

RESOLUTION NUMBER R- 300509

ADOPTED ON JUN 07 2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE ISSUANCE OF 2005 TAX
ANTICIPATION NOTES.

BE IT RESOLVED, by the City Council of the City of San Diego, that the issuance of Tax and Revenue Anticipation Notes in a single series [Notes] of the City of San Diego [City] for Fiscal Year 2005-06 is hereby authorized pursuant to section 92 of the City Charter, together with Article 7.6 (commencing with section 53850) of Chapter 4, Part 1, Division 2, Title 5 of the California Government Code [collectively, the Authorizing Law], and in accordance with the declarations, conditions and terms set forth in those certain documents on file in the office of the City Clerk as Document No. RR- 300509⁻¹ [Accompanying Document], and Document No. RR- 300509⁻² [Note Purchase Agreement], including exhibits attached to such documents, each completed and executed as set forth herein, in an aggregate principal amount not to exceed the lesser of \$185,000,000 or the maximum amount permitted under the Authorizing Law and approval by the City Manager.

BE IT FURTHER RESOLVED, that pursuant to California Government Code Sections 53856 and 53857, the resolution authorizing the issuance of the Notes shall specify what taxes, income, revenue, cash receipts or other moneys are pledged for the payment of the Notes, and the Notes and the interest thereon shall be a first lien and charge against, and shall be payable from the first moneys received by the City from, such pledged moneys, and any Note not paid

from the taxes, income, revenue, cash receipts or other moneys of the City shall be paid from any other moneys of the City lawfully available therefor.

BE IT FURTHER RESOLVED, that (1) the City pledges Available Revenues (as defined below) and Available Property Taxes (as defined below) as security for the payment of the principal of and interest on the Notes, and (2) the City agrees and covenants to deposit in trust into a special fund to be held by the City for the benefit of the owner of the Notes, designated as the "2005-06 Tax and Revenue Anticipation Notes Set Aside Account" (the "Set Aside Account"), sufficient moneys to enable the City to pay in full such principal and interest in multiple installments from Property Taxes (as defined below) and other Revenues, and (3) the City agrees and covenants to further establish a special fund to be held by the City for the benefit of the owner of the Notes designated as the 2005-06 Tax and Revenue Anticipation Notes Segregation Account (the "Segregation Account) for interim deposit of Property Taxes, all in the manner set forth in and otherwise in accordance with the Accompanying Document and the Note Purchase Agreement. If, by the date or dates specified in the Accompanying Document and the Note Purchase Agreement, the amount on deposit in the Set Aside Account is not sufficient to pay the portion of the principal and interest on the Notes required to be on deposit therein on such date or dates, appropriate officers of the City shall thereafter transfer and deposit Revenues to the Set Aside Account so that the amounts in the Set Aside Account are at least equal to the amounts required to pay the principal of and interest on the Notes as they become due. In the manner set forth in and in accordance with the Accompanying Document and the Note Purchase Agreement, (1) the Set Aside Account and all amounts held therein, Available Property Taxes and Available Revenues are hereby pledged and irrevocably set aside to the payment of the Notes, (2) amounts deposited in the Set Aside Account may not be used for any purpose other

than payment of the Notes and may be invested in legal investments which are permitted by the California Government Code and which mature not later than the latest maturity date of the Notes; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund, (3) the Segregation Account shall be created and held in trust for the payment of the Notes, and shall be funded, applied, invested and disbursed, and (4) the Notes shall be a first lien and charge against, and shall be payable from the first moneys received by the City from, Available Property Taxes and Available Revenues.

BE IT FURTHER RESOLVED, for purposes of this Resolution, "Revenues", "Available Revenues", "Property Taxes" and "Available Property Taxes" shall have the following meanings. "Revenues" means all legally available taxes, income, revenue, cash receipts and other moneys of the City attributable to the City's 2005-06 fiscal year, and chargeable to the City's General Fund, and excluding moneys which, when received by the City will be encumbered for a special purpose. "Available Revenues" means (1) with respect to any Set Aside Period (as defined in the Accompanying Document), that portion of Revenues existing on and after the date specified with respect to such Set Aside Period which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Revenues, in each case in accordance with the Accompanying Document and the Note Purchase Agreement. "Property Taxes" means that portion of Revenues consisting of ad valorem property taxes payable to, or for the benefit of the City in respect of its 2005-06 fiscal year, but excluding ad valorem property taxes payable to the City pursuant to the "triple flip" adjustment provisions of California law, including California Revenue and Taxation Code Section 97.68. "Available Property Taxes" means (1) with respect to any Set Aside Period (as defined in the Accompanying Document), that portion of Property Taxes on deposit in the Segregation Account

or otherwise held by the City existing on and after the beginning of such Set Aside Period, in amounts which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Property Taxes, in each case in accordance with the Accompanying Document and the Note Purchase Agreement.

BE IT FURTHER RESOLVED, that the City Manager or his designee is hereby authorized to sell the Notes on a private placement basis, without provision of an official statement or other offering document, to Bank of America, N.A. pursuant to the terms and procedures set forth in the Accompanying Document and in the Note Purchase Agreement; provided the Notes shall bear interest at the variable rate established from time to time pursuant to the Note Purchase Agreement, and in no event to exceed 10% per annum, and the aggregate principal amount of the Notes shall be disbursed to the City from time to time in accordance with the draw down procedures set forth in the Note Purchase Agreement and shall not exceed in the aggregate the lesser of \$185,000,000 or the maximum amount permitted under the Authorizing Law, as certified by the Acting City Treasurer and the City Auditor and Comptroller pursuant to the completed Accompanying Document and as further approved by the City Manager or his designee, his execution of the Accompanying Document to be conclusive evidence thereof.

BE IT FURTHER, RESOLVED, that the City Manager or his designee is authorized to execute and deliver the Accompanying Document and the Note Purchase Agreement in substantially the forms attached hereto as Document No. RR 300509⁻¹ and Document No. RR 300509⁻², respectively, for and on behalf of the City, each such document to be modified with the approval of the City Manager or his designee to reflect the final terms described herein, and as further modified upon the advice of the City Attorney in such manner as facilitates the purchase by Bank of America, N.A. of the Notes in a manner consistent with the

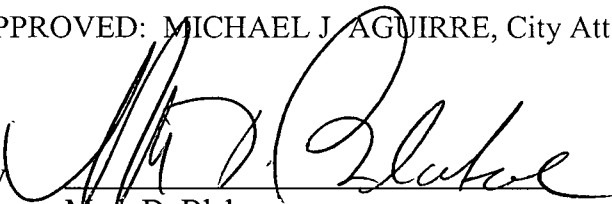
Authorizing Law (including modifications related to the portion of Revenues which shall constitute Available Revenues or Available Property Taxes, or the Set Aside Periods, the funds and accounts established with respect to the Notes), such approval to be conclusively evidenced by such officer's execution thereof.

BE IT FURTHER RESOLVED, that each of the City Auditor and Comptroller and the Acting City Treasurer, or any designee thereof, is authorized to execute and deliver a Tax Certificate prepared by Bond Counsel obligating the City to comply with certain covenants in order to maintain the exclusion of interest on the Notes from the gross income of the owners thereof for federal income tax purposes.

BE IT FURTHER RESOLVED, that the City Manager, the Acting City Treasurer, the City Clerk and the City Auditor and Comptroller, and their designees, upon advice of the City Attorney and Bond Counsel, are hereby authorized and directed, jointly and severally, to do any and all things and to execute, modify and deliver any and all documents, agreements and certificates which they may deem necessary or advisable in order to effect the issuance, sale and delivery of the Notes, including providing a paying agent for the Notes and otherwise to carry out the purposes of this Resolution.

BE IT FURTHER RESOLVED, that the Acting City Treasurer is authorized to execute an agreement with Public Financial Management, Inc., on file in the office of the City Clerk as Document RR-300509⁻³, to provide financial advisory services in connection with the issuance of the Notes.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Mark D. Blake
Deputy City Attorney

MDB:ai
05/26/05
Or.Dept:Fin.Serv.
R-2005-1250

ACCOMPANYING DOCUMENT NO. RR-_____

PERTAINING TO THAT CERTAIN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO ADOPTED JUNE 7, 2005, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF TAX AND REVENUE ANTICIPATION NOTES OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$185,000,000 FOR THE FISCAL YEAR 2005-06; SPECIFYING THE PURPOSES, TERMS AND CONDITIONS OF SAID NOTES; PRESCRIBING THE FORM OF SAID NOTES; AUTHORIZING CITY OFFICIALS TO TAKE ALL ACTIONS REQUIRED FOR THE ISSUANCE, SALE AND DELIVERY OF SUCH NOTES; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH

WHEREAS, the City Council of the City of San Diego (the "City") has received a report from the Acting City Treasurer and the City Auditor and Comptroller that the City will experience a cumulative cash flow deficit during the forthcoming fiscal year of 2005-06 (commencing on July 1, 2005), which report is attached hereto as "Exhibit A" (the "Cash Flow Deficit Report"); and

WHEREAS, such cumulative cash flow deficit is expected to occur as a result of City expenditures exceeding available funds until such time as the proceeds of taxes and revenues of the City for such fiscal year are available; and

WHEREAS, Section 92 of the City Charter of the City (the "City Charter"), together with Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5 of the California Government Code (collectively, the "Authorizing Law"), authorize the issuance of notes of the City in any fiscal year in anticipation of the collection of taxes and revenues of such fiscal year; and

WHEREAS, such notes are not deemed to be the creation of debt within the meaning of Section 90 of the City Charter; and

WHEREAS, Section 92 of the City Charter limits the total amount of such notes that may be issued in any fiscal year to an amount, in the aggregate, not more than twenty-five (25) percent of the City's total budgeted appropriations for such fiscal year; and

WHEREAS, the Cash Flow Deficit Report recommends the issuance of Tax and Revenue Anticipation notes in an aggregate principal amount not to exceed \$155,000,000 (provided Note amounts shall not be drawn down pursuant to the Note Purchase Agreement in an amount exceeding \$_____ (plus an amount equal to the interest expense on the Note), except upon confirmation by the Acting City Treasurer and Acting Auditor and Comptroller of an additional cash flow deficit), which amount does not exceed the limitations set forth in the Authorizing Law; and

WHEREAS, the City wishes to authorize the issuance of tax and revenue anticipation notes in a single series, to be purchased by Bank of America, N.A. from the City from time to time and evidenced by periodic notations on the single Note, in accordance with the Note Purchase Agreement; and

WHEREAS, the City wishes to authorize the issuance of such notes on the terms set forth herein.

NOW, THEREFORE, THIS DOCUMENT, TO BE KNOWN AS THE ACCOMPANYING DOCUMENT TO RESOLUTION NO. R-_____, SHALL ACCOMPANY SAID RESOLUTION TO THE SAME EXTENT AND EFFECT AS IF THEREIN INCORPORATED, as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall have the meanings herein specified.

“Accompanying Document” means this Accompanying Document to City Council Resolution No. R-_____.

“Acting City Treasurer” means the duly appointed person performing the duties of the City Treasurer of the City.

“Authorizing Law” means, collectively, Section 92 of the City Charter and Article 7.6 (commencing with Section 53850), Chapter 4, Part 1, Division 2, Title 5 of the California Government Code.

“Available Revenues” means (1) with respect to any Set Aside Period, that portion of Revenues existing on and after the date specified with respect to such Set Aside Period which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Revenues.

“Available Property Taxes” means (1) with respect to any Set Aside Period, that portion of Property Taxes on deposit in the Segregation Account or otherwise held by the City existing on and after the beginning of such Set Aside Period, in amounts which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Property Taxes.

“Bank” means Bank of America, N.A., a national banking association organized and existing under the laws of the United States.

“Bond Counsel” means an attorney or firm of attorneys of nationally recognized standing in matters pertaining to the validity of, and tax-exempt nature of interest on, obligations issued by states and their political subdivisions.

“City” means City of San Diego, a municipal corporation duly organized and existing under the Constitution of the State of California and the City Charter.

“City Auditor and Comptroller” means the duly appointed person performing the duties of the Auditor and Comptroller of the City.

“City Charter” means the duly enacted City Charter of the City, as amended.

“City Council” means the duly elected or appointed members of the City Council of the City.

“City Manager” means the duly appointed City Manager of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Fifth Set Aside Amount” means an amount equal to (i) the total Potential Principal Amount (determined at May 1, 2006) less (ii) the amount on deposit in the Set Aside Account at the opening of business of the City on May 1, 2006.

“Fifth Set Aside Period” means the period from and including May 1, 2006 to and including May 31, 2006.

“First Set Aside Amount” means an amount equal to twenty percent (20%) of the total Potential Principal Amount (determined at December 31, 2005).

“First Set Aside Period” means the period from and including December 31, 2005 to and including January 31, 2006.

“Fourth Set Aside Amount” means an amount equal to twenty-three percent (23%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of prepayments made pursuant to Section 2.13 of the Note Purchase Agreement during the First Set Aside Period, the Second Set Aside Period and the Third Set Aside Period and (ii) the balance of the Set Aside Account at the City’s opening of business on April 1, 2006.

“Fourth Set Aside Period” means the period from and including April 1, 2006 to and including April 30, 2006.

“Note Purchase Agreement” means that certain Note Purchase Agreement dated as of July 1, 2005 between the City and the Bank, attached to the Resolution No. RR-_____ as Exhibit B.

“Notes” or “Note” means the “City of San Diego, California 2005-06 Tax and Revenue Anticipation Note” in the principal amount of not to exceed \$155,000,000, issued under the Resolution in a single series.

“Potential Principal Amount” has the meaning set forth in Section 9(a) hereof.

