**[USE THIS FORM FOR CONDUIT BONDS]**

MODEL PLACEMENT AGENT ENGAGEMENT AGREEMENT[[1]](#footnote-1)

(for Placements of Municipal Securities)

\_\_\_\_\_\_, 20\_\_

[Issuer]

Re: [Name of Bonds]

[Name of issuer] (the “Issuer”) proposes to issue, offer, and sell in a private placement the above-referenced obligations of the Issuer (the “Bonds”) issued [in authorized denominations $100,000 or more],[[2]](#footnote-2) with, as currently contemplated, gross proceeds of approximately $[\_\_\_\_\_\_\_\_\_\_] for the purpose of [ ] and captioned [ ],[[3]](#footnote-3) pursuant to [name of authorizing document] of the Issuer to be adopted on [date] (the “[Resolution]”).

This Placement Agent Engagement Agreement (the “Agreement”) confirms the agreement among the Issuer, [name of borrower] (the “Borrower”), and the [Firm] (the “Placement Agent”) as follows:

1. **Engagement**. The Issuer and the Borrower hereby engage the Placement Agent as their exclusive agent to assist the Issuer in placing[[4]](#footnote-4) the Bonds on a best efforts basis with one or more purchasers [each a “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933 (the “Securities Act”) or an “accredited investor,” as defined in Rule 501(a)(1),(2),(3), or (7) under the Securities Act, as represented by each purchaser in an executed Investor Letter in the form attached as Exhibit A] (the “Purchaser,” or the “Purchasers”) on a private placement basis (the “Placement”). Sale and delivery of the Bonds by the Issuer and purchase by the Purchasers will occur on the day of closing (“Closing Date”). The Issuer and the Borrower acknowledge and agree that the Placement Agent’s engagement hereunder is not an agreement by the Placement Agent or any of its affiliates to underwrite or purchase the Bonds or otherwise provide any financing to the Issuer

or the Borrower. The Placement Agent hereby accepts this engagement upon the terms and conditions set forth in this Agreement.

