

## RESOLUTION 35-2010

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, AN OBLIGATION PURCHASE CONTRACT AND OTHER NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS; APPROVING THE SALE AND EXECUTION AND DELIVERY OF NOT TO EXCEED \$5,500,000 AGGREGATE PRINCIPAL AMOUNT OF EXCISE TAX AND STATE SHARED REVENUE AND/OR EXCISE TAX AND STATE SHARED REVENUE REFUNDING OBLIGATIONS, SERIES 2010, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND FINANCE DIRECTOR TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY**

**WHEREAS**, the Mayor and Council (the "Council") of the City of Benson, Arizona (the "City"), has determined to (A) finance the costs of (1) wastewater system improvements described as follows: Ocotillo sewer line replacement; (2) water system improvement described as follows: water sleeves under Interstate 10, west end pressure reducing station and Ocotillo water line replacement; (3) natural gas system improvements described as follows: Ocotillo gas line replacement and Pomerene Road gas line replacement; (4) street improvements described as follows: several small pavement management projects and survey of 4th Street and (5) certain other improvements to the utility systems and streets of the City identified as provided herein (collectively, the "New Projects") and (B) refinance a portion of the costs of the wastewater treatment plant, the newest water storage tank and related appurtenances and the swimming pool (the "Refinanced Projects" and, with the New Projects, the "Projects"); by entering into a First Purchase Agreement, to be dated as of the first day of the month of the dated date of the hereinafter described Obligations (the "Purchase Agreement"), with a bank authorized to exercise trust powers in the State of Arizona, appointed as provided herein (the "Trustee"), in its separate capacity as "Seller"; and

**WHEREAS**, in connection with the Purchase Agreement, the Council hereby deems it necessary and desirable to provide for the sale and execution and delivery of excise tax and state shared revenue and/or pledged revenue refunding obligations in one or more series, provided for by this Resolution (collectively, the "Obligations"), evidencing proportionate interests of the owners of the Obligations in payments to be made by the City to the Trustee pursuant to the First Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Trust Agreement"), between the Trustee and the City, such payments to be made pursuant to the Purchase Agreement; and

**WHEREAS**, the City is a municipal corporation duly incorporated and validly existing under the laws of the State; the Constitution and the laws of the State authorize the City to enter into the Trust Agreement and the Purchase Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; the City has duly authorized and executed all of the aforesaid agreements; each of the Trust Agreement and the Purchase Agreement is a lawful, valid and binding obligation of the City, enforceable against the City in accordance with its terms, and each has been duly authorized, executed and delivered by the City; all required procedures

for execution and performance of the Trust Agreement and the Purchase Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes and neither the execution and delivery of this Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City; and

**WHEREAS**, there have been presented to the Council prior to and at the meeting of the Council at which this Resolution is being adopted (1) the proposed form of the Purchase Agreement; (2) the proposed form of the Trust Agreement; (3) the proposed form of a First Continuing Disclosure Undertaking, to be dated the date of delivery of the Obligations (the "Undertaking"), from the City necessary for purposes of Securities and Exchange Commission Rule 15c2-12; (4) the proposed form of the Obligation Purchase Contract, to be dated the date of the sale of the Obligations (the "Purchase Contract"), by and between the City and Stone & Youngberg LLC (the "Underwriter"), for the purchase of the Obligations and (5) the proposed form of the Preliminary Official Statement, to be dated the date of the dissemination thereof (the "Preliminary Official Statement"), relating to the Obligations, which, as to be revised after the sale of the Obligations, shall constitute the Official Statement, to be dated the date of sale of the Obligations (the "Official Statement"), relating to the Obligations;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, THAT:**

**Section 1.** The City Manager and the Finance Director are each hereby authorized to determine on behalf of the City the improvements to be identified for purposes of clause (A)(5) above; the identity of the Trustee; the "times tests" for purposes of coverage and additional debt provided by the Purchase Agreement; the series and the series name and designation of each series of the Obligations; the date the Obligations are to be sold to the Underwriter; the total aggregate principal amount of the Obligations which are to be issued but not to exceed in total for all series the aggregate principal amount of \$5,500,000; the date each series of the Obligations are to be dated; the dates on which interest on each series of the Obligations is to be payable and the interest rates per annum the Obligations are to bear; the dates each series of the Obligations are to mature but not later than July 1, 2030, the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; the terms upon which the Obligations are to be sold to the Underwriter (including determinations of price, original issue discount and premium and underwriting compensation) and the provisions pursuant to which the Obligations are to be credit enhanced (including determinations with respect to bond insurance, if any, for the Obligations); provided, however, that the foregoing determinations shall not result in the yield on the Obligations, as calculated in accordance with Section 148 of the Internal Revenue Code of 1986, as amended, and after taking into account any subsidy resulting from the Obligations or any portion thereof being qualified as "Build America Bonds," exceeding six and one-half percent (6.5%). If, and to the extent, any series of the Obligations meets the requirements therefor pursuant to the Internal Revenue Code of 1986, as amended, such series of the Obligations may be qualified and sold as "Build America Bonds" with the federal tax credits paid directly to the City. The City Manager and Finance Director are hereby authorized and directed to determine such matters on behalf of the City and then to take any action, make any modifications to the

documents described in Section 3 hereof, enter into any agreements, make any elections or certifications and pay any costs necessary to provide for or facilitate the sale and issuance of the Obligations in such manner and to comply with the requirements of such Code and the terms of the Obligations and any agreement related thereto. The City Manager and the Finance Director are hereby authorized to negotiate with and secure, with proceeds of the Obligations or otherwise, such a credit enhancement, from one or more institutions, the claims-paying ability of which are then assigned one of the two highest rating categories by a nationally recognized credit rating agency. The City Manager and Finance Director are each hereby further authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any credit enhancement, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy and/or reserve fund guaranty.

The forms and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are hereby approved.

**Section 2.** The Obligations are to be sold to the Underwriter pursuant to the terms of the Purchase Contract as such terms are to be determined as provided hereinabove.

**Section 3.** The form, terms and provisions of the Purchase Agreement, the Trust Agreement, the Purchase Contract and the Continuing Disclosure Undertaking, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Council at which this Resolution is being adopted are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor and the Clerk are hereby authorized and directed, for and on behalf of the City, to execute and deliver and attest, where applicable, or approve the Purchase Agreement, the Trust Agreement, the Purchase Contract and the Continuing Disclosure Undertaking and to take all action to carry out and comply with the terms of such documents. (In the absence of both the Mayor and the Vice Mayor, the City Manager is hereby authorized and directed to approve and execute and deliver the Purchase Contract.)

**Section 4.** The distribution of the Preliminary Official Statement by the Underwriter is hereby approved, and the Official Statement in substantially the form of the Preliminary Official Statement, with such changes or revisions therein from the form of the Preliminary Official Statement as may be approved by the Mayor or, in the absence thereof, Vice Mayor executing the same, is hereby approved, and the Mayor or, in the absence thereof, Vice Mayor is hereby, authorized, empowered and directed, in the name and on behalf of the County, to execute and deliver the same to the Underwriter and to execute and deliver instruments confirming that the Preliminary Official Statement is “deemed final” in accordance with Securities and Exchange Commission Rule 15(c)2-12.

**Section 5.** The Trustee (including in its capacity as Seller) is hereby requested to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Purchase Contract and the Continuing Disclosure Undertaking and the sale and execution and delivery of the Obligations and is further authorized and directed to take such action as may be reasonable for the administration of the trusts so held by it.

**Section 6.** After any of the Obligations are delivered by the Trustee to the Underwriter thereof upon receipt of payment therefor, this Resolution shall be and remain irrevocable

until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

**Section 7.** The Mayor, the Clerk, the City Manager, the Finance Director and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the Mayor and Council of the City, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by the Preliminary Official Statement.

**Section 8.** All actions of the officers and agents of the City which conform to the purposes and intent of this Resolution and which further the sale and execution and delivery of the Obligations as contemplated by this Resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution.

**Section 9.** If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

**Section 10.** The immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately sell the Obligations to secure the best, available economic terms therefor, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Mayor and Council of the City and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 24th day of May, 2010.

  
.....  
MARK M. FENN, Mayor

ATTEST:

  
.....  
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

  
.....  
MICHAEL J. MASSEE, City Attorney

\$ \_\_\_\_\_  
**CITY OF BENSON  
EXCISE TAX AND STATE SHARED  
REVENUE OBLIGATIONS, SERIES 2010  
and/or**

\$ \_\_\_\_\_  
**EXCISE TAX AND STATE SHARED REVENUE OBLIGATIONS,  
FEDERALLY TAXABLE / STATE TAX-EXEMPT,  
SERIES 2010 (QUALIFIED BUILD AMERICA BONDS – DIRECT PAY)  
and/or**

\$ \_\_\_\_\_  
**EXCISE TAX AND STATE SHARED REVENUE  
REFUNDING OBLIGATIONS, SERIES 2010**

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**OBLIGATION PURCHASE CONTRACT**

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\_\_\_\_\_, 2010

Mayor and City Council  
City of Benson, Arizona

Ladies and Gentlemen:

Upon the terms and conditions hereof and in reliance on the representations, warranties and covenants contained herein and in any certificates or other documents delivered pursuant hereto, Stone & Youngberg LLC (the "Underwriter") acting not as agent of or fiduciary to the City of Benson, Arizona (the "City") but for and on behalf of the Underwriter, hereby offers to enter into this Obligation Purchase Contract with the City for the sale and the purchase by the Underwriter, of the Obligations described below. This offer is made subject to your acceptance of this Obligation Purchase Contract prior to \_\_\_\_\_ p.m., Phoenix, Arizona time, on \_\_\_\_\_, 2010. Upon acceptance, as evidenced by the execution hereof by authorized officers of the City, in the spaces provided below, this Obligation Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the City, and the Underwriter. At any time prior to such acceptance and approval, this offer is subject to withdrawal by the Underwriter upon written notice delivered to the City as herein provided. Unless the context otherwise indicates, any capitalized term not defined in this Obligation Purchase Contract shall have the meaning assigned to it in the Resolution described in Section 4(a) hereof.

Any financial advisory relationship between the Underwriter and the City (if such relationship has existed or now exists) with respect to the hereinafter-described Obligations is

hereby terminated, and the City hereby expressly consents to the purchase of the Obligations (as defined hereafter) on a negotiated basis by the Underwriter. If a financial advisory relationship exists, there may be a conflict of interest in the Underwriter changing from the capacity of financial advisor to underwriter, and the City hereby expressly acknowledges such circumstances. The City and the Underwriter acknowledge that Greenberg Traurig, LLP ("Bond Counsel") has represented and continues to represent the Underwriter in matters not involving or pertaining to the City. The City and the Underwriter consent to Bond Counsel's representation of the City as Bond Counsel and expressly waive any conflict of interest that might be deemed to exist.

**1. Purchase and Sale of the Obligations.** The Underwriter hereby agrees to purchase from the Trustee (as defined herein), and the City hereby agrees to cause the Trustee to sell and deliver to the Underwriter, all, but not less than all, of the of the City's \$\_\_\_\_\_ principal amount Excise Tax and State Shared Revenue Obligations, Series 2010 (the "Excise Obligations"), and/or \$\_\_\_\_\_ principal amount Excise Tax and State Shared Revenue Obligations, Federally Taxable/State Tax Exempt, Series 2010 (Qualified Build America Bonds – Direct Pay) (the "Taxable Excise Obligations"), and/or \$\_\_\_\_\_ principal amount Excise Tax and State Shared Revenue Refunding Obligations (the "Excise Tax Refunding Obligations" and, together with the Excise Obligations and the Taxable Excise Obligations, the "Obligations").

The Obligations will be dated their date of initial issuance and delivery.

The Obligations will be purchased by the Underwriter at the aggregate purchase price of \$\_\_\_\_\_ (which represents the aggregate principal amount of the Obligations plus original issue premium of \$\_\_\_\_\_ less underwriter's compensation of \$\_\_\_\_\_ plus accrued interest on the Obligations from the dated date of the Obligations to the date of the Closing (as hereinafter defined).

Payment for the Obligations shall be made to the Trustee or its order by wire transfer or other funds that are immediately available. Payment and delivery of the Obligations and the other actions contemplated hereby to take place at the time of such payment and delivery of the Obligations hereinafter sometimes called the "Closing".

The Obligations shall (i) be dated, (ii) mature on the dates and in the principal amounts, (iii) bear interest at the rates payable commencing \_\_\_\_ 1, 20\_\_, and semiannually thereafter on each January 1 and July 1, (iv) be subject to redemption and (v) otherwise have the terms, all as set forth on Exhibit A hereto. The terms of the Obligations shall be as otherwise described in, and shall be executed and delivered by the Trustee pursuant to, the First Trust Agreement, to be dated as of June 1, 2010 (the "Trust Agreement"), substantially in the form previously submitted to the Underwriter with only such changes therein as shall be mutually agreed upon between the Underwriter and the City. The Obligations represent undivided proportionate interests in a Purchase Agreement, to be dated as of June 1, 2010 (the "Purchase Agreement"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee and seller (the "Trustee") and the Payments and Prepayments made by the City under the Purchase Agreement. The Obligations are being executed and delivered for the purpose of (i) \_\_\_\_\_ and (ii) refunding in advance of maturity the Obligations Being Refunded (as defined in the hereafter-described Official Statement) and paying costs associated with the execution and delivery of the Obligations.

The Underwriter agrees to make a *bona fide* public offering of all of the Obligations at prices not to exceed the public offering prices set forth on Exhibit A hereto and may subsequently change such offering prices without any requirement of prior notice. The Underwriter may offer and sell any portion of the Obligations to certain dealers (including dealers depositing the Obligations into investment trusts) and others at prices lower than the public offering prices stated on Exhibit A hereto.

The Obligations shall be offered for sale pursuant to an official statement, dated as of the date hereof (including all appendices thereto, the "Final Official Statement"), prepared by or on behalf of the City. The Underwriter agrees to make a public offering of the Obligations at not in excess of the initial offering prices (or not less than the yields) set forth in the Final Official Statement, reserving, however, the right to change such initial offering prices as necessary, in the sole discretion of the Underwriter, in connection with the marketing of the Obligations. The Underwriter may offer and sell the Obligations to certain dealers (including dealers depositing Obligations into investment trusts) and others at prices lower than the public offering prices (or higher than the yields). Based on the initial offering prices to the public of the Obligations, the Underwriter anticipates receiving compensation of \$\_\_\_\_\_.

The Underwriter will furnish to the City a certificate in a form acceptable to Bond Counsel stating that a bona fide public offering of the Obligations has been made and setting forth the initial offering prices at which a substantial amount of the Obligations of each maturity was reasonably expected to be sold to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) as of the date of this Obligation Purchase Contract.

## **2. Final Official Statement.**

(a) The Preliminary Official Statement, dated \_\_\_\_\_, 2010 (the "Preliminary Official Statement"), relating to the Obligations, including the cover page and appendices thereto, has been prepared by the City for use by the Underwriter in connection with the public offer, sale and distribution of the Obligations by the Underwriter, and the City hereby ratifies the use by the Underwriter prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Obligations. The City hereby deems, as of its date, the Preliminary Official Statement "final" (except for permitted omissions) by the City for purposes of Section (b) (1) of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, as amended (the "Rule").

(b) The City shall deliver or cause to be delivered to the Underwriter within seven (7) business days after the acceptance by the City of this Purchase Contract and, in the event the Closing is held less than seven (7) business days from the date hereof, upon request of the Underwriter, in sufficient time to accompany any confirmation requesting payment from any customers of the Underwriter, a reasonable number of copies of the Final Official Statement, dated of even date herewith (the "Official Statement" but if the Official Statement shall be amended prior to the date of delivery of the Obligations, the term "Official Statement" shall refer to such document as amended), relating to the Obligations, including the cover page and appendices thereto, which shall be determined on behalf of the City by the Financial Services Manager of the City to be a "final official statement" for purposes of Sections (b) (3) and (4) of the Rule by his

execution thereof, the Final Official Statement to be substantially in the form of the Preliminary Official Statement with only such changes therein as shall be necessary to conform to the terms of this Purchase Contract and with such other changes and amendments to the date thereof as have been accepted by the Underwriter.

(c) The Official Statement shall be prepared for use in connection with the public offering, sale and distribution of the Obligations by the Underwriter, and the City hereby authorizes the Official Statement and the information therein contained and the City Documents (as defined in Section 4(a)) to be used by the Underwriter in connection with the public offering and sale of the Obligations.

(d) The City shall not adopt any amendment to the Official Statement to which, after having been furnished with a copy, the Underwriter shall object in writing or which shall be disapproved by Bond Counsel or counsel to the Underwriter.

(e) As of the date of acceptance hereof by the City and until twenty-five (25) days after the original execution and delivery of the Obligations, the statements and information in the Official Statement shall, and the statements and information in the Preliminary Official Statement, as of its date were, true, correct and complete in all material respects, and the statements and information in the Official Statement will not, and the statements and information in the Preliminary Official Statement as of its date did not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements and information, in light of the circumstances under which they will be or were made, not misleading in any material respect.

(f) If, after the date of this Purchase Contract and until 25 days after the original execution and delivery of the Obligations, any fact or event occurs which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading, or if it is necessary to amend the Official Statement to comply with law, the City shall notify the Underwriter and provide the Underwriter with such information as it may from time to time request, and if, in the opinion of the Underwriter such fact or event requires preparation and publication of an amendment to the Official Statement, the City shall forthwith prepare and furnish, at the expense of the City (in a form and manner approved by the Underwriter), a reasonable number of copies of amendments to the Official Statement so that the statements in the Official Statement as so amended will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law. If such notifications shall be subsequent to the closing, the City shall furnish such legal opinions, certificates, instruments and other documents as the Underwriter may deem necessary to evidence the truth and accuracy of such amendment to the Official Statement.

(g) The Underwriter hereby agrees to file the Official Statement with Municipal Securities Rulemaking Board.

3. **Closing.** At 8:00 a.m. Mountain Standard Time, on \_\_\_\_\_, 2010, or at such other time and date as shall have been mutually agreed upon by the City and the Underwriter (the "Closing"), the City shall, subject to the terms and conditions hereof, cause the Trustee to deliver the Obligations to the Underwriter duly executed, together with the other documents hereinafter mentioned, and the Underwriter shall, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Obligations as set forth in Section 1 of this Purchase Contract by a certified or bank cashier's check or checks or wire transfer payable in immediately available funds to the Trustee. Payment for the Obligations as aforesaid shall be made at the offices of Bond Counsel or such other place as shall have been mutually agreed upon by the City and the Underwriter.

Delivery of the Obligations shall be made through the facilities of The Depository Trust Company, New York, New York ("DTC") or, in the case of a "F.A.S.T." closing, with the Trustee. The Obligations shall be delivered in definitive fully registered form, bearing CUSIP numbers without coupons, with one Obligation certificate for each maturity of the Obligations, registered in the name of Cede & Co., all as provided in the Trust Agreement, and shall be made available to the Underwriter at least one business day before the Closing for purposes of inspection.

