

## RESOLUTION NO. 14-38

A RESOLUTION AUTHORIZING THE NEGOTIATED SALE OF NOT TO EXCEED \$27,550,000 CITY OF CLEARWATER, FLORIDA WATER AND SEWER REVENUE REFUNDING BOND, SERIES 2014; AWARDING THE SALE THEREOF TO TD BANK, N.A.; APPOINTING AN ESCROW AGENT; APPOINTING A PAYING AGENT AND REGISTRAR; APPOINTING A VERIFICATION AGENT; APPROVING THE FORM OF ESCROW DEPOSIT AGREEMENT; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE AND DELIVERY OF SUCH BOND; RATIFYING THE EXECUTION AND DELIVERY OF THE INTEREST RATE LOCK AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 2, 1984, the City Council of the City of Clearwater, Florida (the "City") enacted Ordinance No. 3674-84 (the "Original Ordinance") to provide for the issuance of bonds payable from Net Revenues of the System (as defined therein); and

WHEREAS, on November 15, 2001, the City enacted Ordinance No. 6915-01 (the "2001 Ordinance", and together with the Original Ordinance, the "Bond Ordinance") which authorized the issuance of the City of Clearwater, Florida, Water and Sewer Revenue [Refunding] Bonds, Series [to be determined], as Additional Bonds under the Original Ordinance; and

WHEREAS, on December 4, 2014, the City enacted Ordinance No. 8620-14, amending the Bond Ordinance (the "2014 Amending Ordinance"), the provisions of which shall apply to each series of Additional Bonds which are authorized on and after the date of enactment of the 2014 Amending Ordinance, retroactive to such date of enactment upon receipt of the consent of the holders of two-thirds in principal of Bonds then outstanding; and

WHEREAS, the City by this Resolution intends to provide for the issuance of its not to exceed \$27,550,000 City of Clearwater, Florida Water and Sewer Revenue Refunding Bond, Series 2014 (the "Series 2014 Bond") as an Additional Bond to advance refund all of the City's outstanding Water and Sewer Revenue Bonds, Series 2006 (the "Refunded Bonds"); and

WHEREAS, other than the Refunded Bonds, the City has currently outstanding under the Bond Ordinance, its Water and Sewer Revenue Refunding Bonds, Series 2003, Water and Sewer Revenue Bonds, Series 2009A, Water and Sewer Revenue Refunding Bonds, Series 2009B and Water and Sewer Revenue Refunding Bonds, Series 2011 (collectively, the "Parity Bonds"); and

WHEREAS, it is in the best interest of the City to provide for the negotiated sale of the not to exceed \$27,550,000 Series 2014 Bond; and

WHEREAS, the City issued a request for proposals ("RFP") to banking and other institutions on September 25, 2014, and received responses thereto on October 27, 2014; and

WHEREAS, the City now desires to approve the issuance and sale of its Series 2014 Bond pursuant to the RFP to TD Bank, N.A. (the "Bank", and upon purchase of the Series 2014 Bonds, the "Bondholder"), the respondent who provided the most favorable response to the RFP, to ratify the execution and delivery of an Interest Rate Lock Agreement between the Bank and the City dated October 30, 2014 and as modified on November 14, 2014 (collectively, the "Interest Rate Lock Agreement") and to take certain other actions in connection with the issuance and sale of the Series 2014 Bond; and

WHEREAS, the City will be provided all applicable disclosure information by the Bank as required by Section 218.385, Florida Statutes; and

WHEREAS, this resolution shall constitute a supplemental resolution under the terms of the Bond Ordinance as amended by the 2014 Amending Ordinance (collectively with the Bond Ordinance, the "Amended Bond Ordinance"), and all capitalized undefined terms used herein shall have the meanings set forth in the Bond Ordinance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

SECTION 1. This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the City of Clearwater, Florida, the Bond Ordinance and other applicable provisions of law. A series of the Water and Sewer Revenue Refunding Bonds authorized by the Bond Ordinance is hereby authorized to be issued in a principal amount of not to exceed \$27,550,000 pursuant to this Resolution, with such bond hereby designated as Series 2014. The Series 2014 Bond authorized by this Resolution is hereby authorized to be issued as an Additional Bond under the Bond Ordinance. The issuance of the not to exceed \$27,550,000 Series 2014 Bond by the City is hereby approved upon the terms and conditions set forth in the Amended Bond Ordinance and this Resolution.

The advance refunding of the Refunded Bonds with a redemption date of December 1, 2015 is hereby authorized, to be paid in part with the proceeds of the Series 2014 Bond herein authorized. The City Manager or in his absence an Assistant City Manager, and Finance Director are hereby authorized and directed to provide irrevocable directions to defease and redeem the Refunded Bonds.

The provisions of the Amended Bond Ordinance shall be fully applicable to the Series 2014 Bond and all of the covenants contained in the Amended Bond Ordinance shall be applicable to the Series 2014 Bond.

SECTION 2. It is in the best interest of the City and the residents and inhabitants thereof that the Series 2014 Bond be issued as a fully certificated bond to the Bank.

SECTION 3. Due to the critical importance of the timing of the sale of the Series 2014 Bond and due to the willingness of the Bank to purchase the Series 2014 Bond at a rate favorable to the City, it is hereby determined that it is in the best interest of the public and the City to sell the Series 2014 Bond at a negotiated sale. The City has received an offer from the Bank to purchase the Series 2014 Bond subject to the terms and conditions set forth in the Bank's Term Sheet dated October 27, 2014 and the Interest Rate Lock Agreement (collectively, the "Term Sheet"), attached hereto collectively as Exhibit A, which Term Sheet is hereby accepted by the City with certain modifications as provided herein and in the Series 2014 Bond. The execution and delivery by the City of the Interest Rate Lock Agreement is hereby ratified.

