



# **Bond Purchase Agreement: Terms and Acceptance - Governmental Tax- or Revenue-Supported Securities**

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September 17, 2008

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# BOND PURCHASE AGREEMENT

## Terms and Acceptance

### Governmental Tax- or Revenue-Supported Securities

9/17/08

The Model Bond Purchase Agreement (the “*Agreement*”) is intended for use in connection with governmental tax- or revenue-supported securities (“*Securities*”), including fixed, variable-rate, auction and credit-enhanced Securities. The Agreement consists of the Bond Purchase Agreement Terms and Acceptance, including the Schedules identified below and attached hereto (collectively, “*BPA Terms and Acceptance*”), and the Bond Purchase Agreement General Provisions and Conditions (“*BPA General Provisions and Conditions*”).

The *BPA Terms and Acceptance* will be modified to reflect the specific terms and provisions applicable to the issuance and sale of the Securities. Complete the blanks in the sections below and the attached Schedules as applicable:

- Schedule I sets forth the terms of the Securities.
- Schedule II contains certain defined terms.
- Schedule III includes any modifications to the Agreement and other required State- or Issuer-specific provisions.
- Schedule IV contains certain Issuer and Underwriter representations.
- Schedule V lists the items to be delivered at the Closing for the delivery of the Securities.

The *BPA Terms and Acceptance* includes various alternative provisions. The drafter should consult closely with his or her client to determine which alternatives to select.

The *BPA General Provisions and Conditions* contains provisions that are applicable to each transaction and may be modified by use of Schedule III to the BPA Terms and Acceptance.

The *Instructions and Commentary* separately provide further information and guidance that may be useful in drafting the Agreement.

*Drafter’s notes and instructions for completion of the BPA Terms and Acceptance are included in shaded text boxes throughout this document but are not part of the Agreement. All text boxes and alternative provisions not utilized should be deleted from the final BPA Terms and Acceptance.*

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**Drafter's Note:** Insert below the names of the Issuer, the Senior Manager and the Securities, along with the Acceptance Deadline, the Effective Date and Time of the Agreement and the Closing Date. If the Senior Manager is acting on behalf of a group of Underwriters, list the names of any Co-Managers and any other Underwriters on the signature page below the signature block.

*Issuer:* \_\_\_\_\_

*Senior Manager:* \_\_\_\_\_,  
acting on behalf of itself and the other Underwriters (if any) listed on the signature page below.

*Securities:* \$\_\_\_\_\_

*Acceptance Deadline:* \_\_\_\_\_, 20\_\_, \_\_:\_\_ a.m./p.m. (\_\_\_\_\_ time).

*Effective Date and Time:* \_\_\_\_\_, 20\_\_, \_\_:\_\_ a.m./p.m. (\_\_\_\_\_ time).

*Closing Date:* \_\_\_\_\_, 20\_\_

*BPA Terms and Acceptance 9/17/08*

## **1. Offer to Purchase the Securities; Execution of Terms and Acceptance**

The Issuer and the Senior Manager, acting on behalf of itself and the Underwriters (if any) listed on the signature page below (together with the Senior Manager, the “*Underwriters*”), are entering into this Bond Purchase Agreement (the “*Agreement*”), to provide for the purchase and sale of the Securities identified above. The Securities are further described in Schedule I.

The Underwriters hereby offer to purchase all (but not less than all) of the Securities from, and to enter into this Agreement with, the Issuer. This offer is subject to acceptance by the Issuer by the Acceptance Deadline and, if not so accepted, will be subject to withdrawal by the Underwriters by written notice delivered to the Issuer at any time prior to acceptance. The Issuer shall accept this Agreement by its execution of this Bond Purchase Agreement Terms and Acceptance (“*BPA Terms and Acceptance*”). Upon such execution, the Agreement will be binding upon the Underwriters and the Issuer. The Senior Manager is acting on behalf of the Underwriters under this Agreement. This Agreement is effective as of the Effective Date and Time.

## **2. Documents Comprising the Agreement**

This Agreement consists of this BPA Terms and Acceptance, the following Schedules and the BPA General Provisions and Conditions, all of which are incorporated herein and constitute part of this Agreement as if fully restated herein. The Schedules are as follows:

Schedule I: Terms of the Securities

Schedule II: Defined Terms

Schedule III: Modifications to the Agreement and Other Required State- or Issuer-Specific Provisions

Schedule IV: Issuer and Underwriter Representations

Schedule V: Items to be Delivered at Closing

*This Agreement shall include all provisions contained in the BPA General Provisions and Conditions except as otherwise specified in this BPA Terms and Acceptance or as modified in Schedule III. All capitalized terms used in this BPA Terms and Acceptance and not otherwise defined are used as defined in Schedule II or in the BPA General Provisions and Conditions.*

### 3. Purchase of the Securities

Drafter's Note: Section 3 provides that the purchase of the Securities will be a joint and several obligation of the Underwriters. If the purchase obligation of the Underwriters is several, rather than joint and several, the first paragraph below should be modified. See the *Instructions and Commentary* for other conforming changes to consider.

The second paragraph in Section 3 is intended to clarify the nature of the relationship between the Underwriters and the Issuer – that the Underwriters and the Issuer are acting on an arm's-length, commercial basis and that no Underwriter is acting as a fiduciary or agent of the Issuer. This paragraph should be discussed with the Senior Manager and the Issuer. If the relationship between the Issuer and an Underwriter differs from that described below, modify or delete the language in the paragraph as appropriate.

The Underwriters, jointly and severally, shall purchase from the Issuer, and the Issuer shall sell to the Underwriters, all (but not less than all) of the Securities on the Closing Date at the aggregate Purchase Price set forth below, plus accrued interest (if any). The Securities shall bear interest at the rates per annum, mature on the dates, be sold to the public at the prices and be subject to optional and mandatory sinking fund redemption prior to maturity and to such other terms and provisions, all as set forth in Schedule I. The Securities otherwise shall be as described in the Official Statement, the Bond Legislation and the Issuer Documents. The Underwriters' agreement to purchase the Securities from the Issuer is made in reliance upon the Issuer's representations, covenants and warranties and on the terms and conditions set forth in this Agreement.

The Issuer acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Issuer and the Underwriters, (ii) in connection with such transaction, each Underwriter is acting solely as a principal and not as an agent or a fiduciary of the Issuer, (iii) the Underwriters have not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer with respect to the offering of the Securities or the process leading thereto (whether or not any Underwriter, or any affiliate of an Underwriter, has advised or is currently advising the Issuer on other matters) or any other obligation to the Issuer except the obligations expressly set forth in this Agreement and (iv) the Issuer has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Securities.

### 4. Purchase Price

Drafter's Note: Specify below the Purchase Price of the Securities. Select Alternative A if the Underwriters will retain an Underwriters' discount. Select Alternative B if there is no Underwriters' discount and the Underwriters will be paid an underwriting commission. Complete and revise the applicable paragraph, including the form of payment(s) and whether the Underwriters are to be separately

reimbursed for out-of-pocket expenses; describe the out-of-pocket expenses, if appropriate. Out-of-pocket expenses may include reimbursement for incidental costs paid by the Underwriters on behalf of the Issuer in connection with the marketing, issuance and delivery of the Securities. See Section 10 of the BPA General Provisions and Conditions. Delete the paragraph that is not applicable.

