12/01/2015	1.130%	2,530,000.00	2,530,000.00		
Entire Issue			9,980,000.00	9,980,000.00	2.0120	1.1300%

Proceeds used for accrued interest	0.00
Proceeds used for bond issuance costs (including underwriters' discount)	0.00
Proceeds used for credit enhancement	0.00
Proceeds allocated to reasonably required reserve or replacement fund	0.00
Proceeds used to currently refund prior issues	9,980,000.00
Proceeds used to advance refund prior issues	0.00
Remaining weighted average maturity of the bonds to be currently refunded	2.0606
Remaining weighted average maturity of the bonds to be advance refunded	0.0000

## FORM 8038 STATISTICS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Refunded Bonds

Bond Component	Date	Principal	Coupon	Price	Issue Price
Series 1985E (2001 Gulf Breeze Loan):					
SERIAL	12/01/2012	2,320,000.00	4.700%	100.000	2,320,000.00
SERIAL	12/01/2013	2,425,000.00	4.950%	100.000	2,425,000.00
SERIAL	12/01/2014	2,555,000.00	5.050%	100.000	2,555,000.00
SERIAL	12/01/2015	2,680,000.00	5.150%	100.000	2,680,000.00
		9,980,000.00			9,980,000.00
			Last Call Date	Issue Date	Remaining Weighted Average Maturity
Series 1985E (2001 Gulf Breeze Loan)			07/02/2012	06/01/2001	2.0606
All Refunded Issues			07/02/2012		2.0606

## SUMMARY OF BONDS REFUNDED

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Series 1985E (2001 Gulf Breeze Loan), 1985E:					
SERIAL	12/01/2012	4.700%	2,320,000.00	07/02/2012	101.000
	12/01/2013	4.950%	2,425,000.00	07/02/2012	101.000
	12/01/2014	5.050%	2,555,000.00	07/02/2012	101.000
	12/01/2015	5.150%	2,680,000.00	07/02/2012	101.000
			9,980,000.00		

## PRIOR BOND DEBT SERVICE

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

\*\* Revised Final Numbers | May 29, 2012 \*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
12/01/2012	2,320,000	4.700%	248,062.50	2,568,062.50	
06/01/2013			193,542.50	193,542.50	
09/30/2013					2,761,605.00
12/01/2013	2,425,000	4.950%	193,542.50	2,618,542.50	
06/01/2014			133,523.75	133,523.75	
09/30/2014					2,752,066.25
12/01/2014	2,555,000	5.050%	133,523.75	2,688,523.75	
06/01/2015			69,010.00	69,010.00	
09/30/2015					2,757,533.75
12/01/2015	2,680,000	5.150%	69,010.00	2,749,010.00	
09/30/2016					2,749,010.00
	9,980,000		1,040,215.00	11,020,215.00	11,020,215.00

## SAVINGS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Date	Prior Debt Service	Refunding Debt Service	Savings
09/30/2013	2,761,605.00	2,558,875.00	202,730.00
09/30/2014	2,752,066.25	2,550,964.00	201,102.25
09/30/2015	2,757,533.75	2,552,770.50	204,763.25
09/30/2016	2,749,010.00	2,544,294.50	204,715.50
	11,020,215.00	10,206,904.00	813,311.00

Savings Summary

Savings PV date	06/01/2012
Savings PV rate	1.392088%
PV of savings from cash flow	788,972.61
Less: Prior funds on hand	(195,768.38)
Net PV Savings	593,204.23

## SUMMARY OF REFUNDING RESULTS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Dated Date	06/01/2012
Delivery Date	06/01/2012
Arbitrage yield	1.130000%
Escrow yield	
Bond Par Amount	9,980,000.00
True Interest Cost	1.130000%
Net Interest Cost	1.130000%
All-In TIC	1.392088%
Average Coupon	1.130000%
Average Life	2.012
Par amount of refunded bonds	9,980,000.00
Average coupon of refunded bonds	5.058181%
Average life of refunded bonds	2.061
PV of prior debt to 06/01/2012 @ 1.392088%	10,717,472.61
Net PV Savings	593,204.23
Percentage savings of refunded bonds	5.943930%

## ESCROW REQUIREMENTS

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Period Ending	Interest	Principal Redeemed	Redemption Premium	Other Requirements	Total
07/02/2012	42,721.88	9,980,000.00	99,800.00	1,746.50	10,124,268.38
	42,721.88	9,980,000.00	99,800.00	1,746.50	10,124,268.38

## ESCROW SUFFICIENCY

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
06/01/2012		10,124,268.38	10,124,268.38	10,124,268.38
07/02/2012	10,124,268.38		(10,124,268.38)	
	10,124,268.38	10,124,268.38	0.00	



## ESCROW COST DETAIL

City of Venice, Florida  
Utility System Refunding Revenue Note, Series 2012  
TD Bank

**\*\* Revised Final Numbers | May 29, 2012 \*\***

Escrow	Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost
ISS	06/01/2012		144,268.38	144,268.38
BP	06/01/2012		9,980,000.00	9,980,000.00
		0	10,124,268.38	10,124,268.38

**SPECIMEN**

No. R-1

\$9,980,000

**TRANSFER OF REGISTRATION OF THIS NOTE IS RESTRICTED. SEE SECTION 9  
OF RESOLUTION NO. 2012-05 HEREIN DESCRIBED.**

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF VENICE, FLORIDA  
UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**

<u>Rate of Interest</u>	<u>Maturity Date</u>	<u>Dated Date</u>
1.13%	December 1, 2015	June 1, 2012
(as may be adjusted as herein provided)		

Registered Owner: TD BANK, N.A.

Principal Amount: NINE MILLION NINE HUNDRED EIGHTY THOUSAND DOLLARS  
(\$9,980,000)

**KNOW ALL MEN BY THESE PRESENTS**, that the City of Venice, Florida (hereinafter called "Issuer"), for value received, hereby promises to pay, solely from the sources hereafter described, the Principal Amount hereof, to the Registered Owner identified above, or registered assigns, and to pay, solely from said sources, interest on said sum from the Dated Date or from the most recent interest payment date to which interest has been paid, at the above Rate of Interest, calculated on the basis of a 360 day year of twelve 30-day months, until payment of such sum, subject to adjustment, together with such other amounts, all as provided on Schedule "II" hereto, which is hereby incorporated by reference with the same effect as if set forth herein in its entirety. Such interest shall be payable on the first day of each December and June, commencing December 1, 2012.

This Note constitutes an authorized issue in the aggregate principal amount of \$9,980,000 issued to finance the cost of refunding all of the principal amount remaining Outstanding of the Issuer's Governmental Unit Note dated as of June 1, 2001, issued pursuant to a Loan Agreement dated as of June 1, 2001, among the Issuer, the City of Gulf Breeze, Florida, and U.S. Bank National Association, as successor trustee. This Note is issued pursuant to the authority of and in full compliance with the Constitution and the laws of the State of Florida, including particularly Chapter 166, Part II, Florida Statutes, and other applicable provisions of law, and pursuant to Resolution No. 2012-05 duly adopted by the Issuer on May 22, 2012 (the "Resolution"), and is subject to all the terms and conditions of such Resolution. Capitalized terms used herein which are defined in the Resolution shall have the meanings set forth therein unless the context hereof expressly requires otherwise.

# SPECIMEN

The principal amount hereof shall be payable in installments on the dates and in the amounts set forth on Schedule "I" attached hereto, with the remaining principal balance, together with any unpaid interest accrued thereon, due and payable on December 1, 2015. All amounts due hereunder shall be paid by the Issuer by wire transfer to the account designated by the Registered Owner to the Registrar in writing from time to time. Any payment required to be made with respect to this Note which is not paid on its due date shall bear interest from such due date at a rate equal to the Default Rate. All such sums payable hereunder shall be payable in any coin or currency of the United States of America which is at the time of payment legal tender for the payment of public or private debts.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of this Note, have happened, exist, and have been performed in due time, form and manner as required by the Constitution and laws of the State of Florida applicable thereto.

