



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director

DATE: November 21, 2006

SUBJECT: Consideration of Resolution Authorizing the Replacement of the Existing Letter of Credit and Reimbursement Agreement for the City's share of the Debt for the South Bay Regional Public Communications Authority Facility

RECOMMENDATION:

The Finance Subcommittee and staff recommend that the City Council: a) adopt Resolution No. 6073 approving the replacement of the existing letter of credit from Allied Irish Bank with a letter of credit from Bank of America and execution of a new Reimbursement Agreement with Bank of America for the City's share of the debt for the South Bay Regional Public Communications Authority facility, and b) appropriate \$25,000 from the General Fund balance.

FISCAL IMPLICATION:

The replacement letter of credit carries certain costs which have been estimated at \$25,000. This includes rating agency review, bond counsel, bank counsel, and administrative bank fees. Those funds are unbudgeted and need to be appropriated by City Council in order to effect this transaction. On-going costs for the letter of credit, estimated to be approximately \$9,000 annually, are charged and paid through budgeted funds.

BACKGROUND:

In 2001, the South Bay Regional Public Communications Authority (RCC) constructed a new dispatch center in Hawthorne. The financing for the project came through bonds issued by the RCC on behalf of each of the member agencies (Manhattan Beach, Hawthorne and Gardena). Manhattan Beach and Hawthorne chose to utilize variable rate debt, while Gardena chose a fixed rate instrument. Our portion of the bond debt was \$2.18 million including all costs of issuance.

The variable rate debt is tied to a letter of credit¹ (LOC) in the City's name. Currently, that LOC is provided by Allied Irish Bank (AIB). AIB has informed us that as of January 17, 2007, they will no longer provide us that LOC due to the small dollar value. As a result, we must provide a replacement LOC with a new financial partner by December 15, 2006.

DISCUSSION:

In 2002, the City used a similar LOC-variable rate debt structure to refinance debt for the Marine Avenue Sports Fields. The LOC for that financing was provided by Bank of America. Given our success and positive results with Bank of America for the past several years on the sports fields debt, we believe it is in our best interest to partner with them again for this requirement.

Bank of America has offered to provide us a new LOC for the RCC debt at the same terms as our current LOC for Marine Avenue Park (.40%, which is slightly lower than AIB's .45% rate). This rate is estimated to be 10 to 35 basis points below what it would cost us to have the LOC with another institution, making Bank of America a cost effective solution.

In order to change the LOC, City Council must approve a new Reimbursement Agreement with Bank of America to replace the previous agreement with AIB. The Reimbursement Agreement ensures that the bank will be reimbursed by the City for any draws made against the Letter of Credit to make the principal and interest payments.

The Finance Subcommittee reviewed this issue at their October 30, 2006 meeting, and approved this plan. As a result, we are seeking Council approval to proceed.

- Attachment A – Resolution No. 6073
 B – Reimbursement Agreement

¹ Each series of bonds are supported by the letter of credit which is drawn upon by the Trustee to pay the principal and interest due. The City then reimburses the bank for that draw, thus the need for a reimbursement agreement.

RESOLUTION NO. 6073

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING THE EXECUTION OF A REIMBURSEMENT AGREEMENT AND AUTHORIZING CERTAIN OTHER ACTIONS RELATED TO THE DELIVERY OF A SUBSTITUTE LETTER OF CREDIT FOR THE SOUTH BAY REGIONAL PUBLIC COMMUNICATIONS AUTHORITY VARIABLE RATE DEMAND REVENUE BONDS, 2001 SERIES C

WHEREAS, the City of Manhattan Beach, California, (the "City") and the South Bay Regional Public Communications Authority (the "Authority") have financed the acquisition, construction, installation and equipping of a consolidated, regional computer-assisted dispatch system (the "Project") to promote the public safety of the members of the Authority (the "Members"), including the City through the issuance of the Authority's Variable Rate Demand Revenue Bonds, 2001 Series C (the "2001 Series C Bonds"); and

WHEREAS, the City and the Authority desire to authorize the actions necessary to deliver a substitute Letter of Credit as defined in the Indenture of Trust, dated as of January 1, 2001 by and between the Authority and BNY Western Trust Company, as trustee (the "Trustee"); and

WHEREAS, in connection with the delivery of the substitute Letter of Credit, the Bonds will be remarketed by Morgan Stanley & Co. Inc. (the "Remarketing Agent"); and

WHEREAS, in connection with the proposed delivery of the substitute Letter of Credit, there has been presented to the City the form of the Reimbursement Agreement by and between Bank of America, N.A. and the City (the "Reimbursement Agreement") for approval.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby approves the Reimbursement Agreement in substantially the form presented to the City Council and on file with the City Clerk. Each of the Mayor, the City Manager, and the Finance Director (each a "Responsible Officer") is hereby authorized to execute the Reimbursement Agreement in substantially the form presented hereto, with such revisions, amendments and completions as shall be approved by any Responsible Officer, with the advice of Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof by any Responsible Officer.