[Alternative A] The Purchase Price of the Securities is \$\_\_\_\_\_ (representing the principal amount of the Securities, less Underwriters' discount of \$\_\_\_\_\_, and less/plus net original issue discount/premium of \$\_\_\_\_\_), plus accrued interest, if any, to the Closing Date. The Purchase Price shall be payable on the Closing Date by the Underwriters to or as directed by the Issuer by [cashiers check] or [wire transfer in immediately available funds] or as otherwise agreed by the Issuer and the Senior Manager as follows: \_\_\_\_\_. [In accordance with Section 10 of the BPA General Provisions and Conditions, the Underwriters also will be reimbursed for the following out-of-pocket expenses: \_\_\_\_\_.]

[Alternative B] The Purchase Price of the Securities is \$\_\_\_\_\_ (representing the principal amount of the Securities, less/plus net original issue discount/premium of \$\_\_\_\_\_), plus accrued interest, if any, to the Closing Date. The Purchase Price shall be payable on the Closing Date by the Underwriters to or as directed by the Issuer by [cashier's check] or [wire transfer in immediately available funds] or as otherwise agreed by the Issuer and the Senior Manager as follows: \_\_\_\_\_. In consideration for their purchase of the Securities, the Issuer will pay the Underwriters an underwriting commission of \$\_\_\_\_\_, payable on the Closing Date to the Senior Manager by [cashier's check] or [wire transfer in immediately available funds] or as otherwise agreed by the Issuer and the Senior Manager as follows: \_\_\_\_\_. [In accordance with Section 10 of the BPA General Provisions and Conditions, the Underwriters also will be reimbursed for the following out-of-pocket expenses: \_\_\_\_\_.]

## 5. Good Faith Deposit

Drafter's Note: Select Alternative A if no Good Faith Deposit will be delivered. Select Alternative B if a Good Faith Deposit will be delivered and specify the amount and form of the Good Faith Deposit, whether the Good Faith Deposit will be held uncashed or deposited by the Issuer and, if deposited, how investment earnings will be applied. The drafter should consult with his or her client to determine which alternative to select. Modify, complete or delete the language below, as applicable.

[Alternative A] No Good Faith Deposit will be delivered.

[Alternative B] The Senior Manager, on behalf of the Underwriters, will deliver to the Issuer, prior to the Effective Date and Time, a Good Faith Deposit in the amount of \$\_\_\_\_\_. The Good Faith Deposit will be delivered to the Issuer in the form of a \_\_\_\_\_. The Good Faith Deposit will be [held uncashed by the Issuer]

or [deposited by the Issuer and applied on the Closing Date as a credit against the payment of the Purchase Price by the Underwriters] or [\_\_\_\_\_]. If the Good Faith Deposit is deposited by the Issuer, investment earnings on such amount will be [retained by the Issuer] or [applied on the Closing Date, along with the Good Faith Deposit, as a credit against the payment of the Purchase Price by the Underwriters]. The application of the Good Faith Deposit shall be subject to Section 3 of the BPA General Provisions and Conditions.

## 6. Official Statement

**Drafter's Note:** Select Alternative A if the Issuer has prepared a Preliminary Official Statement for the Securities. Select Alternative B if no Preliminary Official Statement has been prepared, but the Official Statement has been prepared and distributed at or prior to the Effective Date of the Agreement. If requested by the Issuer, specify in both alternatives the maximum number of copies of the Official Statement that the Issuer will provide at its cost. If the Official Statement was distributed prior to the Effective Date, delete that sentence. If the Official Statement is to be distributed in electronic form, both alternatives state that the Issuer does not object to electronic distribution, as required by MSRB Rule G-32. If Alternative B is selected, delete references in the BPA Terms and Acceptance to the Preliminary Official Statement; references to the Preliminary Official Statement in the BPA General Provisions and Conditions shall be ignored. Modify, complete or delete the language below, as applicable.

Section 4(d) of the BPA General Provisions and Conditions states that, during the period ending on the 25th day after the End of the Underwriting Period, the Issuer shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Senior Manager. Some issuers permit supplements or amendments, without regard to consent of the Senior Manager, if advised by Bond Counsel or Disclosure Counsel (as applicable) that a supplement or amendment is required to comply with applicable securities laws. If the Senior Manager and the Issuer so agree, that change can be made in Schedule III.

[Alternative A] The Issuer hereby consents to and ratifies the use and distribution by the Underwriters of the Preliminary Official Statement in connection with the public offering of the Securities by the Underwriters, and further confirms the authority of the Underwriters to use, and consents to the use of, the final Official Statement with respect to the Securities in connection with the public offering and sale of the Securities. The Issuer hereby represents and warrants that the Preliminary Official Statement previously furnished to the Senior Manager was “deemed final” by the Issuer as of its date for purposes of Rule 15c2-12, except for permitted omissions. In accordance with Section 4(a) of the BPA General Provisions and Conditions, the Issuer agrees, at its cost, to provide to the Underwriters not more than \_\_\_\_\_ copies of the Official Statement. To the extent required by applicable MSRB Rules, the Issuer hereby confirms that it does not object to distribution of the Official Statement in electronic form.

[Alternative B] The Issuer hereby consents to and ratifies the use and distribution by the Underwriters of the Official Statement in connection with the public offering and sale of the Securities by the Underwriters. The Issuer hereby represents and warrants that the Official Statement previously furnished to the Senior Manager was “deemed final” by the Issuer as of its date for purposes of Rule 15c2-12. In accordance with Section 4(a) of the BPA General Provisions and Conditions, to the extent not previously provided, the Issuer agrees, at its cost, to provide to the Underwriters not more than \_\_\_\_\_ copies of the Official Statement. To the extent required by applicable MSRB Rules, the Issuer hereby confirms that it does not object to distribution of the Official Statement in electronic form. All references in this Agreement to the Preliminary Official Statement shall be disregarded.

## **7. Third-Party Credit Enhancement or Support**

**Drafter’s Note:** Select Alternative A if no third-party credit enhancement or support will be provided with respect to the Securities. Select Alternative B if a Policy or Support Facility will be provided with respect to the Securities and complete the applicable information below. If the Policy or Support Facility applies only to a specified series or to specified maturities of the Securities, set forth in Schedule I the applicable series or maturities. Modify, complete or delete the language below, as applicable.

[Alternative A] No Policy or Support Facility will be provided with respect to the Securities.

[Alternative B]

*Bond Insurer:* \_\_\_\_\_, as issuer of the Policy with respect to the Securities (or the specified series or maturities set forth in Schedule I).

*Support Facility Provider:* \_\_\_\_\_, as provider of the \_\_\_\_\_ with respect to the Securities (or the specified series set forth in Schedule I), constituting a Support Facility for purposes of this Agreement.

## **8. Ratings**

**Drafter’s Note:** Specify below, as applicable, long-term and short-term ratings, ratings based on the delivery of the Policy or Support Facility, and underlying ratings.