The Series 2014 Bond is hereby sold and awarded to the Bank at the price of par, and the Mayor, or in his absence the Vice-Mayor, and the City Manager, or in his absence an Assistant City Manager, are hereby authorized to execute and deliver the Series 2014 Bond substantially in the form attached hereto as Exhibit B attested by the City Clerk, or in her absence an Assistant City Clerk, and approved as to form and legal sufficiency by the City Attorney, receive the purchase price therefor and apply the proceeds thereof to the refunding of the Refunded Bonds and the payment of the costs of issuance of the Series 2014 Bond as provided herein, without further authority from this body. The Mayor, or in his absence the Vice-Mayor, and the City Manager, or in his absence an Assistant City Manager, are authorized to make any and all changes on the form of the Series 2014 Bond which shall be necessary to conform the same to the Term Sheet. Execution of the Series 2014 Bond by the Mayor, or in his absence the Vice-Mayor, and the City Manager, or in his absence an Assistant City Manager, shall be conclusive evidence of their approval of the form of the Series 2014 Bond. The Series 2014 Bond shall be payable solely as provided herein. Prior to purchase of the Series 2014 Bond, the Bank shall execute a Purchaser's Certificate attached hereto as Exhibit C. The disclosure letter as required by Chapter 218, Florida Statutes is attached hereto as Exhibit D. In connection with the transfer of the Series 2014 Bond to a subsequent holder except for an affiliate of the Bank, such successor holder shall deliver to the City a Purchaser's Certificate substantially in the form attached hereto as Exhibit C prior to such Series 2014 Bond being registered in the name of such successor holder. For purposes of this provision "affiliate" shall mean, as to any person, any other person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such person. For the purposes of this definition, "Control" shall mean the power, directly or indirectly, either to (i) vote 5% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a person or (ii) direct or cause the direction of the management and policies of a person, whether through the ability to exercise voting power, by control or otherwise. The terms "Controlled by" and "under common Control with" have the meanings correlative thereto.

SECTION 4. The Series 2014 Bond shall be issued in fully registered form; shall be dated as of its date of initial issuance; shall be numbered; shall be in a single denomination equal to the principal amount thereof which principal amount shall not exceed \$27,550,000 and shall be determined by the City Manager or Assistant City Manager and the Mayor or Vice-Mayor prior to the issuance thereof; shall mature on December 1, 2032; shall bear interest at the rate of 3.18% (the "Interest Rate"), subject to the provisions of Section 8 hereof; and such interest to be payable semi-annually on the first (1st) day of each June and December commencing on June 1, 2015. Interest shall be calculated on the basis of a 360 day year consisting of twelve 30 day months. On the date of the issuance of the Series 2014 Bond, the City shall receive the proceeds thereof and deposit the same to pay costs of issuance of the Series 2014 Bond and to refund the Refunded Bonds in accordance with the Escrow Deposit Agreement.

The Series 2014 Bond shall be subject to optional redemption in whole or in part prior to its maturity date, upon two Business Days prior written notice (i) on any Business Day (hereafter defined) prior to the fifth (5<sup>th</sup>) anniversary of the dated date of the Series 2014 Bond at a redemption price equal to the principal amount being redeemed together with interest accrued to the date of redemption plus the Prepayment Fee, as defined below, and (ii) on any Business Day on or after the fifth (5<sup>th</sup>) anniversary of the dated date of the Series 2014 Bond at a redemption price equal to the principal amount being redeemed together with interest accrued to the date of redemption.

"Business Day" shall mean any day other than a Saturday or Sunday or any day on which the Bondholder is lawfully closed.

"Prepayment Fee" shall mean, a fee equal to the greater of (i) 1.00% of the principal balance being prepaid multiplied by the remaining term of the Series 2014 Bond, in years, and (ii) the Yield Maintenance Fee.

The "Yield Maintenance Fee" shall be computed as follows: the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the remaining term of the Series 2014 Bond, shall be subtracted from the Interest Rate, or Default Rate (hereinafter defined) if applicable. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the remaining term of the Series 2014 Bond. Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above referenced current costs of funds divided by 12. The resulting sum of present values shall be the Yield Maintenance Fee.

The Series 2014 Bond is subject to mandatory redemption from Amortization Installments in part prior to maturity at a redemption price equal to 100% of the principal

amount thereof, plus accrued interest to the redemption date on the dates and in the amounts as provided in the Series 2014 Bond as approved by the City Manager or Assistant City Manager and the Mayor or Vice-Mayor prior to the issuance thereof, execution of the Series 2014 Bond to be conclusive evidence of such approval.

Notwithstanding the foregoing, for so long as the Series 2014 Bond is owned by the Bank, the principal of, redemption price and interest on the Series 2014 Bond shall be payable to the Bank on the respective principal and interest payment dates through ACH direct transfer to the Bank, and upon transfer of the Series 2014 Bond to a subsequent holder, at such address as is provided by such subsequent holder in writing to the City, in each case without presentation of the Series 2014 Bond.

SECTION 5. The Series 2014 Bond shall be issued under and secured by the Amended Bond Ordinance on a parity with the Parity Bonds and any Additional Bonds hereafter issued and shall be executed and delivered by the Mayor, or in his absence the Vice-Mayor, the City Manager, or in his absence an Assistant City Manager, and the City Clerk, or in her absence an Assistant City Clerk upon the approval of the City Attorney as to form and legal sufficiency, in substantially the form set forth in the Bond Ordinance and Exhibit B hereto, with such additional changes and insertions therein as conform to the provisions of this Resolution and such execution and delivery shall be conclusive evidence of the approval thereof by such officers.

SECTION 6. U.S. Bank National Association, with its designated office in Orlando, Florida, is hereby designated and authorized to serve as Escrow Agent for the Refunded Bonds. The Escrow Deposit Agreement is to be in substantially the form set forth in Exhibit E attached hereto, together with such changes as shall be approved by the Mayor, or in his absence the Vice-Mayor, and the City Manager, or in his absence an Assistant City Manager, such approval to be conclusively evidenced by their execution thereof. The execution of the Escrow Deposit Agreement is hereby approved, and the execution of the Escrow Deposit Agreement by the Mayor, or in his absence the Vice-Mayor, and the City Manager, or in his absence an Assistant City Manager, is hereby authorized, to be attested by the City Clerk, or in her absence an Assistant City Clerk, the form of which to be approved by the City Attorney. At the time of execution of the Escrow Deposit Agreement, the City shall furnish to the Escrow Agent named therein appropriate documentation to demonstrate that the sums being deposited and the investments to be made will be sufficient for such purposes.

SECTION 7. The City's Finance Director is hereby appointed to serve as the Paying Agent and Registrar for the Series 2014 Bond.

SECTION 8. GNP Services is hereby appointed and designated to provide a verification report demonstrating the adequacy of the cash and investments held in the Escrow Deposit Agreement will be sufficient to pay, in full, the principal and interest on the Refunded Bonds to and including the redemption date of December 1, 2015.

SECTION 9. The interest rate payable on the Series 2014 Bond shall be subject to adjustment in accordance with the following provisions:

"Default Rate" shall mean a rate per annum equal to the Prime Rate plus 6%.