“Property Taxes” means that portion of Revenues consisting of ad valorem property taxes payable to, or for the benefit of, the City in respect of its 2005-06 fiscal year, but excluding ad

valorem property taxes payable to the City pursuant to the "triple flip" adjustment provisions of California law, including without limitation California Revenue and Taxation Code Section 97.68.

"Register" means the book or books of registration kept by the Acting City Treasurer, in which are maintained the names and addresses and principal amounts registered to each Registered Owner.

"Resolution" means, collectively, Resolution No. R-_____ adopted by the City Council, this Accompanying Document, the Note Purchase Agreement, and other exhibits hereto and thereto.

"Revenues" means all legally available taxes, income, revenue, cash receipts and other moneys of the City attributable to the City's 2005-06 fiscal year, and chargeable to the City's General Fund, and excluding moneys which, when received by the City will be encumbered for a special purpose.

"Second Set Aside Amount" means an amount equal to thirty percent (30%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of any prepayments made pursuant to Section 2.13 of the Note Purchase Agreement during the First Set Aside Period and (ii) the balance of the Set Aside Account at the City's opening of business on February 1, 2006.

"Second Set Aside Period" means the period from and including February 1, 2006 to and including February 28, 2006.

"Segregation Account" means the account of that name described in Section 9(b) hereof.

"Set Aside Account" means the account of that name referenced in Section 9(a) hereof.

"Set Aside Period" means, as the context may require, the First Set Aside Period, the Second Set Aside Period or the Third Set Aside Period.

"Third Set Aside Amount" means an amount equal to ten percent (10%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of any prepayments made pursuant to Section 2.13 of the Note Purchase Agreement during the First Set

Aside Period and the Second Set Aside Period and (ii) the balance of the Set Aside Account at the City's opening of business on March 1, 2006.

"Third Set Aside Period" means the period from and including March 1, 2006 and including March 30, 2006.

Section 2. Proposed Budgeted Appropriations. The total budgeted appropriations for fiscal year 2005-06 as shown by the City's proposed budget is approximately \$2,011,000,000 of which approximately \$857,000,000 is attributable to the City's General Fund. Twenty-five percent (25%) of such appropriations is not less than \$213,000,000. The uncollected taxes, income, revenue, cash receipts and other moneys available for the payment of the Notes is estimated to be not less than \$857,000,000 (of which not less than \$290,000,000 is estimated to be property taxes); eighty-five percent (85%) of such amount is \$246,500,000. The total budgeted appropriations for fiscal year 2004-05 deemed appropriated for fiscal year 2005-06 for purposes of City Charter Section 71a is not less than \$2,430,000,000 and the portion of such amount attributable to the General Fund is not less than \$763,000,000, and 25% of such amount is \$190,750,000.

Section 3. Sale of Notes. The Notes will be sold to the Bank pursuant to the Note Purchase Agreement.

Section 4. Issuance of Notes, Amount, Terms, Interest Rate, Place of Payment.

(a) Pursuant to the Authorizing Law, the Notes are hereby authorized to be issued in an aggregate principal amount not to exceed \$155,000,000 to enable the City to meet its budgeted cumulative cash flow deficit as set forth in the recitals hereof and shall be issued as a single Note in a principal amount not to exceed \$155,000,000. Said Notes shall be designated "City of San Diego, California 2005-06 Tax and Revenue Anticipation Note" and shall be issued in a single note in the denominations of \$1,000,000 or any integral multiple of \$100,000 in excess thereof ("Authorized Denominations"). The Notes shall be dated the date of issuance thereof which shall be deemed to be the date on which the first advance in an amount in excess of \$50,000 is funded by the Bank. The

Notes shall bear interest on the principal amount outstanding from time to time, mature and be payable on or before a date not later than 13 months from the date of issuance thereof as determined by the Acting City Treasurer and the City Manager, the Acting City Treasurer's execution thereof to be conclusive evidence of such determination, provided that the interest rate thereon shall be a variable rate or rates determined in accordance with the Note Purchase Agreement, in no event to exceed ten percent (10%) per annum. The principal amount of the Notes shall be noted by the Bank on the form of the Note in accordance with the Note Purchase Agreement. Interest on the Notes shall be payable at maturity or earlier call for optional redemption in accordance with the Note Purchase Agreement.

(b) The Notes shall be initially issued and registered in the name of "Bank of America, N.A.," and shall be evidenced by a single Note.

(c) The Notes shall be initially issued and registered as provided in Section 4(b) hereof. The Notes are non-negotiable and non-transferable and the Bank shall not have the right to sell or transfer the Notes, to create any participation interest in the Notes, to deposit the Notes into any affiliated investment companies or trusts or to otherwise directly or indirectly transfer or assign any interest in the Notes and the foregoing transfer restrictions will be a legend on the Notes.

(d) The City shall be entitled to treat the Bank as the registered owner of the Notes indicated therein as the absolute owner of such Notes for all purposes under the Resolution and for purposes of payment of principal of and interest on such Notes, notwithstanding any notice to the contrary received by the City.

(e) The Acting City Treasurer is hereby authorized and directed to provide any notices or other directions of the City to the Bank pursuant to the Note Purchase Agreement, including without limitation those referred to in Section 2.02, 2.07, 2.12 and 2.13 thereof.

Section 5. Execution of Notes. The Acting City Treasurer is hereby authorized and directed to sign, and the City Clerk to attest and to countersign, the Notes by their printed, lithographed or engraved facsimile signatures, and to affix thereon the seal of the City.

Section 6. Form of Notes. The Notes shall be issued in substantially the form set forth in "Exhibit C" attached hereto and incorporated herein and may be issued in typewritten form, with such changes to designate the applicable series and final terms as may be approved by the Acting City Treasurer, whose execution thereof shall be final and conclusive.

Section 7. Redemption of Notes. The Notes are subject to redemption prior to the maturity date thereof in accordance with the terms of the Note Purchase Agreement.

Section 8. Use of Proceeds of Notes. The proceeds from the sale of the Notes shall be held by the City and placed into the General Fund of the City upon receipt and said proceeds and any investment earnings thereon shall be used to meet the budgeted cumulative cash flow deficit of the City pending the receipt of Revenues. At its option, the City may create a separate fund into which proceeds of the Notes will be deposited, pending transfer to the General Fund.

Section 9. Security for Notes: Pledge of Tax Receipts.

(a) As security for the payment of the principal of and interest on the Notes, the City agrees and covenants to deposit in trust into a special fund to be established and held by the City for the benefit of the owner of the Notes, designated as the "2005-06 Tax and Revenue Anticipation Notes Set Aside Account" (the "Set Aside Account"), and segregated from all other funds and accounts of the City sufficient moneys to enable the City to pay in full such principal and interest, as follows: (i) during the First Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the First Set Aside Period and from the first Property Taxes received by the City during the First Set Aside Period, an amount equal to the First Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the First Set Aside Amount by January 20, 2006, thereafter from all Revenues (including Property

Taxes) received by the City during the First Set Aside Period; (ii) during the Second Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the First Set Aside Amount during the First Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Second Set Aside Period and from the first Property Taxes received by the City during the Second Set Aside Period, an amount equal to the Second Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Second Set Aside Amount by February 19, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the Second Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the First Set Aside Amount during the First Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Second Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Second Set Aside Period, an amount equal to the Second Set Aside Amount; (iii) during the Third Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Second Set Aside Amount during the Second Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Third Set Aside Period and from the first Property Taxes received by the City during the Third Set Aside Period, an amount equal to the Third Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Third Set Aside Amount by March 20, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the Second Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the Second Set Aside Amount during the Second Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Third Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Third Set Aside Period, an amount equal to the Third Set Aside Amount; (iv) during the Fourth Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Fourth Set Aside Amount during the Third Set Aside Period, from Property Taxes on deposit in the

Segregation Account on the first day of the Fourth Set Aside Period and from the first Property Taxes received by the City during the Fourth Set Aside Period, an amount equal to the Fourth Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Fourth Set Aside Amount by April 20, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the [Second] Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the Third Set Aside Amount during the Third Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fourth Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Fourth Set Aside Period, an amount equal to the Fourth Set Aside Amount; and (v) during the Fifth Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Fourth Set Aside Amount during the Fourth Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fifth Set Aside Period and from the first Property Taxes received by the City during the Fifth Set Aside Period, an amount equal to the Fifth Set Aside Amount; or (B) if the balance of the Set Aside Account did not equal or exceed the Fourth Set Aside Amount during the Fourth Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fifth Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Fifth Set Aside Period, an amount equal to the Fifth Set Aside Amount. If by May 31, 2006 the amount on deposit in the Set Aside Account is not sufficient to pay the principal of and interest on the Note as they become due, the City shall thereafter transfer and deposit Revenues (including Property Taxes) to the Set Aside Account so that the amounts in the Set Aside Account are at least equal to the amounts required to pay the principal of and interest on the Note as they become due. Except as provided in this Section 9(a), the City shall not deposit any amounts in the Set Aside Account. The City hereby pledges all Available Revenues and Available Property Taxes to the payment of the principal of and interest on the Notes. The Set Aside Account and all amounts held therein are hereby pledged and irrevocably set aside to

the payment of the Notes. Amounts deposited in the Set Aside Account may not be used for any purpose other than payment of the Notes and may be invested in legal investments which are permitted by the California Government Code and which mature not later than the latest maturity date of the Notes; provided that so long as no Event of Default under the Note Purchase Agreement is continuing, the earnings on any such investment shall be transferred by the City to the City's General Fund. For purposes of this Section 9, "Potential Principal Amount" means the Unused Commitment as of the Effective Date (as such terms are defined in the Note Purchase Agreement), (before giving effect to any portions of the Note purchased on the Effective Date) less the principal amount of the Note previously redeemed, and less the amount of Unused Commitment which has been previously terminated pursuant to Section 2.12 of the Note Purchase Agreement.

(b) To further assure the Bank of the availability of Property Taxes for the purposes set forth herein, the City covenants and agrees to establish hereunder and hold in trust for the benefit of the owner of the Notes a special fund that is segregated from all other funds and accounts of the City which account shall be designated as the "2005-06 Tax and Revenue Anticipation Notes Segregation Account" (the "Segregation Account"). The City agrees and covenants to deposit in the Segregation Account all Property Taxes within one business day following the later to occur of (1) receipt thereof from appropriate officials of the County of San Diego and (2) identification to the City by the County Auditor of the amount comprising Property Taxes. The City covenants and agrees that no moneys other than Property Taxes [and investment earnings thereon, to the extent credited thereto] will be deposited in the Segregated Account. The City hereby warrants that disbursements of moneys to the City are made periodically by appropriate officials of the County through wire transfer to a City concentration account, that such disbursement typically includes amounts comprising Property Taxes and other amounts (including other ad valorem property tax receipts) not comprising Property Taxes, and that the County Auditor typically sends to the City thereafter an apportionment report which identifies to the City categories of

disbursements from which the City can readily identify the portion thereof comprising Property Taxes. Subject to compliance with this Resolution, including Section 9(a) and the Note Purchase Agreement, and so long as no Event of Default under the Note Purchase Agreement is continuing, amounts in the Segregated Account may be used, invested and expended by the City in any lawful manner; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund. During the continuation of an Event of Default, the City shall, if requested by the Bank, transfer all Property Taxes from time to time on deposit in the Segregation Account to the Set Aside Account.

(c) The City hereby pledges all Available Revenues, Available Property Taxes, the Set Aside Account, and all amounts held therein, (collectively, the "Pledged Property") to the payment of the principal of and interest on the Notes. This pledge and grant is a first lien and security interest in favor of the owner of the Note, which shall be valid, binding and enforceable from the date of this Agreement and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge and grant shall be valid, binding and enforceable as against the City, its successors, creditors and all others asserting rights therein, to the extent set forth in the Resolution irrespective of whether such parties have notice thereof, and without the need for physical delivery, recordation, filing or further act.

Section 10. Tax Covenants. The City hereby covenants that it will not take any action or omit to take any action if such action or omission would cause the Notes to be arbitrage bonds, private activity bonds or federally guaranteed obligations within the meaning of the Code, or would otherwise cause interest on the Notes to fail to be excluded pursuant to Section 103(a) of the Code from the gross income of the owners thereof for federal income tax purposes. The City further covenants to comply with the provisions set forth in the Tax Certificate relating to the Notes.

Section 11. Defeasance. The Notes shall no longer be deemed to be outstanding under the Resolution if the City shall have made adequate provision for payment, in accordance with the Notes, the Resolution and the Note Purchase Agreement, of all principal and interest to become due thereon.

Section 12. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any and all of the Notes authorized to be issued under the Resolution by those who shall be the Registered Owner of the same from time to time, the Resolution shall be deemed to be and shall constitute a contract between the City and the owner of the Notes. The pledge made in the Resolution and the covenants and agreements set forth in the Resolution to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the owner of the Notes.

Section 13. Amendments.

(a) The Resolution may be amended by a supplemental resolution adopted by the City Council with the written consent of the owner of one hundred percent of the principal amount of the Notes outstanding.

(b) Subject to the terms of the Note Purchase Agreement, the Resolution may also be amended by a supplemental resolution adopted by the City Council without the consent of any owners of the Notes, provided that such supplemental resolution does not adversely affect the interests of the owners of the Notes.

Section 14. Holidays. Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day (as defined in the Note Purchase Agreement), such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

Section 15. Severability. Except as otherwise provided in the Note Purchase Agreement, if any one or more of the provisions of the Resolution shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the

decision, finding, order or decree of which becomes final, none of the remaining provisions of the Resolution shall be affected thereby, and such provisions shall be valid and enforceable to the fullest extent permitted by law.

Section 16. Certified Copies. The City Clerk shall provide a certified copy of this Accompanying Document to the Acting City Treasurer who is hereby authorized and directed to take such action as shall be necessary to assure compliance by the City with the terms and conditions hereof.