SECTION 2. Each Responsible Officer and their written designees, are hereby appointed as the officers of the City authorized for all purposes required by the Letter of Credit and the Reimbursement Agreement and are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the foregoing authorized actions and the purposes of this resolution.

SECTION 3. The Responsible Officers are hereby authorized and directed, to do any and all things and to execute and deliver any and all documents, including documents and agreements relating to the Bonds, which they may deem necessary or advisable in order to consummate the tender and remarketing of the Bonds, the delivery of the substitute Letter of Credit and otherwise to effectuate the purposes of this resolution.

SECTION 4. This resolution shall take effect immediately.

SECTION 5. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 6. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this 21st day of November, 2006.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By



City Attorney

REIMBURSEMENT AGREEMENT

between

BANK OF AMERICA, N.A.

and

CITY OF MANHATTAN BEACH

Dated as of December 1, 2006

Relating to the

**\$2,180,000 SOUTH BAY REGIONAL PUBLIC COMMUNICATIONS AUTHORITY VARIABLE
RATE DEMAND REVENUE BONDS
2001 SERIES C (CITY OF MANHATTAN BEACH PROJECT)**

REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (the "Agreement") is made as of December 1, 2006 by and between BANK OF AMERICA, N.A., a national banking association (the "Bank") and the CITY OF MANHATTAN BEACH, a municipal corporation and general law city organized under constitution and the laws of the State of California (the "City").

RECITALS

I

- A. The City is a member of the South Bay Regional Public Communications Authority, a California joint powers authority (the "Authority"). The Authority previously issued its Variable Rate Demand Revenue Bonds 2001 Series C (City of Manhattan Beach Project) (the "Bonds"), the proceeds of which were used for the acquisition, construction, installation and equipping of a consolidated, regional computer-assisted dispatch system (the "Project") to promote the public safety of the members of the Authority (the "Members"), including the City.
- B. Each Member entered into an operating and service agreement (the "Operating Agreements") with the Authority pursuant to which the Authority owns and operates the Project for the benefit of the Members and each Member agrees to pay, on a pro rata basis, its portion of the cost of the Project (the "Project Financing Payments") and the cost of its annual operation (the "Operating Payments") (collectively, the "Member Payments."
- C. The Authority issued three series of revenue bonds to finance the Project, each series secured by Project Financing Payments made by one of the three Members. The Bonds were issued by the Authority pursuant to an Indenture dated as of January 1, 2001 (the "Series C Indenture") between the Authority and BNY West ern Trust Company (the "Trustee"), and are secured by a separate pledge of the Project Financing Payments and other amounts to the extent received by the Authority (the "Revenues") pursuant to an Operating Agreement dated as of January 1, 2001 (the "Series C Operating Agreement") between the Authority and the City. The outstanding principal amount of the Bonds is \$[1,800,000].
- D. In order to support payment of principal and interest with respect to the Bonds, Allied Irish Banks, p.l.c. (AIB) issued its irrevocable letter of credit for the account of the City (the "AIB Letter of Credit"), and the AIB Letter of Credit will expire on January 17, 2006.

- E. In order to provide a substitute letter of credit for the AIB Letter of Credit and to provide a source for payment when due of the principal of and interest on and the purchase price of the Bonds, the Bank will provide a letter of credit (the "Letter of Credit") pursuant to this Letter of Credit and Reimbursement Agreement, dated as of December 1, 2006 (the "Agreement") initially in the amount of \$_____.00, such Letter of Credit to constitute "Substitute Security" pursuant to the Series C Indenture;
- F. The Bank is willing to provide the Letter of Credit to the Trustee upon the terms and conditions herein set forth.

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

ARTICLE ONE

DEFINITIONS

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

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

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

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

"Bank Bonds" shall mean the Bonds held by the Tender Agent for the benefit of the Bank as provided in Section 2.15 of the Indenture.

"Bonds" shall mean the South Bay Regional Public Communications Authority Variable Rate Demand Revenue Bonds, 2001 Series C (City of Manhattan Beach Project).