4. **Representations, Warranties and Covenants of the City.** The City hereby represents and warrants to and covenants with the Underwriter that:

(a) The City is a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (the "State"), and has full and legal right, power and authority, and at the date of the Closing shall have full legal right, power and authority under the resolution of the City authorizing the sale and execution and delivery of the Obligations adopted on May 24, 2010 (the "Resolution"), (i) to enter into, execute and deliver this Obligation Contract, the Resolution, the Purchase Agreement, the Trust Agreement, the Depository Trust Agreement described in the Official Statement (the "Depository Trust Agreement"), a written undertaking by the City to provide ongoing disclosure about the City for the benefit of certain owners of the Obligations as required under paragraph (b) (5) of the Rule in form and substance satisfactory to the Underwriter and counsel to the Underwriter (the "Undertaking"), which shall be substantially in the form described in the Official Statement, with such changes as may be agreed to in writing by the Underwriter and counsel to the Underwriter and all documents required hereunder and thereunder to be executed and delivered by the City (this Purchase Contract, the Purchase Agreement, the Resolution, the Trust Agreement, the Depository Trust Agreement, the Undertaking and the other documents referred to in this clause (i) hereinafter referred to as the "City Documents"), (ii) to cause the sale, issuance and delivery of the Obligations to the Underwriter as provided herein, (iii) to carry out and consummate the transactions contemplated by the City Documents and the Official Statement, (iv) to construct and operate the Project (as defined in the Purchase Agreement) and (v) to approve, execute and authorize the use and distribution, as applicable, of the Preliminary Official Statement and the Official Statement, and the City has complied, and shall at the Closing be in compliance in all respects, with all applicable provisions of law and the City Documents as they pertain to such transactions;

(b) By all necessary official action of the City prior to or concurrently with the acceptance hereof, the City has duly authorized all necessary action to be taken by it for (i) the adoption of the Resolution and the issuance and sale of the Obligations, (ii) the approval, execution and delivery of, and the performance by the City of the obligations on its part, contained in the Obligations and the City Documents and (iii) the consummation by it of all other

transactions contemplated by the Official Statement, the City Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the City in order to carry out, give effect to and consummate the transactions contemplated herein and in the Official Statement, and the Resolution (i) authorizes the authorization, execution, delivery and issuance, as applicable, of the City Documents and the Obligations as well as the approval, execution and authorization of the use and distribution of the Preliminary Official Statement and the Official Statement and the selling of the Obligations to the Underwriter, (ii) has been duly and validly adopted by the City and (iii) is in full force and effect;

(c) This Purchase Contract has been duly executed and delivered by the City, and the City Documents (when the other of the City Documents are executed and delivered by the other parties thereto) constitute legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; the Obligations, when issued, delivered and paid for in accordance with the Trust Agreement and this Purchase Contract, shall constitute legal, valid and binding obligations of the City entitled to the benefits of the Trust Agreement and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights and upon the issuance, authentication and delivery of the Obligations as aforesaid, the Purchase Agreement and the Trust Agreement shall provide, for the benefit of the holders from time to time of the Obligations, the legally valid and binding pledge of and lien they purport to create as set forth in the Purchase Agreement and the Trust Agreement;

(d) The City is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City is or any of its property or assets are otherwise subject; no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the City under any of the foregoing or the City Documents and the execution and delivery of the Obligations, the City Documents and the adoption of the Resolution and compliance with the provisions on the part of the City contained therein shall not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City is or to which any of its property or assets are otherwise subject nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City to be pledged to secure the Obligations or under the terms of any such law, regulation or instrument, except as provided by the Obligations and the City Documents;

(e) All authorizations, approvals, licenses, permits, consents, orders and other matters of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the City, of its obligation under the City Documents and the Obligations have

been duly obtained or, with respect to the acquisition and construction of the Project, the City has no reason to believe they shall not be obtained, except for such approvals, consents and orders as may be required under the "blue sky" or securities laws of any jurisdiction in connection with the offering and sale of the Obligations and including particularly, but not by way of limitation, all reports required to be filed by the City pursuant to Section 35-501, Arizona Revised Statutes, as amended, and, except as otherwise indicated in the Official Statement, the City has been and is in material compliance with all prior continuing disclosure undertakings undertaken by it pursuant to the Rule;

(f) The Obligations and the City Documents conform to the descriptions thereof contained in the Official Statement under the caption "THE OBLIGATIONS"; the proceeds of the sale of the Obligations shall be applied as described in the Official Statement under the captions "PLAN OF REFUNDING" and "THE PROJECTS"; the caption "LITIGATION" accurately describes any litigation regarding the Bonds or the security therefor; and the Undertaking conforms to the description thereof contained in the Official Statement under the caption "CONTINUING DISCLOSURE";

(g) There is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or threatened against the City (i) affecting the existence of the City or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Obligations or the levy and collection of the Excise Taxes (as defined in the Official Statement) or the construction or operation of the Project; or (iii) in any way contesting or affecting the validity or enforceability of the Obligations, the City Documents or contesting the exclusion from gross income of interest on the Obligations for federal income tax purposes or State income tax purposes; or (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto; or (v) contesting the formation or powers of the City or any authority for the sale and execution and delivery of the Obligations, the adoption of the Resolution or the execution and delivery of the City Documents; or (vi) which, if decided adversely to the City, would have a materially adverse effect on the financial condition of the City or (vii) is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the Obligations or the City Documents;

(h) The City has not granted a lien on, made a pledge of or agreed to apply the Excise Taxes and other moneys payable under the Purchase Agreement, except as provided or permitted in the Purchase Agreement or as described in the Official Statement;

(i) As of the date thereof, the Preliminary Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(j) At the time of the City's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (f) of Section 3 of this Agreement) at all times subsequent thereto during the period up to and including the Closing Date, the Official Statement does not and will not contain any untrue statement of a material fact or omit to state any

material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(k) Unless the Official Statement is amended pursuant to paragraph (f) of Section 3 of this Purchase Contract, at all times subsequent to the acceptance by the City hereof, during the period up to and including the date of the Closing, the Official Statement shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, misleading;

(l) If the Official Statement is amended pursuant to paragraph (f) of Section 2 of this Purchase Contract, at the time of each amendment thereto and (unless subsequently again amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement as so amended shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(m) The City shall apply, or cause to be applied, the proceeds from sale of the Obligations as provided in and subject to all of the terms and provisions of the City Documents and shall not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes or State income tax purposes of the interest on the Obligations;

(n) The City shall furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request (i) to (A) qualify the Obligations for offer and sale under the "blue sky" or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (B) determine the eligibility of the Obligations for investment under the laws of such states and other jurisdictions and (ii) to continue such qualifications in effect so long as required for the distribution of the Obligations (provided, however, that the City shall not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and shall advise the Underwriter immediately of receipt by the City of any notification with respect to the suspension of the qualification of the Obligations for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(o) The audited financial statements of the City contained in the Official Statement fairly present the financial position and results of operations and changes in fund balances of the City as of the dates and for the periods therein set forth; the City has no reason to believe that such financial statements have not been prepared in accordance with generally accepted accounting principles consistently applied; since June 30 of the last fiscal year presented in the audited financial statements of the City included in the Official Statement, the City has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the City that is not described in the Official Statement, whether or not arising from transactions in the ordinary course of business and prior to the Closing, there will be no adverse change of a material

nature in such financial position, results of operations or condition, financial or otherwise, of the City or the Project;

(p) The City is not a party to any contract or agreement or subject to any restriction, the performance of or compliance with which may have a material adverse affect on the financial condition, operations or prospects of the City or ability of the City to comply with all the requirements set forth in the Official Statement, the Resolution, the City Documents or the Obligations;

(q) Prior to the Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by any of the revenues or assets which will secure the Obligations without the prior approval of the Underwriter;

(r) The representations of the City set forth herein and in the Resolution and the City Documents are, as of the date hereof, true and correct, and between the date hereof and the date of the closing, the City shall not take any action that will cause the representations and warranties made herein to be untrue as of the date of the Closing and

(s) The officers and officials of the City executing the Official Statement, the Resolution, the City Documents and the Obligations and the officers and officials of the City listed on the certificate of the City to be delivered at the Closing have been or will have been duly appointed and are or will be qualified to serve as such officers and officials of the City, and any certificate, signed by any official of the City authorized to do so in connection with the transactions contemplated by this Purchase Contract shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein.

**5. Conditions to Underwriter's Obligations.** The Underwriter has entered into this Purchase Contract in reliance upon the representations, warranties, covenants and agreements of the City contained herein and in reliance upon the representations, warranties, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the City of its obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the obligations of the Underwriter under this Purchase Contract to purchase, to accept delivery of and to pay for the Obligations shall be conditioned upon the performance by the City of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing and shall also be subject to the following additional conditions, including the delivery by the City of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Underwriter:

(a) The representations and warranties of the City and the Trustee contained herein and in the Resolution and the City Documents shall be true, complete and correct on the date hereof and on and as of the date of the Closing, as if made on the date of the Closing;

(b) The City and the Trustee shall have performed and complied with all covenants, agreements and conditions required by this Purchase Contract and the City Documents to be performed or complied with by it prior to or at the Closing;

(c) At the time of the Closing, (i) the City Documents and the Obligations shall be in full force and effect in the form heretofore approved by the Underwriter and shall not have been amended or modified; (ii) the Official Statement shall not have been amended, except in any such case as may have been agreed to by the Underwriter and (iii) all actions of the City required to be taken by the City shall be performed in order for Bond Counsel and counsel to the Underwriter to deliver their respective opinions referred to hereafter;

(d) At the time of the Closing, all official action of the City relating to the Obligations and the City Documents shall be in full force and effect and shall not have been amended, modified or supplemented;

(e) At or prior to the Closing, the City Documents shall have been duly executed and delivered by the City and the Trustee shall have duly executed and delivered the Obligations;

(f) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the Project, in the condition, financial or otherwise, or in the revenues or operations of the City, from that set forth in the Official Statement that, in the judgment of the Underwriter, is material and adverse and that makes it, in the judgment of the Underwriter, impractical to market the Obligations on the terms and in the manner contemplated in the Official Statement;

(g) At the date of the Closing, no "event of default" shall have occurred or be existing under this Purchase Contract or the City Documents nor shall any event have occurred which, with the passage of time or the giving of notice, or both, shall constitute an event of default under this Purchase Contract or the City Documents;

(h) The City shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money;

(i) All steps to be taken, all instruments and other documents to be executed and all other legal matters in connection with the transactions contemplated by this Purchase Contract shall be reasonably satisfactory in legal form and effect to the Underwriter;

(j) At or prior to the Closing, the Underwriter shall have received two copies of the transcript of all proceedings of the City relating to the authorization and issuance of the Obligations, certified, as necessary, by appropriate officials of the City, including, but not limited to, the following opinions, letters, certificates and other documents:

(1) An unqualified approving opinion of Greenberg Traurig, LLP as Bond Counsel as to the Obligations, dated the date of the Closing, addressed to the City and substantially in the form included in the Official Statement;

(2) The supplemental opinion of Greenberg Traurig, LLP as Bond Counsel, dated the date of the Closing, addressed to the Underwriter and substantially in the form attached hereto as Exhibit B;

(3) An opinion of the City Attorney that, based on an investigation of the records of the Superior Court of Cochise County and the United States District Court, District of Arizona, \_\_\_\_\_ Division, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to his knowledge (upon due inquiry), threatened (i) in any way affecting the powers of the City, the existence of the City or the title to office of any of the officials of the City, (ii) seeking to restrain or enjoin the issuance, sale or delivery of the Obligations, or the levy and collection of the Excise Taxes to be levied to pay the principal of and interest on the Obligations, (iii) in any way contesting or affecting the validity or enforceability of the Obligations, the City Documents or any agreements entered into in connection therewith, (iv) contesting in any way the completeness or accuracy of the Official Statement, (v) which may adversely affect the City or its properties or (vi) questioning the tax-exempt status or the Obligations; nor, to the best knowledge of such counsel, is there any reasonable basis therefor;

(4) An opinion letter of Gust Rosenfeld P.L.C., as counsel to the Underwriter, dated the date of the Closing, addressed to the Underwriter, to the effect that (i) the Obligations are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Trust Agreement and the Purchase Agreement are exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and (ii) in their letter containing the foregoing opinion, or in a separate letter dated the date of Closing and addressed to the Underwriter, that, based upon their participation in the preparation of the Official Statement as counsel for the Underwriter (which participation will not extend beyond the date of the Official Statement or the last amendment thereto) and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, during the course of their representation of the Underwriter on this matter, as of the date of Closing no information has come to the attention of the attorneys in such firm rendering legal services in connection with such representation causing them to believe that the Official Statement as of its date (except for the statements contained in the Official Statement and the Appendices thereto relating to the book entry system, The Depository Trust Company, all financial and statistical data or forecasts, numbers, charts, estimates, projections, assumption's or expressions of opinion, information about environmental matters and summaries thereof and references thereto, as to all of which no view need be expressed) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(5) A certificate, dated the date of Closing and signed by the Mayor, the City Clerk and the City Manager of the City, to the effect that (i) the representations and warranties of the City contained herein are true and correct in all material respects on and as of the date of the Closing with the same effects if made on the date of the Closing; (ii) to their best knowledge after due inquiry, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or threatened in any way affecting the existence of the City or the titles of its officials to their respective positions, or seeking to restrain or to enjoin the sale or delivery of the Obligations, or the levy and collection of the Excise Taxes of the City imposed and levied or to be imposed and levied to pay all the principal of and interest on the Obligations, or the imposition thereof, or in any way contesting or affecting the validity or enforceability of the Obligations or the City Documents, or contesting in

any way the completeness or accuracy of the Official Statement or the exclusion from gross income of interest on the Obligations, or contesting the powers of the City or its authority with respect to the Obligations or the City Documents and (iii) the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing;

(6) A certificate, dated the date of the Closing and signed by the City Manager of the City, to the effect that to the best of his knowledge after due investigation (i) the Official Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) the financial statements of the City contained in the Official Statement fairly present the financial position and results of operations and changes in fund balances of the City as of the dates and for the periods therein set forth and the City has no reason to believe that such financial statements have not been prepared in accordance with generally accepted accounting principles consistently applied; (iii) since June 30 of the last fiscal year presented in the audited financial statements of the City included in the Official Statement, the City has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the result of operations or financial condition of the City that is not described in the Official Statement, whether or not arising from transactions in the ordinary course of business, nor are there any deficits in any fund of the City except as disclosed in the Official Statement; and (iv) no event affecting the City has occurred since the date of the Official Statement that should be disclosed in the Official Statement for the purpose of which it is to be used or which it is necessary to disclose therein with respect to the City in order to make the information therein in the light of the circumstances under which they were made or set forth not misleading in any material respect;

(7) A specimen of the Obligations;

(8) A certified copy of the Resolution;

(9) A counterpart original of the Official Statement manually executed on behalf of the City by the City Manager of the City;

(10) A nonarbitrage certificate of the City in form and substance satisfactory to Bond Counsel;

(11) The filing copy of the Information Return Form 8038-G (IRS) for the Obligations and of the Report Relating to Bond and Security Issuance for the Arizona Department of Revenue pursuant to Section 35-501(B), Arizona Revised Statutes, as amended;

(12) An executed copy of each of the City Documents;

(13) A certificate or certificates, dated the date of Closing, signed by an authorized representative of the Trustee and in form and substance satisfactory to Bond Counsel and the Underwriter, in which such official to the best of his/her knowledge after due investigation states that (i) the representations and agreements of the Trustee contained in the Trust Agreement and the Purchase Agreement are true and correct in all material respects as of the Closing and the Trustee has duly executed and delivered the Trust Agreement and the Purchase Agreement and

complied with all agreements and satisfied all conditions on its part to be performed or satisfied under the Trust Agreement and the Purchase Agreement at or prior to the Closing and (ii) no litigation is pending or threatened against the Trustee before any judicial, quasi-judicial or administrative forum (A) to restrain or enjoin the performance by the Trustee of its obligations and duties under the Trust Agreement and the Purchase Agreement, (B) in any way contesting or affecting any authority for, or the validity of, the Obligations or the applications of the proceeds of the Obligations or (C) in any way contesting the existence or corporate trust powers of the Trustee, together with evidence of the authority of the Trustee to execute and deliver the Trust Agreement and the Purchase Agreement and issue and deliver the Obligations and an incumbency certificate;

(14) Letters from [\_\_\_\_\_] and [\_\_\_\_\_], confirming that the Obligations have been rated "\_\_\_\_\_" and "\_\_\_\_\_" respectively, which ratings shall be in effect on the date of Closing.

(15) A copy of a special report prepared by \_\_\_\_\_, independent certified public accountants, addressed to the City, Bond Counsel and the Underwriter, verifying the arithmetical computations of the adequacy of the maturing principal and interest on the obligations and uninvested cash on hand under the Depository Trust Agreement to pay, when due, the principal of and interest on the Obligations Being Refunded and the yields on the Obligations and amounts held under the Depository Trust Agreement;

(16) A certificate of [The Bank of New York Mellon Trust Company, N.A.] as depository trustee under the Depository Trust Agreement, to the effect that moneys or obligations sufficient to effectuate the refunding of the Obligations Being Refunded have been received and that such moneys or obligations have been deposited under the Depository Trust Agreement;

(17) Such other opinions of counsel as are required in connection with the refunding of the Obligations Being Refunded, including an opinion of Bond Counsel to the effect that such refunding will not have an adverse impact on the federal tax-exempt status of interest on the Obligations Being Refunded; and

(18) Such additional opinions, letters, certificates, instruments and other documents as the Underwriter or counsel to the Underwriter may reasonably deem necessary to satisfy conditions to the issuance of the Obligations and to evidence the truth and accuracy as of the Closing, or prior to such time, of the representations, warranties and covenants of the City and the due performance or satisfaction by the City of all agreements then to be performed and all conditions then to be satisfied by the City.

(All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Purchase Contract shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter.)

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Obligations contained in this Purchase Contract, or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Obligations shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriter nor the City shall be under any further

obligation hereunder, except that the respective obligations of the City and the Underwriter set forth in Section 8(c) hereof shall continue in full force and effect.

**6. Compliance with Rule 15c2-12; Circumstances Affecting Disclosure Arising Before or After the Closing.**

(a) As soon as practicable after the date hereof, and in any event within seven business days of the date hereof, the City shall deliver to the Underwriter copies of the Final Official Statement dated the date hereof in substantially the form of the Preliminary Official Statement, with only such changes therein as shall have been approved by the City and the Underwriter (the delivery of the Final Official Statement by the City to the Underwriter and the acceptance thereof by the Underwriter to constitute in all events such approval), executed on behalf of the City by its City Manager. The Final Official Statement shall be provided to the Underwriter for distribution in such quantity as shall be reasonably requested by the Underwriter in order to permit the Underwriter to comply with the provisions of the Rule and the applicable rules of the Municipal Securities Rulemaking Board.

(b) The City will not adopt any amendment of or supplement to the Final Official Statement to which, after having been furnished with a copy, the Underwriter shall object reasonably, in writing, or which shall be disapproved by Bond Counsel or counsel to the Underwriter.

(c) After the date hereof and until 25 days after the end of the underwriting period, if any event shall occur which could cause the Preliminary Official Statement or the Final Official Statement to contain an untrue statement of a material fact or to omit to state a material fact which is necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading as a result of which it is necessary, in the opinion of the Underwriter or the City, to amend or supplement the Final Official Statement, the City shall cause to be prepared and furnished a reasonable number of copies of an amendment of or supplement to the Final Official Statement (in form and substance satisfactory to the Underwriter, and counsel to the Underwriter) which will amend or supplement the Final Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information therein, in light of the circumstances, not misleading in any material respect; provided, however, that if such event shall occur on or prior to the Closing Date, the Underwriter in its sole discretion shall have the right to terminate the Underwriter's obligations hereunder by written notice to the City, and the Underwriter will be under no obligation to purchase and pay for the Obligations. [The expense of preparing any such amendment or supplement shall be paid by the City.]

(d) For the purposes of this Section 6, the City will furnish such information with respect to the City, as the Underwriter may, within twenty-five (25) days of filing the Final Official Statement with a nationally recognized municipal securities information repository (as such term is used in the Rule), reasonably request.

(e) The City represents and warrants that, at the time of the acceptance hereof by the City and (unless an event occurs in the nature described in subparagraph (d) of this Section 6) at all times subsequent thereto during the period up to and including twenty-five (25) days

subsequent to the end of the underwriting period, the Final Official Statement does not and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information therein, in light of the circumstances, not misleading in any material respect.

(f) The City represents and warrants that, if the Final Official Statement is supplemented or amended pursuant to subparagraph (d) of this Section 6 as to such information, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto during the period up to and including twenty-five (25) days subsequent to the end of the underwriting period, the Final Official Statement as to supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(g) The "end of the underwriting period" as used in this Obligation Purchase Contract shall mean the date of the Closing unless the Underwriter gives written notice otherwise to the City prior to the date of the Closing. In the event such notice is given in writing by the Underwriter, the Underwriter agrees to notify the City in writing promptly following the occurrence of the "end of the underwriting period" as defined in the Rule.