CITY OF SAN DIEGO

By: _____
P. Lamont Ewell
Its: City Manager

APPROVED:

MICHAEL AGUIRRE, City Attorney

By: _____
Mark D. Blake, Esq.
Deputy City Attorney

EXHIBIT A

**REPORT OF ACTING CITY TREASURER AND AUDITOR AND COMPTROLLER
REGARDING CASH FLOW DEFICIT**

The undersigned, Acting City Treasurer of the City of San Diego and City Auditor and Comptroller of the City of San Diego hereby certify as follows:

Based upon the computations of the City Auditor and Comptroller, the City of San Diego expects to experience a cumulative cash flow deficit for Fiscal Year 2005-06 on or about _____, 2005 in the amount indicated on the cash flow schedule attached hereto. The budgeted appropriations for Fiscal Years 2004-05 and 2005-06 and the revenues anticipated to be available for repayment of the Notes are not less than those set forth in Section 2 of the completed Accompanying Document No. RR-_____ to Resolution No. R-_____ of which this exhibit is a part. We hereby recommend issuance of the Notes in an aggregate principal amount not to exceed \$_____. As a result of budget uncertainties related to the State budget, we hereby recommend that amounts be available for draw down under the Note Purchase Agreement in an amount up to \$_____ (provided Note amounts shall not be drawn down pursuant to the Note Purchase Agreement in an amount exceeding \$_____ (plus an amount equal to the interest expense on the Note), except upon confirmation by the Acting City Treasurer and City Auditor and Comptroller or Auditor and Comptroller of an additional cash flow deficit, in a manner consistent with the Tax Certificate executed in connection with the issuance of the Notes), or the amount permitted by the Authorizing Law, consistent with federal tax rules governing issuance of tax and revenue anticipation notes.

Dated: July 1, 2005

CITY OF SAN DIEGO

By: _____
Charles E. Mueller, Jr.
Its: Acting City Treasurer

By: _____
John Torell
Its: Auditor and Comptroller

NAME OF ISSUER: CITY OF SAN DIEGO
 Period Covered: Fiscal Year 2005-06
 (Projected)
 CASH FLOW SUMMARY (In Thousands)

DRAFT

Month	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	Totals
Beginning Balance	\$ 38,481	\$ 8,345	\$ 19,056	\$ 10,648	\$ 3,760	\$ 8,760	\$ 5,657	\$ 29,932	\$ 22,245	\$ 2,458	\$ 2,165	\$ 40,243	XXXXXXXX
RECEIPTS:													
Property Tax	8,759	297	12,428	7,384	15,517	54,032	24,916	9,800	10,091	48,846	25,418	15,615	233,103
VLFF & Triple Flip						55,547					55,547		111,094
Sales Tax	10,856	14,475	4,021	4,862	14,481	13,031	7,092	10,308	1,144	6,640		4,985	91,695
Safety Sales Tax	752	659	631	599	578	693	603			312		1,222	8,049
Transient Occupancy Tax	2,677	7,266	8,140	5,703	4,951	5,363	4,029	3,080	6,723	4,264	6,357	10,498	67,051
Property Transfer Tax	1,586	1,112		1,155	1,257	2,502		1,338	1,064	732	1,257	2,903	14,906
Licenses and Permits	1,788	1,435	1,832	2,004	1,353	1,229	3,396	4,952	3,244	2,250	1,940	1,976	27,399
Fines, Forfeiture and Penalties	1,095	2,662	2,529	2,540	2,438	2,245	2,620	1,450	3,067	3,070	2,184	4,906	30,808
Revenue from Use of Money and Property	27	157	105	84	103	103	189	(44)	136	91	111	138	1,200
Franchise Fees	2,795	11,647	1,401	2,871	10,472	109	2,779	13,170	1,977	2,829	12,251	419	62,720
Rents and Concessions	2,622	3,805	3,988	2,635	1,389	2,222	1,774	1,581	2,124	2,295	2,764	3,073	30,272
Motor Vehicle License Fees	675	1,056	1,156	631	878	571	799	692	881	900	750	528	9,517
Revenue from Other Agencies	19	62	41	101	54	28	37	22	34	10,386	288		11,072
Charges for Current Services	4,923	7,710	8,056	8,913	6,869	9,425	17,376	7,805	6,981	7,548	8,355	19,133	113,094
Other Financing Sources	10,000	4,009	10,399					10,399				16,272	63,970
Other Revenue	132	52	91	66	95	129	102	155	115	133	88	69	1,227
Bank of America Note	126,000	9,000		11,000									146,000
TOTAL RECEIPTS	174,706	65,404	52,818	50,348	60,435	104,573	121,259	64,708	37,581	90,296	117,310	81,737	\$ 1,021,175
DISBURSEMENTS:													
Salaries/Wages	57,070	35,561	36,308	34,593	34,375	53,172	34,253	33,379	33,811	33,997	33,572	51,589	471,680
Fringe Benefits	131,308	7,520	8,717	8,608	8,571	12,842	6,853	8,690	8,151	8,090	8,519	23,480	241,349
Services/Supplies	12,465	8,339	11,797	9,202	8,716	7,718	7,256	10,582	10,283	10,903	9,296	23,596	130,153
Data Processing	2,774	1,760	1,760	1,760	1,760	2,200	1,760	1,760	1,760	1,760	1,760	2,063	22,877
Energy	908	1,147	2,115	1,915	1,112	1,565	1,679	1,227	1,312	1,033	1,288	2,951	18,252
Capital Outlay	117	268	529	558	901	629	883	1,757	2,051	558	797	3,134	12,178
Note Principal						29,200	43,800	15,000		34,000	24,000		148,000
Note Interest	200	100		600		350	500			250			2,000
TOTAL DISBURSEMENTS	204,842	54,693	61,226	57,236	55,435	107,676	96,984	72,395	57,368	90,589	79,232	106,813	\$ 1,044,489
Ending Balance	\$ 8,345	\$ 19,056	\$ 10,648	\$ 3,760	\$ 8,760	\$ 5,657	\$ 29,932	\$ 22,245	\$ 2,458	\$ 2,165	\$ 40,243	\$ 15,167	
REPAYMENT FUND													
Beginning Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipts	200	100		600		29,550	44,300	15,000		34,250	24,000		148,000
Disbursements	200	100		600		29,550	44,300	15,000		34,250	24,000		148,000
Ending Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

* Includes additional funds which may be available to the General Fund.

R-300509

EXHIBIT B
[RESERVED]

EXHIBIT C
FORM OF NOTE

R-1

Up to \$ _____ .00

ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Bank of America, N.A., has an interest herein. The Notes are non-negotiable and non-transferable prior to maturity and Bank of America, N.A. does not have the right prior to maturity to sell or transfer the Notes, to create any participation interest in the Notes, to deposit the Notes into any affiliated investment companies or trusts or to otherwise directly or indirectly transfer or assign any interest in the Notes prior to the maturity date of the Notes.

CITY OF SAN DIEGO, CALIFORNIA
2005-06 Tax and Revenue Anticipation Note

<u>INTEREST RATE</u>	<u>DATED DATE</u>	<u>MATURITY DATE</u>
Variable	July 1, 2005	June 30, 2006

FOR VALUE RECEIVED, the City of San Diego, California, acknowledges itself indebted to and promises to pay to Bank of America, N.A., at the office of the Acting City Treasurer, the principal sum advanced to the City from time to time in respect hereof and noted on the Principal Log attached hereto as Exhibit A and incorporated herein by reference, in no event to exceed _____ Million and No/100 Dollars (\$ _____ .00) in lawful money of the United States of America, on June 30, 2006, together with interest on the principal amount outstanding hereunder from time to time at the rate or rates per annum set forth in that certain Note Purchase Agreement by and between the City and the Bank dated as of July 1, 2005 (computed on the basis set forth in the Note Purchase Agreement) in like lawful money from the date hereof until payment in full of said principal sum. Interest hereon shall be payable to the registered owner hereof at the address shown on the registration books of the Acting City Treasurer on June 30, 2006, and at such other times as may be required under the Note Purchase Agreement. The principal of and interest at maturity on this Note shall be payable only to the registered owner hereof upon surrender of this Note as the same shall fall due; provided, however, that no interest shall be payable for any period after maturity during which the registered owner hereof fails to properly present this Note for payment.

It is hereby certified, recited and declared that this Note is one of an authorized issue of Notes entitled "City of San Diego, California 2005-06 Tax and Revenue Anticipation Note" (the "Notes"), in the aggregate principal amount of not to exceed _____ Million and No/100 Dollars (\$ _____ .00), to be issued in a single series by authority of Section 92 of the City Charter of the City and Article 7.6, Chapter 4, Part 1, Division 2, Title 5 of the Government Code of the State of California and Resolution No. R-_____ adopted by the City Council on _____, 2005 (together with the Accompanying Document and the Note Purchase Agreement appended thereto, the "Resolution"), and that all acts, conditions and things required to exist, happen and be performed

precedent to and in the issuance of this Note have existed, happened and been performed in regular and due time, form and manner as required by law; and that this Note, together with all other indebtedness and obligations of the City does not exceed any limit prescribed by the Constitution or laws of the State of California or said City Charter. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Resolution.

The Principal Log attached as Exhibit A hereto, shall be used by the Bank to record the payment of the purchase price by the Bank of the Note from time to time (such purchase price to be paid from time to time by the Bank as provided in the Note Purchase Agreement), which shall evidence the principal amount of the Note Outstanding and the redemption or payment of principal of the Note from time to time. The total amount outstanding under the Note may not exceed \$_____.00 at any time, and no portion of the purchase price therefor shall be accepted after June 30, 2006.

The Notes are subject to prepayment at the times and upon the terms set forth in the Note Purchase Agreement.

As security for the payment of the principal of and interest on the Notes, the City agrees and covenants in the Resolution to deposit in trust into a special fund to be held by the City, designated as the "2005-06 Tax and Revenue Anticipation Notes Set Aside Account" (the "Set Aside Account"), sufficient moneys to enable the City to pay in full such principal and interest at the times and in the manner set forth in the Resolution. Pursuant to the Resolution, the City has pledged all Revenues to the payment of the principal of and interest on the Notes, and the Available Revenues, Available Property Taxes, the Set Aside Account, and all amounts held therein are pledged set aside to the payment of the Notes to the extent provided therein. Amounts deposited in the Set Aside Account may not be used for any purpose other than payment of the Notes and may be invested in legal investments which are permitted by the California Government Code and which mature not later than the latest maturity date of the Notes; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund.

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Acting City Treasurer.

IN WITNESS WHEREOF, the City of San Diego has caused this Note to be executed by the manual or facsimile signature of its Acting City Treasurer and countersigned by the manual or facsimile signature of the City Clerk and caused a facsimile of the official seal to be imprinted hereon, all as of the 1st day of July, 2005.

CITY OF SAN DIEGO

By: _____
Its: Acting City Treasurer

(SEAL)

Countersigned:

By: _____
Its: City Clerk

LEGAL OPINION

The attached is a true copy of the opinion rendered by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, in connection with the issuance of, and dated as of the date of the original delivery of, the Notes. A signed copy is on file in my office.

City Clerk of the City of San Diego

EXHIBIT A

PRINCIPAL LOG

Purchase Amount	Purchase Date	Redemption or Payment Amount	Redemption Date	Outstanding Principal	Bank Initials
----------------------------	--------------------------	---	----------------------------	----------------------------------	--------------------------

July 1, 2005

EXHIBIT D

**§ _____
CITY OF SAN DIEGO, CALIFORNIA
2005-06 TAX AND REVENUE ANTICIPATION NOTE**

CERTIFICATE OF THE CITY CLERK

The undersigned hereby certifies that:

(i) I am the duly qualified and authorized City Clerk of the City of San Diego (the “City”);

(ii) attached hereto as Exhibit A is a true and correct copy of Resolution No. R-_____ of the City Council of the City, adopted on June 7, 2005 and the Accompanying Document Nos. RR-_____ and RR-_____ to Resolution No. R-_____ (collectively, the “Resolution”); and

(iii) the Resolution was duly adopted at a properly noticed meeting of the City Council during which a quorum was acting throughout, and has not been modified, amended, rescinded or revoked and is in full force and effect on and as of the date hereof.

Dated: July 1, 2005

CITY OF SAN DIEGO

By _____
Charles Abdelnour
Its: City Clerk

\$155,000,000

NOTE PURCHASE AGREEMENT

between

CITY OF SAN DIEGO

and

BANK OF AMERICA, N.A.

Dated as of July __, 2005

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This NOTE PURCHASE AGREEMENT, dated as of July __, 2005, is entered into by and between the CITY OF SAN DIEGO, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California and its charter (the "City"), and BANK OF AMERICA, N.A., a national banking association ("BofA").

W I T N E S S E T H:

WHEREAS, the City desires to sell notes in anticipation of its receipt of future tax payments in order to support its cash flow needs; and

WHEREAS, BofA is willing, on the terms and conditions contained herein, to purchase the notes described herein from the City.

NOW, THEREFORE, in consideration of the respective agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. The following terms have the meanings indicated below or in the referenced Section of this Agreement, unless the context shall clearly indicate otherwise:

"Accompanying Document" means Accompanying Document No. RR-_____, including exhibits thereto, on file in the Office of the City Clerk, which document accompanies Resolution No. R-_____, adopted by the City Council on June __, 2005.

"Agreement" means this Note Purchase Agreement, as amended, modified and supplemented from time to time.

"Annual Appropriation Ordinance" means an annual appropriation ordinance of the type described in Section 71 of the City Charter.