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

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

"Date of Issuance" shall mean the date on which the Bank delivers the Letter of Credit pursuant to this Agreement.

"Default Rate" shall mean the Prime Rate plus 2% per annum

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

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

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

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

"Letter of Credit" shall mean the irrevocable direct pay letter of credit to be issued by the Bank pursuant hereto for the account of the City in favor of the Trustee to support payment of the Bonds, in substantially the form of Exhibit A to this Agreement with appropriate insertions, as it may be amended or supplemented from time to time.

"Letter of Credit Commitment" shall mean U.S. \$_____.00, which is comprised of a principal component of \$[1,800,000.00] and an interest component of \$_____.00.

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

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

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

"Prime Rate" shall mean the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors, including the Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank's Prime Rate.

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

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

"Series C Indenture" shall have the meaning set forth in Recital C.

"Series C Operating Agreement" shall have the meaning set forth in Recital C.

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

"

ARTICLE TWO

LETTER OF CREDIT

Section 2.1. Issuance of Letter of Credit; Extension of Letter of Credit.

(a) Extension of Credit. The Bank hereby agrees, on the terms and subject to the conditions hereinafter set forth, to issue the Letter of Credit to the Trustee, in accordance with the terms of this Section 2.1. The Letter of Credit shall be issued by the Bank upon satisfaction by the City of all conditions precedent set forth in Section 3.1 hereof, and for a stated term from the date of the Letter of Credit to the Expiration Date.

(b) Extension of Expiration Date. The initial Expiration Date for the Letter of Credit shall be December 15, 2009; provided that the Expiration Date may be extended on an annual basis, commencing December 15, 2007, for a period of at least one year. Any request for an extension of the Letter of Credit must be in writing and accompanied by such information as the Bank may reasonably request and such request must be received by the Bank no later than 90 days prior to the Expiration Date then in effect. The Bank, in its sole and absolute discretion, may elect not to extend the term of the Letter of Credit. If the Bank has not agreed to the request for extension in writing within 45 days after the Bank received the City's written request and the other information requested by the Bank, the City's request shall be deemed to be denied.

(c) Drawing on the Letter of Credit. Drawings to be made under the Letter of Credit shall be made by presentation by hand delivery, by telecopy,

with receipt confirmed, with an original to follow by mail, in the form of a sight draft, accompanied by the appropriate annex submitted by the Trustee and no further presentation of documentation, including the original Letter of Credit, need be made; it being understood that the telecopy, with receipt confirmed, shall in all events be considered to be the sole operative instrument of drawing.

The Bank may rely upon any such telecopy drawing that the Bank, in good faith, believes to have been dispatched by the Trustee.

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

Section 2.2. Reimbursement of Drawings.

(a) Subject to Section 2.5, the City hereby agrees to reimburse to the Bank for any Drawing under the Letter of Credit as follows: (i) on the same day established under the Series C Indenture for payment of amounts due with respect to the Bonds, a sum equal to the amount drawn on the Letter of Credit on such payment date to pay regularly scheduled payments of principal of and interest accrued on the Bonds; (ii) upon demand, upon the occurrence of an Event of Default, interest on all Obligations, including all outstanding Drawings, at the Default Rate; and (iii) no later than thirty (30) days following the date of a Drawing to pay the purchase price of tendered Certificates, the amount drawn under the Letter of Credit, together with interest thereon at the Prime Rate.

(b) The City hereby agrees to pay interest on the unpaid principal amount of each Drawing at a rate per annum equal to the Prime Rate. The principal amount of any Drawing not paid when due shall bear interest at the Default Rate.

(c) If the City shall fail to pay when due (whether at maturity, on demand, by reason of acceleration or otherwise) any amount due and unpaid hereunder, each such unpaid amount shall (to the extent permitted by applicable law) bear interest for each day from and including the date it was so due until paid in full at a rate per annum equal to the Default Rate, payable on demand.

Section 2.3. Letter of Credit Fees and Other Payments.

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

<u>Rating</u>	<u>Percentage Points</u>
AAA/Aaa - AA-/Aa3	.40%
A1/A+	.65%
A2/A	.90%

A3/ A-

1. 15%

BBB+/ Baa

1. 40%

If either S&P or Moody's shall rate the issuer general obligation credit ratings of the District lower than the other rating agency, the number of percentage points used to calculate the fee will be determined by reference to the lower rating.