1. **Fees and Expenses**.[[5]](#footnote-5)
   1. For its services under this Agreement, the Borrower agrees to pay the Placement Agent:
      1. a non-refundable retainer fee of $[\_\_\_\_\_\_\_\_\_\_], payable upon execution of this Agreement;
      2. a placement fee for its services under this Agreement of [($ ) *or* equal to [ ]% of the aggregate amount of the Bonds sold in the Placement ]), payable on the Closing Date; and
      3. as reimbursement, the reasonable expenses incurred by the Placement Agent in preparing to market and marketing the Bonds, including, but not limited to, travel, fees, and disbursements of counsel to the Placement Agent and printing and distribution of the Placement Materials (as defined below), whether or not a closing occurs, upon the earlier of receipt of an invoice or on the Closing Date, [but such reimbursement will not exceed $[\_\_\_\_\_\_\_\_\_] without Issuer approval,];[[6]](#footnote-6) provided that the Placement Agent shall be under no obligation to pay any expenses incident to this Agreement.
   2. In the event the Issuer, the Borrower, or both terminate this Agreement and within twelve (12) months thereafter sells the Bonds to an investor identified by the Placement Agent to the Issuer or the Borrower prior to such termination, the amounts payable under (2) and (3) above shall be immediately due and payable by the Borrower.
2. **Disclosure and Due Diligence**.
   1. The Issuer and the Borrower will prepare and provide the Placement Agent with a [**SELECT EITHER (A):** private placement memorandum (the “Placement Memorandum”) or **(B)** term sheet and/or other documents including [describe materials provided (*e.g*., financials, budgets, estimated debt service requirements and coverage, , and underlying credit ratings), (the “Information Package”)] together with the draft [Resolution] and other legal documents to be used in connection with the Placement (together with all supplements, modifications, and additions thereto prior to the Closing Date, the “Placement Materials”).[[7]](#footnote-7) The Issuer acknowledges and agrees that it [has prepared and] is solely responsible for the completeness, truth, and accuracy of the information regarding the Issuer in the Placement Materials and that the Placement Agent and each Purchaser may rely upon, as complete, true, and accurate, the Placement Materials and all information provided by the Issuer to the Placement Agent for use in connection with the information regarding the Issuer in the Placement and that the Placement Agent does not assume any responsibility therefor. The Borrower acknowledges and agrees that it [has prepared and] is solely responsible for the completeness, truth, and accuracy of the information regarding the Borrower in the Placement Materials and that the Placement Agent and each Purchaser may rely upon, as complete, true, and accurate, the Placement Materials and all information provided by the Borrower to the Placement Agent for use in connection with the information regarding the Borrower in the Placement and that the Placement Agent does not assume any responsibility therefor.
   2. The Issuer and the Borrower each will: make available to each Purchaser and the Placement Agent such documents and other information which the Purchaser or the Placement Agent reasonably deems appropriate, provide access to its officers, directors, employees, accountants, counsel and other representatives, and provide each Purchaser and the Placement Agent the opportunity to ask questions and receive answers from knowledgeable individuals, including Bond Counsel [and counsels to the Issuer and the Borrower] (whose opinions [and letters of negative assurance] each shall receive and upon which they may rely) concerning the Issuer, the Borrower, the Bonds, and the security therefor; it being understood that the Purchasers and the Placement Agent will rely solely upon such information supplied by the Issuer and the Borrower and their respective representatives [without assuming any responsibility for independent investigation or verification thereof].
   3. In the event that the Placement Agent is unable to complete “due diligence” in order to form a reasonable basis for recommending the Bonds to Purchasers either (1) because of the either the Issuer’s or the Borrower’s failure to comply with paragraph (a) or (b) of this paragraph or (2) because the Placement Agent uncovers “red flags” about the Issuer or the Borrower that cause the Placement Agent to be not satisfied that Placement Agent can in good faith recommend the Bonds to Purchasers, the Placement Agent may terminate this Agreement without further obligation on the part of the Placement Agent to proceed with the Placement and without any obligation on the part of the Placement Agent to reimburse to the Borrower any monies advanced by the Borrower to the Placement Agent. [In such event the amounts due to the Placement Agent under Paragraph 2(a)(3) above shall be immediately due and payable].
3. **Representations, Warranties, and Agreements of the Issuer**. As of the date of this Agreement, unless otherwise stated, the Issuer represents, warrants, and agrees with the Placement Agent that:
   1. The Issuer is duly organized and validly existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ (the “State”) with the power to adopt the [Resolution], perform the agreements on its part contained therein and in the agreements approved thereby and cause the issuance of the Bonds.
   2. The Issuer will not cause or permit any action to be taken in the placement of the Bonds in violation of the requirements for exemption from registration or qualification of the Bonds under all federal and applicable state securities laws and regulations.
   3. The Issuer has complied, and in all respects on the Closing Date will be in compliance, with all of the provisions of applicable law of the State.
   4. The Issuer: (1) has duly authorized and approved the execution and delivery of this Agreement; (2) will adopt and on the Closing Date will have duly adopted the [Resolution]; (3) will duly authorize and approve the Placement Materials and the delivery thereof to prospective Purchasers; and (4) will duly authorize and approve the execution and delivery of [insert titles of all financing or operative documents, including the Bonds, to which the Issuer is a party relating to the issuance and security for the Bonds, as such documents are amended and supplemented to the Closing Date, including but not limited to any trust indenture, loan agreement, or security instrument] (the “Issuer Financing Documents”), and the performance of its obligations and the consummation by it of all other transactions contemplated thereby.
   5. On the Closing Date, the Issuer Financing Documents will have been duly authorized, executed, and delivered by the Issuer, and, assuming due authorization, execution and delivery by the other parties thereto, as applicable, constitute legal, valid and binding agreements of the Issuer enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other laws affecting the enforcement of creditors’ rights generally and by the application of equitable principles if sought and by the limitations on legal remedies imposed on actions against the Issuer in the State of \_\_\_\_\_\_\_.
   6. The Issuer is not, and on the Closing Date will not be, in breach of or default under any applicable law or administrative regulation of the State or any department, division, agency or instrumentality thereof, or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject, which breach or default would materially and adversely affect the Issuer or its ability to perform its duties and obligations under the Issuer Financing Documents, and the execution and delivery of the Issuer Financing Documents, the adoption of the [Resolution] and the issuance of the Bonds and compliance with the provisions of each will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or under any certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject, which breach or default would materially and adversely affect the Issuer or its ability to perform its duties and Bonds under the Issuer Financing Documents and the Bonds.
   7. No action, suit, proceeding or investigation at law or in equity before or by any court, governmental agency, public board or body is, and on the Closing Date will not be, pending or, to the knowledge of the Issuer, threatened: (i) in any way affecting the existence of the Issuer or the titles of the members of [the authorizing body] to their respective offices, (ii) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds or the use of the proceeds thereof by or for the benefit of the Borrower, or collection or payment by the Issuer of any amounts pledged or to be pledged as security to pay the principal of and interest on Bonds, (iii) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to issue, adopt or to enter into (as applicable), the Bonds, the Resolution or the Issuer Financing Documents, (iv) contesting in any way the completeness, truth, or accuracy of the Placement Materials, (v) except as disclosed in the Placement Materials, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to pledge or apply the security or source of payment of, or to pay debt service on the Bonds, or (vi) contesting the status of the interest on the Bonds as excludable from gross income for federal income tax purposes or as exempt from any applicable state tax, in each case as described in the Placement Materials.
   8. Regarding information provided by the Issuer to the Placement Agent:
      1. (i) **[when there is no Placement Memorandum]** The Issuer will furnish the Placement Agent and the Purchaser with the Information Package. The Issuer represents and warrants that all information made available to the Placement Agent by the Issuer or contained in the Information Package, when provided will be, and will be at all times thereafter during the period of the engagement of the Placement Agent hereunder, be complete, true, and accurate in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made; or