"Applicable Lending Office" means, in the case of any Note Portion, the office of BofA at which such Note Portion is carried on the books and records of BofA.

"Applicable Margin" means, (a) so long as no Event of Default is continuing, (i) for any Base Rate Note Portion, zero; (ii) for any IBOR Note Portion, 0.7%; and (iii) for any LIBOR Note Portion, 0.7%; (b) if an Event of Default (other than an Insolvency Event) is continuing, (i) for any Base Rate Note Portion, 2.0%; (ii) for any IBOR Note Portion, 2.7%; and (iii) for any LIBOR Note Portion, 2.7%; and (c) if an Insolvency Event is continuing, (i) for any Base Rate Note Portion, 2.5%; (ii) for any IBOR Note Portion, 3.2%; and (iii) for any LIBOR Note Portion, 3.2%.

"Appropriation Date" means the date on which the Annual Appropriation Ordinance that gives effect to the expenditures set forth in the Budget For Fiscal Year 2005/2006 is adopted.

“Authority Law” means Section 92 of the City Charter and California Government Code Sections 53850 to 53858 (inclusive).

“Authorized Representative” means any of the following officers of the City: the City Manager, the City Treasurer and any individual designated in writing to BofA as an Authorized Representative by the City Manager or the City Treasurer.

“Available Property Taxes” means (1) with respect to any Set Aside Period, that portion of Property Taxes on deposit in the Segregation Account or otherwise held by the City existing on and after the beginning of such Set Aside Period, in amounts which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Property Taxes.

“Available Revenues” means (1) with respect to any Set Aside Period, that portion of Revenues existing on and after the date specified with respect to such Set Aside Period which are required to be deposited in the Set Aside Fund, or (2) on and after any Event of Default, the Revenues.

“Base Rate” means on any day the greater of (a) BofA’s U.S. prime rate in effect for such day (as such U.S. prime rate is announced from time to time by BofA); and (b) the Federal Funds Rate for such day plus 0.5% per annum. BofA’s prime rate is based on various factors, including BofA’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. Each change in the Base Rate shall take effect at the time of such change in such U.S. prime lending rate or the Federal Funds Rate, as the case may be. All calculations based upon BofA’s U.S. prime rate shall be made on the basis of actual days elapsed and a year of 365/366 days, as the case may be, and all calculations based upon the Federal Funds Rate shall be made on the basis of actual days elapsed and a year of 360 days.

“Base Rate Note Portion” means a Note Portion designated or deemed designated as such by the City at the time of the incurrence thereof or conversion thereto.

“BofA” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“BofA Indebtedness” has the meaning assigned to that term in Section 6.01(d)(i)(B) hereof.

“Budget For Fiscal Year 2005/2006” means the proposed budget for Fiscal Year 2005/2006 prepared by the City Manager in accordance with Section 69 of the City Charter.

“Business Day” means any day of the year (i) other than a Saturday; (ii) other than a Sunday; (iii) on which banks located in the city where BofA’s Applicable Lending Office is (or Applicable Lending Offices are) located are not required or authorized to close; (iv) on which banks located in San Diego, California are not required or authorized to close; (v) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Note Portions, any day which is a Business Day described in clauses (i) through (iv) above and which is also a day for trading by and between banks in the London and/or New York interbank Eurodollar market; and (vi) with respect to all notices and determinations in connection with, and payments of principal and interest on, IBOR Note Portions, any day which

is a Business Day described in clauses (i) through (iv) above and which is also a day for trading by and between banks in the applicable interbank Eurodollar market.

“City” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“City Charter” means the charter of the City as in effect on July 1, 2005.

“Commitment Fee” has the meaning assigned to that term in Section 2.11 hereof.

“Commitment Termination Date” means June 30, 2006; provided, however, if the Appropriation Date has not occurred on or prior to July 31, 2005, then the Commitment Termination Date shall mean August 1, 2005.

“Default” means the occurrence of any event or the existence of any circumstances that, with the passage of time, the giving of notice, or both, would become an Event of Default.

“Determination Date” with respect to any Interest Period means (i) in the case of a LIBOR determination, the second London Business Day prior to the commencement of that Interest Period and (ii) in the case of an IBOR determination, the commencement date of that Interest Period.

“Dollars” and “\$” means the lawful currency of the United States of America.

“Effective Date” means the first date on which all of the conditions set forth in Section 3.01 have been satisfied or waived by BofA.

“Event of Default” has the meaning assigned to that term in Section 6.01 hereof.

“Excess Interest” has the meaning assigned to that term in Section 2.06(g) hereof.

“Federal Funds Rate” means for any day the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be the rate applicable to such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to BofA on such day by three Federal funds brokers selected by BofA.

“Fifth Set Aside Amount” means an amount equal to (i) the total Potential Principal Amount (determined at May 1, 2006) less (ii) the amount on deposit in the Set Aside Account at the opening of business of the City on May 1, 2006.

“Fifth Set Aside Period” means the period from and including May 1, 2006 to and including May 31, 2006.

“First Set Aside Amount” means an amount equal to thirty percent (20%) of the total Potential Principal Amount (determined at November 30, 2005).

“First Set Aside Period” means the period from and including December 31, 2005 to and including January 31, 2006.

“Fiscal Year 2005/2006” means the fiscal year of the City commencing on July 1, 2005 and ending on June 30, 2006.

“Fourth Set Aside Amount” means an amount equal to eighty three percent (83%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of any prepayments made pursuant to Section 2.13 during the First Set Aside Period, the Second Set Aside Period and the Third Set Aside Period and (ii) the balance of the Set Aside Account at the City’s opening of business on April 1, 2006.

“Fourth Set Aside Period” means the period from and including April 1, 2006 to and including April 30, 2006.

“General Fund Indebtedness” has the meaning assigned to that term in Section 6.01(d)(i)(A) hereof.

“IBOR” means, for any Interest Period, a rate per annum determined by BofA pursuant to the following formula, rounded upward to the nearest 1/100 of one percent:

$$\text{IBOR} = \frac{\text{IBOR Base Rate for such Interest Period}}{(1.00 - \text{Reserve Percentage})}$$

“IBOR Base Rate” means, for any Interest Period, the interest rate at which BofA’s Grand Cayman Banking Center, Grand Cayman, British West Indies, would offer Dollar deposits for the applicable Interest Period to other major banks in the offshore dollar inter-bank market.

“Reserve Percentage” means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to, marginal, emergency, supplemental, special, and other reserve percentages. As of the Effective Date, the Reserve Percentage is zero.

“IBOR Note Portion” means a Note Portion designated or deemed designated as such by the City at the time of the incurrence thereof or conversion thereto.

“Indebtedness” means, without duplication, (i) bonds, notes and other evidences of indebtedness of the City; (ii) to the extent not included in clause (i) above, obligations of the City for borrowed money or for the deferred or installment purchase price of property or services, including, without limitation, certificates of participation; (iii) to the extent not included in clauses (i) and (ii) above, obligations of the City to pay lease rental in respect of certificates of

participation and lease revenue bonds the proceeds of which were made available to the City; (iv) the face amount of all letters of credit issued for the account of the City and all drafts drawn thereunder; (v) all liabilities secured by any Lien on any property owned by the City, whether or not such liabilities have been assumed by the City; (vi) the aggregate amount required to be capitalized under leases under which the City is the lessee and (vii) all Contingent Obligations of the City. As used in this definition, the term "Contingent Obligation" means, as to the City, any obligation of the City guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the City, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

"Indemnitee" has the meaning assigned to that term in Section 7.07(a) hereof.

"Insolvency Event" means occurrence and continuance of one or more of the following events: the City shall (a) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code (the "Bankruptcy Code") or any other federal, state or foreign bankruptcy, insolvency or similar law, (b) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (c) apply for or consent to the appointment of a receiver, trustee, custodian, liquidator, assignee, sequestrator or similar official for itself or for a substantial part of its property, (d) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (e) make a general assignment for the benefit of creditors, (vi) become unable to pay its debts as they become due, admit in writing its inability to pay its debts as they become due or fail to pay its debts as they become due, (f) declare a moratorium on the payment of its debts or (g) take action for the purpose of effecting any of the foregoing, including, without limitation, the adoption by the City Council of a resolution to take, or to cause any elected official or officer of the City to take, any such action.

"Interest Period" has the meaning assigned to that term in Section 2.07 hereof.

"Interest Rate Mode" means, with respect to a Note Portion, the method by which interest is calculated in respect of the principal amount of such Note Portion, which shall be by reference to the Base Rate, the IBOR (for the applicable Interest Period) or the LIBOR (for the applicable Interest Period).

"LIBOR" means, for any Interest Period, a rate per annum determined by BofA pursuant to the following formula, rounded upward to the nearest 1/100 of one percent:

LIBOR = London Inter-bank Offered Rate for such Interest Period
(1.00 – Reserve Percentage)

“London Inter-bank Offered Rate” means, for any Interest Period, the average per annum interest rate at which Dollar deposits would be offered for the applicable Interest Period by major banks in the London inter-bank market, as shown on the Telerate Page 3750 (or any successor page) at approximately 11:00 a.m. London time two (2) London Business Days before the commencement of such Interest Period. If such rate does not appear on the Telerate Page 3750 (or any successor page), the London Inter-bank Offered Rate for that Interest Period will be determined by such alternate method as reasonably selected by BofA.

“Reserve Percentage” means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to, marginal, emergency, supplemental, special, and other reserve percentages. As of the Effective Date, the Reserve Percentage is zero.

“LIBOR Note Portion” means any Note Portion designated or deemed designated as such by the City at the time of the incurrence thereof or conversion thereto.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement).

“Margin Stock” has the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System.

“Maximum Rate” means ten percent (10%).

“Note” has the meaning assigned to that term in Section 2.04 hereof.

“Note Portion” means an undivided beneficial interest in the Note.

“Notice” or “notice” means any form of written communication or a communication by means of electronic mail, facsimile device, telegraph or cable.

“Notice of Conversion/Continuation” has the meaning assigned to that term in Section 2.05 hereof.

“Notice Office” means the office of BofA located at 333 South Hope Street, 13th Floor, Mail Code: CA9-193-13-17, Los Angeles, California or such other office or mail code as BofA may hereafter designate in writing as such to the City. Any Notice of a change in the Notice Office shall become effective on the fifth day after the delivery of Notice thereof to the City.

“Obligations” shall mean all amounts owing to BofA pursuant to the terms of this Agreement and the Note.

“Parent” has the meaning assigned to that term in Section 2.08(c) hereof.

“Payment Date” has the meaning assigned to that term in Section 2.06(e) hereof.

“Payment Account” means Credit Account: 15921-83980 maintained with Middle Market Banking Credit Services West, Mail Code: CA9-703-11-07 at the San Francisco, California branch of BofA, ABA #121000358, For Further Credit to: City of San Diego TRANS, Facsimile Number: (213)345-7797, or such other account as BofA may hereafter designate in writing as such to the City. Any Notice of a change in the Payment Account shall become effective on the fifth day after the delivery of Notice thereof to the City.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or a political subdivision or an agency or instrumentality thereof.

“Pledged Property” has the meaning assigned to that term in Section 2.14(c) hereof.

“Potential Principal Amount” means, as of any time, the Unutilized Commitment as of the Effective Date (before giving effect to any purchase of Note Portions made on the Effective Date), less the principal amount of the Note prepaid or redeemed prior to such time, and less the amount of Unutilized Commitment which has been terminated pursuant to Section 2.12 hereof prior to such time.

“Property Taxes” means that portion of Revenues consisting of ad valorem property taxes payable to, or for the benefit of, the City in respect of Fiscal Year 2005/2006, but excluding ad valorem property taxes payable to the City pursuant to the “triple flip” adjustment provisions of California law, including without limitation California Revenue and Taxation Code Section 97.68.

“Purchase Date” means, with respect to a Note Portion, the date, which shall be a Business Day, on which BofA is required to purchase such Note Portion as set forth in the applicable Purchase Notice.

“Purchase Notice” has the meaning assigned to that term in Section 2.02 hereof.

“Related Documents” means the Note, each Notice of Conversion/Continuation, each Purchase Notice and the Resolution.

“Resolution” means Resolution No. R-_____ adopted by the City Council on June __, 2005, including Accompanying Document No. RR-_____, as amended, modified and supplemented from time to time.

“Revenues” means all legally available taxes, income, revenue, cash receipts, and other moneys of the City attributable to the Fiscal Year 2005/2006 and chargeable to the City’s

General Fund, and excluding moneys which, when received by the City, will be encumbered for a special purpose.

“Second Set Aside Amount” means an amount equal to fifty percent (50%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of any prepayments made pursuant to Section 2.13 during the First Set Aside Period and (ii) the balance of the Set Aside Account at the City’s opening of business on February 1, 2006.

“Second Set Aside Period” means the period from and including February 1, 2006 to and including February 28, 2006.

“Segregation Account” has the meaning assigned to that term in Section 2.14(b) hereof.

“Set Aside Account” has the meaning assigned to that term in Section 2.14(a) hereof.

“Set Aside Period” means, as the context may require, the First Set Aside Period, the Second Set Aside Period or the Third Set Aside Period.

“State” means the State of California.

“Taxes” has the meaning assigned to that term in Section 2.16 hereof.

“Third Set Aside Amount” means an amount equal to sixty percent (60%) of the total Potential Principal Amount (determined at November 30, 2005) less the sum of (i) the principal amount of any prepayments made pursuant to Section 2.13 during the First Set Aside Period and the Second Set Aside Period and (ii) the balance of the Set Aside Account at the City’s opening of business on March 1, 2006.

“Third Set Aside Period” means the period from and including April 10, 2006 to and including April 30, 2006.