(a) The initial Letter of Credit fee shall be due and payable on the Date of Issuance and shall include the fees for the period from the Date of Issuance through December 31, 2006. Thereafter, the Letter of Credit fee shall be paid quarterly in arrears on the first day of each calendar quarter commencing on April 1, 2007 (the initial quarterly payment shall include the fees for the period commencing on January 1, 2007 through March 31, 2007).

(b) Other Fees. In addition, the City shall pay to Bank upon the amendment or transfer of the Letter of Credit and upon the negotiation of each draft drawn under the Letter of Credit, fees and charges determined by Bank in accordance with Bank's standard fees and charges in effect at the time the Letter of Credit is amended or transferred or any draft is paid.

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

(d) Costs and Expenses. The City shall pay any and all reasonable fees, charges and expenses, payable or incurred by the Bank in connection with the execution, delivery, performance and enforcement of this Agreement and the Letter of Credit, including without limitation, the fees and expenses of counsel to the Bank, together with interest on such amounts from the date such payment is due until paid at a rate per annum equal to the Default Rate, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees and expenses.

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

(i) any reserve or deposit requirements; and

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

(f) Taxes. If any taxes are imposed on any payments made by the City (including payments under this paragraph) other than ordinary income taxes payable by the Bank, the City will pay the taxes and will also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. The City will confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date.

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

(h) Obligation Absolute. Subject to Section 2.5, the obligations of the City under this Agreement shall be unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

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

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

(iii) any delay, extension of time, renewal, compromise or other indulgence or modification granted or agreed to by the Bank, with or without notice to or approval by the City, in respect of any of the City's obligations to the Bank under this Agreement;

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

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

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

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

(k) Non-Business Days. If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

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

Whenever any Taxes are payable by the City, as promptly as possible thereafter the City shall send the Bank an official receipt or other documentation satisfactory to the Bank evidencing payment to such taxation authority.

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

Section 2.4. Liability of Bank. Neither the Bank nor any of its officers or directors shall be liable or responsible for (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee and any

transfer in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except only that the City shall have a claim against the Bank, and the Bank shall be liable to the City, to the extent of any damages suffered by the City by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms of the Letter of Credit or (ii) the Bank's willful failure or gross negligence in failing to pay under the Letter of Credit after the presentation to it by the Trustee of a sight draft and certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; provided, that if the Bank shall receive written notification from the Trustee and the City that sufficiently identified (in the opinion of the Bank) documents to be presented to the Bank are not to be honored, the Bank agrees that it will not honor such documents.

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

Section 2.5. Nature of Obligations of the City.

(a) The Obligations hereunder shall not constitute a general obligation of the City, and shall be secured by and payable solely from the following (the "Collateral"): (a) the Series C Project Financing Payments; (b) the amounts held in the funds and accounts established under the Series C Indenture or the Series C Operating Agreement with respect to the Series C Bonds, other than the Rebate Fund and the Purchase Fund, and all other funds and accounts with any Collateral or proceeds of any Collateral on deposit therein; and (c) to the extent not already included in (a) and (b) above, Series C Revenues. The City acknowledges that in the Series C Indenture the Authority has pledged and placed a lien on the Collateral to and for the benefit of the Bank and the Trustee on behalf of the Series C Bondholders. The City hereby pledges, places a first and prior lien on, assigns and grants a security in its interest, if any, in the Collateral, to secure the obligations to the Bank under this Agreement and any Bank Bonds. Such lien is subject to no other liens other than the lien on the Series C Revenues in favor of the Trustee on behalf of the Series C Bondholders.

(b) The obligations of the City under this Agreement to reimburse the Bank for Drawings shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

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

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

(c) the existence of any claim set-off, defense or other rights which the City may have at any time against the Trustee, any beneficiary or any transferee of the Letter of Credit (or any person for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank or any other person, whether in connection with this Agreement, the Letter of Credit, the Related Documents or any unrelated transaction;

(d) any statement in any certificate or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

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

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

ARTICLE THREE

CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Issuance of Letter of Credit. The obligation of the Bank to issue the Letter of Credit shall be subject to the fulfillment of the following conditions precedent on or before the Date of Issuance thereof, in a manner satisfactory to the Bank and its counsel:

(a) The Bank shall have received an opinion of Hawkins, Delafield & Wood LLP, as special counsel, as required by clause (b)(4) of the definition of "Substitute Security" in the Series C Indenture, in form and substance satisfactory to the Bank and its counsel, dated the Date of Issuance.