(ii) **[when there is a Placement Memorandum]** The Placement Memorandum, when provided will be, complete, true, and accurate in all material respects and when provided will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein not misleading in light of the circumstances in which such statements are made; and

* + 1. any forecasted financial or market information, if any, with respect to the Issuer or its market provided to the Placement Agent and each Purchaser by the Issuer has been or will be prepared in good faith with a reasonable basis for the assumptions and the conclusions reached therein.
  1. On the Closing Date, the Issuer will deliver or cause to be delivered to the Placement Agent:
     1. The opinion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Bond Counsel to the Issuer, dated the Closing Date relating to:
        1. the validity of the Bonds;
        2. exemption from registration and qualification under federal and state securities law; and
        3. the tax-exempt status of the Bonds, together with a reliance letter from such counsel, dated the Closing Date and addressed to the Placement Agent in the form attached to this Agreement as Exhibit A, or such other form as is acceptable to the Placement Agent;
     2. The opinion of \_\_\_\_\_\_\_\_\_\_, General Counsel to the Issuer, dated the Closing Date, to the effect that no litigation before any court naming the Issuer as a party is pending or, to his/her knowledge, threatened in any way affecting the existence of the Issuer or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the use of the proceeds thereof by or for the benefit of the Borrower or collection or application of revenues and assets of the Issuer pledged or to be pledged to pay the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds or the Issuer Financing Documents, or in any way contesting the powers of the Issuer or its authority with respect to the Bonds or the Issuer Financing Documents;
     3. a certificate of the Issuer, dated the Closing Date, in the form attached to this Agreement as Exhibit B, stating:
        1. the representations and warranties of the Issuer contained in this Agreement are true and correct as if made on the Closing Date;
        2. the Issuer has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and
        3. **[When there is a Placement Memorandum]** as of its date and the Closing Date, the information contained in the Placement Memorandum is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;
     4. **[When there is Placement Agent Counsel]** The opinion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, counsel to the Placement Agent, dated the Closing Date, as to such matters as the Placement Agent shall request **[SHOULD INCLUDE NEGATIVE ASSURANCE ON THE PLACEMENT MEMORANDUM IF THERE IS ONE];**
     5. An Investor Letter, in the form attached to this Agreement as Exhibit D, executed by each Purchaser and addressed to the Issuer and the Placement Agent; and
     6. Such additional legal opinions, certificates, proceedings, instruments and other documents as the Placement Agent or its counsel, if any, and Bond Counsel may reasonably request to evidence compliance by the Issuer with legal requirements, the truth and accuracy, as of the Closing Date, of the representations of the Issuer, and the due performance or satisfaction by the Issuer at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer.