This Note shall be subject to redemption prior to maturity at the option of the Issuer, in whole or in part, on any date at a price equal to the principal amount redeemed plus accrued interest to the date of redemption.

The Issuer may deem and treat the person to whom this Note is issued as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the Issuer shall not be affected by any notice to the contrary. No transfer of this Note shall be effective until the same has been surrendered to the Issuer for transfer and a new Note has been issued in the name of the transferee. The Issuer has limited transferability of this Note to banks or other qualified institutional investors in accordance with criteria established from time to time by the Issuer, and requires the delivery of either (i) a purchaser's letter in substantially the form attached hereto as Schedule "III" or (ii) a sophisticated investor letter in form satisfactory to the Issuer providing evidence to the Issuer that such purchaser is a Permitted Lender, prior to transferring registration of this Note to a new Owner.

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# SPECIMEN

**IN WITNESS WHEREOF**, the City of Venice, Florida, has issued this Note and has caused the same to be signed by the Mayor and countersigned and attested by its City Clerk, and its official seal to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of the 1<sup>st</sup> day of June, 2012.

(SEAL)

ATTESTED:

By:

Clerk

**CITY OF VENICE, FLORIDA**

By:

Mayor

## SCHEDULE "I" TO 2012 NOTE

### Principal Payment Schedule

<b>Payment Date (December 1)</b>	<b>Amortization Installment (\$)</b>
2012	2,460,000
2013	2,480,000
2014	2,510,000
2015*	2,530,000
Total	<u>9,980,000</u>

\*Maturity Date

SPECIMEN

**SCHEDULE "II" TO 2012 NOTE  
INTEREST RATE ADJUSTMENT**

Upon the occurrence of a Determination of Taxability and for as long as the Note remains Outstanding, the Rate of Interest on the Note shall be converted to the Taxable Rate. In addition, upon a Determination of Taxability, the Borrower shall pay to the Registered Owner (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Registered Owner as a result of the Determination of Taxability.

Payments of principal or interest hereunder not paid within fifteen (15) days of the due date shall be subject to a late payment charge of six percent (6.00%) of the amount of the late payment and any amount not paid when due shall bear interest at a rate equal to the Default Rate as defined in the Resolution. The foregoing right to a late payment charge is in addition to, and not in limitation of, any other rights which the Registered Owner may have upon the Issuer's failure to make timely payment of such principal and/or interest. Notwithstanding any provision of this paragraph or any other provision hereof to the contrary, in no event shall the Rate of Interest on the Note exceed the maximum rate permitted by applicable law.

**"Determination of Taxability"** means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on the Note is or was includable in the gross income of an owner of the Note for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the owner of a Note, and until the conclusion of any appellate review, if sought.

**"Taxable Period"** shall mean the period of time between (a) the date that interest on the Note is deemed to be includable in the gross income of the Owner thereof for Federal income tax purposes as a result of a Determination of Taxability, and (b) the date of the Determination of Taxability.

**"Taxable Rate"** shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Registered Owner with the same after tax yield that the Registered Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Registered Owner as a result of such Determination of Taxability. The Registered Owner shall provide the Borrower with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer. The Taxable Rate shall be subject to all other adjustments as provided herein.

**SCHEDULE "III" TO 2012 NOTE  
[PURCHASER'S LETTERHEAD]**

[DATE]

**SPECIMEN**

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

To Whom It May Concern:

We certify that the following are true and correct in relation to the purchase by \_\_\_\_\_ (the "Purchaser") of the \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the "2012 Note") dated June 1, 2012, and issued by the City of Venice, Florida (the "Issuer") pursuant to Resolution 2012-05 duly adopted by the Issuer on May 22, 2012 (collectively, the "Resolution"):

1. The Purchaser is an "institutional accredited investor" within the meaning of Regulation D under the Securities Act of 1933 (the "1933 Act") and a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the 1933 Act.

2. The Purchaser has made its own inquiry and analysis with respect to the Issuer, the 2012 Note and the security therefor, and other material factors affecting the security for and payment of the 2012 Note.

3. The Purchaser has received the financial information requested by the Purchaser from the Issuer in connection with the 2012 Note and has been afforded the opportunity to examine such documents and receive such written information concerning the terms and conditions of the 2012 Note and the financial condition and creditworthiness of the Issuer as the Purchaser has deemed necessary to receive in connection with determining whether to purchase the 2012 Note.

4. The Purchaser has not relied upon any representations made by any officials of the Issuer, its agents, employees, counsel or representatives, in reaching its decision to purchase the 2012 Note, other than the certificates, opinions, resolutions, or other documents executed in relation to the issuance of the 2012 Note, but have relied solely upon the documentation referred to in this and the preceding paragraph.

**[NAME OF PURCHASER]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**HALL & ANDERSON, P. A.**

ATTORNEYS AT LAW

1314 EAST VENICE AVENUE  
SUITE E  
VENICE, FLORIDA 34285

**ROBERT C. ANDERSON**

**WAYNE C. HALL\***

Telephone: (941) 480-0999

Facsimile: (941) 480-1446

Website: [www.lawyers.com/ha-law](http://www.lawyers.com/ha-law)

E-mail: [whall@hall-anderson.com](mailto:whall@hall-anderson.com)

[randerson@hall-anderson.com](mailto:randerson@hall-anderson.com)

*\*Board Certified Wills, Trusts,  
and Estates Lawyer*

June 1, 2012

Mayor and City Councilmembers  
City of Venice, Florida

TD Bank, N.A.  
Winter Park, Florida

McGuire Woods LLP  
Jacksonville, Florida

**\$9,980,000**  
**CITY OF VENICE, FLORIDA**  
**UTILITY SYSTEM REFUNDING REVENUE NOTE**  
**SERIES 2012**

Ladies and Gentlemen:

We have acted as legal counsel for the City of Venice, Florida, a municipal corporation of the State of Florida (the "Issuer"), in connection with the issuance of its \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the "2012 Note") and the sale thereof to TD Bank, N.A., pursuant to the Resolution hereafter described. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Resolution. We have reviewed such matters as we deem relevant to the opinions expressed herein. Based upon such review and pertinent representations made by appropriate officials of the Issuer, we are of the opinion that:

1. The 2012 Note, issued in the authorized principal amount of \$9,980,000, was duly executed and delivered by the Issuer under the authority and pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the "Act") and Resolution No. 2012-05 duly adopted by the Issuer on May 22, 2012 (the "Resolution"). At such meeting, a quorum was present and acted throughout and such meeting was at all times open to the public.



Mayor and City Councilmembers  
TD Bank, N.A.  
McGuire Woods LLP  
June 1, 2012  
Page Two

2. The proceeds of the 2012 Note are to be used to refund, together with other legally available monies of the Issuer, all of the remaining amount outstanding of the Governmental Unit Note of the Issuer dated as of June 1, 2001, issued pursuant to Ordinance 1181-85 duly enacted by the Issuer on November 12, 1985, as heretofore amended and supplemented, and a Loan Agreement dated as of June 1, 2001, among the Issuer, the City of Gulf Breeze, Florida, and U.S. Bank National Association, as successor trustee, issued in the aggregate principal amount of \$19,355,000 and currently outstanding in the aggregate principal amount of \$9,980,000 (the "Refunded Obligation").

3. The Issuer has full power and authority to issue the 2012 Note, to adopt the Resolution, to pledge the Pledged Revenues (as defined in the Resolution) to the repayment of the 2012 Note, to execute and deliver, and perform its obligations under the 2012 Note and the Resolution. There are no obligations of the Issuer outstanding which are secured by a lien upon or a pledge of the Pledged Revenues except for the Refunded Obligation, which is being refunded with the proceeds of the 2012 Note, and the State Revolving Fund Indebtedness currently outstanding which is junior and subordinate as to lien and source of security for payment from the Pledged Revenues to the 2012 Note.