"Determination of Taxability" means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service or of the United States Treasury Department determining that interest payable on the Series 2014 Bond is includable in the gross income of a Bondholder for Federal income tax purposes resulting from actions or inactions taken by the City. No such decree, judgment, or action will be considered final for this purpose unless the City has been given written notice thereof and, if it is so desired by the City and is legally permissible, the City has been afforded the opportunity to contest the same, at its own expense, either directly or in the name of the Bondholder, and until the conclusion of any appellate review, if sought.

"Event of Default" shall mean " shall mean (a) an Event of Default under the Bond Ordinance, or (b) the occurrence by the City of a failure to comply with one or more covenants or agreements set forth in the Bond Ordinance or this Resolution, which default or non-compliance shall continue and not be cured within thirty (30) days from receipt by the City of notice of such default or non-compliance by the Holder.

"Interest Rate" shall mean a per annum rate equal to 3.18%, prior to a Determination of Taxability or an Event of Default.

"Prime Rate" shall mean the per annum rate which TD Bank, N.A. announces from time to time to be its prime rate, as in effect from time to time. The prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. TD Bank, N.A. may make commercial loans or other loans at rates of interest at, above or below the prime rate. Each change in the prime rate shall be effective from and including the date such change is announced as being effective.

"Taxable Period" shall mean the period of time commencing on the date that interest on the Series 2014 Bond ceased to be excludable from gross income of the Holder thereof for federal income tax purposes and ending on the earlier of the date the Series 2014 Bond ceases to be outstanding or such adjustment is no longer applicable to the Series 2014 Bond.

"Taxable Rate" shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Holder with the same after tax yield that the Holder would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Holder as a result of such Determination of Taxability. The Holder shall provide the City with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the City.

The City shall pay interest upon the unpaid principal balance of the Series 2014 Bond at the Interest Rate, subject to adjustment as provided herein. Upon a Determination of Taxability, the Interest Rate shall be the Taxable Rate, and upon and during the continuance of an Event of Default (notwithstanding that a Determination of Taxability has also occurred) the Interest Rate shall equal the Default Rate.

In the event of a Determination of Taxability, the interest rate payable hereunder and under the Series 2014 Bond shall be subject to adjustment to the Taxable Rate, effective retroactively to the date on which such Determination of Taxability was made. In addition, upon a Determination of Taxability, the City agrees to pay to the Holder, subject to such Determination of Taxability, the Additional Amount upon demand. "Additional Amount" means (i) the difference between (a) interest on the Series 2014 Bond for the Taxable Period at a rate per annum equal to the Taxable Rate, and (b) the aggregate amount of interest paid on the Series 2014 Bond for the Taxable Period under the provisions of the Series 2014 Bond without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by such Holder to the Internal Revenue Service by reason of such Determination of Taxability.

SECTION 10. For purposes hereof, the Reserve Requirement (as defined in the Amended Bond Ordinance) for the Series 2014 Bond shall be \$0.00, and upon the effective date of the 2014 Amending Ordinance, the Series 2014 Bond shall not be entitled to any security provided by any monies on deposit in the Reserve Account. Prior to such effective date, the Series 2014 Bond shall be additionally secured by the funds on deposit in the Reserve Account as required by the Bond Ordinance, and as of the effective date of the 2014 Amending Ordinance, the Series 2014 Bond shall cease to be secured by the Reserve Account.

SECTION 11. By purchasing the Series 2014 Bond, the Bondholder consents to the amendments set forth in the 2014 Amending Ordinance.

SECTION 12. The City covenants that it will maintain its solvency through the term of the Series 2014 Bond to avoid an act of bankruptcy or the rearrangement, adjustment or readjustment of the obligations of the City under the provisions of any bankruptcy or moratorium laws or similar laws relating to or affecting creditor's rights.

SECTION 13. All prior resolutions of the City inconsistent with the provisions of this resolution are hereby modified, supplemented and amended to conform with the provisions herein contained and except as otherwise modified, supplemented and amended hereby shall remain in full force and effect.

SECTION 14. The Mayor, or in his absence the Vice-Mayor, the City Manager, or in his absence an Assistant City Manager, the Finance Director, the City Attorney and the City Clerk, or in her absence an Assistant City Clerk or any other appropriate officers of the City are hereby authorized and directed to execute any and all certifications or other instruments or documents required by the Resolution, the Term Sheet, the Escrow Deposit Agreement or any other document referred to above as a

prerequisite or precondition to the issuance of the Series 2014 Bond and any such representation made therein shall be deemed to be made on behalf of the City. In the event both the Mayor and the Vice-Mayor are unable to execute the documents related to the Series 2014 Bond, then any other member of the City Council shall be authorized to execute such documents with the full force and effect as if the Mayor or the Vice-Mayor had executed same. All action taken to date by the officers of the City in furtherance of the issuance of the Series 2014 Bond is hereby approved, confirmed and ratified.

SECTION 15. The proceeds received from the delivery of the Series 2014 Bond, together with any other monies lawfully available therefor, shall be applied by the City simultaneously with the delivery of the Series 2014 Bond to the Bondholder, as follows:

(i) to the extent not paid from legally available funds of the City, an amount which shall pay the costs and expenses associated with the issuance of the Series 2014 Bond; and

(ii) a sum specified in the Escrow Agreement that shall be sufficient, taking into account other legally available moneys of the City, if any, to pay the principal of, interest on and redemption premium, if any, on the Refunded Bonds, shall be deposited into the escrow account created under the Escrow Agreement (the "Escrow Account").

Simultaneously with the delivery of the Series 2014 Bond, the City is authorized to transfer or cause to be transferred to the Escrow Account, moneys, if any, accumulated in any sinking and/or reserve funds which were intended to be used to pay debt service on the Refunded Bonds.

The proceeds of the Series 2014 Bond shall be and constitute trust funds for the purposes hereinafter provided and there is hereby created a lien upon such monies, until deposited under the Escrow Agreement, in favor of the Holders of the Series 2014 Bond.

SECTION 16. The City will submit to the Bondholder (i) the City's audited annual financial statements within 210 days of the end of each fiscal year, (ii) the City's approved budget within 60 days after the final approval thereof, (iii) a certification from the Finance Director to the effect that, to his actual knowledge, the City is in compliance with all covenants contained in the Amended Bond Ordinance and this Resolution within 90 days of the end of each fiscal year, and (iv) any other financial information the Bondholder may reasonably request.