1. **Representations, Warranties, and Covenants of the Borrower**, As of the date of this Agreement, unless otherwise stated, the Borrower represents, warrants, and agrees with the Placement Agent that:
   1. The Borrower (i) is a \_\_\_\_\_\_\_\_\_\_, duly organized and validly existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ (the “State”) and authorized to do business under the laws of the State, (ii) has duly authorized and approved the execution and delivery of this Agreement;[[8]](#footnote-8) (iii) has the full right, power, and authority to own its properties and assets, and to carry on its business as now being conducted by it, and as contemplated by this Agreement, and [the Lease, Loan, or Sale Agreement and any other Issuer Financing Documents or other documents to which the Borrower is a party relating to the Bonds] (the “Borrower Financing Documents”; and, together with the Issuer Documents, the “Financing Documents”), and (iv) has the full right, power, and authority to execute and deliver the Borrower Financing Documents and to perform all the undertakings of the Borrower thereunder.
   2. As of the date hereof, the Borrower is not in any material respect in violation of, breach of, or default under any applicable law of the State or of any state in which the Borrower is authorized to do business or of the United States, or any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Financing Documents) or the other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Financing Documents, the performance by the Borrower of its obligations thereunder, the consummation by the Borrower of the transactions contemplated thereby and compliance with the provisions on the Borrower’s part contained therein, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any law of the State or of any state in which the Borrower is authorized to do business or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Financing Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets are bound which violation, breach or default would have a material adverse effect upon the transactions contemplated by this Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation, or instrument, except as provided by the Bonds or the Borrower Financing Documents.
   3. On the Closing Date, the Borrower Financing Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors’ rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.
   4. No consent, approval, authorization or order of any court or governmental body is required for the consummation by the Borrower of the transactions contemplated by this Agreement and the other Borrower Financing Documents.
   5. As of the date hereof, there is no action, suit, proceeding, inquiry or investigation of which the Borrower has been notified, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers executing this Agreement to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Bonds, any of the Borrower Financing Documents or the execution and delivery or adoption by the Borrower of any of the Borrower Financing Documents, or in any way contesting or challenging the powers of the Borrower or its authority with respect to the Borrower Financing Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial condition or operations of the Borrower or the validity of the authorization, execution, delivery or performance by the Borrower of any of the Borrower Financing Documents.
   6. Any certificate signed by the Borrower and delivered to the Placement Agent and the Issuer shall be deemed a representation and warranty by the Borrower to the Placement Agent and the Issuer as to the statements made therein.
   7. Regarding information provided by the Borrower to the Placement Agent:
      1. (i) **[when there is no Placement Memorandum]** The Borrower will furnish the Placement Agent and the Purchaser with the Information Package. The Borrower represents and warrants that all information made available to the Placement Agent by the Borrower or contained in the Information Package, when provided will be, and will be at all times thereafter during the period of the engagement of the Placement Agent hereunder, be complete, true, and accurate in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made; or

(ii) **[when there is a Placement Memorandum]** The Placement Memorandum, when provided will be, complete, true, and accurate in all material respects and when provided will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein not misleading in light of the circumstances in which such statements are made;