4. By official action of the City Council of the Issuer, the Issuer has duly adopted the Resolution, has duly authorized and approved the execution and delivery of the 2012 Note and the consummation by it of all other transactions contemplated by the Resolution and the 2012 Note.

5. The execution and delivery of the 2012 Note and the adoption of the Resolution by the Issuer and compliance with the provisions therein, does not and will not, to the best of our knowledge, conflict with or constitute a breach of or default under any agreement or other instrument to which the Issuer is a party, or any court order or consent decree to which the Issuer is subject, or any law or administrative regulation to which the Issuer is subject.

6. The Resolution is in full force and effect and has not been amended, modified or rescinded since the date of its adoption. The Resolution is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms.

7. No authorization, approval, consent, or other order of the State of Florida or any other governmental authority or agency within the State of Florida which would constitute a condition precedent to or the absence of which would materially adversely affect the ability of the Issuer to establish, levy and collect the Pledged Revenues, to operate its Utility System or to perform its obligations under the 2012 Note or the Resolution, is required.

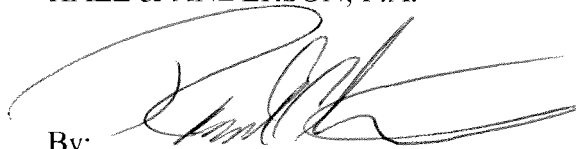
Mayor and City Councilmembers  
TD Bank, N.A.  
McGuire Woods LLP  
June 1, 2012  
Page Three

8. To the best of our knowledge, the Issuer is not in breach of or default under any applicable law or administrative regulation of the State of Florida or the United States of America that would materially impair the performance of its obligations under the 2012 Note or the Act, or the execution and delivery of the 2012 Note, and compliance with all the provisions thereof under the circumstances contemplated thereby, does not and will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any agreement or other instrument to which the Issuer is a party or by which it is bound, and does not and will not constitute a violation of any existing law, regulation, court order or consent decree to which the Issuer is subject.

9. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or to the best of our knowledge, threatened against the Issuer in any way (i) attempting to restrain or enjoin the authorization, issuance, sale, execution, registration or delivery of the 2012 Note, contesting or affecting the legal existence of the Issuer, the covenants in the 2012 Note or the Resolution, or contesting or otherwise affecting the authority for, the validity of, or any proceedings in connection with the authorization, issuance, sale, execution, registration or delivery of the 2012 Note or the application of the proceeds of the 2012 Note; (ii) attempting to restrain, or enjoin or contest the use of the proceeds of the 2012 Note or the collection and appropriation of any Pledged Revenues or other moneys or security provided for the payment of the 2012 Note or powers of the Issuer; (iii) affecting the title of its officers to their respective offices or contesting or affecting the validity or enforceability of the 2012 Note or the Resolution or contesting the powers of the Issuer or its authority to adopt the Resolution; or (iv) in any way affecting the collection by the Issuer of the Pledged Revenues or the pledging thereof to the payment of the 2012 Note; or (v) wherein an unfavorable decision, ruling, or finding would have a materially adverse affect upon the validity of the 2012 Note, the Resolution, or the transactions contemplated therein.

Respectfully submitted,

HALL & ANDERSON, P.A.

By:   
Robert C. Anderson

RCA/dlc



June 1, 2012

Mayor and City Council Members  
City of Venice, Florida

TD Bank, N.A.  
Winter Park, Florida

**\$9,980,000**  
**CITY OF VENICE, FLORIDA**  
**UTILITY SYSTEM REFUNDING REVENUE NOTE**  
**SERIES 2012**

Dear Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the City of Venice, Florida (the “Issuer”) of its \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the “2012 Note”) issued pursuant to the Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the “Act”), and pursuant to Resolution No. 2012-05 of the Issuer, duly adopted on May 22, 2012 (the “Resolution”). We refer you to the 2012 Note and the Resolution for a description of the purposes for which the 2012 Note is issued and the security therefor. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

In connection with our opinion, we have examined the Constitution of the State of Florida (the “State”) and the applicable laws of both the United States of America and the State, including without limitation the Internal Revenue Code of 1986, as amended (the “Code”), the Act, and such certified proceedings and other documents as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon (a) representations of and compliance with covenants by the Issuer contained in the Resolution and certain other documents and certificates delivered on this date and (b) certificates and representations of public officials and representatives of the Issuer, certain of its affiliates and other parties, including, without limitation, representations, covenants and certifications as to the use of the proceeds of the 2012 Note and other factual matters which are relevant to the opinions expressed below, in each case without undertaking any independent verification. We have assumed that all signatures on documents, certificates and instruments examined by us are genuine, all

documents, certificates and instruments submitted to us as originals are authentic, and all documents, certificates and instruments submitted to us as copies conform to the originals. With respect to the opinions expressed below, we have relied upon the opinion of Anderson & Hall, P.A., counsel to the Issuer, of even date herewith, as to matters set forth therein. We have further relied on a consent letter dated April 20, 2012, from the Florida Department of Environmental Protection consenting to the issuance of the 2012 Note as a senior obligation to the Issuer's outstanding State Revolving Fund Indebtedness, as defined in the Resolution. We have assumed that the proceeds of the 2012 Note will be applied in accordance with and for the purposes described in the Resolution and the Issuer's Non-Arbitrage and Tax Certificate of even date herewith.

The description of the 2012 Note in this opinion and other statements concerning the terms and conditions of the issuance of the 2012 Note do not purport to set forth all of the terms and conditions of the 2012 Note or of any other document relating to the issuance of the 2012 Note but are intended only to identify the 2012 Note and to describe briefly certain features thereof.

The opinions set forth below are expressly limited to, and we opine only with respect to, the laws of the State and the federal income tax laws of the United States of America.

As of the date hereof and based on our examination of the law and proceedings in this matter we are of the opinion that:

1. The Issuer is a municipal corporation of the State, with the power to adopt the Resolution and to perform the agreements and obligations on its part contained therein and to issue the 2012 Note.
2. The Resolution has been duly adopted by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable against the Issuer.
3. The Resolution creates a valid pledge of the Pledged Revenues provided therefor in the Resolution, under the conditions, limitations, and restrictions set forth in the Resolution.
4. The 2012 Note has been duly authorized, executed and delivered by the Issuer and is a valid and binding limited and special obligation of the Issuer, payable from and secured solely by the Pledged Revenues provided therefor in the Resolution.
5. The 2012 Note and the interest thereon is not subject to taxation under the laws of the State, except as to estate taxes and any taxes imposed by Chapter 220, Florida Statutes, on interest, income and profits on debt obligations owned by corporations.
6. Under existing laws, regulations and court decisions, interest on the 2012 Note is excludable from gross income for federal income tax purposes under Section 103 of the Code and is not an item of tax preference for purposes of the federal alternative minimum tax imposed

on individuals and corporations. However, for purposes of the alternative minimum tax imposed on corporations (as defined for federal income tax purposes) under Section 56 of the Code, interest on the 2012 Note must be included in computing adjusted current earnings and may be subject to the computation of the branch profits tax on foreign corporations imposed by Section 884 of the Code.

The opinion set forth in paragraph 6 above is subject to the condition that the Issuer comply with all requirements of the Code that must be satisfied subsequent to the issuance of the 2012 Note in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Issuer has covenanted to comply with such requirements. Failure to comply with certain of such requirements may cause the interest on the 2012 Note to be included in gross income for federal income tax purposes to be retroactive to the date of issuance of the 2012 Note. We express no opinion regarding other federal or state tax consequences arising with respect to the 2012 Note, and taxpayers should consult their personal tax advisors.