“Treasurer” means the individual who from time to time occupies the office of the City Treasurer.

“TRAN” means a note (other than the Note) issued by the City during the period commencing July 1, 2005 and ending on June 30, 2006 that is payable from Revenues no later than fifteen (15) months from the date of issuance of such note.

“TRAN Proceeds” means, with respect to the issuance and sale by the City of a TRAN, all proceeds received by or on behalf of the City from any such sale net of underwriter’s commissions, underwriter’s discounts and costs of issuance.

“Unutilized Commitment” means, on the Effective Date, \$155,000,000, and, thereafter at any time, means \$155,000,000 less the aggregate principal amount of all Note Portions purchased by BofA prior to such time.

Section 1.02 Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun

shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. All references herein to financial statements shall, unless expressly stated to be audited financial statements, shall be references to unaudited financial statements.

ARTICLE II NOTES

Section 2.01 Commitment to Purchase Note Portions.

(a) Subject to and upon the terms and conditions set forth herein, BofA agrees, at any time and from time to time prior to the Commitment Termination Date at the written request of the City acting through the Treasurer, to purchase Note Portions issued by the City in an aggregate principal amount not to exceed the Unutilized Commitment at such time.

(b) The aggregate principal amount of each Note Portion purchased hereunder shall be not less than \$1,000,000 and integral multiples of \$100,000 in excess thereof.

Section 2.02 Purchase Notice. Whenever the City desires for BofA to purchase a Note Portion hereunder, the Treasurer shall give BofA at its Notice Office prior written notice of such purchase (a) no later than 10:00 A.M. (Los Angeles time) on the applicable Purchase Date, if such Note Portion is to bear interest initially calculated by reference to the Base Rate; (b) no later than 10:00 A.M. (Los Angeles time) on the applicable Purchase Date, if such Note Portion is to bear interest initially calculated by reference to the IBOR; and (c) no later than 10:00 A.M. (Los Angeles time) on the third Business Day preceding the applicable Purchase Date, if such Note Portion is to bear interest initially calculated by reference to the LIBOR. Each such notice (each a “Purchase Notice”) shall be in the form of Exhibit A, appropriately completed to specify the aggregate principal amount of the Note Portion to be purchased, the applicable Purchase Date (which shall be a Business Day), whether the Note Portion to be purchased is to bear interest initially calculated by reference to the Base Rate, IBOR or LIBOR and, if the Note Portion to be purchased is to bear interest initially calculated by reference to the IBOR or LIBOR, the initial Interest Period to be applicable thereto.

Section 2.03 Disbursement of Proceeds. No later than 2:00 P.M. (Los Angeles time) on the applicable Purchase Date, so long as the conditions precedent to such purchase as set forth in Section 3.02 are satisfied at such time on such date, BofA will make available to the order of the City the principal amount of the Note Portion, in Dollars and in immediately available funds.

Section 2.04 Note. The City's obligation to pay the principal of, and interest on, the Note Portions purchased by BofA shall be evidenced by a master promissory note duly executed and delivered by the City substantially in the form of Exhibit C to the Accompanying Document with blanks appropriately completed in conformity herewith (the "Note"). The Note shall (i) be registered in the name of BofA and be dated the Effective Date; (ii) be in a principal amount equal to an amount not to exceed \$155,000,000 and be payable in the principal amount of the Note Portions evidenced thereby; (iii) mature, with respect to each Note Portion evidenced thereby, on the Commitment Termination Date; (iv) bear interest as provided herein at the Base Rate, IBOR and/or LIBOR; and (v) be entitled to the benefits of this Agreement. BofA will note on the principal log attached to the Note the amount of each Note Portion purchased by BofA and each principal payment in respect thereof. Failure to make any such notation shall not affect the City's obligations in respect of the Note Portions.

Section 2.05 Conversions and Continuations.

(a) Prior to the Commitment Termination Date, the City shall have the option to convert on any Business Day all or a portion of the outstanding principal amount of a Note Portion from one Interest Rate Mode to another Interest Rate Mode, provided that (i) except as otherwise provided in Section 2.08, a LIBOR Note Portion and an IBOR Note Portion may be converted into another Interest Rate Mode only on the last day of the Interest Period applicable to such LIBOR Note Portion and an IBOR Note Portion, as the case may be, being converted and no partial conversion of a LIBOR Note Portion or an IBOR Note Portion shall reduce the outstanding principal amount of the remaining LIBOR Note Portion or IBOR Note Portion to an amount less than \$1,000,000 and integral multiples of \$100,000 in excess thereof; (ii) a Base Rate Note Portion may only be converted into another Interest Rate Mode if no Default is in existence on the date of the conversion; (iii) a Base Rate Note Portion may only be converted into a LIBOR Note Portion or an IBOR Note Portion in a minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof; and (iv) no conversion pursuant to this Section 2.05 shall result in LIBOR Note Portions and IBOR Note Portions having more than eight different Interest Periods in effect on any date.

(b) Prior to the Commitment Termination Date, the City shall have the option to continue all or a portion (which portion shall not be less than \$1,000,000 and integral multiples of \$100,000 in excess thereof) of the outstanding principal amount of any LIBOR Note Portion or any IBOR Note Portion as a LIBOR Note Portion or an IBOR Note Portion, as the case may be, after the last day of the then current Interest Period, provided that (i) no Default exists on the date of continuation; and (ii) no continuation pursuant to this Section 2.05 shall result in LIBOR Note Portions and IBOR Note Portions having more than eight different Interest Periods in effect on any date.

(c) Each such conversion or continuation shall be effected by the City by giving BofA prior to 10:00 A.M. (Los Angeles time), at least, in the case of LIBOR Note Portions, three Business Days', or in the case of IBOR Note Portions, one Business Day's, prior Notice in the form of Exhibit B (each a "Notice of Conversion/Continuation") signed by the Treasurer specifying (i) the Note Portions thereof to be so converted or continued, (ii) if a Base Rate Note Portion is to be converted into a LIBOR Note Portion or an IBOR Note Portion, the initial Interest Period to be applicable thereto or (iii) the LIBOR Note Portion or IBOR Note

Portion, as the case may be, to be so continued and the subsequent Interest Period applicable thereto. If the City acting through the Treasurer specifies that any Interest Period selected in a Notice of Conversion/Continuation shall continue for successive periods, then, so long as no Default has occurred and is continuing on the last day of the applicable Interest Period, the LIBOR Note Portion or IBOR Note Portion, as the case may be, with such Interest Period shall continue for successive periods (until such time as the Treasurer delivers to BofA Notice terminating such election) with the same Interest Period without the requirement that the City deliver to BofA any further Notice of Continuation/Conversion.

(d) In the event the City acting through the Treasurer does not deliver a Notice of Conversion/Continuation to BofA prior to 10:00 A.M. (Los Angeles time), at least, in the case of LIBOR Note Portions, three Business Days, or in the case of IBOR Note Portions, on the last day of an Interest Period (unless a prior Notice of Conversion/Continuation specified successive continuations), the principal portion of the LIBOR Note Portion or IBOR Note Portion, as the case may be, with such expiring Interest Period shall automatically convert to an IBOR Note Portion with a one-day Interest Period without further action on the last day of such Interest Period.

Section 2.06 Interest. The City agrees to pay interest in respect of the unpaid principal amount of the Note as follows:

(a) The City agrees to pay interest in respect of the unpaid principal amount of each Base Rate Note Portion from the date the proceeds thereof are made available to the City or the date a LIBOR Note Portion or an IBOR Note Portion is converted into a Base Rate Note Portion until the earliest of (i) the date such Base Rate Note Portion is paid in full, (ii) the date such Base Rate Note Portion is converted to a LIBOR Note Portion or an IBOR Note Portion or (iii) the Commitment Termination Date, in each case at a rate per annum equal, subject to Section 2.06(g) below, to the product of 0.62347 and the Base Rate plus the Applicable Margin.

(b) The City agrees to pay interest in respect of the unpaid principal amount of each LIBOR Note Portion from the date the proceeds thereof are made available to the City or the date a Base Rate Note Portion or an IBOR Note Portion is converted into a LIBOR Note Portion until the earliest of (i) the date such LIBOR Note Portion is paid in full, (ii) the date such LIBOR Note Portion is converted to a Base Rate Note Portion or an IBOR Note Portion or (iii) the Commitment Termination Date, in each case at a rate per annum which shall, during each Interest Period applicable thereto, be equal, subject to Section 2.06(g) below, to the product of 0.62347 and the LIBOR in effect for such Interest Period plus the Applicable Margin.

(c) The City agrees to pay interest in respect of the unpaid principal amount of each IBOR Note Portion from the date the proceeds thereof are made available to the City or the date a Base Rate Note Portion or a LIBOR Note Portion is converted into an IBOR Note Portion until the earliest of (i) the date such IBOR Note Portion is paid in full, (ii) the date such IBOR Note Portion is converted to a Base Rate Note Portion or a LIBOR Note Portion or (iii) the Commitment Termination Date, in each case at a rate per annum which shall, during each Interest Period applicable thereto, be equal, subject to Section 2.06(g) below, to the product of 0.62347 and the IBOR in effect for such Interest Period plus the Applicable Margin.

(d) Overdue principal and, to the extent permitted by law, overdue interest in respect of each Note Portion shall, subject to Section 2.06(g) below, bear interest at a rate per annum equal to 2% per annum in excess of the applicable rate for such Note Portion. Any other overdue amount payable by the City hereunder shall bear interest at a rate per annum equal, subject to Section 2.06(g) below, to 3% per annum in excess of the Base Rate.

(e) Accrued (and theretofore unpaid) interest shall be payable (i) in respect of each Base Rate Note Portion, quarterly in arrears on the last Business Day of each December, March, June and September (each a "Payment Date"); (ii) in respect of each LIBOR Note Portion, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period; (iii) in respect of each IBOR Note Portion, on the last Business Day of the calendar month during which the Interest Period applicable thereto ended; and (iv) in respect of each Note Portion, on any prepayment (on the amount prepaid), on the Commitment Termination Date and, after the Commitment Termination Date, on demand.

(f) On each Determination Date, the Agent shall determine the interest rate for the LIBOR Note Portion or IBOR Note Portion, as the case may be, for which such determination is being made and shall promptly notify the City thereof. Each such determination shall, absent manifest error, be final and conclusive and binding on the parties hereto.

(g) If the rate of interest payable hereunder, including amounts payable under Sections 2.08 and 2.16 hereof, shall exceed the Maximum Rate or, if less, any maximum interest rate payable by law for any period for which interest is payable, then (i) interest at such Maximum Rate or maximum interest rate, as the case may be, shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) such Maximum Rate or maximum interest rate, as the case may be (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate or maximum interest rate, as the case may be, at which time the City shall pay or cause to be paid to BofA, with respect to amounts then payable to BofA that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to BofA to equal such Maximum Rate or maximum interest rate, as the case may be, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (x) the date all deferred Excess Interest is fully paid to BofA or, (y) as long as such date occurs after August 1, 2005, the Commitment Termination Date.

(h) All computations of interest (other than interest that is determined by reference to BofA's prime rate) shall be made on the basis of a 360-day year and actual days elapsed.

Secton 2.07 Interest Periods. At the time it gives any Purchase Notice or Notice of Conversion/Continuation in respect of the making of, or conversion into, any LIBOR Note Portion or IBOR Note Portion, as the case may be (in the case of the initial Interest Period applicable thereto), or, in the case of any subsequent Interest Period, on (a) the third Business Day prior to the expiration of an Interest Period applicable to a LIBOR Note Portion or (b) on the

last Business Day of the Interest Period applicable to an IBOR Note Portion, the City acting through the Treasurer shall have the right to elect, by giving BofA Notice thereof, the interest period (each an “Interest Period”) applicable to such LIBOR Note Portion or IBOR Note Portion, as the case may be, which Interest Period shall, at the option of the City acting through the Treasurer, be (x) in the case of a LIBOR Note Portion, a one, two, three or six month period and (y) in the case of an IBOR Note Portion, a one, seven or fourteen day period, provided that: (i) the initial Interest Period for any LIBOR Note Portion or any IBOR Note Portion shall commence on the date BofA purchases such Note Portion from the City or, if such LIBOR Note Portion or IBOR Note Portion results from the conversion of another Note Portion, the date of conversion thereof and each Interest Period occurring thereafter in respect of such Note Portion shall commence on the day on which the next preceding Interest Period applicable thereto expires; (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; (iii) if any Interest Period would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day, provided that if any Interest Period would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; and (iv) no Interest Period shall extend beyond the Commitment Termination Date.

Secton 2.08 Increased Costs, Illegality, etc.