* + 1. except as otherwise indicated to the contrary in the Borrower’s financial statements, all historical financial statements of the Borrower provided to the Placement Agent and each Purchaser will be prepared in accordance with generally accepted accounting principles and practices then in effect in the United States and will fairly present the financial condition and operations of the entities covered thereby in all material respects;
    2. any forecasted financial or market information with respect to the Borrower or its market provided to the Placement Agent and each Purchaser by the Issuer has been or will be prepared in good faith with a reasonable basis for the assumptions and the conclusions reached therein.
  1. On the Closing Date, the Borrower will deliver or cause to be delivered to the Placement Agent:
     1. The opinion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Counsel to the Borrower, dated the Closing Date, to the effect that no litigation before any court naming the Issuer as a party is pending or, to his/her knowledge, threatened in any way affecting the existence of the Issuer or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection or application of revenues and assets of the Issuer pledged or to be pledged to pay the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds or the Issuer Documents, or in any way contesting the powers of the Issuer or its authority with respect to the Bonds or the Issuer Documents;
     2. a certificate of the Borrower, dated the Closing Date, in the form attached to this Agreement as Exhibit C, stating:
        1. the representations and warranties of the Borrower contained in this Agreement are true and correct as if made on the Closing Date;
        2. the Borrower has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and
        3. **[When there is a Placement Memorandum]** as of its date and the Closing Date, the information contained in the Placement Memorandum is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

1. **Termination**. This Agreement may be terminated by either party upon ten (10) business days’ prior written notice; provided that the provisions of Paragraph 2 and obligations thereunder shall not be affected by such termination.
2. **Regulatory Disclosure**. The Issuer and the Borrower each acknowledge, in connection with the purchase and sale of the Bonds, the offering of the Bonds for sale and the discussions and negotiations relating to the terms of the Bonds pursuant to and as set forth in this Agreement, that:
   1. the Placement Agent has acted at arm’s length, is acting solely for its own account and is not agent of or advisor to (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), and owes no fiduciary duty to the Issuer or any other person,
   2. the Placement Agent’s duties and obligations to the Issuer and/or the Borrower shall be limited to those contractual duties and obligations set forth in this Agreement,
   3. the Placement Agent may have interests that differ from those of the Issuer and/or the Borrower, and
   4. the Issuer and the Borrower each has consulted its legal and financial advisors to the extent it deemed appropriate in connection with the offering and sale of the Bonds. The Issuer and the Borrower each further acknowledges and agrees that it is responsible for making its judgment with respect to the offering and sale of the Bonds and the process leading thereto. The Issuer and the Borrower each agrees that it will not claim that the Placement Agent acted as a Municipal Advisor to it or rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to it, in connection with the offering or sale of the Bonds or the process leading thereto.[[9]](#footnote-9)

[The Placement Agent hereby further provides the Issuer with certain disclosures relating to Bonds, as required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 as set forth in MSRB Notice 2012-25 (May 7, 2012)[[10]](#footnote-10):

* 1. The Placement Agent intends to serve as a placement agent, and not as a financial advisor or municipal advisor in connection with the issuance of the Bonds. As part of our services as the Placement Agent we may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Bonds.
  2. Concerning our role as the Placement Agent:
     1. Municipal Securities Rulemaking Board Rule G-17 requires us to deal fairly at all times with both municipal issuers and investors;
     2. our primary role in this transaction is to facilitate the sale and purchase of your Bonds between you and one or more investors for which we will receive compensation;
     3. unlike a municipal advisor, we do not have a fiduciary duty to you under the federal securities laws and are, therefore, not required by federal law to act in your best interests without regard to our own financial or other interests;
     4. we have a duty to use our commercially reasonable efforts to arrange the purchase of the Bonds from you by investors at a fair and reasonable price, but must balance that duty with our duty to arrange the sale to investors at prices that are fair and reasonable; and
     5. we will review the Placement Materials for your Bonds in accordance with, and as part of, our responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.
  3. Concerning our Compensation, we will be compensated pursuant to the terms set forth in Paragraph 2 of this Agreement. A portion of our compensation may be based in whole or in part upon the principal amount of the Bonds sold in the Placement. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest because the Placement Agent may have an incentive to recommend to you a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.
  4. [Additional Conflicts Disclosures and/or Disclosures Concerning Complex Municipal Securities Financing as needed.][[11]](#footnote-11)