It is to be understood that the rights of the registered owner of the 2012 Note and the enforceability of the Resolution and the 2012 Note may be subject to the exercise of judicial discretion in accordance with general principles of equity, to the valid exercise of the sovereign police powers of the State, and the constitutional powers of the United States of America and to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar statutes, laws, rules, regulations or other laws affecting the enforcement of creditors' rights and remedies generally heretofore or hereafter enacted.

Our opinions expressed herein are predicated upon present law, facts and circumstances, and we assume no affirmative obligation to update the opinions expressed herein if such laws, facts or circumstances change after the date hereof. The legal opinions set forth herein are intended for the information solely of the addressees hereof and solely for the purpose of the contemplated transactions described herein, and are not to be relied upon by any other person, or entity, or for any other purpose, or quoted as a whole or in part, or otherwise referred to, in any document, or to be filed with any government or other administrative agency, or other person or entity for any other purpose without our prior written consent.

Respectfully submitted,

*McGuire Woods, LLP*



June 1, 2012

Mayor and City Council Members  
City of Venice, Florida

TD Bank, N.A.  
Winter Park, Florida

**\$9,980,000**  
**CITY OF VENICE, FLORIDA**  
**UTILITY SYSTEM REFUNDING REVENUE NOTE**  
**SERIES 2012**

Ladies and Gentlemen:

On the date hereof we rendered to the City of Venice, Florida (the “Issuer”), an opinion approving the validity of the above-mentioned Note. In that connection, we have examined the law and such certified proceedings of the Issuer and other proofs as we deem necessary to render this opinion, including the Resolution referred to in our approving opinion (the “Resolution”) and Ordinance 1181-85 duly enacted by the Issuer on November 12, 1985, as heretofore amended and supplemented (the “Ordinance”). Capitalized terms not defined herein shall have the meanings assigned them in the approving opinion or the Resolution.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the above-mentioned documents, and in the certified proceedings and other certifications and representations of officials and representatives of the Issuer, without undertaking to verify the same by independent investigations. We have also relied upon the Certificate of the Program Trustee dated as of the date hereof, as to the matters referred to therein.

Based on the foregoing, in our opinion the Refunded Obligation has been legally defeased and is no longer outstanding for purposes of the Ordinance.

Respectfully submitted,

*McGuireWoods, LLP*



June 1, 2012

U.S. Bank National Association  
Orlando, Florida

Mayor  
City of Gulf Breeze, Florida

Financial Guaranty Insurance Company  
New York City, New York

Mayor  
City of Venice, Florida

**\$19,355,000**  
**CITY OF GULF BREEZE, FLORIDA**  
**LOCAL GOVERNMENT LOAN PROGRAM**  
**FLOATING RATE DEMAND REVENUE BONDS, SERIES 1985E**  
**DATED JUNE 1, 2001**

Dear Ladies and Gentlemen:

We have acted as bond counsel to the City of Gulf Breeze, Florida (the “Sponsor”) in connection with a loan from the Sponsor to the City of Venice, Florida (the “Governmental Unit”) pursuant to a i) Loan Agreement dated as of June 1, 2001 (the “Loan Agreement”) by and among the Governmental Unit, the Sponsor and U.S. Bank National Association, successor to SunTrust Bank formerly known as SunTrust Bank, National Association, as trustee (the “Trustee”) under that certain Trust Indenture dated as of December 1, 1985, as amended and restated as of July 1, 1986, as heretofore amended and supplemented (collectively, the “Indenture”) and ii) Governmental Unit Note dated June 1, 2012, from the Governmental Unit payable to the Trustee as assignee of the Sponsor (the “Governmental Unit Note”). We are advised that the Governmental Unit intends to deposit with the Trustee on the date hereof an amount equal to the amount specified in Section 4.04(b) of the Indenture (the “Deposit”) required to prepay the above-referenced Governmental Unit Note and the Loan under the Loan Agreement in full on the date hereof (the “Prepayment”). We have examined the law and such proofs as we deem necessary to render this opinion. All capitalized terms used in this opinion, unless otherwise stated herein, shall have the meaning set forth in the Loan Agreement.

As to questions of fact material to our opinion, we have relied upon terms of, and the representations of officials and representatives of the Governmental Unit and upon other certifications of public officials furnished to us (collectively, the “2012 Documents”), all without

undertaking to verify the same by independent investigation. For purposes of this opinion, we have assumed with your permission that (i) the Loan Agreement is in full force and effect and has not been amended since its date of execution and delivery, (ii) the Indenture is in full force and effect and has not been amended since its date of execution and delivery except by the multiple supplemental and amendatory indentures that have previously been furnished to us in fully executed form, (iii) the Governmental Unit has duly issued the \$9,980,000 principal amount of its Utility System Refunding Revenue Note, Series 2012 (the "Venice 2012 Note"), and the Venice 2012 Note constitutes the valid, legal and binding obligation of the Governmental Unit, and (iv) such Prepayment will be made from the proceeds of the Venice 2012 Note, effective on the date hereof.

The opinions set forth below are expressly limited to, and we opine only with respect to the United States bankruptcy laws.

You have inquired whether the transfer of the proceeds of the Venice 2012 Note by the Governmental Unit to the Trustee, together with other legally available monies of the Governmental Unit, to pay the Governmental Unit Note (the "Transfer") would be avoidable under Section 547 of the United States Bankruptcy Code, 11 U.S.C. Section 547, in a case under Chapter 9 of the Bankruptcy Code in which the Governmental Unit were the debtor.

We have investigated such questions of law for the purpose of rendering this opinion as we have deemed necessary. We are opining herein only as to the effect on the subject transaction of United States Federal bankruptcy law.

In order to avoid a transfer as preferential under the Bankruptcy Code a trustee or debtor-in-possession in bankruptcy must establish that the transfer of an interest of the debtor in property was:

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
  - (A) the case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b).



Section 926(b) of the Bankruptcy Code provides for an exception to avoidance under section 547 of the Bankruptcy Code for certain transfers made by a debtor in bankruptcy under Chapter 9 of the Bankruptcy Code. Section 926(b) states that:

A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

11 U.S.C. § 926(b).

On the basis of the foregoing, and in reliance thereon, and subject to the limitations, qualifications, assumptions and exceptions set forth herein, we are of the opinion that the Transfer may not be avoided under Section 547 of the Bankruptcy Code in a case under Chapter 9 of the Bankruptcy Code in which the Governmental Unit were the debtor.

It is our and your understanding that the opinion expressed herein is not a prediction or assurance as to what a court should actually hold, but is an opinion as to the decision a court would reach if the issue was to be properly presented to it and the court were to follow existing precedent as to applicable legal and equitable principles.

Our opinions expressed herein are predicated upon present law, facts and circumstances, and we assume no affirmative obligation to update the opinions expressed herein if such laws, facts or circumstances change after the date hereof. The legal opinions set forth herein are intended for the information solely of the addressees hereof and solely for the purpose of the contemplated transactions described herein, and are not to be relied upon by any other person, or entity, or for any other purpose, or quoted as a whole or in part, or otherwise referred to, in any document, or to be filed with any government or other administrative agency, or other person or entity for any other purpose without our prior written consent.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "McGraw-Hill LLP", written in dark ink.