(b) The Bank shall have received an opinion of Bank counsel, in form and substance satisfactory to the Bank dated the Date of Issuance.

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

(d) The Bank shall have received on the Date of Issuance certified copies or executed originals, as the Bank may request, of the Agreement, the Series C Indenture, the Series C Operating Agreement, and the other documents, certificates and opinions executed and delivered in connection with issuance of the Bonds (collectively, the "Related Documents") and any other documents which the Bank may reasonably request evidencing that all necessary action (including, without limitation, adoption of resolutions) required to be taken by the City in connection with the authorization, execution, issuance, delivery and performance of such documents and any other document required to be delivered by the City pursuant to or in connection with this Agreement or the transactions contemplated hereby, has been taken.

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

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

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

(iii) on the Date of Issuance no Event of Default or no event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing; and

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

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

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

(h) Except for state "blue sky" laws, the Bank shall have received true and correct copies of any and all governmental approvals necessary for the City to enter into this Agreement and such approvals necessary at the Date of Issuance for the transactions contemplated thereby and hereby, or if no governmental approvals are required, a certificate of an Authorized Representative of the City to the effect that no such approvals are necessary.

(i) The Bank shall have received copies of the audited financial statements of the City for the three most recent years for which such statements are available, unaudited financial statements of the City for any fiscal year for which audited financial statements are unavailable and a copy of the City's 2006-2007 adopted budget.

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

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

(n) All other legal matters pertaining to the execution and delivery of this Agreement, the issuance of the Letter of Credit and the other Related Documents shall be reasonably satisfactory to the Bank and their counsel.

ARTICLE FOUR

REPRESENTATIONS AND WARRANTIES

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

(a) The City is a municipal corporation and general law city organized and existing by virtue of and under the Constitution and the laws of the State of California, has the requisite power to carry on its present and proposed activities, and has and had full power, right and authority to enter into this Agreement and the Related Documents to which it is a party and to perform each and all of the matters and things herein and therein.

(b) This Agreement, and any instrument or agreement required hereunder, are within the City's powers, have been duly authorized, and do not conflict with any of its organizational papers.

(c) This Agreement is a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable.

(d) The execution and delivery of, and performance by the City of its obligations under, this Agreement and the Related Documents to which it is a party, and any and all instruments or documents required to be executed in connection herewith or therewith were and are within the powers of the City and will not violate any provision of any applicable law, regulation, decree or governmental authorization, and will not in any material respect violate or cause a default under any provision of any contract, agreement, mortgage, indenture or other undertaking to which it is a party or which is binding upon it or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance upon any of its properties or assets pursuant to the provisions of any such contract, agreement, mortgage, indenture or undertaking.

(e) Except for state "blue sky" laws, all authorizations, licenses, consents, approvals and undertakings which are required to be obtained by the City under any applicable law in connection with the execution, delivery and performance by the City of its obligations under, or in connection with, this Agreement and the Related Documents to which it is a party, have been received on or prior to the Date of Issuance; and all such authorizations, licenses, consents, approvals and undertakings are in full force and effect.

(f) This Agreement does not conflict with any law, agreement, or obligation by which the City is bound.

(g) All financial and other information that has been or will be supplied to the Bank is sufficiently complete to give the Bank accurate knowledge of the City's financial condition, including all material contingent liabilities. Since the date of the most recent financial statement provided to the Bank, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of the City.

(h) There is no lawsuit, tax claim or other dispute pending or threatened against the City which, if lost, would impair the City's financial condition or ability to perform its obligations under this Agreement, except as have been disclosed in writing to the Bank.

(i) The Series C Operating Agreement is in full force and effect and no default has occurred under such agreement. (j) The City is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

(k) The City is not immune from jurisdiction in any court or from legal process under the laws of the United States of America or the State of California with respect to this Agreement or any of the Related Documents.

(l) The representations and warranties of the City in the Related Documents to which it is a party are true and correct, and the City makes such representations and warranties for the benefit of the Bank as if the same were set forth at length in this Agreement and the City has furnished the Bank a true and correct copy of all of the Related Documents as in effect on the date hereof.

ARTICLE FIVE

COVENANTS

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

(a) Subject to Section 2.5, the City shall reimburse the Bank for any unreimbursed Drawings under the Letter of Credit as required by Section 2.2(a).

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

(i) Within 180 days of the City's fiscal year end, the City's annual financial statements, certified and dated by an authorized financial officer of the City. These financial statements must be audited (with an unqualified opinion, using the accounting standards then applicable to the City) by a Certified Public Accountant acceptable to the Bank.