1. **Survival of Certain Representations and Obligations**. The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and their respective officers set forth in or made pursuant to this Agreement shall survive delivery of and payment for the Bonds and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Placement Agent.
2. **Notices**. Any notice or other communication to be given to the Issuer or the Borrower under this Agreement may be given by delivering the same in writing to the Issuer at its address set forth above and to the Borrower at its address set forth below. Any notice or other communication to be given to the Placement Agent under this Agreement may be given by delivering the same in writing to Firm, [address], Attention: [name and title].
3. **Indemnification and Contribution**.
   1. The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer and the Placement Agent and each affiliate, member, officer, director, official, employee and agent of the Issuer and the Placement Agent and their respective counsel, and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the 1933 Act, or Section 20 of the Securities Exchange Act of 1934, as amended (each an “Indemnified Party” and all collectively referred to herein as the “Indemnified Parties”), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees whether incurred before trial, at trial, on appeal or in any bankruptcy or arbitration proceeding), causes of action (whether in contract, tort, or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”) caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Financing Documents or any transaction or agreement, written or oral, pertaining to the foregoing except for the Indemnified Party’s gross negligent acts or willful misconduct with respect thereto, or (ii) any untrue or misleading statement or alleged untrue or alleged misleading statement contained in, or omission from or alleged omission from, the [Placement Memorandum or Information Package] necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person.
   2. Promptly after receipt by an Indemnified Party under paragraph (a) of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.
   3. In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.
   4. If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “separate defense”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney’s fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph (d) will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder. Notwithstanding anything to the contrary, each of the Issuer or the Placement Agent may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower, if so required hereunder, shall indemnify the Issuer and/or the Placement Agent as the case may be for all reasonable costs actually incurred of such counsel.
   5. In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) of this Section 10 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds.
   6. The Indemnified Parties, other than the Placement Agent and the Issuer, shall be considered to be third-party beneficiaries of this Agreement for purpose of this Section 10. The provisions of this Section 10 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination of this Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.
4. **No Assignment**. This Agreement has been made by the Issuer and the Placement Agent, and no person, other than the foregoing and any indemnitee pursuant to Paragraph 10 above, shall acquire or have any right under or by virtue of this Agreement.
5. **Applicable Law**. This Agreement shall be interpreted, governed and enforced in accordance with the laws of the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_].
6. **Effectiveness**. This Agreement shall become effective upon its execution by duly authorized officials of all parties hereto and shall be valid and enforceable from and after the time of such execution.
7. **Severability**. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
8. **Counterparts**. This Agreement may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which shall be an original and all of which shall constitute but one and the same instrument.

Respectfully submitted,

FIRM

[Name and title]

ACCEPTED this \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, 20\_\_.

[NAME OF ISSUER]

By

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

ATTEST:

Clerk

[NAME AND ADDRESS OF BORROWER]

By

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

ATTEST:

Clerk

**EXHIBIT A**

**FORM OF RELIANCE LETTER ON COUNSEL’S OPINION**

**TO THE PLACEMENT AGENT**

[Date of Closing]

[Placement Agent Name and Address]

Re: [Title of Bonds]

Ladies and Gentlemen:

We have acted as bond counsel to [name of Issuer] (the “Issuer”) of the Bonds.

Reference is hereby made to our opinion letter as bond counsel addressed to the Issuer dated of even date herewith and delivered with respect to the above-referenced series of Bonds. Please be advised that you are entitled to rely on said letter as if the same had been addressed to you.