SECTION 17. In the event a rating with respect to debt payable from the Net Revenues falls below A3/A- (or equivalent) or is no longer maintained by the City, the coverage requirement contained in Section 16(E) of the Original Ordinance and Section 17(E) of the 2001 Ordinance (RATE ORDINANCE) shall be increased from 115% to 140% until such time as such rating is at least A3/A- (or equivalent) or the Series 2014 Bond is no longer outstanding.

SECTION 18. The City agrees with the Bondholder to not change or amend this Resolution or the covenants set forth in Section 16(E) and 16(R) of the Original Ordinance or Section 17(G) and 17(T) of the 2001 Ordinance in a manner that would adversely affect the rights and interests of the Bondholder without the written consent of the Bondholder and shall not amend, in any respect, without the written consent of the Bondholder, this Resolution or the definitions of "Gross Revenues," "Net Revenues" and "Cost of Operation and Maintenance" as defined in Section 2 of the Bond Ordinance.

SECTION 19. To the extent permitted by law, the City knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury, with respect to any litigation or legal proceedings based on or arising out of this Resolution or the Series 2014 Bond, including any course of conduct, course of dealings, verbal or written statement or actions or omissions of any party which in any way relates to the Series 2014 Bond or this Resolution.

SECTION 20. The substantive laws of the State of Florida shall govern this Resolution. The parties hereto submit to the jurisdiction of Florida courts and agree that venue for any suit concerning this Resolution shall be in Pinellas County, Florida and such applicable appellate courts.

[Remainder of page left intentionally blank]

SECTION 21. This Resolution shall become effective immediately upon its adoption.

Passed and adopted by the City Council of the City of Clearwater, Florida, this 4<sup>th</sup> day of December, 2014.

CITY OF CLEARWATER, FLORIDA

By: \_\_\_\_\_  
George N. Cretekos  
Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
Pamela K. Akin  
City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

**EXHIBIT A**  
**TERM SHEET**

**EXHIBIT B**

**FORM OF SERIES 2014 BOND**

EXCEPT AS OTHERWISE PROVIDED IN RESOLUTION NO. 14-38 (THE "RESOLUTION"), ANY OWNER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

No. R-1 \$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF CLEARWATER  
WATER AND SEWER REVENUE REFUNDING BOND, SERIES 2014

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>	<u>CUSIP</u>
3.18%	December 1, 2032	December __, 2014	N/A

Registered Owner: TD BANK, N.A.

Principal Amount: \_\_\_\_\_ and no/100 Dollars

KNOW ALL MEN BY THESE PRESENTS, that the City of Clearwater, Florida (hereinafter called "City"), for value received, hereby promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date specified above, the Principal Amount shown above solely from the revenues hereinafter mentioned, and to pay solely from such revenues, interest on said sum from the Dated Date of this Bond or from the most recent interest payment date to which interest has been paid, at the per annum Interest Rate set forth above (as adjusted from time to time as hereinafter provided) until payment of such sum, such interest being payable semiannually on the first day of June and the first day of December of each year, commencing June 1, 2015. The principal of and premium, if any, on this Bond on the final amortization date or earlier date of redemption in full are payable upon presentation and surrender hereof on the date fixed for final maturity or earlier redemption at the principal office of the Finance Director of the City of Clearwater, Florida (the "Paying Agent") in Clearwater, Florida, or at the office designated for such payment of any successor thereof. The principal of and interest on this Bond, when due and payable, shall be paid through ACH direct transfer to the Registered Owner, and upon transfer of this Bond to a subsequent holder, by check or draft mailed to, or through ACH direct transfer to, the person in whose name this Bond is registered at such address as is provided by such subsequent holder in writing to the City without presentation (except upon final maturity or earlier

redemption in full) of this Bond as reflected on the books and records of the Bond Registrar, at the close of business on the 15th day of the month (whether or not a business day) next preceding the interest payment date (the "Record Date"), irrespective of any transfer of this Bond subsequent to such Record Date and prior to such interest payment date, unless the City shall be in default in payment of interest due on such interest payment date. In the event of any such default, such defaulted interest shall be payable to the person in whose name such Bond is registered at the close of business on a special record date for the payment of defaulted interest as established by notice mailed by the Registrar to the Registered Holder of this Bond not less than fifteen (15) days preceding such special record date. Such notice shall be mailed to the person in whose name such Bond is registered at the close of business on the fifth (5th) day preceding the date of mailing. Payment of interest on this Bond may, at the option of the owner of this Bond, be transmitted by wire transfer to such owner to the bank account number on file with the Paying Agent as of the Record Date upon written request therefor by the holder thereof for the appropriate interest payment date. All amounts due hereunder shall be payable in any coin or currency of the United States, which is, at the time of payment, legal tender for the payment of public or private debts.

The interest payable on this Bond shall be subject to adjustment in accordance with the following provisions:

"Default Rate" shall mean a rate per annum equal to the Prime Rate plus 6%.

"Determination of Taxability" means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service or of the United States Treasury Department determining that interest payable on the Series 2014 Bond is includable in the gross income of a Bondholder for Federal income tax purposes resulting from actions or inactions taken by the City. No such decree, judgment, or action will be considered final for this purpose unless the City has been given written notice thereof and, if it is so desired by the City and is legally permissible, the City has been afforded the opportunity to contest the same, at its own expense, either directly or in the name of the Bondholder, and until the conclusion of any appellate review, if sought.

"Event of Default" shall mean " shall mean (a) an Event of Default under the Bond Ordinance, or (b) the occurrence by the City of a failure to comply with one or more covenants or agreements set forth in the Bond Ordinance or this Resolution, which default or non-compliance shall continue and not be cured within thirty (30) days from receipt by the City of notice of such default or non-compliance by the Holder.

"Interest Rate" shall mean a per annum rate equal to 3.18%, prior to a Determination of Taxability or an Event of Default.

"Prime Rate" shall mean the per annum rate which TD Bank, N.A. announces from time to time to be its prime rate, as in effect from time to time. The prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. TD Bank, N.A. may make

commercial loans or other loans at rates of interest at, above or below the prime rate. Each change in the prime rate shall be effective from and including the date such change is announced as being effective.

"Taxable Period" shall mean the period of time commencing on the date that interest on the Series 2014 Bond ceased to be excludable from gross income of the Holder thereof for federal income tax purposes and ending on the earlier of the date the Series 2014 Bond ceases to be outstanding or such adjustment is no longer applicable to the Series 2014 Bond.

"Taxable Rate" shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Holder with the same after tax yield that the Holder would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Holder as a result of such Determination of Taxability. The Holder shall provide the City with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the City.