The following ratings on the Securities shall be in effect on the Closing Date:

Moody’s: \_\_\_\_\_

S&P: \_\_\_\_\_

Fitch: \_\_\_\_\_



## 9. Closing Date

The delivery of and payment for the Securities shall be the “Closing” for the Securities and shall occur at or prior to 1:00 p.m., New York City time, on the Closing Date, or at such other time or on such other date as may be mutually agreed by the Senior Manager and the Issuer. The location of the Closing shall be \_\_\_\_\_, or at such other location as may be mutually agreed by the Senior Manager and the Issuer.

## 10. Issue Price Certificate

**Drafter’s Note:** Section 10 refers to an issue price certificate to be provided by Bond Counsel for signature by the Senior Manager on behalf of the Underwriters. See discussion in the BPA Terms and Acceptance and in connection with the description of the tax certificate or tax regulatory agreement in paragraph (x) of Schedule V. See also the *Instructions and Commentary*. The form of issue price certificate may be attached as an exhibit to Schedule V. As with all tax-related documentation, the form of the issue price certificate should be provided for review by the parties as early in the transaction as practical. The parties should be aware, however, that the ability of the Senior Manager to deliver a particular form of issue price certificate will depend upon the actual factual circumstances of the sale and pricing of the Securities.

Upon request of Bond Counsel, the Senior Manager shall execute and deliver on the Closing Date an issue price or similar certificate, in form and substance reasonably satisfactory to the Issuer, Bond Counsel and the Senior Manager [substantially in the form attached as an exhibit to Schedule V].

## 11. Accountants’ Letter

**Drafter’s Note:** Practices vary widely with respect to the delivery of Accountants’ letters, depending on the nature of the transaction and local custom and practice. The drafter should consult with the Senior Manager and the Issuer, along with the Accountants, at an early stage of the transaction to determine whether one or more Accountants’ letters will be delivered and, if so, the timing, scope and content of the letter(s).

Select Alternative A if no Accountants’ letters are to be delivered in connection with the execution of the Agreement. Select Alternative B, modified as necessary, if one or more Accountants’ letters are to be delivered in connection with the execution of the Agreement with respect to financial statements included in the Preliminary Official Statement. Select Alternative C and cross-reference to Schedule V if one or more Accountants’ letters are to be delivered only on the Closing Date with respect to financial statements included in the Official Statement. Paragraph (xii) of Schedule V requires that either (A) a “bring-down” Accountants’ letter be delivered at Closing, updating and revising information included in the initial letter and addressing the financial statements included in the Official Statement, or (B) if no

letter is delivered in connection with the execution of the Agreement, a separate Accountants' letter be delivered at Closing addressing the financial statements included in the Official Statement. Modify the language in Section 11 below and in Paragraph (xii) of Schedule V if no Preliminary Official Statement has been prepared or if only a single Accountants' letter will be delivered. The *Instructions and Commentary* include further discussion of alternative scenarios with respect to delivery of Accountants' letters. Modify, complete or delete the language below, as applicable.

[Alternative A] No Accountants' letters will be delivered in connection with issuance of the Securities.

[Alternative B] At or prior to the execution of this Agreement, the Senior Manager shall receive a letter or letters with respect to each entity whose audited financial statements appear in the Preliminary Official Statement from such entity's Accountants, addressed to the Issuer and the Underwriters, in form reasonably satisfactory to the Issuer, the Senior Manager and Underwriters' Counsel, consenting to references to such firm in the Preliminary Official Statement, consenting to use in the Preliminary Official Statement of its report relating to the financial statements and setting forth the results of certain specified procedures (as of a date within five business days of the date of the letter or such other date or period as may be agreed to by the Senior Manager) undertaken by the Accountants with respect to the financial information contained in the Preliminary Official Statement.

[Alternative C] On the Closing Date, the Senior Manager shall receive an Accountants' letter as described in Schedule V.

## **12. Indemnification and Contribution**

Indemnification and Contribution provisions are included in Section 11 of the BPA General Provisions and Conditions. The drafter, after consultation with his or her client, should carefully consider, based on State law and Issuer policy, whether the Indemnification and Contribution provisions should be included in the Agreement for a particular transaction. See the *Instructions and Commentary* for further discussion.

Drafter's Note: Select Alternative A if the Indemnification and Contribution provisions in Section 11 of the BPA General Provisions and Conditions do not apply to the transaction. Select Alternative B if the Indemnification and Contribution provisions in Section 11 of the BPA General Provisions and Conditions do apply to the transaction and are to be included in the Agreement. Any changes to Section 11 of the BPA General Provisions and Conditions may be made below or in Schedule III; use the bracketed language in Alternative B to cross-reference to the changes. Modify, complete or delete the language below, as applicable.

[Alternative A] THE INDEMNIFICATION AND CONTRIBUTION PROVISIONS CONTAINED IN SECTION 11 OF THE BPA GENERAL PROVISIONS

AND CONDITIONS ARE NOT APPLICABLE IN CONNECTION WITH THE ISSUANCE AND SALE OF THE SECURITIES AND SHALL NOT BE PART OF THIS AGREEMENT.

[Alternative B] THE INDEMNIFICATION AND CONTRIBUTION PROVISIONS CONTAINED IN SECTION 11 OF THE BPA GENERAL PROVISIONS AND CONDITIONS SHALL APPLY TO THE ISSUANCE AND SALE OF THE SECURITIES AND SHALL BE PART OF THIS AGREEMENT. [See below/Schedule III for certain modifications to the provisions of Section 11 of the BPA General Provisions and Conditions.]

### **13. Counterparts**

This Agreement may be executed in one or more counterparts with the same force and effect as if all signatures appeared on a single instrument.

### **14. Signatures**

Upon execution by the Issuer and the Senior Manager, this Agreement shall be binding upon the Issuer and the Underwriters as of the Effective Date and Time.

ACCEPTED AND AGREED:

ISSUER: \_\_\_\_\_

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

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

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

SENIOR MANAGER, on behalf of the Underwriters: \_\_\_\_\_

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

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

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

CO-MANAGING UNDERWRITERS: \_\_\_\_\_

\_\_\_\_\_

ADDITIONAL UNDERWRITERS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[signature page for BPA Terms and Acceptance relating to  
\_\_\_\_\_ [identify Securities]]

## Schedule I

**Drafter's Note:** Complete below the applicable terms of the Securities, including maturity schedule, interest rates, offering prices or yields, mandatory sinking fund provisions, if any, and optional redemption provisions. If the Securities are comprised of two or more series, the provisions below should be modified to reflect the terms of each separate series. If a Policy or Support Facility will apply only to a specified series or to specified maturities of the Securities, identify below the applicable series or maturities using asterisks and an appropriate footnote.