## **7. Payment of Expenses.**

(a) The Underwriter shall be under no obligation to pay, and the City shall pay, any expenses incident to the performance of the obligations of the City hereunder, including, but not limited to (i) the cost of preparation and printing of the Obligations, the Preliminary Official Statement, the Official Statement, the Resolution and the City Documents in reasonable quantities and all other documents (other than as set forth in the next succeeding paragraph) prepared in connection with the transactions contemplated hereby, (ii) the fees and disbursements of Bond Counsel, counsel to the City, the Trustee and counsel to the Underwriter; (iii) the fees and disbursements of any other engineers, accountants, and other experts, consultants or advisers retained by the City; (iv) the fees for bond ratings and of DTC and (v) reasonable miscellaneous, normally occurring, "out-of-pocket" expenses incurred by the Underwriter in connection with the issuance and sale of the Obligations.

(b) The Underwriter shall pay (i) all advertising expenses in connection with the public offering of the Obligations and (ii) all other expenses incurred by it in connection with the public offering of the Obligations.

(c) If this Purchase Contract shall be terminated by the Underwriter because of any failure or refusal on the part of the City to comply with the terms or to fulfill any of the conditions of this Purchase Contract or if for any reason the City shall be unable to perform its obligations under this Purchase Contract, the City shall reimburse the Underwriter for all "out-of-pocket" expenses (including the fees and disbursements of counsel to the Underwriter) reasonably incurred by the Underwriter in connection with this Purchase Contract or the offering contemplated hereunder.

**8. Termination.** The Underwriter shall have the right to cancel its obligation to purchase the Obligations if, between the date of this Purchase Contract and the Closing, the market price or marketability of the Obligations shall be materially adversely affected, in the sole judgment of the Underwriter, by the occurrence of any of the following:

(i) Legislation shall be enacted by or introduced in the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or any member of the Congress or the State legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or of the State or the United States Tax Court shall be rendered, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed, the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or State income taxation upon interest received on obligations of the general character of the Obligations or, with respect to State taxation, of the interest on the Obligations as described in the Official Statement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences or State income tax consequences of any of the transactions contemplated herein;

(ii) Legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree, or injunction issued by any Court of Competent jurisdiction, or an order, ruling, regulation (final, temporary, or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Obligations, any or all underlying arrangements, are not exempt from registration under or other requirements of the 1933 Act, or that the Trust Agreement is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, or that the issuance, offering, or sale of obligations of the general character of the Obligations, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(iii) Any state "blue sky" or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Obligations as described herein, or issued a stop order or similar ruling relating thereto;

(iv) A general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, or a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(v) The New York Stock Exchange or other national securities exchange or any governmental authority, shall impose, as to the Obligations or as to obligations of the general character of the Obligations, any material restrictions not now in force, or increase materially

those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(vi) Any amendment to the federal or State Constitution or action by any federal or State court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the City, its property, income securities (or interest thereon), or the validity or enforceability of the City's pledge of any portion of the anticipated pledged Excise Taxes;

(vii) Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(viii) There shall have occurred since the date of this Purchase Contract any materially adverse change in the affairs or financial condition of the City;

(ix) The United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise;

(x) Any fact or event shall exist or have existed that, in the Underwriter's judgment, requires or has required an amendment of or supplement to the Official Statement;

(xi) There shall have occurred any downgrading, or any notice shall have been given of (A) any intended or potential downgrading or (B) any review or possible change that does not indicate a possible upgrade, in the rating accorded any of the City's obligations (including the rating to be accorded the Obligations) and

(xii) The purchase of and payment for the Obligations by the Underwriter, or the resale of the Obligations by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission,

**9. Notices.** Any notice to be given under this Obligation Purchase Contract may be given by mailing or delivering the same in writing as follows:

City: City of Benson, Arizona  
120 W. 6<sup>th</sup> Street  
P.O. Box 2223  
Benson, Arizona 85602  
Attn: Glenn Nicholas, City Manager

Underwriter: Stone & Youngberg LLC  
2555 E. Camelback Road, Suite 280  
Phoenix, Arizona 85016  
Attn: Mr. Mark Reader

**10. Parties in Interest.** This Obligation Purchase Contract is made solely for the benefit of the City and the Underwriter (including the successors or assigns of the Underwriter), and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All agreements of the City in this Obligation Purchase Contract shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Obligations.

**11. Effect of Other Contract.** Nothing in this Obligation Purchase Contract shall be construed as altering, terminating or otherwise modifying any existing contracts between the City and the Underwriter.

**12. Miscellaneous.**

(a) If any section, paragraph, subdivision, sentence, clause or phrase hereof shall for any reason be held illegal or unenforceable, such decision shall not affect the validity of the remaining portions hereof. The parties hereto declared they would have executed this Obligation Purchase Contract and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, or clauses or phrases hereof may be held to be illegal, invalid, or unenforceable. If any provision hereof contains any ambiguity which may be construed as either valid or invalid, the valid construction shall be adopted.

(b) This Obligation Purchase Contract expresses the entire understanding and all agreements of the parties hereto with each other with respect to the subject matter hereof, and no party hereto has made or shall be bound by any agreement or any representation to any other party which is not expressly set forth herein.

**13. Notice Concerning Cancellation of Contracts.** To the extent applicable by provision of law, the parties acknowledge that this Obligation Purchase Contract is subject to cancellation pursuant to A.R.S. Section 38-511, as amended, the provisions of which are incorporated herein.

**14. Choice of Law.** This Purchase Contract shall be governed by and construed in accordance with the law of the State.

**15. Severability.** If any provision of this Purchase Contract shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative

or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

**16. Counterparts.** This Obligation Purchase Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

17. **Effective Date.** This Obligation Purchase Contract will become effective upon execution by the Mayor and attested by the Clerk of the City and will be valid and enforceable as of the time of such execution.

18. **Notice Concerning Cancellation of Contracts.** As required by the provisions of Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the State, its political subdivisions (including the Issuer) or any department or agency of either may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time. The State, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract. This Section is not intended to expand or enlarge the rights of the Issuer hereunder except as required by such Section. Each of the parties hereto hereby certifies that it is not presently aware of any violation of such Section which would adversely affect the enforceability of this Purchase Contract and covenants that it shall take no action which would result in a violation of such Section.

**CITY OF BENSON, ARIZONA**

By \_\_\_\_\_  
Mayor

**ATTEST:**

By \_\_\_\_\_  
Clerk, City of Benson, Arizona

**STONE & YOUNGBERG LLC**

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

The Obligations mature on July 1 in the years and amounts and bear interest at the following per annum rates:

**Excise Tax and State Shared Revenue Obligations**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>
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**Excise Tax and State Shared Revenue Obligations**  
**(Qualified Build America Bonds – Direct Pay)**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>
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**Excise Tax and State Shared Revenue Refunding Obligations**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>
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**Optional Redemption:**

The Excise Tax and State Shared Revenue Obligations maturing before or on July 1, 20\_\_, are not subject to redemption prior to their stated maturity date. The \_ Obligations maturing on or after July 1, 20\_\_, may be redeemed prior to maturity, in whole at any time, or in part on any Interest Payment Date, in any order of maturity and by lot within any maturity, by the City, on or after July 1, 20\_\_ at the redemption price of the principal amount of the Obligations to be redeemed, plus in each case, interest accrued to the date fixed for redemption but without premium.

The Excise Tax and State Shared Revenue Obligations (Qualified Build America Bonds – Direct Pay) maturing before or on July 1, 20\_\_, are not subject to redemption prior to their stated maturity date. The \_ Obligations maturing on or after July 1, 20\_\_, may be redeemed prior to maturity, in whole at any time, or in part on any Interest Payment Date, in any order of maturity and by lot within any maturity, by the City, on or after July 1, 20\_\_ at the redemption price of the principal amount of the Obligations to be redeemed, plus in each case, interest accrued to the date fixed for redemption but without premium.

The Excise Tax and State Shared Revenue Refunding Obligations maturing before or on July 1, 20\_\_, are not subject to redemption prior to their stated maturity date. The \_ Obligations maturing on or after July 1, 20\_\_, may be redeemed prior to maturity, in whole at any time, or in part on any Interest Payment Date, in any order of maturity and by lot within any maturity, by the City, on or after July 1, 20\_\_ at the redemption price of the principal amount of the Obligations to be redeemed, plus in each case, interest accrued to the date fixed for redemption but without premium.

**EXHIBIT B**

[LETTERHEAD OF GREENBERG TRAURIG, LLP]

[Closing Date]

Stone & Youngberg LLC  
Phoenix, Arizona

Re: City of Benson, Arizona Excise Tax and State Shared Revenue Obligations and/or  
Excise Tax and State Shared Revenue Refunding Obligations

WE HAVE ACTED as Bond Counsel to the City of Benson, Arizona (hereinafter referred to as the "City") in connection with the issuance this date of Excise Tax and State Shared Revenue Obligations in the aggregate principal amount of \$\_\_\_\_\_ (the "Excise Obligations") and Excise Tax and State Shared Revenue Refunding Obligations in the aggregate principal amount of \$\_\_\_\_\_ (the "Excise Tax Refunding Obligations), and together with the Excise Tax Obligations, the "Obligations") and otherwise as counsel to the City including for purposes relating to the execution and delivery of the "Purchase Agreement" as such term is defined in the hereinafter described Obligation Purchase Contract. The Obligations (i) are issued under a resolution authorizing issuance of, and certain other matters related to, the Obligations adopted by the City Council of the City on \_\_\_\_\_, 2010 (hereinafter referred to as the "Resolution"); (ii) are described in an Official Statement, dated \_\_\_\_\_, 2010 (hereinafter referred to as the "Official Statement"), and (iii) are being sold pursuant to an Obligation Purchase Contract, dated as of \_\_\_\_\_, 2010 (hereinafter referred to as the "Obligation Purchase Contract"), by and between the City and Stone & Youngberg LLC (hereinafter referred to as the "Underwriter"). You may rely on our opinion as Bond Counsel, dated of even date herewith, with regard to the Obligations as if addressed to you.

IN OUR CAPACITY as Bond Counsel, and as counsel as described hereinabove to the City, we have examined and relied upon:

- (i) An executed copy of the Purchase Agreement;
- (ii) An executed copy of the Obligation Purchase Contract;
- (iii) An executed copy of the Official Statement;
- (iv) A certified copy of the Resolution (which authorized, among other matters, execution and delivery of the Obligation Purchase Contract);
- (v) An executed copy of a First Trust Agreement, dated as of June 1, 2010 (hereinafter referred to as the "Trust Agreement"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (hereinafter referred to as the "Trustee");

(vi) An executed copy of a Depository Trust Agreement, dated as of June 1, 2010 (hereinafter referred to as the "Trust Agreement"), by and between the City and the Trustee, as depository trustee;

(vii) An executed copy of a Continuing Disclosure Certificate, dated even date herewith (hereinafter referred to as the "Certificate" and, collectively with the Obligation Purchase Contract, the Purchase Agreement, the Depository Trust Agreement and the Trust Agreement, as the "City Documents"), by and between the City and Stone & Youngberg LLC;

(vii) Such other agreements, certificates (including particularly, but not by way of limitation, a certificate of the Mayor, the City Clerk and the \_\_\_\_\_ of the City, dated as of even date herewith), opinions (including particularly, but not by way of limitation, an opinion of the City Attorney, dated as of even date herewith), letters and other documents, including all documents delivered or distributed at the closing of the sale of the Obligations, as we have deemed necessary or appropriate in rendering the opinions set forth herein and

(viii) Such provisions of the Constitution and laws of the State of Arizona and the United States of America as we believe necessary to enable us to render the opinions set forth herein.

IN OUR EXAMINATION, we have assumed the authenticity of all documents submitted to us as originals, the conformity to original copies of all documents submitted to us as certified or photostatic copies, the authenticity of the originals of such latter documents and the accuracy of the statements contained in such certificates. In connection with our representation of the City in the capacities described above, we have also participated in conferences from time to time with representatives of and counsel to the City, the Underwriter and the Trustee relating to the Official Statement and the City Documents.

WE ARE OF THE OPINION, based upon the foregoing and subject to the qualifications hereinafter set forth, that under applicable law of the State of Arizona and federal law of the United States of America in force and effect on the date hereof:

1. The City is duly incorporated and validly existing as a municipal corporation and political subdivision under the Constitution and laws of the State of Arizona and has all requisite power and authority thereunder and under its Charter to adopt the Resolution and to enter into and perform its covenants and agreements under the Resolution and the City Documents; to approve and authorize the use, distribution and execution, as applicable, of the Official Statement and to carry out and consummate all other transactions contemplated by the Resolution, the Official Statement and the City Documents.

2. No consent of any other party, and no consent, license, approval or authorization of, exemption by or registration with any governmental body, authority, bureau or agency (other than those that have been obtained or will be obtained prior to the deliver of the Obligations), is required in connection with the adoption by the City of the Resolution or the authorization, execution, delivery, issuance and performance, as applicable, by City of the City Documents and the Obligations and the consummation of the transactions contemplated by the Obligations and the City Documents, provided that we express no opinion on any action required under state

securities or "blue sky" laws with respect to the Obligations and the adoption of the Resolution and the execution and delivery by the City of the City Documents and compliance with the provisions of the Resolution and of each of such instruments do not and shall not conflict with or violate any federal or Arizona constitutional or statutory provision.

3. The City has duly (a) adopted the Resolution and (b) authorized (i) the authorization, execution, delivery and issuance, as applicable of, and the performance of its obligations under, the City Documents and the Obligations; (ii) the execution, use and distribution of the Preliminary Official Statement, dated \_\_\_\_\_, 2010, and the Official Statement and (iii) the taking of the actions required on the part of the City to carry out, give effect to and consummate the transactions contemplated by the Official Statement, the Resolution, the City Documents and the Obligations. The City has complied with all applicable provisions of law and has taken all actions required to be taken by it to the date hereof in connection with the transactions contemplated by the aforesaid documents, and the Resolution is fully effective under and pursuant to the laws of the State of Arizona and the Charter of the City and is not subject to referendum.

4. The City Documents have been duly authorized, executed and delivered by the City and, assuming due and valid authorization, execution and delivery by the other party thereto, constitute legal, valid and binding obligations of the City enforceable in accordance with their terms.

5. The adoption and approval of the Resolution, the authorization, execution and delivery of the City Documents and the authorization, issuance, delivery and sale of the Obligations and compliance with the respective provisions thereof under the circumstances contemplated thereby do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or of the Charter or any existing law, ordinance, administrative regulation, court order or consent decree to which the City is subject.

6. The information contained in the Official Statement on the cover thereof, under the headings "INTRODUCTORY STATEMENT," "THE OBLIGATIONS" (except under the subheading "Book-Entry Only System"), "PLAN OF REFUNDING," "SECURITY AND SOURCES OF PAYMENT," "TAX EXEMPTION," "ORIGINAL ISSUE PREMIUM" and "CONTINUING DISCLOSURE" therein and in Appendix \_\_ - "PROPOSED FORM OF OPINION OF BOND COUNSEL," Appendix \_\_\_ - "SUMMARY OF SELECT PROVISIONS OF PRINCIPAL DOCUMENTS" and Appendix \_\_\_ - "FORM OF CONTINUING DISCLOSURE CERTIFICATE" thereto, insofar as such statements purport to summarize certain provisions of the Obligations, the Resolution, the Trust Agreement and the Purchase Agreement, and federal law and the laws of the State of Arizona present a fair and accurate summary of the information which they purport to summarize. Otherwise, in connection with our participation in the transaction relating to the Obligations as Bond Counsel, we have had no part in the preparation of the information appearing on the Official Statement with respect to the City. In connection with our participation in the preparation of the Official Statement, we have not undertaken to determine independently the accuracy, completeness or fairness of the information contained therein.

7. It is not necessary in connection with the issuance and sale of the Obligations to the public to register the Obligations under the Securities Act of 1933, as amended, or to qualify the Resolution or the Trust Agreement under the Trust Indenture Act of 1939, as amended.

8. There is no legal requirement to record, re-record, file or re-file any instrument in order to create, perfect, protect and maintain the enforceability of any pledge, lien or security interest granted or assigned by the Trust Agreement.

Notwithstanding the foregoing, the enforceability of the Obligations by the Underwriter, as the owner of the Obligations, and the validity and enforceability of the Obligation Purchase Contract is subject to all applicable laws regarding conflicts of interest, and we express no opinion with respect to the impact of any such laws on the enforceability of the Obligations by the Underwriter, as owner of the Obligations or the validity or enforceability of the Obligation Purchase Contract.

Respectfully submitted,

FIRST PURCHASE AGREEMENT

by and between

THE BANK OF NEW YORK TRUST COMPANY, N.A.,  
as Seller

and

THE CITY OF BENSON, ARIZONA,  
as Purchaser

Dated as of June 1, 2010

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**FIRST PURCHASE AGREEMENT**

**THIS FIRST PURCHASE AGREEMENT**, dated as of June 1, 2010 (this “Agreement”) by and between **THE CITY OF BENSON, ARIZONA**, a municipal corporation and a political subdivision under the laws of the State of Arizona (“City”), as purchaser hereunder, and **THE BANK OF NEW YORK TRUST COMPANY, N.A.**, a national banking association (“Trustee”), in its capacity as trustee under the First Trust Agreement, dated as of even date herewith (the “Trust Agreement”), by and between Trustee and City and seller hereunder,

**WITNESSETH:**

**WHEREAS**, capitalized terms not defined herein shall have the meaning set forth in the Trust Agreement; and

**WHEREAS**, the Mayor and Council of City have determined that it will be beneficial for the citizens of City for City to (A) finance the costs of (1) \_\_\_\_\_ described as follows: \_\_\_\_\_, (2) \_\_\_\_\_ described as follows: \_\_\_\_\_ and (3) \_\_\_\_\_ described as follows: \_\_\_\_\_ (collectively, the “New Projects”) and (B) refinance a portion of the costs of the wastewater treatment plant, the newest water storage tank and related appurtenances and the swimming pool (the “Refinanced Projects” and, with the New Projects, the “Projects”); and

**WHEREAS**, for the purpose of financing the costs of the New Projects and refinancing the costs of the Refinanced Projects, the Mayor and Council of City requested, and Trustee sold and executed and delivered, respectively, Excise Tax and State Shared Revenue Obligations, Series 2010, in the principal amount of \$\_\_\_\_\_,000 (the “New Money Obligations”) and Excise Tax and State Shared Revenue Refunding Obligations, Series 2010, in the principal amount of \$\_\_\_\_\_,000 (together with the New Money Obligations, the “Obligations”), and the Trustee has, as described in the Trust Agreement, caused deposits to be made with \_\_\_\_\_ and \_\_\_\_\_ and to the Acquisition Fund, the Costs of Issuance Fund and the Debt Service Reserve Fund as described in the Trust Agreement; and

**WHEREAS**, City is a municipal corporation duly incorporated and validly existing under the laws of the State; the Constitution and the laws of the State authorize City to enter into this Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; City has duly authorized and executed all of the aforesaid agreements; this Agreement is a lawful, valid and binding obligation of City, enforceable against City in accordance with its terms, and has been duly authorized, executed and delivered by City; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes and neither the execution and delivery of this

Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which City is now a party or by which City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of City;

**WHEREAS**, Trustee has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to the execution and delivery hereof;

NOW THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

**Section 1. Term and Payments.**

(a) Trustee hereby sells and conveys to City, and City hereby buys and accepts from Trustee, the New Projects. (In order to evidence such sale and conveyance, Trustee has executed and delivered to City a bill of sale on the date of original execution and delivery of the Obligations.)

(b) Trustee shall have no further obligation to provide funds for the Projects and shall be entitled to sole and exclusive possession of the New Projects.

(c) As the purchase price, City shall make the payments to Trustee at the address specified in the Trust Agreement (or such other address as Trustee may designate in writing) on the dates and in the amounts set forth in the Schedule attached hereto and made a part hereof (the "Payments"). (The amounts of each of the Payments in the column of the Schedule designated "Interest," denominated as and comprising interest pursuant to this Agreement and received by the Owners (the "Interest Portion") are interest for purposes of the Code.)