The City shall pay interest upon the unpaid principal balance of this Bond at the Interest Rate, subject to adjustment as provided herein. Upon a Determination of Taxability, the Interest Rate shall be the Taxable Rate as hereinafter provided, and upon and during the continuance of an Event of Default (notwithstanding that a Determination of Taxability has also occurred) the Interest Rate shall equal the Default Rate.

In the event of a Determination of Taxability, the interest rate payable hereunder shall be subject to adjustment to the Taxable Rate, effective retroactively to the date on which such Determination of Taxability was made. In addition, upon a Determination of Taxability, the City agrees to pay to the Holder subject to such Determination of Taxability the Additional Amount upon demand. "Additional Amount" means (i) the difference between (a) interest on the Series 2014 Bond for the Taxable Period at a rate per annum equal to the Taxable Rate, and (b) the aggregate amount of interest paid on the Series 2014 Bond for the Taxable Period under the provisions of the Series 2014 Bond without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by such Holder to the Internal Revenue Service by reason of such Determination of Taxability.

This Bond is the duly authorized Water and Sewer Revenue Refunding Bond, Series 2014 (the "Bond") in the principal amount of \$\_\_\_\_\_ issued to defease, refund and redeem on December 1, 2015, the outstanding principal amount of the City's Water and Sewer Revenue Bonds, Series 2006, maturing on and after December 1, 2019 (the "Refunded Bonds"), which are currently outstanding in the aggregate principal of \$26,430,000, and (ii) to pay the costs of issuing this Bond in full compliance with the Constitution and laws of the State of Florida, including particularly Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (the "Act"), and Ordinance No. 3674-84, enacted August 2, 1984, as amended and supplemented by Ordinance No.

6915-01, enacted November 15, 2001, as further amended by Ordinance No. 8620-14, enacted on December 4, 2014 (collectively, the "Bond Ordinance"), and Resolution No. 14-38, adopted on December 4, 2014, as supplemented (the "Resolution") and is subject to all the terms and conditions of such Bond Ordinance and Resolution (collectively, the Bond Ordinance and Resolution are referred to herein as the "Ordinance").

It is provided in the Ordinance that the Bond of this issue will rank on a parity with the City's Water and Sewer Revenue Refunding Bonds, Series 2003, Water and Sewer Revenue Bonds, Series 2009A, Water and Sewer Revenue Refunding Bonds, Series 2009B and Water and Sewer Revenue Refunding Bonds, Series 2011 (collectively, the "Parity Bonds"). This Bond and the Parity Bonds are payable solely from and secured by a first and prior lien upon and pledge of the Net Revenues, as defined in the Bond Ordinance, which consists of the net revenues derived by the City from the operation of the System (the "Net Revenues") in the manner provided in the Bond Ordinance. This Bond does not constitute an indebtedness, liability, general or moral obligation, or a pledge of the faith, credit or taxing power of the City, the State of Florida or any political subdivision thereof, within the meaning of any constitutional or statutory provisions. Neither the State of Florida nor any political subdivision thereof, nor the City shall be obligated (1) to levy ad valorem taxes on any property to pay the principal of this Bond, the interest thereon or other costs incident thereto or (2) to pay the same from any other funds of the City, except from the Net Revenues, in the manner provided herein. It is further agreed between the City and the Registered Holder of this Bond that this Bond and the indebtedness evidenced hereby shall not constitute a lien upon the System, or any part thereof, or on any other property of the City, but shall constitute a first and prior lien only on the Net Revenues, in the manner provided in the Ordinance.

This Bond shall be subject to optional redemption in whole or in part prior to its maturity date, upon two Business Days prior written notice (i) on any Business Day prior to the fifth (5<sup>th</sup>) anniversary of the dated date of this Bond at a redemption price equal to the principal amount being redeemed together with interest accrued to the date of redemption plus the Prepayment Fee, as defined below, and (ii) on any Business Day on or after the fifth (5<sup>th</sup>) anniversary of the dated date of this Bond at a redemption price equal to the principal amount being redeemed together with interest accrued to the date of redemption.

"Prepayment Fee" shall mean, a fee equal to the greater of (i) 1.00% of the principal balance being prepaid multiplied by the remaining term of this Series 2014 Bond, in years, and (ii) the Yield Maintenance Fee.

The "Yield Maintenance Fee" shall be computed as follows: the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the remaining term of this Series 2014 Bond, shall be subtracted from the Interest Rate, or Default Rate (hereinafter defined) if applicable. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the

result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the remaining term of this Series 2014 Bond. Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above referenced current costs of funds divided by 12. The resulting sum of present values shall be the Yield Maintenance Fee.

This Bond is subject to mandatory redemption from Amortization Installments in part prior to maturity at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date beginning on December 1, 2015 and on each December 1 thereafter in the following principal amounts in the years specified:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2015		2024	
2016		2025	
2017		2026	
2018		2027	
2019		2028	
2020		2029	
2021		2030	
2022		2031	
2023		2032	

In and by the Ordinance, the City has covenanted and agreed with the Registered Holder of this Bond that it will fix, establish, revise from time to time whenever necessary, maintain and collect always, such fees, rates, rentals and other charges for the use of the product, services and facilities of the System which will always provide revenues in each year sufficient to pay, and out of such funds pay, 100% of all costs of operation and maintenance of the System in such year and all reserve and other payments provided for in the Ordinance and 115% of the bond service requirement due in such year on this Bond, and on all other obligations payable on a parity therewith, and that such fees, rates, rentals and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes. In the event a rating with respect to debt payable from the Net Revenues falls below A3/A- (or equivalent) or is no longer maintained by the City, the coverage requirement contained in Section 16(E) of the Original Ordinance or Section 17(E) of the 2001 Ordinance (RATE ORDINANCE) shall be increased from 115% to 140% until such time as such rating is at least A3/A- (or equivalent) or the Series 2014 Bond is no longer outstanding. The City has entered into certain further covenants with the Holder of this Bond for the terms of which reference is made to the Ordinance.

It is certified that this Bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of Florida.

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

This Bond is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities of the State of Florida.