### **Terms of the Securities**

<b><u>Principal Amount</u></b>	<b><u>Maturity ( )</u></b>	<b><u>Interest Rate</u></b>	<b><u>Offering Price or Yield</u></b>
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### **Mandatory Sinking Fund Schedule:**

Securities Maturing on \_\_\_\_\_, \_\_\_\_\_:

**Date**  
**( )**

**Principal  
Amount**

Securities Maturing on \_\_\_\_\_, \_\_\_\_\_:

**Date**  
**( )**

**Principal  
Amount**

### **Optional Redemption:**

## **Schedule II**

### **Defined Terms**

**Drafter's Note:** Modify, complete, add or delete defined terms below that apply to the issuance of the Securities and to conform to provisions included elsewhere in the Agreement.

*All capitalized terms used in this Agreement and not otherwise defined are used as defined in Schedule II below or in the BPA General Provisions and Conditions:*

*Acceptance Deadline:* The date set forth on the first page of the BPA Terms and Acceptance, being the date and time by which the Issuer must accept the Agreement.

*Accountants:* \_\_\_\_\_, the public accountants of the Issuer and/or any entity whose audited financial statements are included in the Preliminary Official Statement and the Official Statement.

*Act:* \_\_\_\_\_.

*Agreement:* This Bond Purchase Agreement, dated the Effective Date, including (i) the BPA Terms and Acceptance, (ii) Schedules I, II, III, IV and V attached hereto and (iii) the BPA General Provisions and Conditions.

*Bond Counsel:* \_\_\_\_\_.

**Drafter's Note:** Modify the description of the Bond Legislation to describe the Issuer's authorizing legislation for the Securities.

*Bond Legislation:* The Resolution(s), Ordinance(s) or Order(s) enacted by the Issuer's legislative body on \_\_\_\_\_, \_\_\_\_\_, authorizing the issuance of the Securities, as amended and supplemented to the Closing Date.

*Bond Insurer:* The issuer of the Policy, if any, identified in the BPA Terms and Acceptance.

*BPA General Provisions and Conditions:* The Bond Purchase Agreement General Provisions and Conditions 9/17/08 attached to, incorporated by reference into, and constituting part of this Agreement, except as otherwise specified or as modified in Schedule III.

*BPA Terms and Acceptance:* The Bond Purchase Agreement Terms and Acceptance 9/17/08 as modified and completed to apply to the issuance and sale of the Securities.

*BPA Terms and Acceptance 9/17/08*

*Closing Date:* The date set forth on the first page of the BPA Terms and Acceptance, being the date of the issuance and delivery of the Securities.

Drafter's Note: Delete reference to the Continuing Disclosure Undertaking if the issuance of the Securities is exempt under Rule 15c2-12 and the Issuer has not otherwise elected to provide a Continuing Disclosure Undertaking.

*Continuing Disclosure Undertaking:* The continuing disclosure undertaking or agreement, if any, entered into by the Issuer with respect to the Securities in accordance with Rule 15c2-12 (which may be a separate document or may be included in the Bond Legislation or another Issuer Document).

Drafter's Note: The definition of Creditors' Rights Laws may be modified to conform to local custom and practice.

*Creditors' Rights Laws:* Limitations on enforceability as may result from bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and from the application of general principles of equity and from public policy limitations on the exercise of any rights to indemnification and contribution.

*Disclosure Counsel:* \_\_\_\_\_.

*DTC:* The Depository Trust Company.

*Effective Date and Time:* The date and time that this Agreement is effective, as set forth on the first page of the BPA Terms and Acceptance.

*End of the Underwriting Period:* The later of (A) the Closing Date or (B) when the Underwriters no longer retain an unsold balance of the Securities. See Section 4(e) of the BPA General Provisions and Conditions.

*Exchange Act:* The Securities Exchange Act of 1934, as amended.

*Excluded Sections:* For purposes of the representations and warranties of the Issuer set forth in Schedule IV, the indemnification provisions set forth in Section 11 of the BPA General Provisions and Conditions and the opinions of Issuer's Counsel and Disclosure Counsel set forth in Schedule V, the "*Excluded Sections*" of the Preliminary Official Statement and the Official Statement shall be: (i) the section describing DTC and its book-entry-only procedures, (ii) any information provided by the Bond Insurer or Support Facility Provider expressly for use in the Official Statement, (iii) the section captioned "Underwriting" and (iv) the following additional sections (if any):  
\_\_\_\_\_.

*Good Faith Deposit:* The amount to be provided as a good faith deposit by the Underwriters to the Issuer, if and to the extent set forth in the BPA Terms and Acceptance.

*Issuer:* The Issuer of the Securities, identified on the first page of the BPA Terms and Acceptance.

Drafter's Note: List as Issuer Documents all transaction documents to which the Issuer is a party. Other transaction documents, if any, to which the Issuer is not a party are referenced in Section 8(a) of the BPA General Provisions and Conditions and may be separately identified in Schedule V.

*Issuer Documents:* All financing documents to which the Issuer is a party relating to the issuance of and security for the Securities, as such documents are amended and supplemented to the Closing Date, including, but not limited to:

(i) this Agreement,

(ii) any Continuing Disclosure Undertaking,

(iii) other applicable financing or operative documents to which the Issuer is a party, as such documents are amended and supplemented to the Closing Date, including any trust indenture, loan agreement, security instrument, auction agreement, remarketing agreement and any agreement with the Bond Insurer or Support Facility Provider, as set forth below:

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*Issuer's Counsel:* \_\_\_\_\_.

*MSRB:* Municipal Securities Rulemaking Board.



*Notice Address:*

ISSUER: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SENIOR MANAGER: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

All Notices required to be delivered under this Agreement shall be given as provided in Section 12 of the BPA General Provisions and Conditions.

*Official Statement:* Official Statement dated [\_\_\_\_\_, \_\_\_\_] or [the Effective Date], relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

**Drafter's Note:** Delete reference to the Paying Agent, if no paying agent will be used by the Issuer for the Securities or if the Trustee is serving as the paying agent.

*Paying Agent:* \_\_\_\_\_, acting as paying agent for the Securities.

*Policy:* A municipal bond insurance policy, if any, issued by the Bond Insurer, insuring the payment when due of principal of and interest on the Securities (or certain specified series or maturities), as identified in the BPA Terms and Acceptance.

**Drafter's Note:** Select Alternative A if the Issuer has prepared a Preliminary Official Statement. Select Alternative B if no Preliminary Official Statement is prepared for use in connection with the sale of the Securities and delete references in the BPA Terms and Acceptance to the Preliminary Official Statement; all references to the Preliminary Official Statement in the BPA General Provisions and Conditions shall be disregarded. See Section 6 of the BPA Terms and Acceptance.

*Preliminary Official Statement:*

**[Alternative A]** Preliminary Official Statement dated \_\_\_\_\_, \_\_\_\_\_, relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

**[Alternative B]** No Preliminary Official Statement has been prepared for use in connection with the sale of the Securities.

*BPA Terms and Acceptance 9/17/08*

*Purchase Price:* The amount specified in the BPA Terms and Acceptance as the Purchase Price to be paid by the Underwriters at the Closing for the purchase of the Securities on the Closing Date.

*Rule 15c2-12:* Rule 15c2-12 promulgated by the SEC under the Exchange Act.

*SEC:* Securities and Exchange Commission of the United States.

*Securities:* The Securities identified on the first page of this BPA Terms and Acceptance, as more specifically described in Schedule I.