On the fifteenth (15th) Business Day of each month after a determination of Trustee that the amount on deposit in the Debt Service Reserve Fund is less than the Reserve Requirement, City shall also pay to Trustee, for deposit to the Debt Service Reserve Fund, an amount equal to one-twelfth ( $1/12$ ) of the amount which, when added to the balance in the Debt Service Reserve Fund, will be equal to the amount then required to be on deposit therein. Alternatively, if the Debt Service Reserve Fund Policy is in effect and, except with respect to amounts already due to the Insurer thereunder against which the following shall not be a defense, the Insurer is not in default or contesting its obligations thereunder and is not in bankruptcy, receivership, insolvency or similar proceedings, City shall pay on the fifteenth (15th) Business Day of each month to the Trustee for deposit to the Insurer Reimbursement Fund an amount equal to one-twelfth ( $1/12$ ) of the amount required to reimburse the Insurer for any Policy Payment (as defined in the Reimbursement Agreement) and interest owed by City to the Insurer under the Debt Service Reserve Fund Policy as well as for any other money owed by City to the Insurer under the Reimbursement Agreement. On the sixteenth (16th) Business Day of each month, City shall also pay to the Insurer the amounts provided by Section 13.13 of the Trust Agreement.

City shall also pay to Trustee its fees and expenses in accordance with the provisions of the Trust Agreement.

City shall receive a credit against amounts so due, equal to any amounts held in the Payment Fund, the Debt Service Reserve Fund or the Insurer Reimbursement Fund, as applicable, in excess of the amount then required to be in the Payment Fund, the Debt Service Reserve Fund or the Insurer Reimbursement Fund, respectively. If the balance available in the Payment Fund after a Payment is insufficient to make the next required payments of principal and interest due on the Obligations on the next date for payment thereof, City shall pay any such deficiency in sufficient time to prevent default in the payment of principal of or interest on the Obligations falling due on such date.

This Agreement shall be deemed and construed to be a “*net purchase agreement*,” and the Payments shall be an absolute net return to Trustee, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein.

(d) The obligation of City to pay the amounts described in paragraph (c) hereof (including the Payments) from the sources described herein and to comply with the other provisions hereof shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of Trustee of any obligation to City or otherwise, or out of indebtedness or liability at any time owing to City by Trustee. Until such time as all of the amounts described in paragraph (c) hereof (including the Payments) shall have been fully paid or provided for, City (i) shall not suspend or discontinue the same, (ii) shall comply with the other provisions hereof and (iii) shall not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure of Trustee or any other person to complete the New Projects, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the New Projects, the taking by *eminent domain* of title to or temporary use of any or all of the New Projects, commercial frustration of purpose, abandonment of the New Projects by City, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Trustee from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event Trustee shall fail to perform any such agreements on its part, City may institute such action against Trustee as City may deem necessary to compel performance so long as such action does not abrogate the obligations of City contained in the first sentence of this paragraph.

(e) Any of the payments described in paragraph (c) hereof (including the Payments) due on a day which is not a Business Day may be made on the next Business Day and will be deemed to have been made on the date due.

**Section 2. Pledge; Limited Obligations.**

(a) City hereby irrevocably pledges for the payment of the amounts described in Section 1(c) (including the Payments) the revenues from the Excise Taxes and the

State Shared Revenues. Such pledge shall be a first lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make the payments described in Section 1(c) (including the Payments) when due. City shall make said payments from the revenues from the Excise Taxes and the State Shared Revenues (first making the Payments and thereafter making the other required payments). All of such payments are coequal as to the pledge of and lien on the revenues from the Excise Taxes and the State Shared Revenues and share ratably, without preference, priority or distinction, as to the source or method of payment from the revenues from the Excise Taxes and the State Shared Revenues or security therefor. The rights of the Owners to payment from the revenues from the Excise Taxes and the State Shared Revenues are on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of any obligations hereafter incurred on a parity pursuant to Section 5 (the "Parity Lien Obligations").

(b) City shall remit to Trustee from the revenues from the Excise Taxes and the State Shared Revenues all amounts due under this Agreement in the amounts and at the times and for the purposes as required herein. The obligation of City to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from the revenues from the Excise Taxes and the State Shared Revenues and shall in no circumstances constitute a general obligation or a pledge of the full faith and credit of City, the State or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any *ad valorem* property taxes.

(c) City may, at the sole option of City, make payments due pursuant to Section 1 from its other funds as permitted by law and as City shall determine from time to time, but Trustee acknowledges that it has no claim hereunder to such other funds. No part of the purchase price payable pursuant to this Agreement shall be payable out of any *ad valorem* property taxes imposed by City or from bonds or other obligations, the payment of which City's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by City according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State.

**Section 3. Surplus and Deficiency of Revenues from Excise Taxes and State Shared Revenues.** The revenues from the Excise Taxes and State Shared Revenues in excess of amounts, if any, required to be deposited with or held by Trustee for payments due under this Agreement and the Trust Agreement shall constitute surplus revenues and may be used by City for any lawful purpose for the benefit of City, including the payment of obligations to which the revenues from the Excise Taxes and the State Shared Revenues may from time to time be pledged on a basis subordinate hereto. If at any time the moneys in the funds held for payment of amounts due under this Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required, any such deficiency shall be made up from the first moneys thereafter received and available for such transfers under the terms of this Agreement and, with respect to payment from the revenues from the Excise Taxes and the State Shared Revenues, *pro rata*, as applicable, with amounts due with respect to the Parity Lien Obligations with respect thereto, and the transfer of any such sum or sums to said fund as may be necessary to make up

any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

**Section 4. Parity Lien Obligations.** So long as any of the Obligations remain outstanding and the principal and interest thereon shall be unpaid or unprovided for or any other amounts remain unpaid or unprovided for hereunder, City shall not further encumber the revenues from the Excise Taxes or the State Shared Revenues on a basis equal to the pledge hereunder unless the revenues from the Excise Taxes plus the State Shared Revenues, when combined mathematically for such purpose only, in the most recently completed Fiscal Year, shall have amounted to at least \_\_\_\_\_ (\_\_) times the highest combined interest and principal requirements for any succeeding Fiscal Year for this Agreement and the Parity Lien Obligations (i.e. those already, or so proposed to be, secured by such pledge).

**Section 5. City Control over Revenue Collection.**

(a) To the extent permitted by applicable law, the revenues from the Excise Taxes shall be retained and maintained so that the amounts received from the revenues from the Excise Taxes and the State Shared Revenues, when combined mathematically for such purpose only, all within and for the most recently completed Fiscal Year, shall have been equal to at least \_\_\_\_\_ (\_\_) times the total of interest and principal requirements for the current Fiscal Year for this Agreement and the Parity Lien Obligations. If the revenues from the Excise Taxes and the State Shared Revenues for any such Fiscal Year shall not have been equal to at least \_\_\_\_\_ (\_\_) times the total of the interest and principal requirements for the current Fiscal Year for this Agreement and the Parity Lien Obligations or if at any time it appears that the revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such requirements, City shall, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which will be part of the Excise Taxes or increase the rates for the Excise Taxes currently imposed fully sufficient at all times, after making allowance for contingencies and errors, in each Fiscal Year in order that (a) the revenues from the Excise Taxes and the State Shared Revenues will be sufficient to meet all current requirements hereunder and (b) the revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level as required by the first sentence of this paragraph.

(b) (i) In order to secure payment of this Agreement and to create a separate and special fund which shall contain only the revenues from the Excise Taxes and shall not contain any other moneys of City, City shall maintain a special fund known as the “City of Benson Excise Tax Revenue Fund” (the “Excise Tax Revenue Fund”). Upon receipt by City, the revenues from the Excise Taxes shall be deposited in and to the Excise Tax Revenue Fund. The Excise Tax Revenue Fund shall be funded only from the revenues from the Excise Taxes received by City and from no other source. After paying therefrom amounts of the revenues from the Excise Taxes for the purposes described herein, the Excise Tax Revenue Fund may be reduced to zero each December 31 and July 31 after the amount required to be paid as described hereinabove has been paid, including by transferring any such balance to the General Fund of City.

(ii) In order to secure payment of this Agreement and to create a separate and special fund which shall contain only the State Shared Revenues and shall not

contain any other moneys of City, City shall also maintain a special fund known as the “City of Benson State Shared Revenue Fund” (the “State Shared Revenue Fund”). Upon receipt by City, the State Shared Revenues shall be deposited in and to the State Shared Revenue Fund. The State Shared Revenue Fund shall be funded only from the State Shared Revenues received by City and from no other source. After paying therefrom amounts of the State Shared Revenues for the purposes described herein, the State Shared Revenue Fund may be reduced to zero each December 31 and July 31 after the amount required to be paid as described hereinabove has been paid, including by transferring any such balance to the General Fund of City.

**Section 6. Certain Matters with Respect to Projects.**

(a) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, Trustee has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the title, merchantability, condition, quality or fitness of the New Projects for any particular purpose or the conformity of the New Projects to any plans, specifications, construction contract, purchase order, model or sample, or as to their design, construction, delivery, installation, construction oversight and operation or their suitability for use by City after completion. All such risks shall be borne by City without in any way excusing City from its obligations under this Agreement, and Trustee shall not be liable to City for any damages on account of such risks. Except with respect to any acts by Trustee which are not undertaken at the request of City or with the prior approval of City, City waives all claims against Trustee growing out of the acquisition, construction, installation or otherwise of the New Projects. Trustee shall have no liability to City for any failure of any contractor to perform any contract or other undertaking with respect to the New Projects in any respect. Trustee shall have no obligation to obtain or insure compliance with any required permits or approval procedures with respect to the Projects. In the event of any defect in any item of the New Projects or other claim with respect to the New Projects, recourse of City shall be against the contractors, manufacturers, suppliers, etc. of the New Projects and, where applicable, the person selling the property to Trustee, and not against Trustee. For such purpose, Trustee hereby assigns and transfers to City the right, title and interest of Trustee in and to all representations, warranties, guarantees and service agreements relating to the New Projects made or entered into by Trustee and by any contractor, manufacturers, suppliers, etc. of the New Projects. Trustee further designates City as its attorney-in-fact granting to City the right to initiate and take all actions necessary to enforce any and all construction contracts and all such warranties and service agreements. Trustee is entering into this Agreement solely as Trustee, shall not be personally liable hereunder and shall be afforded the same rights, protections, immunities and indemnities acting hereunder as afforded to it as Trustee under the Trust Agreement. Notwithstanding anything to the contrary herein, at no time shall the Trustee be listed in the chain of title to the New Projects.

(b) Trustee hereby irrevocably appoints City as its sole and exclusive agent to act for and on behalf of Trustee in acquiring, constructing, installing or otherwise providing for the New Projects. As such agent, City shall have full authority to do all things necessary to bring about the financing of the New Projects. Trustee shall not be liable, responsible or accountable for the acts of City as its agent hereunder, and City hereby assumes all responsibility for the performance of such duties.

(c) City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Agreement, peaceably and quietly, have, hold and enjoy the New Projects, without suit, trouble or hindrance from Trustee. City hereby grants and conveys to Trustee, and all persons claiming by, through or under Trustee, including its successors and assigns under the Trust Agreement and the Owners for whom it acts, a nonexclusive easement upon, in and to the Projects for the purpose of permitting the Projects to be maintained upon the premises.

(d) Notwithstanding any other terms or provisions of this Agreement, the interest of Trustee in the New Projects is solely in its capacity as Trustee for the purpose of facilitating the financing of the acquisition, construction, installation and otherwise by City of the New Projects, and Trustee shall not have the power, authority or obligation to assume any responsibility for the overall management or maintenance of the New Projects, including, without limitation, any day-to-day decision-making or operational aspects of the New Projects. The elements of the New Projects and the sites therefor were selected by City, and all design and engineering criteria and specifications for the New Projects to be constructed or acquired were or will be determined by City.

**Section 7. Providing for Payment.** City may provide for the payment of any of the Payments in any one or more of the following ways:

(a) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 1 hereof or on a date on which it can be prepaid;

(b) by depositing with a Depository Trustee, in trust for such purposes, money which, together with the amounts then on deposit with Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable, in such amount as shall be certified to Trustee and City, by a national firm of certified public accountants acceptable to both Trustee and City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with Trustee and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid.

Upon any partial payment of a Payment resulting in a redemption of Obligations, each installment of interest which shall thereafter be payable as a part of the subsequent Payments shall be reduced, taking into account the interest rate or rates on the Obligations remaining outstanding after the partial payment of redemption of Obligations from the proceeds of such payment so that the interest remaining payable as a part of the subsequent Payments shall be sufficient to pay the interest on such outstanding Obligations when due.

**Section 8. Term of Agreement.** This Agreement shall not terminate so long as any payments are due and owing pursuant to the Obligations, the Debt Service Insurance Policy or the Reimbursement Agreement. Subject to Section 7, upon full payment or provision

for payment and in consideration of the timely payment of all of the amounts described in Section 1(c) (including the Payments) and provided that City has performed all the covenants and agreements required by City to be performed, this Agreement shall cease and expire. The obligations of City under this Agreement, including, without limitation, its obligation to pay the Payments, shall survive any action brought as provided in the next Section, and City shall continue to pay the Payments and perform all other obligations provided in this Agreement; provided, however, that City shall be credited with any amount received by Trustee pursuant to actions brought under the next Section.

**Section 9. Default; Remedies Upon Default.**

(a) (i) Upon (A) the nonpayment of the whole or any part of any of the amounts described in Section 1(c) hereof (including the Payments) at the time when the same is to be paid as provided herein or in the Trust Agreement, (B) the violation by City of any other covenant or provision of this Agreement or the Trust Agreement, (C) the occurrence of an event of default with respect to any of the Parity Lien Obligations or (D) the insolvency or bankruptcy of City as the same may be defined under any law of the United States of America or the State, or any voluntary or involuntary action of City or others to take advantage of, or to impose, as the case may be, any law for the relief of debtors or creditors, including a petition for reorganization, and

(ii) if such default has not been cured (A) in the case of nonpayment of any of the amounts described in Section 1(c) hereof (including the Payments) as required hereunder or under the Trust Agreement on the due date or the nonpayment of payments on their due dates with respect to any of the Parity Lien Obligations on their due dates; (B) in the case of the breach of any other covenant or provision of the Trust Agreement or this Agreement not cured within sixty (60) days after notice in writing from Trustee specifying such default and (C) in the case of any other default under any of the Parity Lien Obligations after any notice and passage of time provided for under the proceedings under which such obligations were issued then,

(iii) subject to the limitations of the Trust Agreement, Trustee may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect the Payments and any other amounts payable by City under the Trust Agreement or this Agreement then due (but not the Payments and such other amounts accruing), or to enforce performance and observance of any pledge, obligation, agreement or covenant of City under the Trust Agreement or this Agreement, and with respect to the revenues from the Excise Taxes and the State Shared Revenues, without notice and without giving any bond or surety to City or anyone claiming under City, have a receiver appointed of the amounts of the revenues from the Excise Taxes and the State Shared Revenues, which are pledged to the payment of amounts due hereunder, with such powers as the court making such appointment shall confer (and City does hereby irrevocably consent to such appointment); provided, however, that under no circumstances may the Payments be accelerated.

Each right, power and remedy of Trustee provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for herein, or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute

or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by Trustee of any one or more of the rights, powers or remedies provided for herein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies. The failure to insist upon strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the rights of Trustee to insist upon a strict compliance by Trustee with all the covenants and conditions hereof. City shall, upon not less than 10 days' prior request by Trustee, execute, acknowledge and deliver to Trustee a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if this Agreement has been modified, that it is in full force and effect except as modified, and stating the modification), and the dates to which the amounts payable hereunder have been paid in advance, if any.

(b) Trustee shall in no event be in default in the performance of any of its obligations hereunder unless and until Trustee shall have failed to perform such obligation within 30 days or such additional time as is reasonably required to correct any such default after notice by City properly specifying wherein Trustee has failed to perform any such obligation. No default by Trustee shall relieve City of its obligations to make the various payments herein required, so long as any of the Obligations remain outstanding; however, City may exercise any other remedy available at law or in equity to require Trustee to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to Trustee under the Trust Agreement.

**Section 10. Assignment.**

(a) Except as otherwise provided herein, City shall not assign, transfer, pledge or hypothecate or otherwise dispose of this Agreement or any interest therein.

(b) Subject to the terms of the Trust Agreement, all and every part of the right, title and interest in and to this Agreement and all payments of any kind due or which become due to Trustee hereunder are sold, pledged, assigned and transferred pursuant to the Trust Agreement; provided, however, that if the same shall not impair the Obligations, Trustee shall execute such nondisturbance and acceptance instruments as shall reasonably be required to evidence the same as hereinafter provided and shall become and be deemed to be the seller hereunder and have all of the rights, powers, privileges and remedies, and be subject to all of the covenants and agreements, as such hereunder for all purposes of this Agreement, except that Trustee makes no representation or warranty, and therefore will assume no obligation, with respect to the title, merchantability, condition, quality or fitness of the Projects for any particular purpose or for the enforcement of any warranties or service agreement made or assigned and City shall have no right to abate, reduce, withhold or offset against any payments due hereunder on account of any claims for misrepresentations or breach of warranty or service agreements or any claims for sums due City from any predecessor(s) in interest of Trustee. City attorns to and recognizes Trustee as the owner of all right, title and interest in, to and under this Agreement and the payments thereafter due and payable pursuant to this Agreement and as seller pursuant to this Agreement. City shall execute and deliver to Trustee such certificates or other instruments in

such forms as may reasonably be required by Trustee and to which City can truthfully attest, including but not limited to a separate acknowledgment of assignment and attornment certificate in the customary form as to the right, title and interest of Trustee in, to and under this Agreement and the payments thereafter due and payable pursuant to this Agreement.

**Section 11. Federal Law Provisions.**

(a) (i) No direction for the making of any investment or other use of the proceeds of any of the Obligations shall be made which would cause the Obligations to be “arbitrage bonds” as that term is defined in section 148 (or any successor provision thereto) of the Code or “private activity bonds” as that term is defined in section 141 (or any successor provision thereto) of the Code, and the requirements of such sections and related regulations of the Code shall be complied with throughout the term of the Obligations. (Particularly, City shall be the owner of the Projects for federal income tax purposes. City shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Projects unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Projects. Also, the payment of principal and interest with respect to the Obligations shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Obligations, or amounts treated as proceeds of the Obligations, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which the Obligations are being executed and delivered, may be so used in making investments of a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury.) City shall comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the execution and delivery of the Obligations (initially those in Section 14) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion. In consideration of the purchase and acceptance of the Obligations by the owners from time to time thereof and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, as amended, City shall, and the appropriate officials of City are hereby directed, to take all action required to retain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(ii) (A) City shall take all necessary and desirable steps, as determined by the Mayor and Council of City, to comply with the requirements hereunder in order to ensure that the Interest Portion is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event City receives a Special Counsel’s Opinion (as such term is defined in the next subsection) that either compliance with such requirement is not required to maintain the exclusion from gross income of the Interest Portion or compliance with some other requirement will meet the requirements of the Code. In the event City receives such a Special Counsel’s Opinion, the parties agree to amend this Agreement to conform to the requirements set forth in such opinion.

(B) If for any reason any requirement hereunder is not complied with, City shall take all necessary and desirable steps, as determined by City, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and City shall pay any required interest or penalty under hereinafter described Regulations section 1.148-3(h) with respect to the Code.

(iii) City designates the Obligations as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. In that connection, City represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, during the current calendar year have not issued and will not issue tax-exempt obligations designated as qualified tax-exempt obligations in an aggregate amount, including the Obligations, exceeding \$30,000,000.

(b) (i) Terms not otherwise defined in paragraph (ii) hereof shall have the meanings given to them in the arbitrage certificate of City delivered in connection with the execution and delivery of the Obligations.

(ii) The following terms shall have the following meanings:

Special Counsel’s Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by City.

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of issue of the Obligations and shall end on the date selected by City, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Obligation.

Bond Yield is as indicated in such arbitrage certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Obligations as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of issue of the Obligations and using semiannual compounding on the basis of a 360-day year.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by City from the sale of the Obligations but excluding amounts used to pay accrued interest on the Obligations within one year of the date of issuance of the Obligations;

(ii) transferred proceeds of the Obligations under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii) and

(iv) replacement proceeds of the Obligations within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Obligations, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Obligations in the event City or Trustee encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Trust Agreement.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in such arbitrage certificate, which is the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters of wholesalers) at which price a substantial amount of the Obligations was sold, less any bond insurance premium and reserve surety bond premium. Issue price shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds and which is not acquired to carry out the governmental purposes of the Obligations.

Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(iii) Unless an exception available pursuant to the Regulations applies as indicated in a Special Counsel's Opinion or a written statement of an expert consultant employed pursuant to paragraph (viii) hereof, within 60 days after the end of

each Bond Year, City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(A) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Obligations (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Obligations (determined as of the last day of such Bond Year); and

(B) not later than 60 days after the retirement of the last Obligation, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Obligation).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(iv) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(v) For purposes of paragraph (iv), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(A) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(B) Except as provided in paragraph (vi) or (vii), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(C) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(vi) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(A) the yield on reasonably comparable direct obligations of the United States; and

(B) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(vii) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(A) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with City or any other person (whether or not in connection with the Obligations), and that the bid is not being submitted solely as a courtesy to City or any other person for purposes of satisfying the requirements in the Regulations that City receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Obligations.

(B) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(C) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Obligations (e.g., a lead underwriter within 15 days of the issue date of the Obligations or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If City uses an agent to conduct the bidding, the agent may not bid.

(D) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(E) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(G) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to

increase the purchase price or reduce the yield of the guaranteed investment contract).

(G) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(H) City retains until three years after the last outstanding Obligation is retired, (1) a copy of the guaranteed investment contract, (2) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by City and a copy of the provider's certification described in (G) above, (3) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (4) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(viii) Such experts and consultants shall be employed by City to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the Obligations.

(c) City shall comply with and carry out all of the provisions of the Sixth Continuing Disclosure Undertaking, dated even date with the date of original execution and delivery of the Obligations (the "Continuing Disclosure Agreement"), provided that such costs of compliance shall be payable solely from revenues from the Excise Taxes and the State Shared Revenues. Notwithstanding any other provision of this Agreement, failure of City to comply with the Continuing Disclosure Agreement shall not be considered an event of default; however, the Trustee may (and, at the request of the original purchaser of the Obligations or the owners of at least 25% aggregate principal amount in outstanding Obligations and receipt of indemnity to its satisfaction, shall) take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause City to comply with its obligations under this Section. The Trustee is not responsible for monitoring or verifying compliance by the City with the Continuing Disclosure Agreement.

**Section 12. Covenant as to Conflict of Interest; Other Statutory Restrictions.**

(a) To the extent applicable by provision of law, Trustee acknowledges that this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein and which provides that City may within three (3) years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract

with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. Trustee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Trustee within three years from the execution of this Agreement, unless a waiver of Section 38-511, Arizona Revised Statutes, as amended, is provided by City. No basis exists for City to cancel this Agreement pursuant to Section 38-511, Arizona Revised Statutes, as amended, as of the date hereof.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by Trustee of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of Trustee by City. City retains the legal right to randomly inspect the papers and records of Trustee to ensure that Trustee is complying with the above-mentioned warranty. Trustee shall keep such papers and records open for random inspection during normal business hours by City. Trustee shall cooperate with the random inspections by City including granting City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Sections 35-391.06 and 35-393.06, Arizona Revised Statutes, as amended, Trustee does not have a scrutinized business operation in Sudan or Iran. For the purpose of this subsection, the term “scrutinized business operations” shall have the meanings set forth in Section 35-391 and 35-393, Arizona Revised Statutes, as amended, as applicable. If City determines that Trustee submitted a false certification, City may impose remedies as provided by law including terminating the services of Trustee.

### **Section 13. Miscellaneous.**

(a) No covenant or obligation herein to be performed by City may be waived except by the written consent of Trustee, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Trustee from invoking such remedy at any later time prior to the cure by City of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State in effect from time to time.

(c) The recitals set forth at the beginning of this Agreement are incorporated in this Agreement by this reference. This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented, altered or changed in any respect except by a written document signed by both Trustee and City, subject to the restrictions with regard thereto provided by the Trust Agreement.

(d) Any term or provision of this Agreement found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(f) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to the right, title or interest of Trustee herein shall be and have the rights of a third party beneficiary hereunder.

(g) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of June, 2010.

**Trustee:**

**THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as seller**

By.....  
Printed Name:.....  
Title:.....

**City:**

**CITY OF BENSON, ARIZONA, a municipal  
corporation under the laws of the State of  
Arizona, as purchaser**

By.....  
Mayor

**ATTEST:**

By.....  
City Clerk

**SCHEDULE**

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
01/01/11	-	\$	\$
07/01/11	\$		
01/01/12			
07/01/12			
01/01/13			
07/01/13			
01/01/14			
07/01/14			
01/01/15			
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07/01/27			
01/01/28			
07/01/28			
01/01/29			
07/01/29			
01/01/30			
07/01/30			
<b>Total</b>	\$	\$	\$

FIRST TRUST AGREEMENT

by and between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

and

THE CITY OF BENSON, ARIZONA

Dated as of June 1, 2010

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\* \* \*

FIRST TRUST AGREEMENT

**THIS FIRST TRUST AGREEMENT**, dated as of \_\_\_\_\_ 1, 2010 (together with any duly authorized, executed and delivered supplement thereto, this "Trust Agreement"), by and between **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.[??]**, a national banking association, as trustee, or any successor thereto acting as trustee pursuant to this Trust Agreement and in its capacity as "Seller" pursuant to the hereinafter described Purchase Agreement (the "Trustee"), and **THE CITY OF BENSON, ARIZONA**, a political subdivision under the laws of the State of Arizona (the "City");

**WITNESSETH:**

**WHEREAS**, capitalized terms not defined herein shall have the meaning set forth in the Trust Agreement; and

**WHEREAS**, the Mayor and Council of City have determined that it will be beneficial for the citizens of City for City to (A) finance the costs of (1) \_\_\_\_\_ described as follows: \_\_\_\_\_, (2) \_\_\_\_\_ described as follows: \_\_\_\_\_ and (3) \_\_\_\_\_ described as follows: \_\_\_\_\_ (collectively, the "New Projects") and (B) refinance a portion of the costs of the wastewater treatment plant, the newest water storage tank and related appurtenances and the swimming pool (the "Refinanced Projects" and, with the New Projects, the "Projects") pursuant to the Purchase Agreement, dated as of \_\_\_\_\_ 1, 2010 (together with any duly authorized, executed and delivered amendment thereto, the "Purchase Agreement"), by and between the City and the Trustee, as "Seller"; and

**WHEREAS**, for the purpose of financing the costs of the New Projects and refinancing the costs of the Refinanced Projects, the City has requested the Trustee, and the Trustee desires to sell and execute and deliver, respectively, Excise Tax and State Shared Revenue Obligations, Series 2010, in the principal amount of \$\_\_\_\_\_,000 (the "New Money Obligations"), and Excise Tax and State Shared Revenue Refunding Obligations, Series 2010, in the principal amount of \$\_\_\_\_\_,000 (the "Refunding Obligations" and, together with the New Money Obligations, the "Obligations"), each evidencing a proportionate interest in certain payments made by the City pursuant to the Purchase Agreement, pursuant to the provisions of this Trust Agreement; and

**WHEREAS**, the City and the Trustee will enter into this Trust Agreement to facilitate the administration of the financing and refinancing of the costs of the Projects, and the Trustee has full legal authority and is duly empowered to enter into this Trust Agreement and has taken all actions necessary to authorize the execution and delivery hereof; and

**WHEREAS**, the City is a municipal corporation duly incorporated and validly existing under the laws of the State; the Constitution and the laws of the State authorize the City to enter into this Trust Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; the City has duly authorized and executed all of the aforesaid agreements; this Trust Agreement is a lawful, valid and binding

obligation of the City, enforceable against the City in accordance with its terms, and has been duly authorized, executed and delivered by the City; all required procedures for execution and performance of this Trust Agreement, including publication of notice public hearings, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes and neither the execution and delivery of this Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City; the City has disclosed in writing to the Trustee all facts that do or will materially adversely affect the properties, operations or financial condition of the City and that any financial statements, notices or other written statements provided by the City to the Trustee pursuant hereto will not contain any untrue statement of a material fact or omit any material fact necessary to make such statements or information not misleading and the New Projects comply with all applicable environmental laws, rules and regulations (including, without limitation, all federal, state and local laws) and with Title III of the Americans with Disabilities Act (the "Act") and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation and commercial facilities if and to the extent the Act and regulations apply to the New Projects; and

**WHEREAS**, the Trustee has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to authorize the execution and delivery hereof;

NOW, THEREFORE, in consideration for the Obligations executed, delivered and Outstanding under this Trust Agreement; the acceptance by the Trustee of the trusts created herein; the purchase and acceptance of the Obligations by the Owners (as such term and all other terms not otherwise defined hereinabove are hereinafter defined) and the issuance by the Insurer of the Debt Service Reserve Fund Policy, and to secure, *first*, the payment of principal of and interest on (to the extent provided herein) the Obligations, the rights of the Owners of the Obligations and the performance and the observance of the covenants and conditions contained in the Obligations, the Purchase Agreement and herein, and, *second*, the payment of amounts due pursuant to the Reimbursement Agreement and the performance and the observance of all of the covenants and conditions contained therein, the Trustee hereby declares an irrevocable trust and acknowledges its acceptance of all right, title and interest in and to the following described trust estate, which shall be administered by the Trustee according to the provisions of this Trust Agreement and for the equal and proportionate benefit of *first*, the Owners of Obligations and, *then*, the Insurer:

A. All right, title and interest of Seller in, under and pursuant to the Purchase Agreement, the Payments and any other amounts payable by the City under the Purchase Agreement and the present and continuing right to (i) make claim for, collect or cause to be collected, receive or cause to be received all such revenues, receipts and other sums of money payable or receivable thereunder, (ii) to bring acts and proceedings thereunder or for the

enforcement of such rights, and (iii) to do any and all other things which the Seller is or may become entitled to do thereunder;

B. Amounts on deposit from time to time in the funds created pursuant hereto, subject to the provisions of this Trust Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

C. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Obligations or the amounts due pursuant to the Reimbursement Agreement, by Seller or by anyone on its behalf or with its written consent, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof,

TO HAVE AND TO HOLD, all and singular, the trust estate, including all additional property which by the terms hereof has or may become subject to the encumbrance of this Trust Agreement, unto the Trustee and its successors and assigns, forever, subject, however, to the rights of the City, its successors and assigns, under the Purchase Agreement;

IN TRUST, however, for the equal and proportionate benefit and security of *first*, the Owners from time to time of the Obligations executed and delivered hereunder and Outstanding, none of the Obligations being entitled to priority or distinction one over the other in the application of the revenues from the Excise Tax and the State Shared Revenues pledged by the Purchase Agreement to the Payments, regardless of the delivery of any of the Obligations prior to the delivery of any other of the Obligations, or regardless of the time or times the Obligations mature or are subject to redemption prior to maturity, all of the Obligations being co-equal as to the pledge of and lien on the revenues from the Excise Tax and the State Shared Revenues pledged for the Payments thereof and sharing ratably, without preference, priority or distinction, as to the source or method of payment from the revenues from the Excise Tax or the State Shared Revenues or security therefor and, *then*, the Insurer; and conditioned, however, that if the City shall well and truly pay or cause to be paid fully and promptly when due all indebtedness, liabilities, obligations and sums at any time secured hereby, including interest and attorneys' fees, and shall promptly, faithfully and strictly keep, perform and observe or cause to be kept, performed and observed all of its covenants, warranties and agreements contained herein, this Trust Agreement shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereafter set forth. For such purposes, the City and the Trustee hereby agree as follows:

## ARTICLE I DEFINITIONS

**Section 1.1. Definitions.** In addition to the terms defined in the first paragraph hereof and in the Recitals hereto and in the Purchase Agreement and unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Trust Agreement, have the meanings herein specified.

“Acquisition Fund” means the fund by that name established pursuant to Article III hereof and held by the Trustee.

“Authorized Denominations” means \$5,000 of principal due of a series on a specific maturity date or integral multiples thereof.

“Business Day” means any day of the week other than a Saturday, Sunday or a day which shall be in the State a legal holiday or a day on which the Trustee is authorized or obligated by law or executive order to close or a day on which the Federal Reserve is closed as modified by the effect of Section 9.6 hereof.

“Certificate of Completion” means the notice of completion, filed with the Trustee by the City Representative, stating that the New Projects have been substantially completed.

“City Representative” means the City Manager, the City Finance Director or any other person authorized by the City Manager or the Mayor and Council to act on behalf of the City with respect to this Trust Agreement.

“Closing Date” means the day when the Obligations, duly executed by the Trustee, are delivered to the original purchaser thereof.

“Code” means the Internal Revenue Code of 1986, as amended. References to the Code and sections thereof include applicable regulations and temporary regulations thereunder and any successor provisions to those sections, regulations or temporary regulations and any applicable regulations or temporary regulations issued pursuant to the Internal Revenue Code of 1954.

“Completion Date” means the date on which the Certificate of Completion is filed with the Trustee by the City Representative.

“Construction Contract” means, collectively, any contracts between the City and a Contractor, for the installation, construction and other matters necessary for any portion of the New Projects.

“Contractor” means any contractor under a Construction Contract and any successor or assigns permitted.

“Corporate Trust Office” means the office of the Trustee designated in Section 12.2 hereof or any successor corporate trust office.

“Costs of Issuance Fund” means the fund of that name established pursuant to Article III hereof and held by the Trustee.

“Debt Service Insurance Policy” means the Financial Guaranty Insurance Policy issued by the Insurer insuring the scheduled payment of the principal of and interest on the Obligations when due.

“Debt Service Reserve Fund” means the fund of that name established pursuant to Article V hereof and held by the Trustee.

“Debt Service Reserve Fund Policy” means the Financial Guaranty Insurance Policy issued by the Insurer insuring the scheduled amount of the Reserve Requirement.

“Defaulted Interest” has the meaning provided in Section 2.11(d).

“Defeasance Obligations” are those described in clause 1 of the definition of Permitted Investments. Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“Delivery Costs” means all items of expense directly or indirectly payable by or reimbursable to the City or the Trustee relating to the sale and execution and delivery of the Purchase Agreement, this Trust Agreement and the Obligations, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Obligations and charges and fees in connection with the foregoing.

“Demand for Payment” shall have the meaning provided in the Reimbursement Agreement.

“Depository Trustee” means any bank or trust company, which may include the Trustee, designated by the City, with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State of Arizona authority.

“Designated Office” means the office designated as such by the Trustee in writing to the City.

“DTC” means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“Electronically” means with respect to notice, one transmitted through a timesharing terminal, computer network or facsimile machine, if operative as between any two parties, or if not operative, by telephone (promptly confirmed in writing).

“Event of Default” means an event of default under the Purchase Agreement as provided in Section \_\_ thereof.

“Excise Taxes” means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and

forfeitures which the City imposes; provided that the Mayor and Council of the City may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council.

“Financing Documents” means this Trust Agreement, the Purchase Agreement and the Reimbursement Agreement.

“Fiscal Agent” means a designee of the Insurer.

“Fiscal Year” means the period commencing each July 1 and ending June 30 of the succeeding calendar year, unless otherwise determined and designated by the City.

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the City or the Trustee.

“Insurer” means Assured Guaranty Corp., a Maryland insurance corporation, or any successor thereto as the provider of the Insurance Policy.

“Insurer Reimbursement Fund” means the fund of that name established pursuant to Article V hereof.

“Interest Payment Date” means each January 1 and July 1, while any Obligations are Outstanding provided that, if any such day is not a Business Day, any payment due on such date may be made on the next Business Day, without additional interest and with the same force and effect as if made on the specified date for such payment.

“Market Value” means the indicated bid value of the investment or investments to be valued as shown in The Wall Street Journal or any publication having general acceptance as a source of valuation of the same or similar types of securities or any securities pricing service available to or used by the Trustee and generally accepted as a source of valuation.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

“Notification” shall have the meaning provided in Section 10.3.

“Outstanding” refers to Obligations issued in accordance with this Trust Agreement, excluding: (i) Obligations which have been exchanged or replaced, or delivered to the Trustee for credit against a mandatory redemption installment; (ii) Obligations which have been paid; (iii) Obligations which have become due and for the payment of which moneys have been duly provided to the Trustee; and (iv) Obligations for which there have been irrevocably set aside with a Depository Trustee sufficient moneys or obligations permitted by the Purchase

Agreement bearing interest at such rates and with such maturities as will provide sufficient funds to pay the principal of and premium, if any, and interest on such Obligations, provided, however, that if any such Obligations are to be redeemed prior to maturity, the City shall have taken all action necessary to redeem such Obligations and notice of such redemption shall have been duly mailed in accordance with the proceedings under which such Obligations were issued or irrevocable instructions so to mail shall have been given to the Trustee.

“Owner” or any similar term, when used with respect to an Obligation means the person in whose name such Obligation shall be registered.

“Payment Fund” means the fund by that name established pursuant to Article V hereof and held by the Trustee.

“Payment Request Form” means the form set forth in Exhibit B which is attached hereto and made a part hereof.

“Permitted Investments” means any of the following, to the extent permitted by law:

1. (A) Cash (fully insured by the Federal Deposit Insurance Corporation), (B) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America (“U.S. Treasury Obligations”), (C) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (D) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (E) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

A. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”) Participation Certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts) and Senior debt obligations;

B. Farm Credit Banks (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) Consolidated system-wide bonds and notes;

C. Federal Home Loan Banks (FHL Banks)  
Consolidated debt obligations and

D. Federal National Mortgage Association (FNMA or “Fannie Mae”) Senior debt obligations and Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding the portion of their unpaid principal amounts).

4. Unsecured certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the City, time deposits, and bankers’ acceptances (having maturities of not more than 365 days) of any bank, including the Trustee or any of its affiliates, the short-term obligations of which are rated “A-1+” or better by S&P and “Prime-1” or better by Moody’s.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$15 million.

6. Commercial paper (having original maturities of not more than 270 days) rated “A-1+” or better by S&P and “Prime-1” or better by Moody’s.

7. Money market mutual funds rated “AAm” or “AAm-G” or higher by S&P or, if rated by Moody’s, “Prime-1” or better by Moody’s, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, the Trustee collects fees for services rendered pursuant to this Trust Agreement, which fees are separate from the fees received from such funds and services performed for such funds and pursuant to this Trust Agreement may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee.

8. “State Obligations”, which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state, the unsecured general obligation debt of which is rated “A3” by Moody’s and “A” by S&P, or higher, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated;

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated “A-1+” or better by S&P and “MIG-1” by Moody’s and

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (B) above and rated “AA-“ or better by S&P and “Aa-3” or better by Moody’s.

9. Pre-refunded municipal obligations rated “AAA” by S & P and “Aaa” by Moody’s meeting the following requirements:

A. The municipal obligations are not subject to redemption prior to maturity or the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. The municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. The principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations (“Verification”);

D. The cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. No substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification and

F. The cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements: With any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least “A-“ by S&P and “A-3” by Moody’s; or any broker-dealer with “retail customers” or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least “A-“ by S&P and “A-3” by Moody’s, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or any other entity rated “A-“ or better by S&P and “A-3” for better by Moody’s and acceptable to the Insurer (each a “Provider”), provided that:

A. Permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and

collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Collateral");

B. The Trustee or a third party acting solely as agent therefore or for the City (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books) and such collateral shall be marked to market;

C. The collateral shall be marked to market on a daily basis and the provider or the Custodian shall send monthly reports to the Trustee, the City and the Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

D. The repurchase agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Insurer;

E. The repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof and

F. The repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A-3" by Moody's, as appropriate, the provider must, notify the City, the Trustee and the Insurer within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: provide a written guarantee acceptable to the Insurer, post Collateral or assign the agreement to a Provider. If the provider does not perform a remedy within ten (10) Business Days, the provider shall, at the direction of the trustee (who shall give such direction if so directed by the Insurer) repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the City or the Trustee.