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name City of Venice, Florida		2 Issuer's employer identification number (EIN) 59-8000443	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a 941-486-2628	
4 Number and street (or P.O. box if mail is not delivered to street address) 401 West Venice Avenue	Room/suite	5 Report number (For IRS Use Only) 3	
6 City, town, or post office, state, and ZIP code Venice, Florida 34285		7 Date of issue June 1, 2012	
8 Name of issue Utility System Refunding Revenue Note, Series 2012		9 CUSIP number None	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Jeff Snyder, Finance Director		10b Telephone number of officer or other employee shown on 10a 941-486-2628	

**Part II Type of Issue (enter the issue price). See the instructions and attach schedule.**

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17	\$9,980,000	00
18 Other. Describe ►	18		
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>			
If obligations are BANs, check only box 19b <input type="checkbox"/>			
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>			

**Part III Description of Obligations. Complete for the entire issue for which this form is being filed.**

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	12/01/2015	\$ 9,980,000	\$ 9,980,000	2.0120 years	1.1300 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22	0	00
23 Issue price of entire issue (enter amount from line 21, column (b))	23	\$9,980,000	00
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	\$0	00
25 Proceeds used for credit enhancement	25	0	00
26 Proceeds allocated to reasonably required reserve or replacement fund	26	0	00
27 Proceeds used to currently refund prior issues	27	9,980,000	00
28 Proceeds used to advance refund prior issues	28	0	00
29 Total (add lines 24 through 28)	29	9,980,000	00
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	0	00

**Part V Description of Refunded Bonds. Complete this part only for refunding bonds.**

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	2.0606	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	N/A	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	07/02/12	
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	June 1, 2001	

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . . **35** 0 00
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . . **36a** 0 00
- b** Enter the final maturity date of the GIC ▶ \_\_\_\_\_
- c** Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . . **37** 0 00
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the following information:
- b** Enter the date of the master pool obligation ▶ \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
- d** Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(II) (small issuer exception), check box . . . . . ▶ ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶ ☐
- 41a** If the issuer has identified a hedge, check here ☐ and enter the following information:
- b** Name of hedge provider ▶ \_\_\_\_\_
- c** Type of hedge ▶ \_\_\_\_\_
- d** Term of hedge ▶ \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ▶ ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ▶ ☒
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ▶ ☒
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ☐ and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
- b** Enter the date the official intent was adopted ▶ \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative John W. Holic Date 06/01/2012 John Holic, Mayor  
Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name Richard I. Lott	Preparer's signature <u>Richard I. Lott</u>	Date 6/1/2012	Check <input type="checkbox"/> if self-employed	PTIN P01239469
Firm's name ▶ McGuireWoods LLP			Firm's EIN ▶ 54-0505957	
Firm's address ▶ 50 N. Laura St, Suite 3300, Jacksonville, FL 32202			Phone no. 904-798-2671	



# CITY OF VENICE

401 W. Venice Avenue Venice, FL 34285

(941) 486-2626 Fax (941) 480-3031  
Suncom: 516-4382

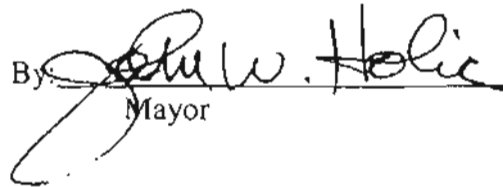
June 1, 2012  
(Certified Mail)

Internal Revenue Service Center  
Ogden, Utah 84201

Dear Sirs:

On behalf of the City of Venice, Florida, pursuant to Section 149 of the Internal Revenue Code of 1986, as amended, I enclose for filing an executed Form 8038-G relating to the \$9,980,000 Utility System Refunding Revenue Note, Series 2012, being issued this date.

Sincerely,

By:   
Mayor

Enclosure

7010 2780 0000 0701 9172

<b>U.S. Postal Service</b>	
<b>CERTIFIED MAIL RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 50.35
Certified Fee	\$2.95
Return Receipt Fee (Endorsement Required)	\$2.35
Restricted Delivery Fee (Endorsement Required)	\$0.00
<b>Total Postage &amp; Fees</b>	<b>\$ 55.65</b>

Postmark: 03 JUN 2012  
USPS 325026998  
2060212-0003

Sent To: **Internal Revenue Service**  
 Street, Apt. No., or PO Box No.:  
 City, State, ZIP+4: **Ogden, UT 84201**

PS Form 3800, August 2006 See Reverse for Instructions

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No          If YES, enter delivery address below:</p> <p>3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
1. Article Addressed to:  <b>Internal Revenue Service</b> <b>Ogden, UT 84201</b>  <b>2060212/0003</b>		JUN 05 2012 OGDEN, UT	
2. Article Number: (Transfer from service label)		7010 2780 0000 0701 9172	

**STATE OF FLORIDA - DIVISION OF BOND FINANCE LOCAL BOND MONITORING**

[Home](#)

[Account](#)

[Logout](#)

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**Notice of Sale Status**

Notice of Sale submission successful.

Submit Date: 5/16/2012

Bond Issue Name: \$9,980,000 City of Venice, Florida Utility System Refunding Revenue Note, Series 2012

Sale Date: 5/22/2012

Closing Date: 6/1/2012

---

[Print this page](#)

## NAME OF GOVERNMENTAL UNIT

City of Venice, Florida

## MAILING ADDRESS OF GOVERNMENTAL UNIT OR ITS MANAGER

Address(1) 401 West Venice Avenue

Address(2)

City Venice

State FL

Zip 34285

## COUNT(IES) IN WHICH GOVERNMENTAL UNIT HAS JURISDICTION

Sarasota

## TYPE OF ISSUER

City

IS THE ISSUER A COMMUNITY DEVELOPMENT DISTRICT? ☐

ISSUE NAME	AMOUNT	INTEREST CALCULATION	YIELD
Utility System Refunding Revenue Note, Series 2012	\$9,980,000.00	Arbi	1.13

## AMOUNT AUTHORIZED

\$9,980,000.00

## DATED DATE (MM/DD/YYYY)

6/1/2012

## SALE DATE (MM/DD/YYYY)

5/22/2012

## DELIVERY DATE (MM/DD/YYYY)

6/1/2012

## LEGAL AUTHORITY FOR ISSUANCE

Ch. 166, F.S.

## TYPE OF ISSUE

Bank Loan/Line of Credit

IS THIS A PRIVATE ACTIVITY BOND (PAB)? ☐Did This Issue Receive a PAB Allocation? ☐

Amount of Allocation

\$0.00

## SPECIFIC REVENUES(S) PLEDGED

Primary

Other

Secondary

Other

Net Revenues of Utility System

## PURPOSE(S) OF THE ISSUE

Primary

## Refunding

Secondary

Other

IS THIS A REFUNDING ISSUE? ☒

ISSUE NAME	DATE	ORIGINAL PAR VALUE	PAR VALUE REFUNDED
Governmental Unit Note, Series 2001	6/1/2001	\$19,355,000.00	\$9,980,000.00

REFUNDED DEBT HAS BEEN

Defeased

DID THE REFUNDING ISSUE CONTAIN NEW MONEY? ☐

APPROXIMATELY WHAT PERCENTAGE OF PROCEEDS IS NEW MONEY?

TYPE OF SALE

Negotiated Private Placement

INSURANCE/ENHANCEMENTS

No Credit Enhancement

RATING(S)

Moody's

NR

S &amp; P

NR

Fitch

NR

Other

DEBT SERVICE SCHEDULE PROVIDED BY

E-mail

OPTIONAL REDEMPTION PROVISIONS PROVIDED BY

E-mail

PROVIDE THE NAME AND ADDRESS OF THE SENIOR MANAGING UNDERWRITER OR SOLE PURCHASER

Underwriter TD Bank, N.A.