*Securities Act:* The Securities Act of 1933, as amended.

*Senior Manager:* The firm identified as the Senior Manager on the first page of the BPA Terms and Acceptance, acting on behalf of itself and the other Underwriters (if any).

*State:* \_\_\_\_\_.

*Support Facility:* A third-party credit enhancement or liquidity facility (other than a Policy), if any, provided by the Support Facility Provider, supporting payments with respect to the Securities (or certain specified series), as identified in the BPA Terms and Acceptance.

*Support Facility Provider:* The provider of the Support Facility, if any, identified in the BPA Terms and Acceptance.

<p><b>Drafter's Note:</b> Delete reference to the Trustee if no trustee will be used in connection with the Securities.</p>
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*Trustee:* \_\_\_\_\_, acting as trustee and/or paying agent for the Securities.

<p><b>Drafter's Note:</b> Modify the definition of Trust Estate as necessary to conform to the Securities <u>or</u> identify more specifically the security or the source of payment for the Securities. If a different defined term is used, add a statement to the following effect: "References in the BPA General Provisions and Conditions to 'Trust Estate' shall be deemed to refer to '[insert new defined term]'."</p>
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*Trust Estate:* The taxes, revenues and/or other funds pledged or otherwise identified by the Issuer as security or the source of payment for the Securities as set forth in the Issuer Documents or \_\_\_\_\_.

*Trust Indenture Act:* Trust Indenture Act of 1939, as amended.

*Underwriters:* The Underwriters (including the Senior Manager, the Co-Managing Underwriters and any additional Underwriters) identified on the signature page of the BPA Terms and Acceptance.

*Underwriters' Counsel:* \_\_\_\_\_.

### **Schedule III**

#### **Modifications to the Agreement and Other Required State- or Issuer-Specific Provisions**

Drafter's Note: Insert below any modifications, additions to or deletions from the BPA General Provisions and Conditions, to the extent not otherwise set forth in the BPA Terms and Acceptance. Provisions that are specifically required as a matter of State or Issuer law or policy also should be set forth below. See the *Instructions and Commentary* for a general discussion and description of certain modifications and supplements to the Agreement that may be included in Schedule III.

Each of the modifications and/or supplemental provisions set forth below or attached to this Schedule III shall be incorporated in and constitute part of this Agreement as if fully restated therein:

**Representations and Warranties**

**Drafter's Note:** Representations and warranties of the Issuer will vary significantly depending on the nature of transaction, the Issuer and State law and practice. Section A of Schedule IV identifies representations and warranties that customarily may be given by Issuers, but not all of the paragraphs below will be required or appropriate for every transaction.

In some transactions, the Underwriters also will be requested to make certain representations and warranties. Section B of Schedule IV identifies certain representations and warranties that may be given by Underwriters. In some instances, additional representations and warranties may be requested to address specific matters of State or Issuer law or policy.

The drafter should consult with his or her client to determine which representations and warranties are appropriate. In particular, the drafter and the Senior Manager should give careful consideration prior to expanding the scope of the Underwriters' representations and warranties. Certain representations and warranties that the Senior Manager may be requested to make on behalf of the Underwriters in some circumstances more appropriately may be obtained by the Issuer directly from each Underwriter. The Senior Manager also may include representations and warranties from each Underwriter in the Agreement Among Underwriters relating to the Securities.

Review closely the representations and warranties set forth in Schedule IV and complete, modify, add and delete as appropriate. All drafter's notes should be deleted from the final BPA Terms and Acceptance. If no Preliminary Official Statement has been prepared, references below to the Preliminary Official Statement should be deleted.

A. **Representations and Warranties of the Issuer.** The Issuer hereby agrees with, and makes the following representations and warranties to, the Underwriters, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

- (a) The Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Bond Legislation, to execute and deliver the Issuer Documents and the Official Statement, to issue, sell and deliver the Securities as provided herein, and to carry out and to consummate the transactions contemplated by the Bond Legislation, the Issuer Documents and the Official Statement.

**Drafter's Note:** Identify below any official action of the Issuer that has not occurred as of the Effective Date; if all such official action has occurred, delete the bracketed clause.

- (b) [Except for \_\_\_\_\_,] By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized and approved (i) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement for use by the Underwriters in connection with the public offering of the Securities, (ii) the issuance and sale of the Securities upon the terms set forth herein and as contemplated by the Bond Legislation, the Issuer Documents and the Official Statement and (iii) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Bond Legislation and the Issuer Documents.
- (c) The Securities will be issued in conformity with and entitled to the benefit and security of the Bond Legislation and the Issuer Documents, including the pledge or application thereunder of the Trust Estate.
- (d) This Agreement constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms; the other Issuer Documents, when duly executed and delivered, will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms; and the Securities, when issued, authenticated and delivered in accordance with the Issuer Documents and sold to the Underwriters as provided herein, will be the legal, valid and binding obligations of the Issuer enforceable in accordance with their terms; in all cases, except as the enforceability of this Agreement, the other Issuer Documents and the Securities may be limited by application of Creditors' Rights Laws.
- (e) The Issuer is not in breach of or default in any material respect under (if applicable) its charter documents, its articles of incorporation or its bylaws or under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a material default or event of default by the Issuer under any of the foregoing.
- (f) The adoption, execution and delivery of the Securities, the Bond Legislation and the Issuer Documents, and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a

breach of or default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets are otherwise subject, and such adoption, execution, delivery or compliance will not result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature upon the Trust Estate or the property or assets, if any, of the Issuer to be pledged to secure the Securities or under the terms of any such law, regulation or instrument, except as provided by the Securities, the Bond Legislation and the Issuer Documents.

- (g) All authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the issuance of the Securities or the due performance by the Issuer of its obligations under the Bond Legislation, the Issuer Documents and the Securities have been duly obtained or will be obtained prior to the Closing, except for: (i) \_\_\_\_\_, (ii) such authorizations, approvals, consents and orders (if any) as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities and (iii) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.
- (h) The Preliminary Official Statement as of its date did not, and the Official Statement as of its date does not and as of the Closing Date 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, in the light of the circumstances under which they were made, not misleading; provided that, the Issuer makes no statement as to the Excluded Sections of the Preliminary Official Statement or the Official Statement.

<p><u>Drafter's Note:</u> Identify applicable accounting principles and revise accordingly.</p>
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- (i) The financial statements of the Issuer contained in the Preliminary Official Statement and the Official Statement fairly present the financial position and results of operations of the Issuer as of the dates and for the periods therein set forth in accordance with [\_\_\_\_\_] [generally accepted accounting principles] consistently applied, and, since the date thereof, there has been no material adverse change in the financial position or results of operations of the Issuer.
- (j) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body, pending or,

to the knowledge of the Issuer, threatened against the Issuer: (i) affecting the existence of the Issuer or the titles of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the pledge or collection by the Issuer of the Trust Estate or the making of any other required deposits with respect to the Securities, (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 Securities, the Bond Legislation or the Issuer Documents, (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (v) except as disclosed in the Official Statement, 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 Trust Estate or to pay debt service on the Securities, or (vi) contesting the status of the interest on the Securities 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 Official Statement.