11. Investment agreements with a domestic or foreign bank or corporation, the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P and "Aa3" by Moody's; and acceptable to the Insurer (each an "Eligible Provider"); provided that:

A. Interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the Acquisition Fund, construction draws) on the Obligations;

B. The invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; the Trustee and the City hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

C. The provider shall send monthly reports to the Trustee, the City and the Insurer setting forth the balance the City or the Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

D. The investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

E. The investment agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Insurer;

F. The City, the Trustee and the Insurer shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;

G. The City, the Trustee and the Insurer shall receive an opinion of foreign counsel to the provider (if applicable) that the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and any judgment rendered by a court in the United States would be recognized and enforceable in such country;

H. The investment agreement shall provide that if during its term:

(1) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3," the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (A) provide a written guarantee acceptable to the Insurer, (B) post Eligible Collateral (as hereinafter defined) with the City, the Custodian free and clear of any third party liens or claims, or (C) assign the agreement to an Eligible Provider, or (D) repay the principal of and accrued but unpaid interest on the investment;

(2) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A-3", the provider must, at the direction of the issuer or the trustee (who shall give such direction if so directed by the Insurer), within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the issuer or trustee;

I. In the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee, the City and the Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

J. The investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof and

K. the investment agreement must provide that if during its term: the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the issuer or the trustee (who shall give such direction if so directed by the Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or the Trustee, as appropriate, and the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or the Trustee, as appropriate.

12. Interests in the Local Government Investment Pool established pursuant to Arizona Revised Statutes Section 35-326.

Agreement. "Policy Coverage" has the meaning provided in the Reimbursement

Agreement. "Policy Limit" has the meaning provided in the Reimbursement

“Policy Payment” has the meaning provided in the Reimbursement Agreement.

“Project Costs” means, with respect to the New Projects, all architectural, engineering, soils, survey, archaeology, demolition, construction management fees, development fees, contingencies and other related costs of installation, construction and other matters necessary for the New Projects and all costs payable to a Contractor under a Construction Contract, or incurred by Trustee or the City with respect to the transaction to which this Trust Agreement pertains.

“Regular Record Date” means the close of business on the fifteenth day of the month preceding each Interest Payment Date.

“Reimbursement Agreement” means the Reimbursement Agreement (Reserve Fund Policy), dated \_\_\_\_\_, 2010, by and between the City and the Insurer.

“Reimbursement Rate” has the meaning provided in Section 13.13 hereof.

“Reimbursement Request Form” means the form set forth in Exhibit C hereof.

“Reserve Account Requirement” or “Reserve Requirement” means \$624,150.

“Responsible Officer” means, when used with respect to the Trustee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any senior associate, any associate or any other officer of the Trustee within the Corporate Trust Office customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Trust Agreement.

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

“Securities Depository” means a “clearing agency” (securities depository) registered under Section 17A of the Securities Exchange Act of 1934, as amended.

“Special Record Date” has the meaning provided in Section 2.11(d).

“State” means the State of Arizona.

“State Shared Revenues” means any amounts of excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State or any agency thereof and returned, allocated or apportioned to the City, except the City’s share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

“Vendor” means any supplier of items for inclusion in the New Projects who is to be paid from amounts held in the Acquisition Fund.

Words importing persons include firms, associations and corporations, and the singular and plural forms of words shall be deemed interchangeable wherever appropriate.

## **ARTICLE II SPECIAL REVENUE OBLIGATIONS**

**Section 2.1. Authorization of the Obligations.** The Trustee is hereby authorized and directed to execute and deliver to the original purchaser thereof, the New Money Obligations in the principal amount of \$\_\_\_\_\_,000 and the Refunding Obligations in the principal amount of \$\_\_\_\_\_,000, evidencing (notwithstanding the multiple series) proportionate ownership interests in the Purchase Agreement and the Payments. In no event shall the Obligations be deemed liabilities, debts or obligations of the Trustee.

**Section 2.2. Date; Interest Accrual.** Each Obligation shall be dated the Closing Date, and interest with respect thereto shall be payable from such date or from the most recent Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Obligations.

**Section 2.3. Maturities and Interest Rates.** The Obligations shall be in Authorized Denominations. The Obligations shall mature on the dates and in the principal amounts, and interest with respect thereto shall be computed at the rates, as shown below:

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rates</u>
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New Money Obligations

2010	\$ ____,000	%
2011	____,000	
2012	____,000	
2013	____,000	
2014	____,000	
2015	____,000	
2016	____,000	
2017	____,000	
2018	____,000	
2019	____,000	
2023	____,000	
2029	____,000	

Refunding Obligations

2010	\$ ____,000	%
2011	____,000	
2012	____,000	
2013	____,000	
2014	____,000	
2015	____,000	
2016	____,000	
2017	____,000	
2018	____,000	
2019	____,000	
2023	____,000	
2029	____,000	

**Section 2.4. Interest on Obligations.** Interest on the Obligations shall be payable semiannually on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_, to and including the date of maturity or prior redemption of the Obligations. Said interest shall represent the portion of the Payments designated as interest and coming due during the six-month period preceding each Interest Payment Date with respect to the Obligations. The proportionate share of the portion of the Payments designated as interest with respect to any Obligation shall be computed by multiplying the portion of Payments designated as principal with respect to such Obligation by the rate of interest applicable to such Obligation (on the basis of a 360-day year of twelve 30-day months).

**Section 2.5. Form.** The Obligations shall be in fully registered, certificated form. The form of the New Money Obligations and the Refunding Obligations shall be substantially in the forms set forth in Exhibits A-1 and A-2, respectively.

**Section 2.6. Execution.** The Obligations shall be executed by and in the name of the Trustee by the manual signature of an authorized representative of the Trustee. If any representative whose signature appears on any Obligation ceases to be such representative before the Closing Date, such signature shall nevertheless be as effective as if the representative had remained in office until the Closing Date. Any Obligation may be executed on behalf of the Trustee by such person as at the actual date of the execution of such Obligation shall be the proper authorized representative of the Trustee although at the nominal date of such Obligation such person shall not have been such authorized representative of the Trustee. No Obligation shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Trust Agreement unless and until executed and delivered by the Trustee. The execution by the Trustee of any Obligation shall be conclusive evidence that the Obligation so executed has been duly authorized and delivered hereunder and is entitled to the security and benefit of this Trust Agreement.

**Section 2.7. Book-Entry Only System.** The Trustee and the City may from time to time enter into, and discontinue, an agreement with a Securities Depository which is the Owner of the Obligations, to establish procedures with respect to the Obligations not inconsistent with the provisions of this Trust Agreement; provided, that, notwithstanding any other provisions of this Trust Agreement, any such agreement may provide that different provisions for notice to the Securities Depository may be set forth herein and that a legend shall appear on each Obligation so long as the Obligations are subject to such agreement. With respect to Obligations registered in the name of a Securities Depository (or its nominee), neither the Trustee nor the City shall have any obligation to any of its members or participants or to any person on behalf of whom an interest is held in the Obligations. It is hereby acknowledged that the City and the Trustee intend to enter into an agreement with DTC in connection with the execution and delivery of the Obligations, and while such agreement is in effect, the procedures established therein shall apply to the Obligations notwithstanding any other provisions of this Trust Agreement to the contrary. As long as DTC is the Securities Depository with respect to the Obligations, the Trustee shall be a "DTC Direct Participant." The Trustee shall not have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Obligations regarding accuracy of any records maintained by DTC or DTC participants, the payments by DTC or DTC participants of any amount in respect of principal, redemption price or interest on the Obligations, any notice which is permitted or required to be given to or by Owners hereunder (except such notice as is required to be given by the City to the Trustee or to DTC), or any consent given or any other action taken by DTC as Owner.

**Section 2.8. Application of Proceeds.** The proceeds received by the Trustee from the sale of the Obligations shall forthwith be applied by the Trustee as follows:

- (1) \$ \_\_\_\_\_ shall be \_\_\_\_\_;
- (2) \$ \_\_\_\_\_ shall be deposited in the Costs of Issuance Fund and

(3) \$ \_\_\_\_\_ shall be deposited in the Acquisition Fund.

The Trustee shall also receive the Debt Service Reserve Fund Policy for the credit of the Debt Service Reserve Fund.

**Section 2.9. Transfer and Exchange.**

(a) Any Obligation may, in accordance with its terms, be transferred upon the registration books for the Obligation required to be kept pursuant to the provisions of Section 2.13 hereof by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Obligation for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Obligation or Obligations shall be surrendered for transfer, the Trustee shall execute and deliver a new Obligation or Obligations in fully registered form of the series, maturity and interest rate and for a like aggregate principal amount.

(b) Obligations may be exchanged at the Designated Office for a like aggregate principal amount of Obligations of Authorized Denominations of the same series, maturity and interest rate. In connection with any such exchange or transfer of Obligations, the Owner requesting such exchange or transfer shall, as a condition precedent to the exercise of the privilege of making such exchange or transfer, remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid, other than one imposed by the City (which will not be payable by the Trustee), or any fee or expense of the Trustee or the City with respect to such exchange or transfer.

(c) The Trustee may, but shall not be obligated to, exchange or register the transfer of an Obligation (i) if the Obligation is to be redeemed, in whole or in part, or (ii) during a period of fifteen (15) days preceding the giving of a notice of redemption. If an Obligation subject to redemption is to be transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation or Obligations.

**Section 2.10. Obligations Mutilated, Lost, Destroyed or Stolen.** If any Obligation shall become mutilated, the Trustee, at the expense of the Owner of said Obligation, shall execute and deliver a new Obligation of like series, tenor, maturity and amount in exchange and substitution for the Obligation so mutilated, but only upon surrender to the Trustee of the Obligation so mutilated. Any mutilated Obligation so surrendered to the Trustee shall be cancelled by it and redelivered to, or upon the order of, the Owner of such Obligation. If any Obligation shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and, if an indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Owner of such Obligation, shall execute and deliver a new Obligation of like series, tenor, maturity and amount and numbered as the Trustee shall determine in lieu of and in substitution for the Obligation so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Obligation delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section. Any Obligation issued under the provisions

of this Section in lieu of any Obligation alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Obligations secured by this Trust Agreement. The Trustee shall not be required to treat both the original Obligation and any replacement Obligation as being Outstanding for the purpose of determining the principal amount of Obligations which may be executed and delivered hereunder or for the purpose of determining any percentage of Obligations Outstanding hereunder, but both the original and replacement Obligation shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Obligation for an Obligation which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Obligation upon receipt of the aforementioned indemnity.

**Section 2.11. Payment.**

(a) Payment of interest due with respect to any Obligation on any Interest Payment Date shall be made to the person appearing on the registration books for the Obligation maintained by the Trustee as the Owner thereof as of the Regular Record Date immediately preceding such Interest Payment Date, such interest to be paid by check mailed on the date due by first class mail to such Owner at the address thereof as it appears on such registration books, payable in lawful money of the United States of America.

(b) The principal and redemption price, if any, with respect to the Obligations shall be payable in lawful money of the United States of America upon surrender when due at the Designated Office.

(c) Interest and, if arrangements for surrender are made with the Trustee, principal and redemption price, if any, payable to any securities depository or to any Owner of \$1,000,000 or more in principal amount of Obligations shall be paid by wire transfer in immediately available funds to an account in the United States of America if the Owner makes a written request of the Trustee at least twenty (20) days before the Interest Payment Date specifying the account address. The notice may provide that it shall remain in effect for subsequent payments until otherwise requested in a subsequent written notice.

(d) Any interest on any Obligation which is payable on, but is not punctually paid or duly provided for on, any Interest Payment Date (“Defaulted Interest”) shall forthwith cease to be payable to the Owner on the relevant Regular Record Date solely by virtue of such Owner having been such Owner. Such Defaulted Interest shall thereupon be paid, together with interest thereon at the same rate per annum as such Defaulted Interest, by the Trustee (out of funds provided to it by the City) to the persons in whose names such Obligations are registered at the close of business on a special record date for the payment of such portion of Defaulted Interest as may then be paid from the sources herein provided (the “Special Record Date”). When the Trustee has funds available to pay the Defaulted Interest and interest thereon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest and interest thereon which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment by the Trustee. The Trustee shall promptly cause notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor to be mailed, first class postage prepaid, to each Owner of an Obligation at his address as it appears in the registration books by the Trustee for the Obligation not less than ten (10) days

prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest and interest thereon shall be paid to the persons in whose names the Obligation are registered on such Special Record Date.

**Section 2.12. Execution of Documents and Proof of Ownership.**

(a) Any request, direction, consent, revocation of consent or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Obligation Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Obligations. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Obligations shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(1) The fact and date of the execution by any Owner or the attorney or agent thereof of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority.

(2) The fact of the ownership of Obligations by any person and the amount, the maturity and the numbers of such Obligations and the date of his holding the same be proved on the registration books maintained pursuant to Section 2.13 hereof.

(b) Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Obligation shall bind every future Owner of the same Obligation in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

**Section 2.13. Obligation Register.** The Trustee will keep or cause to be kept, at the Designated Office, sufficient books for the registration and transfer of each series of the Obligations which shall at all times during regular business hours on any Business Day be open to inspection by the City and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Obligations as hereinbefore provided.

**Section 2.14. Payment of Unclaimed Amounts.** In the event any check for payment of interest on an Obligation is returned to the Trustee unendorsed or is not presented for

payment within two (2) years from its payment date or any Obligation is not presented for payment of principal at the maturity or redemption date, if funds sufficient to pay such interest or principal due upon such Obligation shall have been made available to the Trustee for the benefit of the Owner thereof, it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Obligation who shall thereafter be restricted exclusively to such funds for any claim of whatever nature relating to such Obligation or amounts due thereunder. The obligation of the Trustee to hold such funds shall continue for two years and six months (subject to applicable escheat laws) following the date on which such interest or principal payment became due, whether at maturity or the date fixed for redemption, or otherwise, at which time the Trustee shall surrender such unclaimed funds so held to the City, whereupon any claim of whatever nature by the Owner of such Obligation arising under such Obligation shall be made upon the City.

**ARTICLE III**  
**APPLICATION OF PROCEEDS RECEIVED BY TRUSTEE;**  
**ACQUISITION FUND; COSTS OF ISSUANCE FUND**

**Section 3.1. Establishment and Application of Acquisition Fund.**

(a) The Trustee shall establish a special trust fund designated as the “City of Benson Acquisition Fund” (herein referred to as the “Acquisition Fund”); shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Trust Agreement.

(b) Pursuant to the Purchase Agreement and subject to the terms and conditions thereof, the City has irrevocably been appointed as the sole and exclusive agent to act for and on behalf of the Trustee in the installation and construction of the New Projects. Except as provided in Subsection (c)(4), moneys in the Acquisition Fund shall be expended only for Project Costs. It is understood and agreed that the Trustee shall have no responsibility or liability for the performance of the City under this Trust Agreement, the Purchase Agreement, and any other documents executed in connection herewith or therewith.

(c) (1) The amount in the Acquisition Fund shall be applied to the payment of the Project Costs, as hereinafter provided, upon receipt of a duly executed Payment Request Form (upon which the Trustee is entitled to rely) in substantially the form attached hereto as Exhibit B, certified to by the City Representative. The Trustee shall remit to the payee designated in the Payment Request Form, the amount requested to be paid in such Payment Request Form within three (3) Business Days following submission of such Payment Request Form. Notwithstanding the foregoing, the Trustee shall apply moneys on deposit in the Acquisition Fund to reimburse the City for any Project Costs incurred or advanced by the City within three (3) Business Days of receipt of a duly executed Reimbursement Request Form in substantially the form attached hereto as Exhibit C duly certified by the City Representative. The City shall not submit, in the aggregate, more than four (4) Payment Request Forms and/or Reimbursement Request Forms in any one calendar month.

(2) Project Costs will be paid directly to the Contractor, the Vendor or the payee named in the Payment Request Form unless the Contractor, the Vendor, the payee named or the City Representative request payment to be made to the Contractor, the Vendor or the named payee and another party jointly, in which case such cost shall be paid jointly.

(3) Should any shortfall or deficiency occur in the Acquisition Fund, the City shall immediately pay such amounts to the Trustee in addition to the Payments otherwise due pursuant to the Purchase Agreement.

(4) Amounts in the Acquisition Fund shall be used to pay principal of and interest on the Obligations if insufficient funds are otherwise available to make such payments when due.

(5) On the Completion Date, all remaining moneys in the Acquisition Fund shall be transferred to the Payment Fund and applied by the Trustee to the Payments due from the City on the next succeeding Interest Payment Date.

(6) Any amount remaining in the Acquisition Fund upon the occurrence of an Event of Default shall not be disbursed as provided in this Section, but shall be immediately transferred to the Payment Fund and used to pay principal and interest with respect to the Obligations.

**Section 3.2. Establishment and Application of Costs of Issuance Fund.**

(a) The Trustee shall establish a special trust fund designated as the “City of Benson Costs of Issuance Fund” (herein referred to as the “Costs of Issuance Fund”), shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Trust Agreement.

(b) Amounts in the Costs of Issuance Fund shall be disbursed for Delivery Costs. Disbursements from the Costs of Issuance Fund shall be made by the Trustee upon receipt of a requisition for disbursement (on which the Trustee is entitled to rely) executed or approved by the City Representative. Each such certificate shall set forth the amounts to be disbursed for payment, or reimbursement of previous payments, of Delivery Costs and the person or persons to whom said amounts are to be disbursed.

(c) On the earlier of \_\_\_\_\_, 2010, or when all Delivery Costs associated with the Obligations have been paid (as shown by a certificate of a City Representative, if requested by the Trustee), the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Payment Fund and the Costs of Issuance Fund shall be closed.

**ARTICLE IV  
REDEMPTION OF OBLIGATIONS**

**Section 4.1. Redemption Provisions.**

(a) The Obligations maturing before or on July 1, 20\_\_, are not subject to redemption prior to maturity. The Obligations maturing on or after July 1, 20\_\_, are subject to redemption in such order and from such maturities as may be selected by the City and by lot within any maturity by such methods as may be selected by the Trustee from prepayments made at the option of the City pursuant to Section 7 of the Purchase Agreement, in whole or in part on any date, on or after July 1, 20\_\_, at a redemption price equal to the principal amount of Obligations or portions thereof to be redeemed, together with accrued interest to the date fixed for redemption, but without premium.

(b) (1) The New Money Obligations maturing on July 1 of the following years shall be redeemed on July 1 of the years indicated and in the principal amounts indicated at a price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year Redeemed</u>	<u>Principal Amount Redeemed</u>
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
20__	__,000
20__	__,000

(2) The Refunding Obligations maturing on July 1 of the following years shall be redeemed on July 1 of the years indicated and in the principal amounts indicated at a price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year Redeemed</u>	<u>Principal Amount Redeemed</u>
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ ____,000
20__	__,000
20__	__,000
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ ____,000
20__	__,000
20__	__,000
20__	__,000
20__	__,000

(3) Whenever Obligations subject to mandatory redemption are purchased, redeemed (other than by mandatory redemption) or are delivered by the City to the Trustee for cancellation, the principal amount of the Obligations so retired shall satisfy and be credited against the mandatory redemption requirements therefor in any order specified by the City.

**Section 4.2. Selection of Obligations for Redemption.** The Obligations shall be redeemed only in the principal amounts of \$5,000 each or integral multiples thereof. The City shall, at least forty-five (45) days prior to the redemption date, notify the Trustee of such redemption date and of the maturities of the Obligations and the principal amount of the Obligations of any such maturity to be redeemed on such date. For the purposes of any redemption of less than all of the Obligations of a series of a single maturity, if the Obligations are not held in a book-entry-only system as described in Section 2.7, the particular Obligations or portions of Obligations of such maturity to be redeemed shall be selected by the Trustee by lot in accordance with its standard procedures not more than forty-five (45) nor less than thirty (30) days prior to the redemption date by such selection methods as the Trustee shall in its sole discretion deem appropriate and fair; provided, however, that such selection methods shall provide for the selection of Obligations or portions thereof for redemption in principal amounts of \$5,000 or integral multiples thereof such that any \$5,000 Obligation or \$5,000 portion of an Obligation of such maturity shall be as likely to be called for redemption as any other such \$5,000 Obligation or \$5,000 portion thereof. The Trustee shall promptly notify the City in writing of the Obligations so selected for redemption, and the City will provide the Trustee within thirty (30) days a recomputed payment schedule for the Purchase Agreement.