Address(1) 1560 North Orange Avenue

Address(2) Suite 300

City Winter Park

State FL

Zip 32789

CO-Underwriter None

Address(1)

Address(2)

City

State -



Zip

**PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY ATTORNEY OR FINANCIAL CONSULTANT WHO ADVISED THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE.**

**Bond Counsel** McGuireWoods LLP

Address(1) 50 North Laura Street

Address(2) Suite 3300

City Jacksonville

State FL

Zip 32202

**CO-Bond Counsel** None

Address(1)

Address(2)

City

State -

Zip

**Financial Advisor/Consultant** First Southwest Co.

Address(1) 450 South Orange Avenue

Address(2) Suite 460

City Orlando

State FL

Zip 32801

**CO-Financial Advisor/Consultant** None

Address(1)

Address(2)

City

State -

Zip

**Other Professionals** Robert C. Anderson (Issuer's Counsel)

Address(1) 1314 East Venice Avenue

Address(2) Suite 3

City Venice

State FL

Zip 34292

**PAYING AGENT**

Issuer

**REGISTRAR**

Issuer

**BF2004-A AND BF2004-B**

NOTE: The following items are required to be completed in full for all bond issues except those sold pursuant to Section 154 Part III, Sections 159 Parts II, III, or V; or Section 243 Part I, Florida Statutes.

**HAS ANY FEE, BONUS, OR GRATUITY BEEN PAID BY ANY UNDERWRITER OR FINANCIAL CONSULTANT, IN CONNECTION WITH THE BOND ISSUE, TO ANY PERSON NOT REGULARLY EMPLOYED OR ENGAGED BY SUCH UNDERWRITER OR CONSULTANT? IF YES, PLEASE PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO EACH SUCH UNDERWRITER OR CONSULTANT.**

**HAVE ANY OTHER FEES BEEN PAID BY THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE, INCLUDING ANY FEE PAID TO ATTORNEYS OF FINANCIAL CONSULTANTS? IF YES, PLEASE PROVIDE THE TOTAL FEES PAID TO APPLICABLE PARTICIPANTS.**

Total Bond Counsel Fees Paid

**\$20,500.00**

Total Financial Advisor Fees Paid

**\$17,500.00**

Other Fees Paid

COMPANY NAME	FEE PAID	SERVICE PROVIDED OR FUNCTION SERVED
GreenspoonMarder	\$5,000.00	Lenders Counsel
McGuireWoods LLP	\$7,500.00	Bankruptcy Counsel

**FILING OF THIS FORM HAS BEEN AUTHORIZED BY THE OFFICIAL OF THE ISSUER IDENTIFIED BELOW**

Name

John Holic, Mayor

Title

Governmental Officer primarily responsible for coordinating  
issuance of the bonds**FEES CHARGED BY UNDERWRITER**

Management Fee (Per Thousand Par Value)

0

Private Placement Fee

\$0.00

**UNDERWRITER'S EXPECTED GROSS SPREAD (PER THOUSAND PAR VALUE)**

0

**FOR ADDITIONAL INFORMATION, THE DIVISION OF BOND FINANCE SHOULD CONTACT:**

Name Richard I. Lott  
 Title Bond Counsel  
 Phone 9047982671  
 Company McGuireWoods LLP  
 Address(1) 50 North Laura Street  
 Address(2) Suite 3300  
 City Jacksonville  
 State FL  
 Zip 32202

**INFORMATION RELATING TO PARTY COMPLETING THIS FORM (IF DIFFERENT FROM ABOVE)**

Name  
 Title  
 Phone  
 Company  
 Address(1)  
 Address(2)  
 City  
 State -  
 Zip

In order to better serve local governments, the Division of Bond Finance will remind issuers as their deadlines approach for filing continuing disclosure information required by SEC Rule 15c2-12, based on the following information:

**IF THE ISSUER IS REQUIRED TO PROVIDE CONTINUING DISCLOSURE INFORMATION IN ACCORDANCE WITH SEC RULE 15c2-12, DO YOU WANT THE DIVISION OF BOND FINANCE TO REMIND YOU OF YOUR FILING**

**DEADLINE?** **ON WHAT DATE IS THE CONTINUING DISCLOSURE INFORMATION REQUIRED TO BE FILED? (MM/DD)****PROVIDE THE FOLLOWING INFORMATION REGARDING THE PERSON(S) RESPONSIBLE FOR FILING CONTINUING DISCLOSURE INFORMATION REQUIRED BY SEC RULE 15c2-12 AND THE CONTINUING DISCLOSURE AGREEMENT (INCLUDING OTHER OBLIGATED PARTIES, IF APPROPRIATE).**

Name

Title

Phone

Company

Address(1)

Address(2)

City

State -

Zip

Fax

Email

## CERTIFICATE OF COMPLIANCE WITH MAXIMUM INTEREST RATE

June 1, 2012

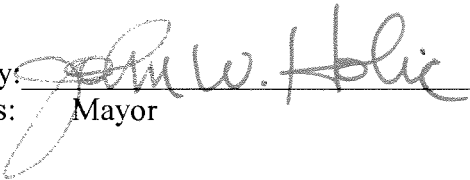
The undersigned official of the City of Venice, Florida (the "Issuer"), **DOES HEREBY CERTIFY**, pursuant to Section 215.84, Florida Statutes, as amended (the "Statute"), as to the computation of the interest rate on the Issuer's \$9,980,000 Utility System Refunding Revenue Note, Series 2012, dated as of June 1, 2012 (the "2012 Note"), as follows:

1. The undersigned is authorized to execute this Certificate on behalf of the Issuer.
2. The Statute provides that government bonds may bear interest at a rate not to exceed an average net interest cost rate which shall be computed by adding 300 basis points to *The Bond Buyer* "20 Bond Index" published immediately preceding the first day of the calendar month in which such bonds are sold.
3. The sale of the 2012 Note, in the amount of \$9,980,000, bearing an initial interest rate of 1.13% was awarded on May 22, 2012, to TD Bank, N.A., Winter Park, Florida. The method of computing the interest rate on the 2012 Note is not expected to change over the life of the 2012 Note. Accordingly, the interest rate for the 2012 Note complies with the Statute, based upon *The Bond Buyer* "20 Bond Index" of 3.86% for April 26, 2012.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate on behalf of the Issuer on the day and year first written above.

**CITY OF VENICE, FLORIDA**

By:   
Its: Mayor

*[Signature Page to Certificate of Compliance with Maximum Interest Rate]*

## NEGOTIATED SALE DISCLOSURE STATEMENT

June 1, 2012

TD Bank, N.A. (the "Lender"), the purchaser on this date of the \$9,980,000 Utility System Refunding Revenue Note, Series 2012, dated as of the date hereof (the "2012 Note"), issued by the City of Venice, Florida (the "Issuer"), pursuant to Section 218.385, Florida Statutes, as amended, hereby states as follows:

1. The estimated direct expenses to be incurred by us are as follows:

\$0.00

It should be noted that the Issuer will pay the fees of our counsel, Greenspoon Marder, P.A., in the amount of \$5,000.

2. To the best of our knowledge, information and belief, there are no "finders" as defined in Section 218.386, Florida Statutes, in connection with the issuance of the 2012 Note.

3. The amount of the total fee expected to be realized is \$0.00.

4. There will not be a commitment fee.

5. No fee, bonus or other compensation has been or will be paid by us in connection with the 2012 Note to any person not regularly employed or retained by us in connection with the sale or issuance of the 2012 Note.

6. The address of the Lender is:

TD Bank, N.A.  
1560 North Orange Avenue, Suite 300  
Winter Park, Florida 32789

7. Truth-in-Bonding Statement. The Issuer is proposing to issue the 2012 Note to finance a portion of the cost of refunding all of the remaining amount outstanding of the Issuer's Governmental Unit Note dated as of June 1, 2001, issued pursuant to a Loan Agreement dated as of June 1, 2001, between the Issuer and the City of Gulf Breeze, Florida. The 2012 Note is expected to be repaid over a period of approximately 3.5 years. At the fixed interest rate of 1.13%, subject to adjustment on the dates and in the manner described in the Resolution (as such term is defined in the 2012 Note), the total interest expected to be paid over the life of the 2012 Note will be approximately \$226,904.