This Bond is issued in the form of a fully registered bond without coupons in the denomination of a single bond in the principal amount of \$\_\_\_\_\_. Subject to the limitations and upon payment of the charges provided in the Ordinance, this Bond may be exchanged for a like principal amount of this Bond. This Bond is transferable by the Registered Holder hereof in person or by his attorney duly authorized in writing, at the above-mentioned office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond will be issued to the transferee in exchange therefor. This Bond may be transferred upon the registration books upon delivery to the Registrar of this Bond, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Registrar, duly executed by the Registered Holder of this Bond to be transferred or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of such Bond, along with the social security number or federal employer identification number of such transferee and, if such transferee is a trust, the name and social security or federal employer identification numbers of the settlor and beneficiaries of the trust, the federal employer identification number and date of the trust and the name of the trustee. In all cases of the transfer of a Bond, the Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond at the earliest practicable time in accordance with the provisions of the Ordinance. The City or the Registrar may charge the Registered Holder of such Bond for every such transfer or exchange of this Bond an amount sufficient to reimburse them for their reasonable fees and any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange, and may require that such charge be paid before any such new Bond shall be delivered.

The City may deem and treat the Registered Holder hereof as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the City shall not be affected by any notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond

exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond does not violate any constitutional or statutory limitations or provisions.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the City of Clearwater, Florida, has issued this Bond and has caused the same to be executed by the manual signature of its City Manager or an Assistant City Manager and countersigned by the manual signature of its Mayor, and its corporate seal to be affixed, impressed, imprinted, lithographed or reproduced hereon, and attested by the signature of its City Clerk, as of the Dated Date.

CITY OF CLEARWATER, FLORIDA

(SEAL)

By: \_\_\_\_\_  
George N. Cretekos  
Mayor

By: \_\_\_\_\_  
[Assistant] City Manager

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Rosemarie Call  
City Clerk

By: \_\_\_\_\_  
Pamela K. Akin  
City Attorney

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_ (Please insert name and Social Security or Federal Employer Identification number of assignee) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ (the "Transferee") as attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or a trust company.

\_\_\_\_\_

NOTICE: No transfer will be registered and no new Bond will be issued in the name of the Transferee, unless the signature(s) to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

## EXHIBIT C

### FORM OF PURCHASER CERTIFICATE

Mayor and City Council  
City of Clearwater  
Clearwater, Florida

Ladies and Gentlemen:

This Certificate is being executed and delivered by the undersigned as purchaser (the "Purchaser") to the City of Clearwater, Florida (the "City"), in connection with the issuance, sale and delivery of the City's Water and Sewer Revenue Refunding Bond, Series 2014 (the "Bond") to the Purchaser, in accordance with the terms of the Purchaser's Term Sheet to the City dated October 27, 2014, being issued pursuant to Ordinance No. 3674-84 (the "Original Ordinance"), Ordinance No. 6915-01 (the "2001 Ordinance") and Ordinance No. 8620-14 (the "2014 Ordinance" and, together with the Original Ordinance and the 2001 Ordinance, collectively, the "Bond Ordinance") and Resolution No. 14-38 (the "Resolution") for the purpose of advance refunding the City's Water and Sewer Revenue Bonds, Series 2006 (the "Refunded Bonds"). Terms defined in the Resolution are used in this letter with the meanings assigned to them in the Bond Ordinance and the Resolution.

The undersigned hereby represents, warrants and agrees to and with the City that:

1. The Purchaser is an accredited investor as such term is defined in the Securities Act of 1933, as amended, and Regulation D issued pursuant thereto, a principal part of whose business consists of buying securities such as the Bond.
2. The Purchaser has received copies of the Bond Ordinance and the Resolution and certain of the other documents or instruments being delivered in connection with the issuance of the Bond, and said documents are in form and substance satisfactory to the Purchaser and its counsel.
3. The Purchaser has conducted its own investigations, to the extent it deems satisfactory or sufficient, into matters relating to the business, properties, management, and financial position and results of operations of the City.
4. The Purchaser understands that the Bond is not registered under the Securities Act of 1933, as amended. The Purchaser is purchasing the Bond for its own account for investment and not with a view to, and with no present intention of, distributing or reselling the Bond or any portion thereof, provided that the Purchaser reserves the right to transfer the Bond purchased or any interest therein at any time and in our sole discretion and, in the event that we so transfer the Bond, we assume the

responsibility for complying with any applicable federal and state securities laws provided, however, the Purchaser acknowledges that the registration of the Bond may only be transferred in whole.

The Purchaser understands and agrees that the foregoing representations will be relied upon by the City in the issuance of the Bond.

TD BANK, N.A.

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

Name: Kyle P. Keith

Title: Vice President

## EXHIBIT D

### FORM OF DISCLOSURE LETTER

Mayor and City Council  
City of Clearwater  
Clearwater, Florida

Ladies and Gentlemen:

1. An itemized list setting forth the nature and estimated amounts of expenses to be incurred by TD Bank, N.A., as the original purchaser (the "Purchaser") in connection with the issuance of \$27,520,000 in principal amount of the City of Clearwater, Florida Water and Sewer Revenue Refunding Bond, Series 2014 (the "Bond") is attached as Schedule I hereto.

2. No compensation was paid to any finders, as defined in Section 218.386, Florida Statutes, as amended, in connection with the issuance of the Bond.

3. Underwriting fees in the amount of \$0.00 are expected to be realized in the sale of the Bond.

4. The Bond is being placed with the Purchaser, as the original purchaser thereof, and no management fee is being charged.

5. No other fee, bonus or other compensation is to be paid by the Purchaser in connection with the Bond issue to any person not regularly employed or retained by them, except for compensation of \$6,000 to Holland & Knight LLP, in its capacity as counsel to the Purchaser, which amount is being paid by the City.

6. There were no underwriters involved in the placement of the Bond to the Purchaser.

7. (a) The City is proposing to issue \$27,520,000 aggregate principal amount of debt or obligations for the purpose of refunding all of the City's Water and Sewer Revenue Bond, Series 2006. This debt or obligation is expected to be repaid over a period of approximately 18 years. At a forecasted true interest cost rate of 3.18%, total interest paid over the life of the debt or obligation will be \$10,274,371.53.

(b) The source of repayment for this issue is the Water and Sewer Revenues of the City. Authorizing this debt will result in approximately \$2,102,282.72 of such revenues of the City not being available to finance other services of the City each year for 18 years.

We understand that you do not require any further disclosure from the Purchaser, pursuant to Section 218.385, Florida Statutes, as amended.

TD BANK, N.A.