(a) In the event that BofA shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon the City):

(i) On any Determination Date that, by reason of any changes arising after the date of this Agreement affecting the interbank Dollar market adequate and fair means do not exist for ascertaining the LIBOR or the IBOR; or

(ii) At any time, that BofA shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Note Portion or IBOR Note Portion because of (x) any change since the date of this Agreement in any applicable law or governmental rule, regulation, order or request (whether or not having the force of law) (or in the interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, order or request), such as, for example, but not limited to, (A) a change in the basis of taxation of payments to BofA or its Applicable Lending Office of the principal of or interest on the Note or any other amounts payable hereunder (except for changes in the rate of tax on, or determined by reference to, the net income or profits of BofA or its Applicable Lending Office imposed by the jurisdiction in which its principal office or Applicable Lending Office is located) or (B) a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the LIBOR or the IBOR and/or (y) other circumstances affecting BofA or the interbank Dollar market or the position of BofA in such market; or

(iii) At any time, that (A) the purchase of any LIBOR Note Portion or IBOR Note Portion, (B) the conversion of the Interest Rate Mode with respect to a Note

Portion into a LIBOR Note Portion or IBOR Note Portion or (C) the continuation of a LIBOR Note Portion or IBOR Note Portion as such, has been made (x) unlawful by any law or governmental rule, regulation or order, (y) impossible by compliance by BofA with any governmental request (whether or not having force of law) or (z) impracticable as a result of a contingency occurring after the date of this Agreement which materially and adversely affects the interbank Dollar market;

then, and in any such event, BofA shall promptly give notice (by telephone confirmed in writing) to the City of such determination. Thereafter (x) in the case of clause (i) above, LIBOR and/or IBOR, as the case may be, shall no longer be available as an Interest Rate Mode until such time as BofA notifies the City that the circumstances giving rise to such notice no longer exist, and any Purchase Notice or Notice of Conversion/Continuation given by the City with respect to LIBOR Note Portions or IBOR Note Portions which have not yet been incurred (including by way of conversion or continuation) shall be deemed rescinded by the City, (y) in the case of clause (ii) above, the City shall, subject to Section 2.06(g) hereof, pay to BofA, upon written demand therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as BofA in its sole discretion shall determine) as shall be required to compensate BofA for such increased costs or reductions in amounts received or receivable hereunder (a written notice as to the additional amounts owed to BofA, showing the basis for the calculation thereof, submitted to the City by BofA shall, absent manifest error, be final and conclusive and binding on all the parties hereto), provided that such additional amounts (whether in the form of an increased rate of, or a different method of calculating, interest) shall not become effective until the fifteenth day following delivery by BofA to the City of said demand and (z) in the case of clause (iii) above, take one of the actions specified in Section 2.08(b) as promptly as possible and, in any event, within the time period required by law.

(b) At any time that any Note Portion is affected by the circumstances described in Section 2.08(a)(ii), the City may, and at any time that any Note Portion is affected by the circumstances described in Section 2.08(a)(iii), the City shall, either (i) if the affected Note Portion is then being purchased or pursuant to a conversion or continuation, cancel said purchase, conversion or continuation by giving BofA notice by telephone (confirmed in writing) of the cancellation on the same date that the City was notified by BofA pursuant to Section 2.08(a)(ii) or (iii); or (ii) if the affected Note Portion is then outstanding, upon at least three Business Days' written notice to BofA, require BofA to convert the Interest Rate Mode with respect to such Note Portion to the Base Rate.

(c) If BofA determines at any time that any applicable law or governmental rule, regulation, order or request (whether or not having the force of law) concerning capital adequacy, or any change in interpretation or administration thereof by any governmental authority, central bank or comparable agency, will have the effect of increasing the amount of capital required or expected to be maintained by BofA or any Person controlling BofA (the "Parent") based on the existence of BofA's Unutilized Commitment hereunder or its obligations hereunder, then the City shall pay to BofA, upon its written demand therefor, such additional amounts as shall be required to compensate BofA or the Parent, as the case may be, for the increased cost to BofA or the Parent as a result of such increase of capital, provided that such additional amounts shall not become effective until the fifteenth day following delivery by BofA to the City of said demand. In determining such additional amounts, BofA will act reasonably

and in good faith and will use averaging and attribution methods which are reasonable, provided that BofA's determination of compensation owing under this Section 2.08(c) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. BofA, upon determining that any additional amounts will be payable pursuant to this Section 2.08(c), will give prompt written notice thereof to the City, which notice shall show the basis for calculation of such additional amounts.

Section 2.09 Compensation. The City shall compensate BofA, upon its written request (which request shall set forth the basis for requesting such compensation and shall, absent manifest error, be final and conclusive and binding on all the parties hereto), for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by BofA to fund its LIBOR Note Portions and/or IBOR Note Portions) which BofA may sustain: (i) if for any reason (other than a default by BofA) a purchase of, or conversion from or into, a LIBOR Note Portion or IBOR Note Portion does not occur on a date specified therefor in a Purchase Notice or Notice of Conversion/Continuation (whether or not withdrawn by the City or deemed rescinded pursuant to Section 2.08(a)); (ii) if any repayment (including any prepayment made pursuant to Section 2.13) or conversion of any LIBOR Note Portion or IBOR Note Portion occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBOR Note Portion or IBOR Note Portion is not made on any date specified in a notice of prepayment given by the City to BofA; or (iv) as a consequence of (x) any other default by the City to pay the principal of and interest on the Note Portions when required by the terms of this Agreement and the Note or (y) any action taken pursuant to Section 2.08(b).

Section 2.10 Change of Applicable Lending Office. BofA agrees that, upon the occurrence of any event giving rise to the operation of Sections 2.08(a)(ii) or (iii), 2.08(c) or 2.16 with respect to BofA, it will, if requested by the City, use reasonable efforts (subject to overall policy considerations of BofA and its Parent) to designate another Applicable Lending Office for any Note Portions affected by such event, provided that such designation is made on such terms that BofA and its Applicable Lending Office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such section. Nothing in this Section 2.10 shall affect or postpone any of the obligations of the City or the right of BofA provided in Section 2.08 or 2.16.

Section 2.11 Fee. The City agrees to pay to BofA an unutilized commitment fee (the "Commitment Fee") for the period from the Effective Date until the Commitment Termination Date (or such earlier date as the Unutilized Commitment shall have been terminated) equal to the product of 0.20% (20 basis points) and the daily average Unutilized Commitment. Accrued Commitment Fee shall be due and payable quarterly in arrears on each Payment Date and on the Commitment Termination Date or upon such earlier date as the Unutilized Commitment shall be terminated. All computations of the Commitment Fee shall be made on the basis of a 365-day year and actual days elapsed.

Section 2.12 Voluntary Termination of Unutilized Commitment. Upon at least five Business Days' prior notice to BofA at its Notice Office, the City shall have the right, without premium or penalty, to terminate the Unutilized Commitment in whole or in part, in integral multiples of \$1,000,000.

Section 2.13 Prepayments.

(a) The City shall have the right to prepay the Note, without premium or penalty, in whole or in part from time to time by giving BofA at its Notice Office at least three Business Days' prior notice of its intent to prepay the Note. With respect to each prepayment of the Note pursuant to this Section 2.13: (i) the City may designate the Note Portions which are to be prepaid and, in the case of LIBOR Note Portions or IBOR Note Portions, as the case may be, the specific Interest Periods applicable thereto and the amount or amounts to be prepaid; (ii) each prepayment shall be in an aggregate principal amount of at least \$1,000,000 and integral multiples of \$100,000 in excess thereof, provided that no partial prepayment of LIBOR Note Portions or IBOR Note Portions, as the case may be, shall reduce the outstanding principal amount of such Note Portion to an amount less than \$1,000,000 and integral multiples of \$100,000 in excess thereof; and (iii) if the City elects to prepay LIBOR Note Portions or IBOR Note Portions on a Business Day other than the last day of the Interest Period applicable thereto, the City agrees, subject to Section 2.06(g) hereof, to pay to BofA the amounts, if any, determined in accordance with Section 2.09 hereof.

(b) The City shall prepay the Note, without premium or penalty, in whole or in part from time to time, from TRAN Proceeds. The City shall provide BofA with written notice of each proposed sale of such TRANs not less than three Business Days prior to the anticipated date of issuance of such TRANs. Each prepayment required by this Section 2.13(b) shall be made not less than the Business Day comprising the applicable issuance date.

(c) With respect to each prepayment in part required by Section 2.13(b), the City may designate the Note Portions which are to be prepaid, provided that if any prepayment of a LIBOR Note Portion or an IBOR Note Portion shall reduce the outstanding principal balance of such Note Portion to an amount less than \$1,000,000, such outstanding LIBOR Note Portion or IBOR Note Portion, as the case may be, shall immediately be converted into a Base Rate Note Portion. In the absence of a designation by the City as described in the preceding sentence, BofA shall, subject to the above, make such designation in its sole discretion and shall incur no liability as a result thereof.

Section 2.14 Set Aside Account; Segregation Account; Security Interest.

(a) As security for the payment of the principal of and interest on the Note, the City agrees and covenants to deposit in trust into a special fund to be established and held by the City for the benefit of the holder of the Note, designated as the "2005-06 Tax and Revenue Anticipation Notes Set Aside Account" (the "Set Aside Account"), and segregated from all other funds and accounts of the City, sufficient moneys to enable the City to pay in full such principal and interest, as follows: (i) during the First Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the First Set Aside Period and from the first Property Taxes received by the City during the First Set Aside Period, an amount equal to the First Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the First Set Aside Amount by January 20, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the First Set Aside Period; (ii) during the Second Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the First Set Aside Amount during the First Set Aside Period, from Property Taxes on

deposit in the Segregation Account on the first day of the Second Set Aside Period and from the first Property Taxes received by the City during the Second Set Aside Period, an amount equal to the Second Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Second Set Aside Amount by February 19, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the Second Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the First Set Aside Amount during the First Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Second Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Second Set Aside Period, an amount equal to the Second Set Aside Amount; (iii) during the Third Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Second Set Aside Amount during the Second Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Third Set Aside Period and from the first Property Taxes received by the City during the Third Set Aside Period, an amount equal to the Third Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Third Set Aside Amount by March 20, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the Third Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the Second Set Aside Amount during the Second Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Third Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Third Set Aside Period, an amount equal to the Third Set Aside Amount; (iv) during the Fourth Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Third Set Aside Amount during the Third Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fourth Set Aside Period and from the first Property Taxes received by the City during the Fourth Set Aside Period, an amount equal to the Fourth Set Aside Amount; provided, however, that if the amount of Property Taxes deposited in the Set Aside Account does not equal the Fourth Set Aside Amount by April 20, 2006, thereafter from all Revenues (including Property Taxes) received by the City during the Fourth Set Aside Period; or (B) if the balance of the Set Aside Account did not equal or exceed the Third Set Aside Amount during the Third Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fourth Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Fourth Set Aside Period, an amount equal to the Fourth Set Aside Amount; and (v) during the Fifth Set Aside Period, (A) if the balance of the Set Aside Account equaled or exceeded the Fourth Set Aside Amount during the Fourth Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fifth Set Aside Period and from the first Property Taxes received by the City during the Fifth Set Aside Period, an amount equal to the Fifth Set Aside Amount; or (B) if the balance of the Set Aside Account did not equal or exceed the Fourth Set Aside Amount during the Fourth Set Aside Period, from Property Taxes on deposit in the Segregation Account on the first day of the Fifth Set Aside Period and from the first Revenues (including Property Taxes) received by the City during the Fifth Set Aside Period, an amount equal to the Fifth Set Aside Amount. If by May 31, 2006 the amount on deposit in the Set Aside Account is not sufficient to pay the principal of and interest on the Note as they become due, the City shall thereafter transfer and deposit Revenues (including Property Taxes) to the Set Aside Account so that the amounts in the Set Aside Account are at least equal to the amounts required to pay the principal of and interest on the Note as they become due. Except as provided in this Section

2.14(a), the City shall not deposit any amounts in the Set Aside Account. Amounts deposited in the Set Aside Account may not be used for any purpose other than payment of the Note and may be invested in legal investments which are permitted by the California Government Code and which mature not later than the latest maturity date of the Note; provided that, so long as no Event of Default is continuing, the earnings on any such investments shall be transferred by the City to the City's General Fund.

(b) (b) To further assure BofA of the availability of Property Taxes for the purposes set forth herein, the City agrees and covenants to establish and hold in trust for the benefit of the holder of the Note a special fund that is segregated from all other funds and accounts of the City, which account shall be designated as the "2005-06 Tax and Revenue Anticipation Notes Segregation Account" (the "Segregation Account"). The City agrees and covenants to deposit in the Segregation Account all Property Taxes within one business day following the later to occur of (1) receipt thereof from appropriate officials of the County of San Diego and (2) identification to the City by the County Auditor of the amount comprising Property Taxes. The City covenants and agrees that no moneys other than Property Taxes and investment earnings thereon, to the extent credited thereto will be deposited in the Segregated Account. The City hereby warrants that disbursements of moneys to the City are made periodically by appropriate officials of the County through wire transfer to a City concentration account, that such disbursement typically includes amounts comprising Property Taxes and other amounts (including other ad valorem property tax receipts) not comprising Property Taxes, and that the County Auditor typically sends to the City thereafter an apportionment report which identifies to the City categories of disbursements from which the City can readily identify the portion thereof comprising Property Taxes. So long as no Event of Default is continuing, amounts deposited in the Segregation Account may be used, invested and expended by the City for any lawful purpose and, so long as no Event of Default is continuing, the earnings on any such investments shall be transferred by the City to the City's General Fund. During the continuation of an Event of Default, the City shall, if requested by BofA, transfer all Property Taxes from time to time on deposit in the Segregation Account to the Set Aside Account.

(c) The City hereby pledges all Available Revenues, Available Property Taxes, the Set Aside Account and all amounts held therein (collectively, the "Pledged Property") to the payment of the principal of and interest on the Note. This pledge and grant is a first lien and security interest in favor of the owner of the Note, which shall be valid, binding and enforceable from the date of this Agreement and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge and grant shall be valid, binding and enforceable as against the City, its successors, creditors and all others asserting rights therein, to the extent set forth herein irrespective of whether such parties have notice thereof, and without the need for physical delivery, recordation, filing or further act.