- (k) The Issuer has received all licenses, permits or other regulatory approvals required (if any) for the pledge, collection and/or application by the Issuer of the Trust Estate and the Issuer is not in material default, and no event has occurred which would constitute or result in a material default, under any such licenses, permits or approvals.

**Drafter's Note:** If the Issuer cannot make the Rule 15c2-12 representation set forth in paragraph (1) with respect to any previous written continuing disclosure undertaking, if not otherwise described in the Official Statement, briefly describe the nature of the Issuer's failure to comply with the previous undertaking, the steps taken to correct that failure and the measures taken to ensure that the Issuer will comply in the future with its continuing disclosure undertakings.

- (l) If required in accordance with Rule 15c2-12, the Issuer has entered or will enter into the Continuing Disclosure Undertaking and, unless otherwise described in the Official Statement or set forth below, the Issuer has not failed during the previous five years to comply in all material respects with any previous undertakings in a written continuing disclosure contract or agreement under Rule 15c2-12.

[Unless otherwise described in the Official Statement, describe any failures during the previous five years to comply with any previous undertakings: \_\_\_\_\_.]

- (m) The Bond Legislation, the Issuer Documents and the Securities conform to the description thereof contained in the Official Statement.



- (n) The Issuer has the legal authority to apply proceeds of the Securities for the purposes contemplated by the Bond Legislation and the Issuer Documents, including for the payment or reimbursement of incidental expenses in connection with the marketing, issuance and delivery of the Securities to the extent required by Section 10(a) of the BPA General Provisions and Conditions and in compliance with applicable law.
- (o) Any certificate signed by an authorized officer of the Issuer and delivered to the Senior Manager shall be deemed a representation and warranty of the Issuer to the Underwriters as to the statements made therein.

B. **Representations and Warranties of the Underwriters.** The Underwriters hereby agree with, and make the following representations and warranties to, the Issuer, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

- (a) Each Underwriter is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.
- (b) This Agreement has been duly authorized, executed and delivered by the Senior Manager on behalf of the Underwriters and, assuming the due authorization, execution and delivery by the Issuer, is the legal, valid and binding obligation of the Underwriters enforceable in accordance with its terms, except as the enforceability of this Agreement may be limited by application of Creditors' Rights Laws.
- (c) Each Underwriter, on its own behalf, represents that it is licensed by and registered with the Financial Industry Regulatory Authority as a broker-dealer and the MSRB as a municipal securities dealer.

The Issuer acknowledges that the Senior Manager makes the foregoing representations on behalf of the Underwriters in reliance upon representations made by the Underwriters to the Senior Manager in the Agreement Among Underwriters relating to the Securities.

## Schedule V

### Items to be Delivered at Closing

**Drafter's Note:** Items to be delivered at Closing will vary significantly depending on the nature of the transaction and Issuer and State law and practice. Schedule V identifies items that customarily may be delivered at Closing, *but not all items listed below will be required for every transaction. The content of each of these items also may vary significantly from the descriptions below.* A draft of the Agreement, including Schedule V, should be distributed as early as possible in order to identify closing items that may require further negotiation among the parties.

Review closely the list of closing items included in Schedule V and complete, modify, add and delete as appropriate. The drafter may prefer to attach a form of an item identified below in place of the description of that item. Other items that may be attached to Schedule V include the form of issue price certificate to be executed by the Senior Manager in accordance with Section 10 of the BPA Terms and Acceptance. All drafter's notes should be deleted from the final BPA Terms and Acceptance.

The Underwriters shall receive on the Closing Date, in form and substance satisfactory to Bond Counsel and to the Senior Manager, each item specified below, unless waived by the Senior Manager on behalf of the Underwriters:

**Drafter's Note:** Consider carefully the addressees of each opinion identified in paragraphs (i) through (vi) below. For example, depending on local practice, the approving opinion of Bond Counsel may be addressed only to the Issuer (with a separate reliance letter to the Underwriters) or may be addressed only to the Underwriters or may be addressed to both. Certain Issuers also may request that they be included as an addressee of the opinion of Underwriters' Counsel. See the *Instructions and Commentary* for a further discussion of addressees of opinions. If the approving opinion of Bond Counsel is not attached as an appendix to the Official Statement, the substance of that opinion should be described in paragraph (i) below or the form of the approving opinion should be attached to Schedule V. Recipients of any reliance letters from Bond Counsel should be identified in paragraph (i) below. In addition to the Underwriters (if not an addressee), other recipients of reliance letters relating to Bond Counsel's approving opinion may include the Trustee, the Bond Insurer and the Support Facility Provider.

(i) The approving opinion of Bond Counsel, addressed to the Underwriters (or addressed to the Issuer with a reliance letter addressed to the Underwriters), dated the Closing Date, and in substantially the form included as an appendix to the Official Statement, together with reliance letters addressed to: \_\_\_\_\_.

(ii) The supplemental opinion of Bond Counsel, addressed to the Underwriters and the Issuer, dated the Closing Date, to the effect that:

(A) this Agreement has been duly authorized, executed and delivered by the Issuer and constitutes the legal, valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by Creditors' Rights Laws;

Drafter's Note: Other formulations of the language in clause (B) below may identify specific sections of the Official Statement that are addressed or specific sections that are excluded, as the case may be. Bond Counsel also may provide, particularly if requested by the Issuer, a broader 10b-5 paragraph with respect to the Official Statement (or specified sections). Bond Counsel also specifically may be asked to address in the supplemental opinion matters that are described in the Official Statement as being "in the opinion of Bond Counsel."

(B) the statements and information contained in the Official Statement, as of its date and as of the date of such opinion, relating to the Securities, the security and sources of payment for the Securities and the tax status of the Securities fairly and accurately summarize the provisions of the documents or matters of law indicated therein, as of such dates, and the statements describing the Bond Legislation and the Issuer Documents contained in the Official Statement, as of its date and as of the date of such opinion, fairly and accurately summarize the provisions of such documents purported to be summarized as of such dates; and

(C) the Securities are exempt from registration pursuant to the Securities Act and the Bond Legislation and any related trust indenture are exempt from qualification as an indenture pursuant to the Trust Indenture Act.

Drafter's Note: In some transactions, Issuer's Counsel may be an active participant in the transaction and may render an opinion in connection with the issuance and sale of the Securities. That opinion may include some or all of the items identified in paragraph (iii) below. In other transactions, Issuer's Counsel may not play an active role and some of the items below may be addressed, in whole or in part, in the approving and supplemental opinions of Bond Counsel, the opinion of Disclosure Counsel and/or an Issuer certificate. Certain of the paragraphs below are intended to parallel the representations made by the Issuer in Schedule IV and any modifications to the Issuer representations should be reflected in the corresponding subparagraphs below, as appropriate. If no Preliminary Official Statement has been prepared for the Securities, references to the Preliminary Official Statement should be deleted.