(ii) The City shall, promptly upon its approval and within 90 days of the final adoption of the annual budget of the City, deliver to the Bank a copy of such budget and promptly after the adoption thereof, copies of any and all amendments and supplements to the budget.

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

(iv) Within the period provided in (i) above, a compliance certificate of the City signed by an authorized financial officer of the City setting forth (i) the information and computations (in sufficient detail) to establish that the City is in compliance with all financial covenants at the end of the period covered by the financial statements then being furnished and (ii) whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action the City is taking and proposes to take with respect thereto.

(c) The City shall maintain a rating on the City's long-term

general obligations from either Moody's Investors Service or Standard & Poor's Ratings Services or both of at least BBB/Baa2.

(d) The City shall promptly notify the Bank in writing of any lawsuit over Five Million Dollars (\$5,000,000) against the City.

(e) The City shall maintain adequate books and records and shall maintain its financial records in accordance with generally accepted accounting principles, applied consistently, throughout the term of this Agreement.

(f) The City shall allow the Bank and its agents to inspect the City's properties and examine, audit, and make copies of books and records at any reasonable time. If any of the City's properties, books or records are in the possession of a third party, the City authorizes that third party to permit the Bank or its agents to have access to perform inspections or audits and to respond to the Bank's requests for information concerning such properties, books and records.

(g) The City shall maintain insurance as to amount, nature and carrier covering property damage (including loss of use and occupancy) to any of the City's properties, public liability insurance including coverage for contractual liability, product liability and workers' compensation, and any other insurance which is usual for the City, and in any case shall maintain the insurance required by Section 4.10 of the Series C Operating Agreement.

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

(i) The City shall not take any action which can reasonably be anticipated to result in a material adverse change to its operations or properties.

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

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

under this Agreement and the Related Documents.

(l) The City has complied with and shall comply with all health, safety, or environmental law or regulation regarding Hazardous Substances, and the City is not the subject of any claim, proceeding, notice, or other communication regarding Hazardous Substances. The City shall give the Bank prompt written notice of any such claim, proceeding, notice or other communication regarding Hazardous Substances. "Hazardous Substances" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

(m) The City shall perform all of its obligations under the Series C Operating Agreement and the other Related Documents, including, without limitation, its obligation to make annual appropriations for Program Payments as required by Section 3.2 of the Series C Operating Agreement (without regard to potential Customer Operating Payments).

(n) The City shall not amend or supplement any of the Related Documents without the prior written consent of the Bank.

(o) The City shall not discontinue use of the Project, other than as permitted by Section 3.3 of the Series C Operating Agreement.

ARTICLE SIX

DEFAULTS

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

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

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

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

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

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

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

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

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

(i) The issuer general obligation credit ratings of the District shall fall below BBB by Standard & Poor's Rating Service or Baa2 by Moody's Investors Service. If either S&P or Moody's shall rate the issuer general obligation credit ratings of the District lower than the other rating agency, the default will be determined by reference to the lower rating.

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

ARTICLE SEVEN

MISCELLANEOUS

Section 7.1. Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the City therefrom, shall be effective unless the same shall be in writing and signed by the Bank and no amendment, modification or waiver of any provision of the Letter of Credit shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific

instance and for the purpose for which given. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

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

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

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

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

(a) represent the sum of the understandings and agreements between the Bank and the City concerning this credit;

(b) replace any prior oral or written agreements between the Bank and the City concerning this credit; and

(c) are intended by the Bank and the City as the final, complete and exclusive statement of the terms agreed to by them

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

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

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

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

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

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

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

provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

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

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

Section 7.14 Bank Agreement. The Bank agrees not to enter into any agreement which would adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Bonds.

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

BANK OF AMERICA, N.A.

CITY OF MANHATTAN BEACH

By _____
Typed Name: Michael C. Jones
Title: Vice President
Title _____

By _____
Typed Name _____

Address where notices to the Bank are to be sent:

Address where notices to the City are to be sent:

CA9-193-13-17

1400 Highland Avenue

333 South Hope St., 13th Flr.
90266
Los Angeles, CA 90071
Facsimile: 213-621-3606

Manhattan Beach, CA
Attn: Chief Administrative Officer
Facsimile: 310-802-5001

ATTEST:

By: _____
Typed Name _____
City Clerk

APPROVED AS TO FORM

By: _____
Typed Name _____
Title _____