Secton 2.15 Method and Place of Payment. Except as otherwise specifically provided herein, all payments under this Agreement or the Note shall be made to BofA not later than 12:00 Noon (New York time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Account. Whenever any payment to be made hereunder or under the Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall

be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

Secton 2.16 Net Payment. All payments made by the City hereunder or under the Note will be made without setoff, counterclaim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the net income of BofA pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office or Applicable Lending Office of BofA is located) and all interest, penalties or similar liabilities with respect thereto (collectively, "Taxes"). As of the Effective Date, the Bank is not aware of any Taxes that would apply to its receipt of payments made by the City hereunder or under the Note. Subject to Section 2.06(g) hereof, the City shall also reimburse BofA, upon the written request of BofA, for taxes imposed on or measured by the net income of BofA pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office or Applicable Lending Office of BofA is located as BofA shall determine are payable by BofA in respect of amounts paid to or on behalf of BofA pursuant to the preceding sentence. If any Taxes are so levied or imposed, the City agrees, subject to Section 2.06(g) hereof, to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder or under the Note, after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein or in the Note. The City will furnish to BofA within 45 days after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the City. The City hereby agrees, subject to Section 2.06(g) hereof, to indemnify and hold harmless BofA, and reimburse BofA upon its written request, for the amount of any Taxes so levied or imposed and paid by BofA.

Secton 2.17 BofA Records. All transactions relating to the Unutilized Commitment and the Note Portions including, without limitation, prepayments, repayments, interest charges and reductions and terminations of the Unutilized Commitment and the Note Portions shall be reflected in the books and records of BofA, which records shall be conclusive and binding upon the City absent manifest error.

ARTICLE III CONDITIONS PRECEDENT

Secton 3.01 Conditions to BofA's Entering Into Agreement. It shall be a condition precedent to BofA's entering into this Agreement that all proceedings taken in connection with the transactions contemplated hereby and all documents incident thereto, including the Related Documents, shall be in form and substance satisfactory to BofA and that the conditions enumerated in this Section 3.01 have been fulfilled to the satisfaction of BofA. Delivery by BofA of fully executed signature pages to this Agreement shall constitute acknowledgment and acceptance by BofA that all such conditions have been met or waived.

(a) Representations. On the Effective Date, (i) there shall exist no Event of Default or Default; (ii) all representations and warranties made by the City herein or in any of the Related Documents shall be true and correct with the same effect as though such representations and warranties had been made at and as of such time; and (iii) each of the Related Documents to which the City is a party, as amended (if applicable), is in full force and effect and has not been amended, modified or changed.

(b) Documents. On or prior to the Effective Date, BofA shall have received, in form and substance satisfactory to BofA, the following:

- (i) True and complete executed originals of this Agreement and the Note;
- (ii) The Resolution certified on the Effective Date by the City Clerk;
- (iii) Signature and incumbency certificates, dated the Effective Date, of the signatories of the City executing this Agreement and the Note;
- (iv) A certificate of an Authorized Representative, dated the Effective Date, making the representations set forth in Section 3.01(a) with respect to the City;
- (v) Executed copies of (A) the legal opinion of counsel to the City; and (B) the legal opinion of bond counsel, which opinions shall be (x) in form and substance satisfactory to BofA and (y) addressed to BofA;
- (vi) A copy of the City's unaudited comprehensive annual financial report ("CAFR") for the City's 2002-2003 fiscal year;
- (vii) A copy of the Budget For Fiscal Year 2005/2006;
- (viii) A copy of the City's monthly cash flow projections for Fiscal Year 2005/2006 (the "Cash Flow Projections"); and
- (ix) Such further documentation, certificates or opinions as BofA may reasonably request in connection with the matters arising under this Agreement and the Related Documents.

(c) Absence of Material Adverse Change. BofA shall be satisfied on the Effective Date that no material adverse change in or effect upon the financial condition of the City shall have occurred since June 30, 2004 or the City's ability to perform its obligation under this Agreement and the Related Documents.

(d) Payment. The City shall have paid the fees and expenses of counsel to BofA as provided in Section 7.05 hereof.

(e) Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to BofA, and BofA

shall have received such other statements, certificates, agreements, documents and information with respect to the City and matters contemplated by this Agreement as BofA may request.

Section 3.02 Conditions to Purchase. The obligation of BofA to purchase a Note Portion on any day is subject to the satisfaction of the following conditions on such date:

(a) Unutilized Commitment. The Unutilized Commitment shall not have expired or been terminated on or prior to such day.

(b) Purchase Notice. BofA shall have timely received the required Purchase Notice with respect to such Note Portion.

(c) No Default; Representations and Warranties. At the time such Note Portion is to be purchased and also after giving effect thereto (i) there shall exist no Default or Event of Default and (ii) all representations and warranties contained herein and in the other Related Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of such date.

ARTICLE IV REPRESENTATIONS OF THE CITY

The City makes the following representations and warranties to BofA as of the date hereof, the Effective Date and each Purchase Date:

Section 4.01 Valid Existence. The City is a municipal corporation duly organized and existing under and by virtue of the laws of the State and its Charter and has the necessary power and authority to execute and deliver this Agreement and the Related Documents, to perform its obligations hereunder and thereunder.

Section 4.02 Authorization and Validity. The execution, delivery and performance by the City of this Agreement and the Related Documents have been duly authorized by proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement and the Related Documents constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

Section 4.03 Compliance with Laws and Contracts. Neither the execution and delivery by the City of this Agreement and the Related Documents, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will (a) violate any provision of the Charter, (b) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City, (c) result in any breach of, or default under the provisions of any material indenture, resolution, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (d) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

Section 4.04 Litigation. There is no action, suit, proceeding, inquiry or investigation; at law or in equity or by or before any court, governmental agency, public board or body, pending or, to the best knowledge of the City, after due investigation, threatened against the City (i) wherein an unfavorable decision, ruling, or finding would adversely affect the existence of the City or the title of any official of the City to such person's office, or (ii) seeking to restrain or enjoin the issuance, sale or delivery of the Note, or the collection of Revenues pledged or to be pledged to pay the obligations of the City under the Note, or the pledge thereof, or (iii) in any way contesting or affecting the validity or enforceability of this Agreement or the Related Documents, or (iv) contesting the power of the City or its authority with respect to the Note or this Agreement or the Related Documents, or (v) contesting the exclusion of interest on the Note from gross income for Federal income tax purposes; nor, to the best knowledge of the City, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity of the Note, this Agreement or the other Related Documents or the authorization, execution, delivery by the City of the Note, this Agreement or the other Related Documents or the performance of its obligations hereunder and thereunder.

Section 4.05 No Event of Default. No Event of Default or Default has occurred and is continuing.

Section 4.06 Cash Flow Projections. The City represents that the Cash Flow Projections were prepared on the basis of information and estimates that the City believed to be reasonable.

Section 4.07 Reappropriations for Salaries, Wages, Maintenance and Support Expenses. Set forth on Schedule 4.07 attached hereto and made a part hereof is a list of appropriations made in the Annual Appropriation Ordinance for the City's 2004/2005 fiscal year that relate to salaries and wages and maintenance and support expenses. Such appropriations shall, in the absence of an Annual Appropriation Ordinance for Fiscal Year 2005/2006, be deemed reappropriated for Fiscal Year 2005/2006.

Section 4.08 Regulatory Approvals. Each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court, governmental agency or regulatory authority (federal, state or local), required in connection with the City's execution and delivery of, and performance under this Agreement and the Related Documents has been obtained or made and is in full force and effect.

Section 4.09 Prospective Change in Law. To the best knowledge of the City, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the ability of the City to perform its obligations under this Agreement or any of the Related Documents.

Section 4.10 Sovereign Immunity. Under California law, the City is not immune, by virtue of the fact that it is a governmental entity, from actions brought in contract.

Section 4.11 Priority of Security Interest. The Authority Law, the Resolution and this Agreement provide BofA with a valid security interest in the Pledged Property, the priority of which is set forth in the Resolution, and BofA is required to take no further action to perfect or maintain this security interest.

Section 4.12 Resolution. The Resolution is in full force and effect, and the City hereby makes to BofA each of the representations and warranties made by the City therein as if set forth at length herein. The Resolution has not been amended or supplemented except by such amendments or supplements as have previously been delivered to BofA.

ARTICLE V COVENANTS OF THE CITY

During the term of this Agreement, and until the Obligations are paid in full, including full payment of the Note, unless BofA shall otherwise consent in writing, the City covenants and agrees as follows:

Section 5.01 Notice of Default. As soon as practicable but in any event not more than three Business Days after an Authorized Representative of the City shall have obtained knowledge of the occurrence of an Event of Default or Default provide to BofA the written statement of an Authorized Representative setting forth the details of each such Event of Default or Default and, to the extent the City has made any determination with respect thereto, the action which the City proposes to take with respect thereto.

Section 5.02 Compliance With Laws. The City shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the City's power and authority to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or to execute and deliver the Related Documents and to perform its obligations thereunder.

Section 5.03 Resolution. The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Resolution, each of which covenants and agreements is, by this reference, incorporated into this Agreement in its entirety together with all defined terms and construction provisions necessary for a correct understanding thereof. The City shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Resolution which would materially impair the ability of the City to perform its obligations under this Agreement without the prior written consent of BofA.

Section 5.04 No Impairment. The City will not take any action that would materially impair the City's ability to perform its obligations under this Agreement and the Related Documents.

Section 5.05 Budgets; Financial Statements; Reports, Certificates and Other Information. The City shall provide or cause to be provided to BofA copies of:

- (a) As soon as available, the CAFR for such fiscal year together with an unqualified report of the independent accountants who conducted the audit of the financial statements of the City contained in the CAFR;
- (b) As soon as available and in any event within 15 days of the end of each calendar month (commencing with November, 2005) during each fiscal year of the City, a statement setting forth the Revenues actually received by the City during such calendar month and the Revenues projected by the City for such calendar month;
- (c) As soon as available the annual budget for the City;
- (d) Promptly, notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency which, if adversely determined, would materially impair the ability of the City to carry out its obligations under this Agreement, or any other Related Document or any other document, instrument or agreement required hereunder or thereunder, or would materially and adversely affect its assets or financial condition; and
- (e) Promptly, notice of any matter or event which may result in a material adverse change in the City's financial condition or operations.

Section 5.06 Inspection Rights. At any reasonable time and from time to time the City shall permit BofA or any agents or representatives thereof to examine and make copies of the records and books of account related to the Revenues and the transactions contemplated by this Agreement and the Related Documents, to visit the City's properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

Section 5.07 Use of Proceeds. The City shall use the proceeds of each Note Portion solely for the cash flow needs of the City for Fiscal Year 2005/2006, including, without limitation, payment of accrued interest on the Note and payment of accrued Commitment Fee. Without limiting the preceding sentence, the City agrees that no part of the proceeds of any Note Portion will be used by the City to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock. Notwithstanding anything to the contrary contained in this Section 5.07, until such time as the Annual Appropriation Ordinance for Fiscal Year 2005/2006 is adopted, the City shall use the proceeds of each Note Portion purchased by BofA prior to such date as permitted by Section 71a of the City Charter solely to pay salaries and wages and maintenance and support expenses in amounts not in excess of those appropriated by the City for its fiscal year 2004/2005.

Section 5.08 Existence. The City shall maintain its legal existence and shall not merge or consolidate with or into any other Person.

Section 5.09 Indebtedness and Liens. The City shall not create or suffer to exist any Indebtedness secured by or Lien upon or with respect to any of the Pledged Property, except as permitted pursuant to the Resolution.

Section 5.10 Assignments. The City shall not assign, transfer or otherwise convey any interest in the Pledged Property without the prior written consent of BofA.

Section 5.11 Further Assurances. From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as BofA may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the Related Documents or for the purpose of more fully perfecting or renewing BofA's rights with respect to the Pledged Property.

ARTICLE VI EVENTS OF DEFAULT; REMEDIES

Section 6.01 Events of Default. Each of the following events shall constitute an "Event of Default" hereunder:

(a) Payments. The City shall (i) default in the payment when due of any principal of the Note; or (ii) default, and such default shall continue unremedied for two or more days, in the payment when due of any interest on the Note or any other Obligation.

(b) Representations Untrue. Any representation, warranty, certification or statement made by the City in this Agreement or in any Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any Related Document shall (in any such case) have been incorrect or untrue in any materially adverse respect when made or deemed to have been made.

(c) Covenant Defaults.

(i) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Sections 2.14, 5.01, 5.03, 5.04, 5.07, 5.08, 5.09 and 5.10 of this Agreement.

(ii) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Section 5.05 of this Agreement and such default, if capable of being remedied, shall remain unremedied for 10 days after written notice thereof shall have been given to the City by BofA.

(iii) The City shall default in the due performance or observance of any term, covenant or agreement contained herein or incorporated herein (other than those described in other provisions of this Section 6.01) and such default, if capable of being remedied, shall remain unremedied for 60 days after written notice thereof shall have been given to the City by BofA.

(d) Cross Default. The City shall (i) default in any payment of any (A) Indebtedness payable from the City's general fund (other than the Note) ("General Fund Indebtedness") beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such General Fund Indebtedness was created or (B) Indebtedness or lease rental or installment payment owed to BofA (other than the Note) or any of its affiliates for the lease or purchase of vehicles (including helicopters), equipment and other

property ("BofA Indebtedness") beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such BofA Indebtedness was created; or (ii) default in the observance or performance of any agreement or condition relating to any General Fund Indebtedness or BofA Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such General Fund Indebtedness or BofA Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such General Fund Indebtedness or BofA Indebtedness to become due prior to its stated maturity.

(e) Cross Acceleration. Any General Fund Indebtedness or BofA Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof.

(f) Invalidity; Repudiation.

(i) Any material provision of this Agreement, the Note or the Resolution is declared to be null and void by a final non-appealable judgment of court of competent jurisdiction; or

(ii) The City shall deny that it has any or further liability or obligation under this Agreement, the Note or the Resolution.