(iii) The opinion of Issuer's Counsel (if any) addressed to the Underwriters and the Issuer, dated the Closing Date, to the effect that:

(A) the Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Bond Legislation, to execute and deliver the Issuer Documents and the Official

Statement, and to issue the Securities and apply the proceeds thereof pursuant to the Bond Legislation and the Issuer Documents, and compliance with the provisions of each thereof will not conflict with or constitute a violation or breach of or default under any existing law or administrative rule or regulation, or, to the best of the knowledge of such counsel, any court order or decree, or any agreement, contract or other instrument to which the Issuer is a party or is otherwise subject or bound;

(B) by all necessary official action of the Issuer, the Issuer has duly authorized and approved (i) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, (ii) the issuance and sale of the Securities upon the terms set forth in the Bond Legislation, the Issuer Documents and the Official Statement and (iii) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Bond Legislation and the Issuer Documents;

(C) the Bond Legislation and any other resolutions of the Issuer approving and authorizing the issuance and sale of the Securities, the distribution of the Preliminary Official Statement and the execution and delivery of the Issuer Documents and the Official Statement were duly adopted at one or more meetings of the Issuer that were called and held pursuant to all applicable laws and regulations, and with all public notice required by all applicable laws and regulations and at which a quorum was present and acting throughout;

(D) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body pending, or, to the knowledge of such counsel, threatened against the Issuer: (i) affecting the existence of the Issuer or the titles of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the pledge or collection by the Issuer of the Trust Estate or the making of any other required deposits with respect to the Securities, (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 Securities, the Bond Legislation or the Issuer Documents, (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (v) except as disclosed in the Official Statement, 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 the Trust Estate or to pay debt service on the Securities, or (vi) contesting the status of the interest on the Securities 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 Official Statement;

(E) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement have been duly

authorized by the Issuer; nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Official Statement, as of its date and as of the date of such opinion, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data or as to the Excluded Sections of the Official Statement; and

(F) all authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the Issuer of its obligations under the Bond Legislation, the Issuer Documents and the Securities have been duly obtained, except for: (i) such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities and (ii) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.

**Drafter's Note:** If an opinion of Trustee's counsel is to be provided, as described in paragraph (iv), that opinion typically addresses the enforceability against the Trustee of the Issuer Documents to which the Trustee is a party. The Trustee's counsel opinion may be deleted based on, among other factors, local practice or if there is no Trustee, if the Trustee's role is limited, if the Trustee is not represented by counsel or if the role of Trustee's counsel is limited.

(iv) The opinion of counsel to the Trustee (if any), addressed to the Underwriters and the Issuer, dated the Closing Date, addressing such matters as reasonably may be requested by the Senior Manager and Bond Counsel.

**Drafter's Note:** The opinion of Underwriters' Counsel described in paragraph (v) generally is addressed only to the Underwriters, although certain Issuers may request that they be an addressee or receive a reliance letter. In those instances where Underwriters' Counsel agrees to do so, it should consider whether additional language is appropriate to identify that the Issuer is not the client of Underwriters' Counsel and that the scope of the engagement of Underwriters' Counsel may differ from the scope of an engagement where an attorney-client relationship exists with the Issuer. The portions of the Official Statement that are to be excluded from the 10b-5 paragraph of Underwriters' Counsel should be discussed with the Senior Manager, but generally differ from the Excluded Sections. Certain Underwriters may require specific language in the opinion of Underwriters' Counsel, including, for example, language addressing compliance with Rule 15c2-12. If the issuance of the Securities is exempt from Rule 15c2-12, clause (B) may be deleted.

(v) The opinion of Underwriters' Counsel, addressed to the Underwriters, dated the Closing Date, to the effect that: (A) the Securities are exempt from registration under the Securities Act and the Bond Legislation and any related trust indenture are exempt from qualification under the Trust Indenture Act and (B) the Continuing Disclosure Undertaking meets the requirements of Rule 15c2-12. In addition, such counsel shall state in its letter containing the foregoing opinion or in a separate letter addressed to the Underwriters that, without having undertaken to determine independently, or to assume responsibility for, the accuracy, completeness or fairness thereof, and based solely on their participation in meetings and telephone conferences at which representatives of the Issuer, Bond Counsel and the Senior Manager were at various times present, nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Official Statement, as of its date and as of the date of such letter, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data, and any information in the Official Statement respecting the Bond Insurer, the Support Facility Provider or DTC.

(vi) The opinion of Disclosure Counsel, if any, addressed to the Underwriters and the Issuer, dated the Closing Date, to the effect that nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Official Statement, as of its date and as of the date of such opinion, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data or as to the Excluded Sections of the Official Statement.

(vii) A certificate dated the Closing Date of an authorized officer of the Issuer to the effect that:

(A) the representations and warranties of the Issuer contained in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date;

(B) the Issuer has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied at or prior to the Closing;

(C) no event affecting the Issuer has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein not misleading in any material respect; and

(D) there is no action, suit, proceeding or investigation before or by any court or public board or body pending or threatened against the Issuer to restrain or enjoin the issuance, execution or delivery of the Securities or in any manner questioning the proceedings or authority for the issuance of the Securities or affecting directly or indirectly the validity of the Securities or of any provisions made or authorized for their payment or contesting the existence of the Issuer or the title of any of its officers to their respective offices.

(viii) Written evidence that the rating(s) on the Securities by the applicable rating services, as set forth in the BPA Terms and Acceptance, are in effect as of the Closing Date.

Drafter's Note: Delete or modify paragraph (ix) if there is no Trustee or if the Paying Agent will serve some or all of the functions described below.

(ix) A certificate of an officer of the Trustee, acceptable to the Senior Manager, dated the Closing Date, to the effect that the Issuer Documents and other financing or operative documents relating to the Securities to which the Trustee is a party have been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery thereof by the Issuer and the other parties thereto, constitute valid and binding agreements of the Trustee enforceable against the Trustee in accordance with their terms, and the Securities have been authenticated in accordance with the Bond Legislation and the Issuer Documents by a duly authorized officer or signatory of the Trustee; and an incumbency certificate of the Trustee, in form and content acceptable to the Senior Manager and Bond Counsel, dated the Closing Date, with respect to the officers or other signatories of the Trustee who have executed, authenticated and delivered the Securities, the Issuer Documents to which the Trustee is a party, and all other financing or operative documents relating to the Securities to be signed by the Trustee.

Drafter's Note: Tax-related documentation described in paragraph (x) should be provided for review by the parties as early in the transaction as practical. See also Section 10 of the BPA Terms and Acceptance relating to delivery by the Senior Manager of an issue price certificate. The issue price certificate may be an exhibit or attachment to the tax certificate or tax regulatory agreement.

(x) A tax certificate or tax regulatory agreement, executed by a duly authorized officer of the Issuer, in form and substance satisfactory to Bond Counsel, setting forth, among other things, in the manner permitted by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the reasonable expectations of the Issuer as of the Closing Date as to the use of proceeds of the Securities and of any other funds of the Issuer expected to be used to pay debt service on the Securities and the facts and estimates on which such expectations are based, and stating that, to the best of knowledge and belief of such certifying officer, the expectations set forth therein are reasonable.