**Section 4.3. Notice of Redemption; Effect.**

(a) The Trustee shall cause notice of any redemption of Obligations hereunder, other than redemption at maturity, to be mailed to the Owners of all of the Obligations to be redeemed at the addresses appearing in the Register kept for such purpose pursuant to Section 2.13 hereof. Each such notice shall (1) be sent no more than 60 nor less than 30 calendar days prior to the redemption date, (2) identify the Obligations to be redeemed (specifying the CUSIP numbers, if any, assigned to the Obligations), (3) specify with respect to

the Obligations being redeemed their series, their date of issue, their maturity date, their redemption date and their redemption price, (4) set forth the name, address and telephone number of the person from whom information pertaining to the redemption may be obtained, and (5) state that on the redemption date the Obligations to be redeemed will be payable at the Designated Office, that from that date interest will cease to accrue and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Obligations. No defect affecting any Obligation, whether in the notice of redemption or the delivery thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Obligations.

(b) If at the time of mailing of notice of an optional redemption of Obligations, there has not been deposited with the Trustee moneys or Defeasance Obligations sufficient to redeem all Obligations subject to such redemption and the requirements of (e) below are not satisfied, then such notice shall state that the redemption is conditional upon the deposit of moneys or Defeasance Obligations sufficient for the redemption with the Trustee and satisfaction of such requirements not later than the opening of business on the redemption date, and such notice will be of no effect and such Obligations shall not be redeemed unless such moneys or Defeasance Obligations are so deposited and such requirements in (d) below are met.

(c) Any notice of redemption shall be mailed by first class mail, postage prepaid; provided that any notice of redemption given to any Owner of \$1,000,000 or more in aggregate principal amount of Obligations also shall be transmitted electronically. A certificate of the Trustee shall conclusively establish the mailing or delivery of any such notice for all purposes.

(d) Notice having been mailed in the manner provided in (b) above, the Obligations and portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus interest accrued to the redemption date.

(e) If the money or Governmental Obligations for the redemption of all of the Obligations and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee on the redemption date, so as to be available therefor on that date, then from and after the redemption date those Obligations and portions thereof to be redeemed shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If those moneys shall not be so available on the redemption date, those Obligations and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

(f) All moneys deposited in the Payment Fund and held by the Trustee for the redemption of particular Obligations shall be held in trust for the account of the Owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Obligations.

**Section 4.4. Partial Redemption of Obligation.** Upon surrender of any Obligation redeemed in part only, the Trustee shall execute and deliver to the Owner thereof, at the expense of the City, a new Obligation or Obligations of Authorized Denominations equal in

aggregate principal amount to the unredeemed portion of the Obligation surrendered and of the same series and maturity.

**ARTICLE V**  
**PAYMENT FUND; DEBT SERVICE RESERVE FUND**  
**AND INSURER REIMBURSEMENT FUND**

**Section 5.1. Trustee’s Rights in Purchase Agreement.** The Trustee holds in trust hereunder all of its rights and duties in the Purchase Agreement, including but not limited to all of the rights to receive and collect all of the Payments and all other amounts required to be deposited in the Payment Fund, the Debt Service Reserve Fund and the Insurer Reimbursement Fund pursuant to the Purchase Agreement or pursuant hereto. All of the Payments and such other amounts to which the Seller may at any time be entitled shall be paid directly to the Trustee in trust, and all of the Payments collected or received by the Trustee shall be held by the Trustee in trust hereunder in the Payment Fund, the Debt Service Reserve Fund and the Insurer Reimbursement Fund for the benefit of the Owners.

**Section 5.2. Establishment and Application of Payment Fund.**

(a) The Trustee shall establish a special trust fund designated as the “Series 2010 Excise Tax and State Shared Revenue Payment Fund” (herein referred to as the “Payment Fund”). So long as any Obligations are Outstanding, the City shall have no beneficial right or interest in the Payment Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

(b) Subject to the limitations pursuant to the Purchase Agreement with respect to the revenues from the Excise Tax Revenues and the State Shared Revenues, the City shall be required to make the Payments, taking into account any funds on deposit in the Payment Fund as a credit towards any Payment then due. The Trustee, not less than ten (10) Business Days prior to each Interest Payment Date, shall notify the City of the amount required to be paid after taking into account earnings on investments which will be transferred to the Payment Fund in accordance herewith, on or before such Interest Payment Date for both principal and interest with respect to the Obligation. All amounts received by the Trustee as Payments pursuant to the Purchase Agreement shall be deposited in the Payment Fund.

(c) All amounts in the Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and interest and redemption premiums, if any, with respect to the Obligations as the same shall become due and payable, in accordance with the provisions of Articles II and IV hereof.

**Section 5.3. Establishment and Application of Debt Service Reserve Fund.**

(a) The Trustee shall establish a special trust fund designated as the “Debt Service Reserve Fund” (herein referred to as the “Debt Service Reserve Fund”). So long as any Obligations are Outstanding, the City shall have no beneficial right or interest in the Debt

Service Reserve Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

(b) (1) Commencing on the fifteenth (15th) Business Day of the month following a payment made from the Debt Service Reserve Fund as hereinafter described, the Trustee shall deposit into the Debt Service Reserve Fund from amounts paid pursuant to Section 1(c) of the Purchase Agreement the amount required pursuant to such section to restore the Debt Service Reserve Fund to an amount equal to the Reserve Requirement.

(2) No deposit need be made into the Debt Service Reserve Fund if the maximum amount of the Debt Service Reserve Fund Policy is at least equal to the Reserve Requirement . (If and to the extent that money has been deposited in the Debt Service Reserve Fund, all such money shall be used (or investments purchased with such money shall be liquidated and the proceeds applied as required) prior to any drawing under the Debt Service Reserve Fund Policy.)

(3) Amounts in the Debt Service Reserve Fund shall be withdrawn (i) on the fourth (4th) Business Day immediately preceding any payment date for the Obligations and used solely for the purpose of paying the scheduled interest on or principal of the Obligations in the event that no money of the City is made available therefor pursuant to the Purchase Agreement or (ii), if from other than amounts deposited pursuant to Section 5.4(b)(1), otherwise for the retirement of all of the Obligations then Outstanding.

(4) If immediately before any transfer described in Section 5.5 hereof the amount in the Debt Service Reserve Fund exceeds an amount equal to the Reserve Requirement and if the City is not then in default under the Purchase Agreement, the Trustee shall withdraw the amount of any such excess from such fund and shall apply such amount, *first*, to pay amounts due with respect to the Debt Service Reserve Fund Policy (including by transferring amounts to the Insurer Reimbursement Fund) and, *then*, as a deposit to the Payment Fund.

**Section 5.4. Establishment and Application of Insurer Reimbursement Fund.**

(a) The Trustee shall establish a special trust fund designated as the “Insurer Reimbursement Fund” (herein referred to as the “Insurer Reimbursement Fund”). So long as any Obligations are Outstanding, the City shall have no beneficial right or interest in the Insurer Reimbursement Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

(b) (1) In the event that there is insufficient money in the Debt Service Reserve Fund available for the scheduled payment of the principal of and interest on the Obligations, then in that event, the Trustee is hereby authorized and directed to deliver to the Insurer, at least three (3) Business Days prior to the date on which the funds are required, a Demand for Payment in order to effect payment of the principal of and interest on the Obligations. (The Trustee shall, upon receipt of moneys received from the draw on the Debt

Service Reserve Fund Policy, as specified in the Demand for Payment, credit the Debt Service Reserve Fund to the extent of moneys received pursuant to such Demand.)

(2) Any amounts advanced by the Insurer as a result of the foregoing shall be reimbursed from the amounts paid pursuant to Section 1(c) of the Purchase Agreement, until the Policy Coverage equals the Policy Limit. Commencing on the fifteenth (15th) Business Day of the month following a payment made under the Debt Service Reserve Fund Policy, the Trustee shall, from such amounts paid pursuant to the Purchase Agreement, deposit in the Insurer Reimbursement Fund an amount of money equal to the amount required to reimburse the Insurer for any Policy Payment and interest owed by the City to the Insurer under the Debt Service Reserve Fund Policy as well as for any other moneys owed by the City to the Insurer under the Reimbursement Agreement. No deposit need be made into the Insurer Reimbursement Fund until such time as the Insurer has made a payment under the Debt Service Reserve Fund Policy. All moneys in the Insurer Reimbursement Fund shall be used and withdrawn by the Trustee at the direction of the Insurer solely for the purpose of reimbursing the Insurer for payments made by the Insurer under the Debt Service Reserve Fund Policy and related interest and other moneys owed by the City to the Insurer under the Reimbursement Agreement.

**Section 5.5. Transfers of Investment Earnings to Payment Fund.** Except as otherwise directed by the City, the Trustee shall, on or before the next Interest Payment Date occurring on July 1, transfer any income or profit on the investment of moneys in the funds hereunder to the Payment Fund.

**Section 5.6. Surplus.** Any surplus remaining in any of the funds created hereunder, after redemption and payment or provision for redemption and payment of all Obligations, including accrued interest and redemption premium, if any, and payment of any applicable fees, expenses or indemnities to the Trustee, or provision for such redemption and payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the City.

## **ARTICLE VI MONEYS IN FUNDS; INVESTMENT; CERTAIN TAX COVENANTS**

**Section 6.1. Held in Trust.** The moneys and investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the Owners of the Obligations and for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the City or any Owner of the Obligations.

**Section 6.2. Investments Authorized.** Upon written order of the City Representative, moneys held by the Trustee hereunder shall be invested and reinvested by the Trustee, to the maximum extent practicable in Permitted Investments having the highest yield reasonably obtainable. The City Representative shall direct such investment in specific Permitted Investments. Such investments, if registrable, shall be registered in the name of the

Trustee and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. The Trustee shall have no obligation to invest and reinvest any cash held by it hereunder in the absence of timely and specific written direction from the City Representative. In no event shall the Trustee be liable for the selection of investments. The Trustee may conclusively rely upon such written direction from the City Representative as to both the suitability and legality of the directed investments. The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the City specifically waives compliance with 12 Code of Federal Regulations 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 6.3. Accounting.** The Trustee shall furnish to the City, not less than semiannually, an accounting (which may be in the form of its customary statement) of all investments made by the Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 6.2 hereof.

**Section 6.4. Allocation of Earnings.** Any income, profit or loss on such investments shall be deposited in or charged to the respective funds from which such investments were made, and any interest on any deposit of funds shall be deposited in the fund from which such deposit was made, except as otherwise provided herein. At the direction of the City Representative, any such income, profit or interest shall be transferred and applied if necessary to pay amounts due pursuant to section 148 of the Code.

**Section 6.5. Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at Market Value. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment.

**Section 6.6. Limitation of Investment Yield.** In the event the City is of the opinion that it is necessary to restrict or limit the yield on the investment of any amounts paid to or held by the Trustee hereunder in order to avoid the Obligations, or any of them, being considered “arbitrage bonds” within the meaning of section 148 of the Code, the City Representative may issue to the Trustee a written certificate to such effect (along with appropriate instructions), in which event the Trustee will take such action as is instructed so to restrict or limit the yield on such investment in accordance with the specific instructions contained in such certificate, irrespective of whether the Trustee shares such opinion.

**Section 6.7. Other Tax Covenants.** In consideration of the acceptance and execution of the Purchase Agreement by the Trustee and the purchase by the Owners, from time

to time, and in consideration of retaining the exclusion of the portion of each Payment denominated as and comprising interest pursuant to the Purchase Agreement and received by the Owners for federal income tax purposes, the City shall, from time to time, neither take nor fail to take any action, which action or failure to act is within its power and authority and would result in such portion of each such Payment becoming subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of the Purchase Agreement or such laws as they may be modified or amended or tax laws later adopted. The City shall comply with such requirement(s) and will take any such action(s) as are necessary to prevent such portion of each such Payment from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by special counsel; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to the Obligations; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys held pursuant to this Trust Agreement and limiting the use of the proceeds of the Obligations and property financed thereby.

## **ARTICLE VII THE TRUSTEE**

**Section 7.1. Appointment of Trustee.** The City hereby authorizes and directs the Trustee to, and the Trustee shall, execute and deliver the Purchase Agreement, as Seller, and receive all moneys required to be deposited with the Trustee hereunder and shall allocate, use and apply the same as provided in this Trust Agreement. The City shall maintain as the Trustee a bank or trust company with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal or State authority, so long as any of the Obligations are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

**Section 7.2. Liability of Trustee; Standard of Care.** Except with respect to its authority and power generally and authorization to execute this Trust Agreement, the recitals of facts, covenants and agreements herein, in the Purchase Agreement and in the Obligations shall be taken as statements, covenants and agreements of the City, and the Trustee assumes no responsibility for the correctness of the same, or makes any representations as to the validity hereof or sufficiency of this Trust Agreement, the Purchase Agreement or of the Obligations or shall incur any responsibility in respect hereof or thereof, other than in connection with the duties or obligations herein or in the Obligations assigned to or imposed upon them, respectively. Prior to the occurrence of an Event of Default, or after the timely cure of an Event of Default, the Trustee shall perform only such duties as are specifically set forth in this Trust Agreement and no implied obligations or covenants should be read into this Trust Agreement against the

Trustee. After the occurrence of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it, and use the same degree of care and skill in such exercise, as a prudent person would exercise under the circumstances in the conduct of the affairs of the Trustee.

**Section 7.3. Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 7.1 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Section 7.4. Protection and Rights of the Trustee.**

(a) The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificates, statements, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Obligation or to take any action at his request unless such Obligation shall be deposited with the Trustee and satisfactory evidence of the ownership of such Obligation shall be furnished to the Trustee. The Trustee may consult with counsel with regard to legal questions, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

(b) Whenever in the administration of its duties under this Trust Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of the City Representative and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Trust Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

(c) The Trustee may become the Owner of the Obligations with the same rights it would have if it were not Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Obligations, whether or not such committee shall represent the Owners of the majority in principal amount of the Obligations then Outstanding.

(d) The recitals, statements and representations by the City contained in this Trust Agreement, the Purchase Agreement or in the Obligations shall be taken and construed as made by and on the part of the City and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

(e) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Trust Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or gross negligence.

(f) No provision in this Trust Agreement shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(g) The Trustee shall not be accountable for the use or application by the City or any other party of any funds which the Trustee has released in accordance with the terms of this Trust Agreement.

(h) The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the New Projects. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Purchase Agreement or this Trust Agreement for the acquisition, construction, improving, existence, furnishing or use of the New Projects.

(i) Notwithstanding any provision in this Trust Agreement or the Purchase Agreement to the contrary, the Trustee shall not be required to take notice or be deemed to have notice of an Event of Default, except an Event of Default under Section 9(a)(i)(A) of the Purchase Agreement, unless a Responsible Officer of the Trustee has actual notice thereof or is specifically notified in writing of such default by the City or the Owners of at least twenty-five percent (25%) in aggregate principal amount of all Obligations then Outstanding.

(j) The Trustee agrees to accept and act upon instructions or directions pursuant to this Trust Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If

the City elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(k) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

(l) The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of those Obligations.

(m) The permissive right of the Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful default. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the New Projects.

(n) Before taking any action under this Trust Agreement relating to an Event of Default or in connection with its duties under this Trust Agreement other than making payments of principal and interest on the Obligations as they become due, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances and except liability which is adjudicated, to have resulted from its gross negligence or willful default in connection with any action so taken.

(o) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Obligations then outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement.

**Section 7.5. Compensation of Trustee.** The City shall from time to time, pursuant to a fee schedule agreed to between the City and the Trustee (which schedule may be amended in writing), pay to the Trustee reasonable compensation for its services, including but not limited to advances to, and reasonable fees and expenses of, independent appraisers,

accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 7.6. Removal and Resignation of Trustee.**

(a) The City (but only if no Event of Default has occurred and is continuing) or the Owners of a majority in aggregate principal amount of all Obligations Outstanding, at any time upon thirty (30) days' prior written notice, and for any reason, may remove the Trustee and any successor thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section, the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) The Trustee may at any time resign by giving written notice to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor trustee by an instrument in writing; provided, however, that in the event that the City does not appoint a successor trustee within thirty (30) days following receipt of such notice of resignation or its giving notice of removal, the retiring Trustee may petition the appropriate court having jurisdiction to appoint a successor trustee. Any resignation or removal of the Trustee and appointment of a successor trustee shall become effective upon acceptance of appointment by the successor trustee. The Trustee and the City shall execute any documents reasonably required to effect the transfer of rights and obligations of the Trustee to the successor trustee subject, however, to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable fees and expenses of its counsel) and the indemnification under Sections 7.4 and 10.3 hereof. Upon such acceptance, the successor trustee shall mail notice thereof to the Owners of the Obligations at their respective addresses set forth on the registration books for the Obligations maintained pursuant to Section 2.13 hereof.

**Section 7.7. Appointment of Agent.** The Trustee may appoint an agent or agents to exercise any of the powers, rights or remedies granted to the Trustee under this Trust Agreement and to hold title to property or to take any other action which may be desirable or necessary.

**Section 7.8. Commingling.** The Trustee may commingle any of the funds held by it pursuant to this Trust Agreement in a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the Trustee hereunder shall be accounted for separately notwithstanding such commingling by the Trustee.

**Section 7.9. Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City, or any of its agents, at any time, upon reasonable prior notice, during regular business hours. The Trustee shall provide the City Representative with semiannual reports of funds transactions and balances.

## **ARTICLE VIII MODIFICATION OR AMENDMENT OF AGREEMENTS**

### **Section 8.1. Amendments Permitted.**

(a) This Trust Agreement and the rights and obligations of the Owners of the Obligations and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement which shall become effective when the written consent of the Owners of a majority in aggregate principal amount of all Obligations then Outstanding, exclusive of Obligations disqualified as provided in Section 8.3 hereof, shall have been filed with the Trustee. No such modification or amendment shall (1) extend or have the effect of extending the fixed maturity of any Obligation or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the redemption thereof, without the express consent of the Owner of such Obligation, or (2) reduce or have the effect of reducing the percentage of Obligations required for the affirmative vote or written consent to an amendment or modification of this Trust Agreement or the Purchase Agreement, or (3) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental or amending agreement shall become effective as provided in Section 8.2 hereof.

(b) This Trust Agreement and the rights and obligations of the Owners of the Obligations, and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement, without the consent of any such Owners or the Insurer, but only (1) to provide for additions or modifications to the New Projects, (2) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Trustee (for its own behalf) or the City, (3) to secure additional revenues or provide additional security or reserves for payment of the Obligations, (4) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder, (5) to provide for the appointment of a successor trustee pursuant to the terms hereof, (6) to preserve the exclusion of the interest on the Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the City to continue to issue bonds or other obligations the interest on which is likewise exempt from federal and State income taxes, (7) to cure, correct or supplement any ambiguous or defective provision contained herein or therein, (8) with respect to rating matters or (9) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not materially adversely affect the interests of the Owners of the Obligations as evidenced by an opinion of counsel delivered by the City to the Trustee. Any such supplemental or amending agreement shall become effective upon execution and delivery

by the parties hereto or thereto as the case may be. The Trustee may rely upon an opinion of Independent Counsel which is also nationally recognized bond counsel as conclusive evidence that any such supplemental or amending agreement complies with this Section.

**Section 8.2. Procedure for Amendment With Written Consent of Obligation Owners.**

(a) This Trust Agreement and the Purchase Agreement may be amended by supplemental or amending agreement as provided in this Section in the event the consent of the Owners of the Obligations are required pursuant to Section 8.1 hereof. A copy of such supplemental or amending agreement, together with a request to the Owners of the Obligation for their consent thereto, shall be mailed by the Trustee to each Owner of an Obligation at the address thereof as set forth on the registration books for the Obligations maintained pursuant to Section 2.13 hereof, but failure to mail copies of such supplemental or amending agreement and request shall not affect the validity of the supplemental or amending agreement when assented to as in this Section provided.

(b) Such supplemental or amending agreement shall not become effective unless there shall be filed with the Trustee the written consent of the Owners of a majority in principal amount of all Obligations then Outstanding (exclusive of Obligations disqualified as provided in Section 8.3 hereof) and a notice shall have been mailed as hereinafter in this Section provided. The consent of an Owner of an Obligation shall be effective only if accompanied by proof of ownership of the Obligations for which such consent is given, which proof shall be such as is permitted by Section 2.12 hereof. Any such consent shall be binding upon the Owner of the Obligation giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

(c) After the Owners of the required percentage of Obligations shall have filed their consents to such supplemental or amending agreement, the Trustee shall mail a notice to the Owners of the Obligations in the manner hereinbefore provided in this Section for the mailing of such supplemental or amending agreement of the notice of adoption thereof, stating in substance that such supplemental or amending agreement has been consented to by the Owners of the required percentage of Obligations and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental or amending agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental or amending agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Obligations at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty (60) day period.