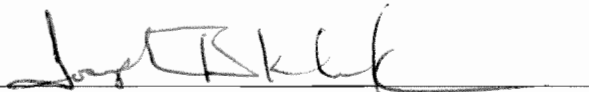
The source of repayment or security for the 2012 Note is the Pledged Revenues (as such term is defined in the Resolution), to the extent and in the manner described therein. Assuming for purposes hereof that the interest rate on the 2012 Note remains constant at 1.13% per annum, authorizing the 2012 Note will result in an estimated average amount of

\$2,916,258.29 of such Pledged Revenues not being available to finance the other services of the Issuer each year for approximately 3.5 years.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this statement on behalf of the Bank on the day and year first written above.

**TD BANK, N.A.**

By:   
Name: Joseph Kabourek  
Title: Senior Lender, Vice President

*[Signature Page to Negotiated Sale Disclosure Statement]*





TD Bank, N.A.,  
1560 North Orange Avenue, Suite 300  
Winter Park, FL 32789  
Tel: 407-622-3544  
Fax: 407-622-8470  
joe.kabourek@td.com

June 1, 2012

Mayor and City Council Members  
City of Venice, Florida  
401 West Venice Avenue  
Venice, Florida 34285

McGuireWoods LLP  
Bank of America Tower  
50 North Laura Street, Suite 3300  
Jacksonville, Florida 32202-3661

To Whom It May Concern:

We certify that the following are true and correct in relation to the purchase by TD Bank N.A. (the “Lender”) of the \$9,980,000 Utility System Refunding Revenue Note, Series 2012 (the “2012 Note”) dated June 1, 2012, and issued by the City of Venice, Florida (the “Issuer”) pursuant to Resolution 2012-05 duly adopted by the Issuer on May 22, 2012 (collectively, the “Resolution”):

1. The Lender is an “institutional accredited investor” within the meaning of Regulation D under the Securities Act of 1933 (the “1933 Act”) and a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the 1933 Act.
2. The Lender is a banking corporation that is engaged as a regular part of its business in making loans.
3. The Lender has made its own inquiry and analysis with respect to the Issuer, the 2012 Note and the security therefor, and other material factors affecting the security for and payment of the 2012 Note.
4. The Lender has received the financial information requested by the Lender from the Issuer in connection with the 2012 Note and has been afforded the opportunity to examine such documents and receive such written information concerning the terms and conditions of the 2012 Note and the financial condition and creditworthiness of the Issuer as the Lender has deemed necessary to receive in connection with determining whether to purchase the 2012 Note.
5. The Lender has not relied upon any representations made by any officials of the Issuer, its agents, employees, counsel or representatives, in reaching its decision to purchase the 2012 Note, other than the certificates, opinions, resolutions, or other

documents executed in relation to the issuance of the 2012 Note, but have relied solely upon the documentation referred to in this and the preceding paragraph.

6. The Lender understands that the loan is evidenced by the 2012 Note, and the 2012 Note is issued in a single denomination equal to the aggregate principal amount of the 2012 Note and may not be transferred except in whole and to a Permitted Lender, as defined in the Resolution.

7. The Lender is acquiring the 2012 Note from its own capital for its own accounts for investment and not with a view to the resale or other distribution of all or any part thereof or any interest therein to others.

8. The Lender acknowledges that it is permitted to transfer the 2012 Note only upon compliance with the requirements of the Resolution and the 2012 Note.

9. The interest rate established for the 2012 Note was established at arms length between the Lender and the Issuer.

10. The Lender further represents, warrants and covenants that:

(i) it is not funding the loan represented by the 2012 Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes;

(ii) it understands that so long as it is not, in the opinion of bond counsel, required by any applicable law, regulation, rating agency standard or rule of an applicable regulatory agency, the Issuer does not intend to make any filing with respect to the loan represented by the 2012 Note with the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board's continuing disclosure site;

(iii) it understands that no CUSIP will be obtained with respect thereto;

(iv) it understands that the 2012 Note is not a municipal security, that it will not treat the 2012 Note as a municipal security for purposes of the securities laws, that it will characterize the 2012 Note as a loan and not as a municipal security for accounting purposes and will take no action inconsistent with such characterization; and

(v) the 2012 Note carries no rating from any credit rating agency.

**TD BANK, N.A.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

  
VICE PRESIDENT

## **RECEIPT FOR 2012 NOTE**

June 1, 2012

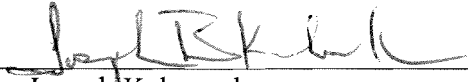
The undersigned does **HEREBY ACKNOWLEDGE RECEIPT** this date of the \$9,980,000 City of Venice, Florida Utility System Refunding Revenue Note, Series 2012 (the “2012 Note”), dated June 1, 2012, issued pursuant to Resolution No. 2012-05 adopted by the City of Venice, Florida (the “City”) on May 22, 2012 (the “Resolution”) and as more particularly described on Schedule “I” attached hereto.

The undersigned **HEREBY CERTIFIES** that it has paid to the City in immediately available funds, the principal amount of \$9,980,000 representing the purchase price of the 2012 Note, which purchase price has been wired to U.S. Bank National Association, as the Program Trustee, as defined in the Resolution.

*[Signature Page Follows]*

Dated the day and year first above written.

**TD BANK, N.A.**  
**as Purchaser**

By:   
Name: Joseph Kabourek  
Title: Senior Lender, Vice President

*[Signature Page to Receipt for 2012 Note]*

## **SCHEDULE "I"**

### **DESCRIPTION OF 2012 NOTE**

**CITY OF VENICE, FLORIDA UTILITY SYSTEM REFUNDING REVENUE NOTE, SERIES 2012**, dated June 1, 2012; in the form of one fully registered Note in the denomination of \$9,980,000; bearing interest from the date thereof (payable on the first day of each December and June commencing on December 1, 2012, at an interest rate of 1.13% (subject to adjustment as described therein), and maturing in installments on the dates and in the amounts set forth below, with all remaining principal and interest due on December 1, 2015:

<b>Payment Date (December 1)</b>	<b>Principal Amount</b>
2012	\$2,460,000
2013	2,480,000
2014	2,510,000
2015	2,530,000
Total	<u>\$9,980,000</u>

## **CERTIFICATE OF PROGRAM TRUSTEE**

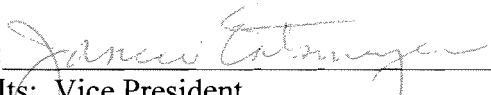
June 1, 2012

The undersigned, as an authorized signatory of U.S. Bank National Association, as successor Trustee, in connection with the City of Gulf Breeze, Florida ("Gulf Breeze") Floating Rate Demand Revenue Bonds Local Government Loan Program, Series 1985E, remarketed by Gulf Breeze in connection with the funding of a loan to the City of Venice, Florida ("Venice"), pursuant to a Loan Agreement between Venice and Gulf Breeze dated as of June 1, 2001, pursuant to which Venice issued its Governmental Unit Note dated as of June 1, 2001 (the "Refunded Obligation"), hereby acknowledges that the deposit by Venice on this date of \$10,124,268.38, is sufficient to fully defease the Refunded Obligation as of the date hereof.

*[Signature Page Follows]*

Dated as of the day first above written.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Program Trustee

By:   
Its: Vice President

*[Signature Page to Certificate of Program Bonds Trustee]*

## **ISSUER'S CERTIFICATE AS TO ISSUANCE EXPENSES**

June 1, 2012

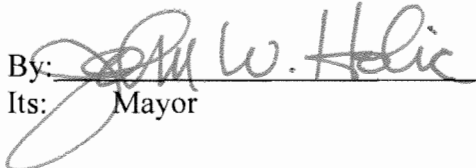
I, the undersigned Mayor of the City of Venice, Florida (the "Issuer"), in connection with the issuance of \$9,980,000 Utility System Refunding Revenue Note, Series 2012, by the Issuer, do hereby authorize payment of the issuance expenses set forth in Schedule "I" in the amounts not exceeding the sums set forth in said Schedule "I."