Drafter's Note: The use of consultants, as contemplated in paragraph (xi), will vary according to the nature of the transaction and is more likely in revenue-supported transactions. The content of any certificate to be provided by the consultant, particularly as to the assurances provided with respect to accuracy and completeness of the consultant's report, should be negotiated prior to mailing the Preliminary Official Statement. If no Preliminary Official Statement has been prepared for the Securities, references to the Preliminary Official Statement should be deleted.

(xi) A certificate, dated as of the Closing Date, of an authorized representative of each consultant (if any) to the Issuer, consenting to the references to the consultant in the Preliminary Official Statement and the Official Statement and, if applicable, consenting to the inclusion of any report of that consultant as an appendix to the Preliminary Official Statement and the Official Statement; and, to the effect that the information contained in the Official Statement with respect to the consultant and its report under the applicable specified caption(s) and appendix is accurate and did not as of its date and does not as of the Closing Date contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Drafter's Note: Paragraph (xii) contemplates either (A) a "bring-down" Accountants' letter, updating the Accountants' letter delivered in connection with the execution of the Agreement, or (B) if no Accountants' letter was previously delivered, a separate Accountants' letter delivered only at Closing. The paragraph below generally should be consistent with the description of the Accountants' letters in the BPA Terms and Acceptance. See the earlier discussion in the BPA Terms and Acceptance and the *Instructions and Commentary*.

(xii) An Accountants' letter or letters, dated as of the Closing Date, (A) substantially in the form of the Accountants' letter or letters delivered pursuant to the BPA Terms and Acceptance (if an Accountants' letter was delivered in connection with the execution of this Agreement), consenting to references to such firm in the Official Statement, consenting to use in the Official Statement of its report relating to the financial statements and with procedures brought down to a date within five business days (or such other date or period as may be agreed to by the Senior Manager) of the Closing Date or (B) if no Accountants' letter previously has been delivered, a letter or letters with respect to each entity whose audited financial statements appear in the Official Statement from such entity's Accountants, addressed to the Issuer and the Underwriters, in form reasonably satisfactory to the Issuer, the Senior Manager and Underwriters' Counsel, consenting to references to such firm in the Official Statement, consenting to use in the Official Statement of its report relating to the financial statements and setting forth the results of certain specified procedures (as of a date within five business days of the date of the letter or such other date or period as may be agreed to by the Senior Manager) undertaken by the Accountants with respect to the financial information contained in the Official Statement.



(xiii) An Information Return for Tax-Exempt Bond Issues (Internal Revenue Service Form 8038-G), in a form satisfactory to Bond Counsel for filing, executed by a duly authorized officer of the Issuer.

(xiv) A copy of the Blanket Letter of Representations to DTC relating to the Securities signed by the Issuer.

**Drafter's Note:** One or both of paragraphs (xv) and (xvi) are included if a Policy and/or Support Facility is delivered in connection with the Securities. Materials relating to any Policy or Support Facility provided in connection with the Securities, including the certificates and opinions of counsel provided by the Bond Insurer or Support Facility Provider, vary in form and content based on the practice of the particular Bond Insurer or Support Facility Provider. The Bond Insurer or Support Facility Provider at a minimum should provide certificate or opinion comfort as to those portions of the Official Statement that it has furnished. In lieu of the paragraphs below, a detailed listing may be added of the items to be provided in connection with the Policy or Support Facility.

(xv) If the Securities (or any portion thereof) are insured by a Policy: a certified copy of the Policy issued by the Bond Insurer and any other documents executed in connection therewith; an opinion of counsel to, and/or a certificate signed by an authorized officer of, the Bond Insurer, dated the Closing Date, each in customary form, addressed to the Underwriters and the Issuer, addressing, among other matters, the enforceability of the Policy and the accuracy of the information provided by the Bond Insurer for inclusion in the Official Statement.

(xvi) If the Securities (or any portion thereof) are supported by a Support Facility: an executed copy of the Support Facility and any other documents executed in connection therewith; a certificate of the Support Facility Provider, dated the Closing Date, in customary form, signed by an authorized officer of the Support Facility Provider, to the effect that the information provided by the Support Facility Provider for inclusion in the Official Statement is accurate; and an opinion of counsel to the Support Facility Provider, dated the Closing Date, in customary form, addressed to the Underwriters and the Issuer, addressing, among other matters, the enforceability of the Support Facility.

**Drafter's Note:** Paragraph (xvii) applies if the Securities are issued, in whole or in part, to advance refund outstanding securities and generally describes the items to be delivered at Closing relating to the refunding. In lieu of paragraph (xvii), a detailed listing may be added of the items to be provided in connection with the advance refunding.

(xvii) If the Securities (or any portion thereof) are being issued to advance refund other outstanding obligations: a letter from a firm of certified public accountants, verifying the mathematical accuracy of the related schedules and computations with respect to the yield on the Securities and the availability of sufficient funds (including investment income) for payment of the obligations to be refunded; the executed escrow

agreement, if any; and an opinion or opinions of Bond Counsel, dated the Closing Date, in form and substance satisfactory to the Senior Manager, relating to the defeasance of the obligations to be refunded.

Drafter's Note: Paragraph (xviii) applies if the Securities are issued as variable rate or auction rate Securities. In lieu of paragraph (xviii), a detailed listing may be added of the additional documents, opinions and certificates to be delivered at the Closing.

(xviii) If the Securities (or any portion thereof) are being issued as variable rate or auction rate securities: true and complete copies of any related agreements, including, without limitation, any remarketing agreement, auction agency agreement, broker-dealer agreement or similar agreement, together with any required opinions and certificates.

Drafter's Note: Paragraph (xix) applies if the Issuer is entering into an interest rate swap or similar agreement with respect to the Securities, or if the Issuer is terminating an interest rate swap or similar agreement with respect to outstanding securities to be refunded or defeased with proceeds of the Securities. List the various agreements, certificates and opinions of counsel to be delivered at the Closing in connection with that transaction.

(xix) If, in connection with the issuance of the Securities, (A) the Issuer is entering into any interest rate exchange or similar agreement pertaining to any of the Securities, a true and complete copy thereof, together with any related required guarantees, opinions and certificates and/or (B) the Issuer is terminating any interest rate exchange or similar agreement pertaining to any obligations to be defeased or refunded from proceeds of the Securities, any related required opinions and certificates, and matters related to payment of any termination payment.

(xx) True and complete copies of all opinions, certificates and other documents delivered to the Trustee under the Bond Legislation and the Issuer Documents; and such additional legal opinions, certificates, instruments and other documents as the Senior Manager or Bond Counsel reasonably may request, in form and substance satisfactory to the Senior Manager or Bond Counsel, as the case may be, to evidence (A) compliance by the Issuer with legal requirements reasonably relating to the transactions contemplated by the Official Statement and this Agreement, (B) the truth and completeness, as of the date thereof and as of the time of the Closing, of the statements and information contained in the Official Statement, (C) the truth and completeness, as of the time of the Closing, of the representations and warranties of the Issuer contained in this Agreement and the certificates and other documents referred to in this Agreement, and (D) the due performance or satisfaction by the Issuer at or prior to the Closing of all agreements then to be satisfied.

[identify additional items, if any, attached as exhibits to Schedule V.]