(g) Insolvency, Etc. An Insolvency Event shall have occurred; or the State or any other governmental authority having jurisdiction over the City imposes a debt moratorium, debt restructuring, or comparable restriction on repayment when due and payable of the principal of or interest on any debt by the City; or the property of the City shall be condemned, seized, or otherwise appropriated.

(h) Pledge, Etc. The pledge of the Pledged Property created by the Authority Law, this Agreement and the Resolution shall fail to provide BofA with the security interest in the Pledged Property purported to be provided, or BofA shall cease to have a valid security interest in the Pledged Property.

(i) Resolution Default. The City shall default in the due performance or observance of any material term, covenant or agreement contained in the Resolution and the same shall not have been cured within any applicable cure period.

(j) Certain Unsatisfied Judgments. A judgment or court order for the payment of money in excess of \$5,000,000 shall be rendered against the City that is payable from the City's general fund, and such judgment or court order shall continue unsatisfied and in effect for a period of 60 consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal.

Secton 6.02 Remedies. If any Event of Default shall have occurred and be continuing, BofA may by Notice to the City take any or all of the following actions, without prejudice to the rights of BofA or the holder of any Note to enforce its claims against the City (provided, that, if

an Event of Default specified in Section 6.01(g) shall occur, the result which would occur upon the giving of Notice by BofA to the City as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such Notice): (i) declare the Unutilized Commitment terminated, whereupon the Unutilized Commitment shall forthwith terminate immediately and any Commitment Fee shall forthwith become due and payable without any other notice of any kind; (ii) declare the principal of and any accrued interest in respect of the Note and all other Obligations owing hereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City and/or (iii) exercise any other rights or remedies BofA may have under the Resolution, at law or in equity.

Secton 6.03 No Waiver; Cumulative Remedies. No failure or delay on the part of BofA or the holder of the Note in exercising any right, power or privilege hereunder or under any Related Document and no course of dealing between the City and BofA or the holder of the Note shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any Related Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any Related Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which BofA or the holder of the Note would otherwise have. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of BofA or the holder of the Note to any other or further action in any circumstances without notice or demand.

ARTICLE VII
MISCELLANEOUS

Secton 7.01 Amendments. No provision of this Agreement may be amended, modified, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto.

Secton 7.02 Assignments. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of BofA; and (ii) prior to the earlier of the maturity date of the Note or the date the Note is accelerated, BofA may not assign or otherwise transfer any of its rights or obligations hereunder.

Secton 7.03 Governing Law; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.

(b) EACH OF THE CITY AND BOFA IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF

OR RELATING TO THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 7.04 Severability. If any provision of this Agreement shall be held or deemed to be or shall in fact be illegal, inoperative or unenforceable the same shall not affect any other provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 7.05 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 7.06 Expenses. The City shall pay the reasonable out-of-pocket expenses of BofA in connection with the negotiation, execution and delivery of this Agreement and the Related Documents (including legal fees and costs of counsel for BofA). The City shall also pay (a) all reasonable out-of-pocket expenses of BofA, including reasonable fees and expenses of counsel retained by BofA in connection with any waiver or consent hereunder or under any Related Documents or any amendment hereof or thereof, (b) all reasonable out-of-pocket expenses of BofA, including reasonable fees and expenses of counsel retained by BofA, in order to monitor political, financial and legal developments affecting the City, provided that the City shall not be required to pay out-of-pocket expenses pursuant to this clause (b) in excess of \$50,000 and (c) if any Default or Event of Default occurs, all out-of-pocket expenses incurred by BofA, including the fees and disbursements of counsel and experts retained by BofA in connection with such Default or Event of Default and collection and other enforcement proceedings resulting therefrom.

Section 7.07 Indemnification.

(a) To the maximum extent permitted by law, the City agrees to indemnify and hold harmless BofA and its officers, directors, employees and their agents (each, an "Indemnitee") from and against any and all claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses (including, without limitation, reasonable attorney's fees and expenses) whatsoever which an Indemnitee may incur (or which may be claimed against an Indemnitee by any person or entity whatsoever) by reason of or in connection with any action, proceeding or investigation (whether or not BofA is a party thereto) arising from the entering into and/or performance of this Agreement or any Related Document or the use of the proceeds of the Note or the consummation of any transactions contemplated herein or in any Related Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such action, proceeding or investigation (but excluding any such claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses, to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnitee, including the sale, transfer or participation of the Note in violation of Section 7.13(c) hereof).

(b) Promptly after receipt by an Indemnitee of notice of the commencement of any action, proceeding, or investigation in respect of which indemnity or reimbursement may be sought as provided above (each, an "Indemnified Claim"), such Indemnitee will notify the City

in writing of the receipt or commencement thereof, but the failure of an Indemnitee to notify the City with respect to a particular action, proceeding or investigation shall not relieve the City from any obligation or liability which it may have pursuant to this Section 7.07 with respect to such action, proceeding or investigation, or which it may have otherwise than pursuant to this Agreement with respect to any action, proceeding, or investigation, except to the extent such failure to so notify the City with respect to a particular action, proceeding or investigation results in substantial prejudice to the City, in which case the City's indemnification and reimbursement obligations shall be reduced to the extent of such prejudice.

(c) The City shall be entitled at its own expense to participate in and control the defense of any action, proceeding or investigation with counsel reasonably satisfactory to such Indemnitee. Notwithstanding the preceding sentence, an Indemnitee will be entitled to employ counsel separate from counsel for the City and from any other party in such action, proceeding or investigation and to participate in the action, proceeding, or investigation, and the City shall bear the fees and expenses of such separate counsel (and shall pay such fees and expenses as and when incurred), only if the Indemnitee and the counsel selected pursuant to the preceding sentence shall have reasonably concluded that there may be one or more legal defenses available to the Indemnitee which are different from or additional to those available to the City and which cannot be adequately raised by the selected counsel for conflict reasons. Each Indemnitee shall cause its counsel to cooperate with the City in the defense of any action, proceeding or investigation to the extent consistent with its professional responsibilities. The City shall not be liable for the settlement by any Indemnitee of any action, proceeding or investigation effected without its consent, which consent will not be unreasonably or untimely withheld. The City shall not settle or compromise any action, proceeding or investigation, or permit a default or consent to the entry of any judgment with respect thereto, unless such settlement, compromise, default or consent includes, as an unconditional term thereof, the giving by the party other than the City thereto of an unconditional general release to all Indemnitees from all liability in respect of such action, proceeding, or investigation.

(d) To the maximum extent permitted by law, the City agrees to indemnify and hold BofA and its officers, directors, employees and their agents harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Note and the other Related Documents, or any amendment thereto.

Secton 7.08 Term of the Agreement. The obligation of BofA to purchase Note Portions under this Agreement shall terminate on the Commitment Termination Date. Except for the City's obligations to indemnify BofA and each Indemnitee, this Agreement shall terminate when (a) the Unutilized Commitment shall have expired or terminated and (b) all Obligations have been paid in full.

Secton 7.09 Notice. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or BofA shall be deemed or have been sufficiently given or filed for all purposes, if any, when delivered by hand or three Business Days after being sent by registered mail, return receipt requested, postage

prepaid, and if given by telecopy or telegraphic means shall be deemed given when transmitted (receipt confirmed):

If to the City:

City of San Diego
Office of the City Treasurer
1200 Third Avenue, Suite 100
MS 51T
San Diego, CA 92101
Attention: Charles E. Mueller, Jr., Acting City Treasurer
Telephone: 619-236-6112
Facsimile: 619-533-5933
E-mail: [cmueller@sandiego.gov]

City of San Diego Treasurer – Investments Division
1200 3rd Avenue, 16th Floor, Suite # 1624
MS-51V
San Diego, CA 92101
Attention: Raymond Day, Chief Investment Officer
Shahid Mahmud, Investment Officer
Telephone: 619-533-6313
Facsimile: 619-533-6259
E-mail: rday@sandiego.gov
Smahmud@sandiego.gov

If to BofA:

Bank of America, N.A.
333 South Hope Street, 13th Floor
Mail Code: CA9-193-13-17
Los Angeles, CA 90071
Attention: Michael C. Jones
Telephone: (213) 621-7139
Facsimile: (213) 621-3606

or to such other address, telephone number or facsimile number as one party hereto shall notify to the other party hereto.

Secton 7.10 Holidays. Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

Secton 7.11 Survival. All representations, warranties, covenants and agreements of the City contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery hereof shall continue in

full force and effect until payment in full of the Obligations, it being understood that the agreements of the City found in the Protective Provisions and Section 7.05 hereof shall survive the termination of this Agreement and payment in full of the Obligations.

Section 7.12 No Liability. The City agrees that none of BofA, its officers, directors, employees and their agents shall have any liability or responsibility for the acts or omissions of the City in respect of its use of this Agreement or any amounts made available by BofA hereunder. BofA agrees that none of the City, its officers, Council members, employees and their agents shall have any liability or responsibility for the acts or omissions of BofA in respect of the performance of BofA's obligations under this Agreement.

Section 7.13 BofA's Representations. BofA represents, warrants to and agrees with the City that:

(a) BofA has authority to purchase the Note and to enter into this Note Purchase Agreement on a private placement basis without provision by the City of an official statement or other offering document;

(b) BofA has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Note and is able to bear the economic risks of such investment;

(c) The Note is being acquired by BofA for investment and not with a view to, or for resale in connection with, any distribution of the Note. BofA intends to hold the Note for its own investment portfolio through the maturity of the Note, and acknowledges that the Note is non-negotiable and non-transferable prior to maturity and it does not have the right prior to maturity to sell or transfer the Note, to create any participation interests in the Note, to deposit the Note into any affiliated investment companies or trusts or to otherwise directly or indirectly transfer or assign any interests in the Note. BofA understands that the Note will be in certificated form and that the foregoing transfer restrictions will be a legend on the Note. BofA understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity is not permitted;

(d) BofA understands that the Note is not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state; (b) will not be listed in any stock or other securities exchange; (c) will not carry a rating from any rating service; and (d) will be delivered in a form which is non-negotiable and non-transferable;

(e) BofA acknowledges that it has either been supplied with or been given access to information to which a reasonable investor would attach significance in making investment decisions, and BofA has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the financial condition of the City, the Note and the security therefor so that, as a reasonable investor, BofA has been able to make an informed investment decision to purchase the Note;

(f) BofA has received and reviewed the Voluntary Reports of Information dated January 27, 2004 and March 12, 2004 relating to the General Fund, which advised that there were certain errors in the Comprehensive Annual Financial Report of the City of San Diego, California for the fiscal year ended June 30, 2002, which was audited by Calderon, Jaham & Osborn;

(g) BofA has received and reviewed the unaudited draft basic financial statements of the City of San Diego, California for the fiscal year ended June 30, 2003 (the "2003 Statements"). The 2003 Statements are currently being audited by KPMG LLP and BofA understands and acknowledges that the 2003 Statements may be substantially revised upon the completion of that audit, and some of those revisions may be material. BofA has also received and reviewed the following: (i) the City's fiscal year 2004/2005 Budget Midyear Status Report; (ii) the City's Fiscal Year 2005/2006 Proposed Budget; (iii) the City's fiscal year 2002/2003 draft unaudited CAFR; (iv) the City's General Fund Estimated Summary Financials for fiscal years 2001-2004; (v) the City's General Fund Estimated Fund Balances for fiscal years 2000-2005; (vi) a Listing of Cash Balances by Fund Type greater than \$20 million, as of April 2005; (vii) the City's Estimated General Fund Budget Trends for fiscal years 2003-2005; (viii) the City's Estimated Major General Fund Revenue Trends for fiscal years 2000-2006; (ix) the City's Multi Year Financial Forecast for fiscal years 2006-2010; and (x) the engagement letter between the City and Kroll, Inc.

(h) BofA acknowledges that the obligation of the City to pay debt service on the Note is an obligation payable solely from Revenues as defined in the Accompanying Document; and

(i) BofA has made its own inquiry and analysis with respect to the Note and the security therefor, and other material factors affecting the security and payment of the Note.

(j) BofA acknowledges that several investigations are ongoing regarding certain bond offerings of the City, including an ongoing investigation by the Securities and Exchange Commission and the United States Attorney's Office, and that the City Attorney has issued five reports regarding illegal acts and other matters such reports being dated January 14, 2005, February 9, 2005, April 5, 2005, May 9, 2005 and May 15, 2005. In addition Vinson & Elkins LLP prepared a report dated September 16, 2004, and has or is in the process of conducting additional procedures in connection with its report. On May 17, 2005 the San Diego District Attorney announced that felony charges had been filed against six former and current members of the City's retirement board based on violations of state conflict of interest laws. The Bank acknowledges that the City can give no assurances regarding such investigations or when such investigations will be completed. As well, the City can give no assurance that other investigations will not be initiated against the City in the future.

* * *

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

CITY OF SAN DIEGO

By: _____
Name:
Title:

Approved as to form:

By: _____
Name:
Title:

BANK OF AMERICA, N.A.

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

SCHEDULE 4.07

Fiscal 2004/2005 Appropriations For Salaries And Wages And Maintenance And Support

Salaries and Wage	\$442,495,859
Fringe Benefits	\$194,883,426
Supplies and Services	\$125,941,888

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

AC 2501013

ORIGINATING

DEPT. NO.: 052/056

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$17,500.00

Vendor: Public Financial Management, Inc

Purpose: To authorize the expenditures of funds independent to financial advisory services pertaining to the Fiscal Year 2005-2006 Tax and Revenue Anticipation Note for an amount not to exceed \$17,500.

Date: May 24, 2005 By: 

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	65013	65013	2000	4141	065013				\$17,500.00
TOTAL AMOUNT										\$17,500.00

FUND OVERRIDE

AC-361 (REV 2-92)

AC 2501013

R-300509

JUN 07 2005