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

Name: Kyle P. Keith

Title: Vice President

SCHEDULE I

EXPENSES

EXHIBIT E

FORM OF ESCROW DEPOSIT AGREEMENT

This ESCROW DEPOSIT AGREEMENT, dated as of December 9, 2014, by and between the CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida (the "City"), and U.S. BANK, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America, as Escrow Holder (the "Escrow Holder");

WITNESSETH:

WHEREAS, the City has previously authorized and issued obligations of the City as hereinafter set forth defined as the "Refunded Bonds", as to which the Annual Debt Service (as hereinafter defined) is set forth on Schedule A; and

WHEREAS, the City has determined to provide for payment of the Annual Debt Service of the Refunded Bonds by depositing with the Escrow Holder pursuant to the provisions hereof, cash in an amount equal to the Annual Debt Service; and

WHEREAS, in order to obtain the funds needed for such purpose, the City has authorized and is, concurrently with the delivery of this Agreement, issuing the Series 2014 Bond more fully described herein; and

WHEREAS, the City has determined that the amount to be on deposit from time to time in the Escrow Account, as defined herein, will be sufficient to pay the Annual Debt Service;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Escrow Holder agree as follows (provided however that the Escrow Holder in agreeing to the foregoing shall not be held or deemed responsible in any manner whatsoever for the recitals made herein or in the Ordinance, or the adequacy or sufficiency of the Escrow Requirement):

Section 1. Definitions. As used herein, the following terms mean:

(a) "Agreement" means this Escrow Deposit Agreement.

(b) "Annual Debt Service" means, with respect to the redemption date for the Refunded Bonds, the principal of, premium, and interest on the Refunded Bonds coming due on the Call Date as shown on Schedule A attached hereto.

(c) "Bond" or "Series 2014 Bond" means the Water and Sewer Revenue Refunding Bond, Series 2014 of the City, authorized by the Ordinance, as herein defined.

(d) "Call Date" shall mean December 1, 2015.

(e) "Escrow Account" means the account established and held by the Escrow Holder pursuant to this Agreement, in which cash and investments will be held for payment of the Refunded Bonds.

(f) "Escrow Holder" means U.S. Bank, National Association, a national banking association organized under the laws of the United States of America.

(g) "Escrow Requirement" means, as of any date of calculation, the sum of an amount in cash in the Escrow Account which will be sufficient to pay, as the installments thereof become due, the Annual Debt Service.

(h) "Federal Securities" means direct obligations of the United States of America and obligations the principal of or interest on which are fully guaranteed by the United States of America, none of which permit redemption prior to maturity at the option of the obligor.

(i) "Irrevocable Instruction and Authorization to Redeem Bonds" means a certificate executed by the City which provides for redemption of certain of the Refunded Bonds on the Call Date, irrevocably instructs the Escrow Holder to give notice of such redemption and directs the Paying Agent for the Refunded Bonds to pay the Refunded Bonds and the interest thereon upon surrender thereof at maturity or on their Call Date.

(j) "City" means the City of Clearwater, Florida.

(k) "Ordinance" means Ordinance No. 3674-84 enacted by the City on August 2, 1984, as amended and supplemented in Ordinance 6915-01, enacted on November 15, 2001, as further amended and supplemented by Ordinance No. 8620-14, enacted on December 4, 2014.

(l) "Paying Agent" shall mean Wells Fargo Bank, N.A., Paying Agent for the Refunded Bonds.

(m) "Refunded Bonds" shall mean the City's Water and Sewer Revenue Bonds, Series 2006 maturing on or after December 1, 2019.

Section 2. Deposit of Funds. The City hereby deposits \$\_\_\_\_\_ with the Escrow Holder in immediately available funds, to be held in irrevocable escrow by

the Escrow Holder and applied solely as provided in this Agreement. The City represents that:

(a) Such funds are all derived as follows:

(1) \$\_\_\_\_\_ from the net proceeds of the Bond; and

(2) \$\_\_\_\_\_ transferred from the Debt Service Reserve Fund for the Refunded Bonds.

(b) Such funds, when applied pursuant to Section 3 below, will at least equal the Escrow Requirement as of the date hereof.

Section 3. Use and Investment of Funds. The Escrow Holder acknowledges receipt of \$\_\_\_\_\_ and agrees:

(a) to hold the funds in irrevocable escrow during the term of this Agreement, and

(b) to deposit the sum of \$\_\_\_\_\_ of funds from the Debt Service Reserve Fund and invest \$\_\_\_\_\_ of such funds in the Unrestricted Securities identified as such on Schedule B hereto and hold \$\_\_\_\_\_ in cash, and deposit the sum of \$\_\_\_\_\_ from the proceeds of the Bond, and invest \$\_\_\_\_\_ of such funds in the Restricted Securities identified as such on Schedule B hereto and hold \$\_\_\_\_\_ in cash until the Call Date.

(c) The Escrow Holder shall invest the moneys held in the Escrow Account upon written direction of the Issuer accompanied by (1) a list of the Federal Securities to be purchased, (2) a report of an independent certified accountant verifying the sufficiency of the receipts from the Federal Securities will be sufficient to redeem the Refunded Bonds on December 1, 2015, and (3) an opinion of Bond Counsel to the effect that such investment will not materially adversely affect the exclusion of the interest on the Series 2014 Bonds from income for purposes of federal income taxation.

Section 4. Payment of Refunded Bonds.

(a) Refunded Bonds. On the Call Date, the Escrow Holder shall pay to the Paying Agent for the Refunded Bonds, from the cash on hand in the Escrow Account, a sum sufficient to pay the Annual Debt Service coming due on such date, as shown on Schedule A and as demonstrated on Schedule B hereto.

(b) Surplus. On the Call Date, after making the payments from the Escrow Account described in Subsection 4(a), the Escrow Holder shall pay to the City any remaining cash in the Escrow Account in excess of the Escrow Requirement, to be used for any lawful purpose of the City.

(c) Priority of Payments. The holders of the Refunded Bonds shall have an express first lien on the funds in the Escrow Account until such funds are used and applied as provided in this Agreement. If the cash on hand in the Escrow Account is ever insufficient to make the payments required under Subsection 4(a), all of the payments required under Subsection 4(a) shall be made when due before any payments shall be made under Subsections 4(b).

(d) Fees and Expenses of Escrow Holder. On the date hereof, the Escrow Holder acknowledges receipt of its fees to serve as Escrow Holder in the amount of \$\_\_\_\_\_ and agrees to invoice the City for reimbursement of any out of pocket expenses incurred by the Escrow Holder in performing its services hereunder, and further acknowledges that the Escrow Holder does not have a lien on or claim against any funds held hereunder for reimbursement of such expenses.

#### Section 5. Reinvestment.

(a) Except as provided in Section 3 hereof, and in this Section, the Escrow Holder shall have no power or duty to invest any funds held under this Agreement or to sell, transfer or otherwise dispose of or make substitutions of the Federal Securities held hereunder.