*[Signature Page Follows]*



Dated the day and year first written above.

**CITY OF VENICE, FLORIDA**

By:   
Its: Mayor

*[Signature Page to Issuer's Certificate as to Issuance Expenses]*

## **SCHEDULE "I"**

### **COSTS OF ISSUANCE**

<b><u>Services</u></b>	<b><u>Provider</u></b>	<b><u>Amount</u></b>
Bond Counsel	McGuireWoods LLP	\$20,500.00
Bankruptcy Counsel	McGuireWoods LLP	7,500.00
Lender's Counsel	GreenspoonMarder	5,000.00
Financial Advisor	FirstSouthwest	17,500.00
Miscellaneous	N/A	1,000.00
Total		<u>\$51,500.00</u>



# Florida Department of Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

April 20, 2012

Mr. Richard I. Lott  
McGuire Woods, LLP  
25 West Cedar Street, Suite 500  
Pensacola, Florida 32502

Re: WW66115P & WW66115L - Venice  
State Revolving Fund Loans

Dear Mr. Lott:

Thank you for your March 30, 2012 e-mail concerning the City of Venice's refunding of Utility System Refunding Revenue Note, Series 2012, not to exceed \$9,980,000, for the refunding of Water and Sewer Revenue Bonds, Series 2001. As a condition of the 2012 refunding note being issued, Ordinance 1181-85 will be replaced with Resolution 2012-05.

The revenue and debt service information provided by you indicates that the net revenues of the City's water and sewer system will satisfy the coverage requirements of State Revolving Fund Loan Agreement WW66115P and WW66115L for the refunding of Water and Sewer Revenue Bonds, Series 2001. In accordance with Section 7.02 of the Loan Agreement, the Department gives its consent for the issuance of the Series 2012 Revenue Note as senior obligations to Loans WW66115P and WW66115L, as well as the replacement of Ordinance 1181-85 with Resolution 2012-05.

If we may be of further assistance, please call Susan Taylor at (850) 245-8358.

Sincerely,

Robert E. Holmden, P.E., Chief  
Bureau of Water Facilities Funding

RH/st

cc: Joel Tindal - First Southwest  
Jeff Snyder - City of Venice

450 South Orange Ave,  
Suite 460  
Orlando, FL 32801

407.426.9611 Direct  
407.426.7835 Fax

**Joel G. Tindal**  
Vice President

joel.tindal@firstsw.com

**Date:** June 1, 2012

**To:** Distribution List

**Subject:** City of Venice, Florida  
\$9,980,000.00 Utility System Refunding Revenue Note, Series 2012

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This memorandum will outline information for the closing of the above referenced bond issue and summarizes the money transfers necessary for closing. Unless otherwise noted, all funds will be delivered in Federal Funds.

**I. SCHEDULE**

Pre-Closing

**Date:** Thursday, May 31, 2012  
**Time:** 12 PM EDT  
**Place:** Bond Counsel will coordinate pre-closing via Mail  
**Attn:** Richard Lott (904) 798-2671

Closing

**Date:** Friday, June 1, 2012  
**Time:** 11:00 AM EDT  
**Place:** via phone/email

**II. DELIVERY AND AUTHENTICATION OF THE SERIES 2012 NOTE**

Bond Counsel will prepare one note for \$9,980,000.00. The Utility System Refunding Revenue Note, Series 2012 (the "Series 2012 Note") will mature on December 1, 2015 and will be registered in the name of TD Bank, N.A. ("TD Bank"). The Series 2012 Note shall bear an interest rate of 1.13% per annum.

### III. SETTLEMENTS FROM TD BANK

The Note Proceeds transfer from TD Bank is as follows:

	<b>Total</b>
Par Amount	\$ 9,980,000.00
<b>Total Transfer Amount</b>	<b>\$ 9,980,000.00</b>

The Note Proceeds will be applied as follows:

	<b>Total</b>
Prepayment of 2001 Governmental Unit Note	\$ 9,980,000.00
<b>Total Transfer Amount</b>	<b>\$ 9,980,000.00</b>

### IV. SETTLEMENTS FROM THE CITY OF VENICE

The total transfer amount from the City is as follows:

	<b>Total</b>
Prepayment of 2001 Governmental Unit Note	
Accrued Interest	\$ 42,721.88
Premium due for Prepayment	99,800.00
Accrued Trustee / Paying Agent Fees	1,746.50
<b>Total Transfer Amount</b>	<b>\$ 144,268.38</b>

*In addition to the above transfer by the City for the prepayment of the 2001 Governmental Unit Note, the City will provide for payment of the regularly scheduled interest payment due June 1, 2012 (in the amount of \$248,062.50) to the Gulf Breeze Trustee prior to closing of the Series 2012 Note.*

### V. TRANSFER OF SERIES 2012 NOTE PROCEEDS

On June 1, 2012 and after all bond documents have been executed, TD Bank will transfer funds consisting of one (1) Fed Fund wire totaling \$9,980,000.00 for the prepayment of the City's outstanding loan from the City of Gulf Breeze, Florida Local Governmental Loan Program, Series 1985E ("2001 Governmental Unit Note").

Wire instructions are as follows:

**1. Transfer of Funds from TD Bank for the prepayment of the 2001 Governmental Unit Note**

<b>Amount</b>	<b>\$9,980,000.00</b>
To:	U.S. Bank National Association 777 E. Wisconsin Avenue Milwaukee, Wisconsin 53202-5300
ABA Routing No.:	091000022
BNF:	U.S. Bank CT WIRE CLRG
BNF: Account No:	180121167365
Ref:	Gulf Breeze 1985E City of Venice 6743000
Attn:	Vicki Dominguez, (651) 495-3750

**VI. TRANSFER OF THE CITY'S CONTRIBUTION**

On or prior to the morning of Friday, June 1, 2012, the City will wire transfer funds consisting of one (1) Fed Funds wire totaling \$144,268.38 for the prepayment of the 2001 Governmental Unit Note.

Wire instructions are as follows:

**1. Transfer of Funds from the City of Venice for the prepayment of the 2001 Governmental Unit Note**

<b>Amount</b>	<b>\$144,268.38</b>
To:	U.S. Bank National Association 777 E. Wisconsin Avenue Milwaukee, Wisconsin 53202-5300
ABA Routing No.:	091000022
BNF:	U.S. Bank CT WIRE CLRG
BNF: Account No:	180121167365
Ref:	Gulf Breeze 1985E City of Venice 6743000
Attn:	Vicki Dominguez, (651) 495-3750

**VII. RECEIPT OF FUNDS AND CLOSING**

Upon confirmation of the receipt of the above wire transfers, execution, and delivery of all closing documents and legal opinions, Bond Counsel shall contact the City and release the Series 2012 Note to TD Bank and the financing will then be closed.

**VIII. POST-CLOSING**

Upon successful closing, the City will disburse funds to pay issuance costs associated with the issuance and delivery of the Note.

**IX. SERIES 2012 NOTE SOURCES & USES OF FUNDS**

**Sources**


Par Amount	\$ 9,980,000.00
City of Venice Contribution	195,768.38
<b>Total Sources</b>	<b>\$ 10,175,768.38</b>

**Uses**

Prepayment of 2001 Governmental Unit Note	\$ 10,124,268.38
Cost of Issuance	51,500.00
<b>Total Uses</b>	<b>\$ 10,175,768.38</b>

Approved and Accepted by:

City of Venice, Florida

  
\_\_\_\_\_  
Jeffrey Snyder, CPA  
Finance Director

Form of Identification (circle one):

Valid Driver's License / Valid Passport / Known to Lender / See Notarial Stamp

By:   
\_\_\_\_\_  
Bank Representative or Notary