This letter is furnished by us to you in our capacity as bond counsel to the Issuer pursuant to Paragraph 4(i)(1) of the Placement Agent Engagement Agreement with respect to the Bonds, dated as of [date of Agreement], between the Issuer and you. No attorney-client relationship has existed or exists between our firm and you or any other party in connection with the Bonds or by virtue of this letter. Our opinion may be relied upon only by the addressee hereof and may not be used or relied upon by any other person for any purpose whatsoever without, in each instance, our prior written consent.

Very truly yours,

**EXHIBIT B**

**FORM OF ISSUER CLOSING CERTIFICATE**

Pursuant to the Placement Agent Engagement Agreement, dated [date of Agreement] between [name of Issuer] and [name of the Placement Agent] (the Agreement”), as [title] of the Issuer duly authorized to execute this certificate on behalf of the Issuer, I hereby certify:

#### (1) the representations and warranties of the Issuer contained in the Agreement are true and correct as if made on the date hereof;

#### (2) the Issuer has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and

#### (3) as of its date and the date hereof, the information contained in the Placement Materials is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

[Name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Date] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT C**

**FORM OF BORROWER CLOSING CERTIFICATE**

Pursuant to the Placement Agent Engagement Agreement, dated [date of Agreement] among [name of Issuer], [name of Borrower], and [name of the Placement Agent] (the Agreement”), as [title] of the Borrower duly authorized to execute this certificate on behalf of the Borrower, I hereby certify:

#### (1) the representations and warranties of the Borrower contained in the Agreement are true and correct as if made on the date hereof;

#### (2) the Borrower has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and

#### (3) as of its date and the date hereof, the information contained in the Placement Materials is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

[Name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Date] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT D**

**FORM OF INVESTOR LETTER[[12]](#footnote-12)**

|  |  |
| --- | --- |
| [Address to Issuer and Placement Agent] |  |
|  |  |

Re: [Name of Bonds]

Ladies and Gentlemen:

The undersigned (the “Investor”) hereby acknowledges that it is purchasing $[\_\_\_\_\_\_\_\_\_] aggregate principal amount of [name of bonds] (the “Bonds”) issued [in authorized denominations $100,000 or more] pursuant to a Resolution (the “Resolution”) of the [name of authorizing body], adopted [date]. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution and the Placement Materials, each as defined herein.

This letter is being provided pursuant to a Placement Agent Agreement, dated \_\_\_\_\_\_\_ \_\_, 20\_\_ (the “Placement Agreement”), among \_\_\_\_\_\_\_\_\_\_ (the “Issuer”), [name of borrower] (the “Borrower”), and [name of the placement agent] (the “Placement Agent”).

The Investor acknowledges that the proceeds of the Bonds will be used for [describe uses of Bond proceeds].

The Bonds together with interest thereon shall be payable from [describe source of payment].

In connection with the sale of the Bonds to the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has the authority and is duly authorized to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with its purchase of the Bonds.[[13]](#footnote-13)

2. [The Investor is (a) a “qualified institutional buyer” as that term is defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), or (b) an “accredited investor” as that term is defined in Rule 501(a)(1),(2),(3), or (7) under the Securities Act.]

3. The Investor is not purchasing the Bonds for more than one account or with a view to distributing the Bonds.

4. The Investor understands that the Bonds are not, and are not intended to be, registered under the Securities Act and that such registration is not legally required as of the date hereof, and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will [not] carry a rating from any rating agency, and (d) will be delivered in a form that may not be readily marketable.

5. The Investor acknowledges that it has either been supplied with or been given access to information, including [insert language tracking the text of Paragraph 3(a) describing the Placement Materials], which it has requested from the Issuer and the Borrower and to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals, including its own counsel, concerning the Issuer, the Borrower, and the Bonds and the security therefor so that, as a reasonable investor, the Investor has been able to make a decision to purchase the Bonds. The Investor has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Bonds.

6. The Investor acknowledges that the obligations of the Issuer under the Resolution [describe nature of Issuer’s obligations]. [Describe limitations on the sources of funds available for the payment of debt service.]

7. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Investor is aware that there are certain economic and regulatory variables and risks that could adversely affect the security for the Bonds. The Investor has reviewed the documents executed in conjunction with the issuance of Bonds, or summaries thereof, including, without limitation, the Resolution.

8. The Investor acknowledges and agrees that the Placement Agent and the Issuer take no responsibility for, and make no representation to the Investor, or any subsequent purchaser, with regard to, a sale, transfer or other disposition of the Bonds in violation of the provisions of the Resolution, or any securities law or income tax law consequences thereof. The Investor also acknowledges that, with respect to the Issuer’s obligations and liabilities, the Investor is solely responsible for compliance with the sales restrictions on the Bonds in connection with any subsequent transfer of the Bonds made by the Investor.

9. The Investor agrees that it is bound by and will abide by the provisions of the Resolution relating to transfer, the restrictions noted on the face of the Bonds and this Investor Letter. The Investor also covenants to comply with all applicable federal and state securities laws, rules and regulations in connection with any resale or transfer of the Bonds by the Investor.[[14]](#footnote-14)

10. The Investor acknowledges that the sale of the Bonds to the Investor is made in reliance upon the certifications, representations, and warranties herein by the addressees hereto.

11. The interpretation of the provisions hereof shall be governed and construed in accordance with [State] law without regard to principles of conflicts of laws.

12. All representations of the Investor contained in this letter shall survive the execution and delivery of the Bonds to the Investor as representations of fact existing as of the date of execution and delivery of this Investor Letter.

Date: \_\_\_\_\_\_\_\_\_ \_\_, 20\_\_ Very truly yours,

Investor:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. This Agreement addresses the agreement for services as placement agent among the Issuer, the Borrower, and the Placement Agent. It does not address the terms of purchase and sale of the Bonds between the Issuer and Purchasers or terms and conditions between the Issuer and the Borrower. [↑](#footnote-ref-1)
2. Required as a component of the exemption from Exchange Act Rule 15c2-12 under paragraph (d)(1) thereof. [↑](#footnote-ref-2)
3. If Agreement intended to trigger the underwriter exclusion of the Municipal Advisor rule, provide sufficient details and add appropriate statements to Paragraph 6. [↑](#footnote-ref-3)
4. Variations on this description may include “in locating,” “identifying” and “assist in arranging sales,” as may be negotiated with the Issuer prior to execution of the Agreement. [↑](#footnote-ref-4)
5. Paragraph (b) and subparagraph (a)(1) are optional; subparagraphs (a)(2) and (3) may be combined. [↑](#footnote-ref-5)
6. Optional. [↑](#footnote-ref-6)
7. *See* discussion in Placement Agent Agreement *Commentary*. [↑](#footnote-ref-7)
8. The Placement Agent may consider requiring a specific description of the supporting corporate authority. [↑](#footnote-ref-8)
9. If the Agreement is intended to trigger the underwriter exclusion referenced in n. 3, *supra*, add the additional text in brackets immediately below. [↑](#footnote-ref-9)
10. Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (effective August 2, 2012). [↑](#footnote-ref-10)
11. Clauses (e) through (g) are based upon *SIFMA Model Underwriter Disclosures Pursuant to MSRB Rule G-17*, July 2012, which also provides sample text for disclosure of additional conflicts and complex municipal securities financing. [↑](#footnote-ref-11)
12. Issuer or Borrower may require an investment letter pursuant to the purchase agreement among the Issuer, the Borrower, and the Purchasers which may also be addressed to the Placement Agent, provided the representations above are included as consistent with the circumstances and delivery to the Placement Agent as a condition of the purchase agreement. [↑](#footnote-ref-12)
13. [INCLUDE THE FOLLOWING LANGUAGE IF NO CUSIP IS DESIRED:  The Investor (a) is a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; and (b) has the present intent to hold the Bonds to maturity or earlier redemption or mandatory tender.] [↑](#footnote-ref-13)
14. Some issuers may want a “travelling” investor letter required upon subsequent resales. *See Commentary* for discussion. [↑](#footnote-ref-14)