(b) At the written request of the Issuer and upon compliance with the conditions hereinafter stated, the Escrow Holder shall sell, transfer, otherwise dispose of or request the redemption of any of the Federal Securities acquired hereunder and shall either apply the proceeds thereof to the full discharge and satisfaction of the Refunded Bonds or substitute other Federal Securities for such Federal Securities. The Issuer will not request the Escrow Holder to exercise any of the powers described in the preceding sentence in any manner which would cause any Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder. The transactions may be effected only if (i) an independent certified public accountant shall certify to the Escrow Holder that the cash and principal amount of Federal Securities remaining on hand after the transactions are completed, together with the interest due thereon, will be not less than the Escrow Requirement, and (ii) the Escrow Holder shall receive an unqualified opinion from a nationally recognized bond counsel or tax counsel to the effect that the transactions will not cause such Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect on the date of the transactions and applicable to transactions undertaken on such date.

Section 6. No Redemption or Acceleration of Maturity. Except as provided in the Irrevocable Instruction and Authorization to Redeem Bonds, the City will not accelerate the maturity or due date of the Refunded Bonds.

Section 7. Responsibilities of Escrow Holder. The Escrow Holder and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and

delivery of this Agreement, the establishment of the Escrow Account, the acceptance of the funds deposited therein, transfer or other application of money by the Escrow Holder in any non-negligent act, non-negligent omission or non-negligent error of the Escrow Holder made in good faith in the conduct of its duties. The Escrow Holder shall, however, be liable to the City for its negligent or willful acts, omissions or errors which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Escrow Holder shall be determined by the express provisions of this Agreement. The Escrow Holder may consult with counsel, who may or may not be counsel to the City, and in reliance upon the opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Holder shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City.

The Escrow Holder has no duty to determine or inquire into the happening or occurrence of any event or contingency where the performance or the failure of performance of the City with respect to arrangements or contracts with others, the Escrow Holder's sole duty and responsibility hereunder being to safeguard the Escrow Account and dispose of and deliver the same strictly in accordance with this Agreement.

Section 8. Resignation of Escrow Holder. The Escrow Holder may resign and thereby become discharged from the duties and obligations hereby created, by notice in writing given to the City and published once in a newspaper of general circulation published in the territorial limits of the City, and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, not less than sixty (60) days before such resignation shall take effect. Such resignation shall take effect immediately upon the appointment of a successor Escrow Holder hereunder and payments of all amounts due the resigning Escrow Holder.

Section 9. Removal of Escrow Holder.

(a) The Escrow Holder may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of not less than fifty-one per centum (51%) in aggregate principal amount of each series of Refunded Bonds then outstanding, such instruments to be filed with the City, and notice in writing given by such holders to all of the registered holders of each series of the Refunded Bonds and published once in a newspaper of general circulation published in the territorial limits of the City, and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, not less than sixty (60) days before such removal is to take effect as stated in such instrument or instruments. A photographic copy of any instrument filed with the City under the provisions of this paragraph shall be delivered by the City to the Escrow Holder.

(b) The Escrow Holder may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Agreement with respect to the duties and obligations of the Escrow Holder, by the City or by the holders of not less than twenty-five per centum (25%) in aggregate principal amount of each series of the Refunded Bonds then outstanding.

(c) No such removal shall take effect until a successor Escrow Holder shall be appointed hereunder.

#### Section 10. Successor Escrow Holder.

(a) If at any time hereafter the Escrow Holder shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Escrow Holder shall thereupon become vacant. If the position of Escrow Holder shall become vacant for any of the foregoing reasons or for any other reason, the City shall appoint a successor Escrow Holder to fulfill the duties of Escrow Holder hereunder. The City shall publish notice of any such appointment once in each week for four (4) successive weeks in a newspaper of general circulation published in the territorial limits of the City and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, and, before the second publication of such notice shall mail a copy thereof to the original purchaser or purchasers of the Refunded Bonds.

(b) At any time within one year after such vacancy shall have occurred, the holders of a majority in principal amount of each series of Refunded Bonds then outstanding, by an instrument or concurrent instruments in writing, executed by all such bondholders and filed with the governing body of the City, may appoint a successor Escrow Holder, which shall supersede any Escrow Holder theretofore appointed by the City. Photographic copies of each such instrument shall be delivered promptly by the City, to the predecessor Escrow Holder and to the Escrow Holder so appointed by the bondholders.

(c) If no appointment of a successor Escrow Holder shall be made pursuant to the foregoing provisions of this section, the holder of any Refunded Bonds then outstanding, or any retiring Escrow Holder may apply to any court of competent jurisdiction to appoint a successor Escrow Holder. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Holder.

Section 11. Term. This Agreement shall commence upon its execution and delivery and shall terminate when the Refunded Bonds have been paid and discharged in accordance herewith, and all amounts held by the Escrow Holder hereunder have been applied in accordance herewith.

Section 12. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Holder to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreements herein contained shall be null and void and shall be severed from the remaining covenants and agreements and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 13. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as duplicate originals and shall constitute and be but one and the same instrument.

Section 14. Governing Law. This Agreement shall be construed under the laws of the State of Florida.

Section 15. Security for Accounts and Funds. All accounts and funds maintained or held pursuant to this Agreement shall be continuously secured in the same manner as other deposits of municipal funds are required to be secured by the laws of Florida.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and their official seals to be hereunto affixed as of the date first above written.

CITY OF CLEARWATER, FLORIDA

(SEAL)

\_\_\_\_\_  
George N. Cretekos  
Mayor

ATTEST:

\_\_\_\_\_  
Rosemarie Call  
City Clerk

\_\_\_\_\_  
[Assistant] City Manager

Approved as to Form,  
Sufficiency and Correctness:

\_\_\_\_\_  
Pamela K. Akin  
City Attorney

U.S. BANK, NATIONAL ASSOCIATION,  
as Escrow Holder

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule A

(Annual Debt Service; Description of Refunded Bonds)

Series 2006 Bonds

<u>Payment Date</u>	<u>Principal</u>	<u>Premium</u>	<u>Interest</u>	<u>Total Debt Service</u>
June 1, 2015				
December 1, 2015				

Schedule B  
ESCROW CASH FLOW

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Disbursements</u>	<u>Cash Balance</u>
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UNRESTRICTED SECURITIES  
[To be provided]

RESTRICTED SECURITIES  
[To be provided]