**Section 8.3. Disqualified Obligations.** Obligations owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or

indirect common control with the City (except any Obligations held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any vote, consent, waiver or other action or any calculation of Outstanding Obligations provided for in this Trust Agreement and shall not be entitled to vote upon, consent to, or take any other action provided for in this Trust Agreement; provided, however, that in determining whether the Trustee shall be protected in relying upon any such approval or consent of an Owner, only Obligations which a Responsible Officer of the Trustee actually knows to be owned or held by the City, or by any person directly or indirectly controlled by, or under direct or indirect common control with the City (except any Obligations held in any pension or retirement fund) shall be deemed not to be Outstanding unless all Obligations are so owned, in which case such Obligations shall be considered Outstanding for the purpose of such determination.

**Section 8.4. Effect of Supplemental Trust Agreement.** From and after the time any supplemental or amending agreement becomes effective pursuant to this Article VIII, this Trust Agreement or the Purchase Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Obligations Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental or amending agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Purchase Agreement, as the case may be, for any and all purposes. The Trustee may require each Owner, before his consent provided for in this Article VIII shall be deemed effective, to reveal whether the Obligations as to which such consent is given are disqualified as provided in Section 8.3 hereof.

**Section 8.5. Endorsement or Replacement of Obligations Delivered After Amendments.** The Trustee may determine that Obligations delivered after the effective date of any action taken as provided in this Article shall bear a notation, by endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand of the Owner of any Obligation Outstanding at such effective date and presentation of his Obligation for the purpose at the office of the Trustee, a suitable notation shall be made on such Obligation. The Trustee may determine that the delivery of substitute Obligations, so modified as in the opinion of the Trustee is necessary to conform to such Obligation Owners' action, which substitute Obligations shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner of any Obligation then Outstanding, such substitute Obligation shall be exchanged at the Designated Office of the Trustee, without cost to such Owner, for an Obligation of the same character then Outstanding, upon surrender of such Outstanding Obligation.

**Section 8.6. Amendatory Endorsement of Obligations.** The provisions of this Article shall not prevent any Obligation Owner from accepting any amendment or supplement as to the particular Obligations held thereby, provided that proper notation thereof is made on such Obligations.

**ARTICLE IX  
COVENANTS, NOTICES**

**Section 9.1. Compliance With and Enforcement of Purchase Agreement.**

The City shall perform all obligations and duties imposed on it under the Purchase Agreement and shall not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be an Event of Default. The City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting any such action will deliver the same, or a copy thereof, to the Trustee.

**Section 9.2. Observance of Laws and Regulations.**

The City shall well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a political subdivision, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

**Section 9.3. Recordation and Filing.**

The City shall file this Trust Agreement (or a memorandum thereof or a financing statement with respect thereto), and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Owners.

**Section 9.4. Further Assurances.**

The Trustee (at the reasonable request of the City) and the City shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement and the Purchase Agreement and for the better assuring and confirming unto the Owners the rights and benefits provided herein.

**Section 9.5. Notification to the City of Failure to Make Payments.**

The Trustee shall notify the City of any failure by the City to make any Payment or other payment required under the Purchase Agreement to be made to the Trustee, in writing and within one (1) Business Day of any such failure. Such notice shall not be a prerequisite for the occurrence of an Event of Default.

**Section 9.6. Business Days.**

Except as otherwise required herein, if this Trust Agreement or the Purchase Agreement requires any party to act on a specific day and such day is not a Business Day, such party need not perform such act until the next succeeding Business Day, and such act shall be deemed to have been performed on the day required.

**ARTICLE X**  
**LIMITATION OF LIABILITY**

**Section 10.1. Limited Liability of the City.** Except for the payment of Payments from the revenues from the Excise Taxes and the State Shared Revenues when due in accordance with the Purchase Agreement and the performance of the other covenants and agreements of the City contained in the Purchase Agreement and herein, the City shall have no pecuniary obligation or liability to any of the other parties or to the Owners with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Obligations or the distribution of Payments to the Owners by the Trustee.

**Section 10.2. No Liability of the City for Trustee Performance.** The City shall have no obligation or liability to any of the other parties or to the Owners with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

**Section 10.3. Indemnification of the Trustee.**

(a) To the extent permitted by law, the City shall indemnify and save the Trustee and its officers, directors, agents and employees, harmless for, from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of: (1) the use, maintenance, condition or management of, or from any work or thing done on, the New Projects or the sites of the New Projects or any portion thereof or interest therein by the City; (2) any breach or default on the part of the City in the performance of any of its obligations under this Trust Agreement and any other agreement made and entered into for purposes of the New Projects or any interest therein; (3) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the New Projects; (4) any act of negligence of any assignee of, or purchaser from, the City or of any of its or their agents, contractors, servants, employees or licensees with respect to the New Projects; (5) the installation or construction of the New Projects or any interest therein; (6) the actions of any other party, including but not limited to the operation or use of the New Projects or the sites of the New Projects or interest therein by the City; (7) the ownership of the New Projects or the sites of the New Projects or interest therein, (8) the exercise and performance by the Trustee of its powers and duties hereunder, under the Purchase Agreement or the Obligations or in connection with any document or transaction contemplated herewith or therewith, or (9) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of the Obligations, including the costs and expenses of defending itself against any claim of liability arising under this Trust Agreement. No indemnification will be made under this Section or elsewhere in this Trust Agreement for willful misconduct, gross negligence or breach of duty under this Trust Agreement by the Trustee, or by its officers, agents, employees, successors or assigns. As security for the payment of amounts under Section 7.5 and this Section 10.3, the Trustee shall be secured under this Trust Agreement by a lien prior to the Obligations. The obligations of the City hereunder for indemnification under this Section shall remain valid and binding notwithstanding, and shall survive, the maturity

and payment or redemption of the Obligations or resignation or removal of the Trustee or the termination of this Trust Agreement.

(b) The Trustee, promptly after determining that any event or condition which requires or may require indemnification by the City hereunder exists or may exist, or after receipt of notice of the commencement of any action in respect of which indemnity may be sought hereunder, shall notify the City in writing of such circumstances or action (the "Notification"). Failure to give such notification shall not affect the right of the Trustee to receive the indemnification provided for herewith. Upon giving of the Notification, the Trustee shall cooperate fully with the City in order that the City may defend, compromise or settle any such matters or actions which may result in payment by the City hereunder. The City shall give the Trustee notice of its election within fifteen (15) days after receiving the Notification whether the City, at its sole cost and expense, shall represent and defend the Trustee in any claim or action which may result in a request for indemnification hereunder. If the City timely gives the notice that it will represent and defend the Trustee thereafter, the Trustee shall not settle or compromise or otherwise interfere with the defense or undertakings of the City hereunder. The City shall not settle or compromise any claim or action against the Trustee without the written approval of the Trustee, except to the extent that the City shall pay all losses and the Trustee shall be fully released from such claim or action. If the City either fails to timely give its notice or notifies the Trustee that the City will not represent and defend the Trustee, the Trustee may defend, settle, compromise or admit liability as it shall determine in the reasonable exercise of its discretion, at the expense of the City. In the event the City is required to and does indemnify the Trustee as herein provided, the rights of the City shall be subrogated to the rights of the Trustee to recover such losses or damages from any other person or entity.

**Section 10.4. Opinion of Counsel.** Before being required to take any action, the Trustee may require an opinion of Independent Counsel acceptable to the Trustee, which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, the Trustee shall be absolutely protected in relying thereon.

## **ARTICLE XI**

### **EVENTS OF DEFAULT AND REMEDIES OF OBLIGATION OWNERS**

**Section 11.1. Seller's Rights held in Trust.** As provided herein, the Trustee holds in trust hereunder all of the Seller's rights in and to the Purchase Agreement, including without limitation all of the Seller's rights to exercise such rights and remedies conferred on the Seller pursuant to the Purchase Agreement as may be necessary or convenient to enforce payment of the Payments and any other amounts required to be deposited in the Payment Fund and enforcement of the pledge of the revenues from the Excise Taxes and the State Shared Revenues for the payment of the Obligations.

**Section 11.2. Remedies Upon Default; No Acceleration.** If an Event of Default shall happen, then and in each and every such case during the continuance of such Event of Default, the Trustee may, or upon request of the Owners of a majority in aggregate principal

amount of the Obligations then Outstanding and receiving indemnity satisfactory to it shall, exercise one or more of the remedies granted pursuant to the Purchase Agreement; provided, however, that notwithstanding anything herein or in the Purchase Agreement to the contrary, there shall be no right under any circumstances to accelerate the maturities of the Obligations or otherwise to declare any of the Payments not then past due or in default to be immediately due and payable.

**Section 11.3. Application of Funds.** All moneys received by the Trustee pursuant to any right given or action taken pursuant to the provisions of this Article XI or Section 9 of the Purchase Agreement shall be applied by the Trustee in the order following, in the case of the Obligations, upon presentation of the several Obligations, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee and then of the Obligation Owners in declaring such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel and

Second, to the payment of the whole amount then owing and unpaid with respect to the Obligations and, with interest on the overdue principal and installments of interest at the rate of twelve percent (12%) per annum (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest and interest on overdue principal, as aforesaid), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Obligations, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

Third, to the payment of the amounts owing and unpaid with respect to the Reimbursement Agreement and then, if not paid as a result of subrogation to the rights of the Owners, the Debt Service Insurance Policy.

**Section 11.4. Institution of Legal Proceedings.** If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of all Obligations then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners of Obligations by a suit in equity or action at law for the specific performance of any covenant or agreement contained herein.

**Section 11.5. Non-waiver.** Except as otherwise provided in this Article, the Obligation Owners have the right to institute suit to enforce and collect the Payments as provided in the Purchase Agreement. No delay or omission of the Trustee or of any Owner of any of the Obligations to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article to the Trustee or the Owners of Obligations may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Obligation Owners.

**Section 11.6. Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Obligations, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of a majority in aggregate principal amount of the Obligations Outstanding.

**Section 11.7. Limitation on Obligation Owners' Right to Sue.**

(a) No Owner of any Obligation issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless (1) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (2) the Owners of at least a majority in aggregate principal amount of all Obligations then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (3) said Owners shall have tendered to the Trustee indemnity satisfactory to it against the costs, expenses, and liabilities to be incurred in compliance with such request and (4) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

(b) Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Obligations of any remedy hereunder; it being understood and intended that no one or more Owners of Obligations shall have any right in any manner whatever by his or their action to enforce any right under this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Obligations.

(c) The right of any Owner of any Obligation to receive payment of said Owner's proportionate interest in the Payments as the same become due, or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Trust Agreement.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.1. Defeasance.**

(a) If and when any Outstanding Obligation or portion thereof shall be paid and discharged in any one or more of the following ways:

(1) By paying or causing to be paid the principal of and interest and redemption premium, if any, with respect to such Obligations Outstanding, as and when the same become due and payable;

(2) By depositing with a Depository Trustee, in trust for such purpose, at or before maturity, money which, together with the amounts then on deposit in the Payment Fund is fully sufficient to pay or cause to be paid such Obligations Outstanding, including all principal, interest and redemption premium, if any; or

(3) By depositing with a Depository Trustee, in trust for such purpose, any Defeasance Obligations which are noncallable in such amount as shall be certified to the Trustee and the City in a report (the "Verification") by an independent firm of nationally recognized certified public accountants acceptable to the Trustee and the City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit in the Payment Fund together with the interest to accrue thereon, to pay and discharge or cause to be paid and discharged such Obligations (including all principal, interest and redemption premium, if any) at their respective maturity or prior redemption dates, which deposit may be made in accordance with the provisions of Section 7 of the Purchase Agreement;

notwithstanding that any Obligations shall not have been surrendered for payment, all obligations of the Trustee and the City with respect to such Outstanding Obligations shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from funds deposited pursuant to subsections (2) or (3) of this Section and paid to the Trustee by the Depository Trustee, to the Owners of the Obligations not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to subsections (2) or (3), the Obligations shall continue to represent direct and proportionate interests of the Owners thereof in such funds.

(b) Any funds held by the Trustee, at the time of one of the events described in paragraph (a) of this Section, which are not required for the payment to be made to Owners or for the payment of any other amounts due and payable by the City hereunder or under the Purchase Agreement, shall be paid over to the City.

(c) Any Obligation or portion thereof in Authorized Denominations may be paid and discharged as provided in this Section; provided however, that if any such Obligation or portion thereof is to be redeemed, notice of such redemption shall have been given in accordance with the provisions hereof or the City shall have submitted to the Trustee instructions expressed to be irrevocable as to the date upon which such Obligation or portion thereof is to be redeemed and as to the giving of notice of such redemption; and provided further,

that if any such Obligation or portion thereof will not mature within sixty (60) days of the deposit referred to in subsections (ii) or (iii) of this Section, the Trustee shall give notice of such deposit by first class mail to the Owners.

(d) No Obligation may be provided for as described in this Section if, as a result thereof, or of any other action in connection with which the provisions for payment of such Obligation is made, the interest payable on any Obligation is thereby made includable in gross income for federal income tax purposes. The Trustee, the Depository Trustee, and the City may rely upon an opinion of Independent Counsel which is nationally recognized bond counsel to the effect that the provisions of this subsection will not be breached by so providing for the payment of any Obligations.

**Section 12.2. Notices.** All written notices to be given under this Trust Agreement shall be given by overnight delivery or courier or by mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective upon deposit in the United States of America mail, postage prepaid or, in the case of personal delivery, upon delivery to the address set forth below:

If to the City:                   City of Benson, Arizona  
120 West 6th Street  
P.O. Box 2223  
Benson, Arizona 85602  
Attention: City Manager

If to the Trustee:               The Bank of New York Mellon Trust Company, N.A.  
1225 West Washington Street, Suite 126  
Tempe, Arizona 85281  
Attention: Corporate Trust

**Section 12.3. Incorporation of State Statutes.**

(a) As required by the provisions of Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the City may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. The Trustee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Trust Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Trust Agreement on behalf of the City within three years from the execution of this Trust Agreement, unless a waiver of Section 38-511, Arizona Revised Statutes, as amended, is provided by the City. No basis exists for the City to cancel this Trust Agreement pursuant to Section 38-511, Arizona Revised Statutes, as amended, as of the date hereof.

(b) To the extent applicable under Section 41-440, Arizona Revised Statutes, as amended, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Trustee of the foregoing shall be deemed a material breach of this Trust Agreement and may result in the termination of the services of the Trustee. The City retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the above-mentioned warranty. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Trustee. The Trustee shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Sections 35-391.06 and 35-393.06, Arizona Revised Statutes, as amended, the Trustee does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term “scrutinized business operations” shall have the meanings set forth in Section 35-391 and 35-393, Arizona Revised Statutes, as amended, as applicable. If the City determines that the Trustee submitted a false certification, the City may impose remedies as provided by law including terminating the services of the Trustee.

**Section 12.4. Governing Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State of Arizona.

**Section 12.5. Binding Effect and Successors.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the City or the Trustee is named or referred to, such reference shall be deemed to include successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 12.6. Execution in Counterparts.** This Trust Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Trust Agreement.

**Section 12.7. Destruction of Cancelled Obligations.** Whenever in this Trust Agreement provision is made for the surrender to or cancellation by the Trustee and the delivery to the City of any Obligations, the Trustee may destroy such Obligations and deliver a certificate of such destruction to the City instead.

**Section 12.8. Headings.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement. All references herein to “Articles”, “Sections”, and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; and the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 12.9. Parties Interested Herein.** Nothing in this Trust Agreement or the Obligations, expressed or implied, is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Trustee and the Owners, any legal or equitable right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, provisions and agreements in this Trust Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee and the Owners of the Obligations.

**Section 12.10. Waiver of Notice.** Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 12.11. Severability of Invalid Provisions.** In case any one or more of the provisions contained in this Trust Agreement or in the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Obligations pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

**ARTICLE XIII  
PROVISIONS RELATING TO DEBT SERVICE INSURANCE POLICY  
AND DEBT SERVICE RESERVE FUND**

**Section 13.1. Applicability of this Article.** Notwithstanding anything herein to the contrary, the provisions of this Article shall be applicable and shall supersede any conflicting provisions herein so long as the Debt Service Insurance Policy or the Debt Service Reserve Fund Policy are in effect and, except with respect to amounts already due to the Insurer thereunder against which the following shall not be a defense, the Insurer is not in default or contesting its obligations thereunder and is not in bankruptcy, receivership, insolvency or similar proceedings.

**Section 13.2. No Purchase in Lieu of Redemption.** Without the prior written consent of the Insurer, none of the Obligations shall be purchased by the City in lieu of redemption, unless such Obligations are redeemed, defeased or cancelled.

**Section 13.3. Limitation on Variable Rate Debt and Derivative Instruments.** To the extent not otherwise prohibited by applicable law from agreeing to do so, the City shall not enter into (i) any variable rate indebtedness on a parity with or subordinate to the Obligations or (ii) any derivative instruments in connection with the Obligations and any Additional Parity Obligations.

**Section 13.4. Reporting Requirements.** The City shall furnish, or cause to be furnished , to the Insurer:

- (1) Fiscal year budgets thirty (30) days after the beginning of each fiscal year of the City;
- (2) Annual audits prepared by a certified public accountant, within one hundred eighty (180) days of the completion of the fiscal year of the City together with a certificate of an authorized representative of the City stating that the City is not in default of any of its obligations or the financial covenants under the Financing Documents;
- (3) Prior to issuing Additional Parity Obligations, any disclosure document or financing agreement pertaining thereto, which disclosure document or financing agreement shall include, without limitation, the applicable maturity schedule, interest rate or rates, redemption and security provisions pertaining thereto;
- (4) Within thirty (30) days following any litigation or investigation that may have a material adverse affect on the ability of the City to comply with its obligations under the Financing Documents notice of such litigation or investigation and
- (5) Immediate notice of any draw on the Debt Service Reserve Fund.

**Section 13.5. Notices and Other Information.**

(a) Any notice that is required to be given to the Owners, any entity required pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission or to the Trustee pursuant to the Financing Documents shall also be provided to the Insurer, simultaneously with the sending of such notices. In addition, to the extent that the City has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Obligations, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

(b) All demands, notices and other information required to be given to the Insurer under the Financing Documents shall be in writing and shall be mailed by registered or certified mail or personally delivered or telecopied to the recipient as follows:

Assured Guaranty Corp.  
31 West 52nd Street  
New York, New York 10019  
Attn: Risk Management Department  
(Re: Policy No. D-2010-1432)  
Telecopy No.: (212) 581-3268  
Confirmation: (212) 974-0100  
Email: riskmanagementdept@assuredguaranty.com

(In each case in which notice or other communication refers to an Event of Default, a claim on the Debt Service Insurance Policy or the Debt Service Reserve Fund Policy or any event with

respect to which failure on the part of Assured Guaranty to respond shall be deemed to constitute consent or acceptance, then such demand, notice or other communication shall be marked to indicate “URGENT MATERIAL ENCLOSED” and shall also be sent to the attention of the General Counsel at the same address and telecopy above and at generalcounsel@assuredguaranty.com.)

(c) The Insurer shall have the right to receive such additional information as it may reasonably request.

(d) The Insurer shall be permitted to discuss the affairs, finances and accounts of the City or any information the Insurer may reasonably request regarding the security for the Obligations with appropriate officers of the City, and the City shall use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the City on any Business Day upon reasonable prior notice.

(e) The Trustee shall notify the Insurer of any failure of the City to provide notices, certificates and other information under the Trust Agreement.

### **Section 13.6. Defeasance.**

(a) In the event that the principal and/or interest due on the Obligations shall be paid by the Insurer pursuant to the Debt Service Insurance Policy, the Obligations shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and the assignment and pledge of the trust estate established by this Trust Agreement and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of the Owners including, without limitation, any rights that the Owners may have in respect of securities law violations arising from the offer and sale of the Obligations.

(b) In addition to the items required by Section 12.1 hereof, the following shall be provided to the Insurer:

(1) An opinion of Special Counsel to the effect that the defeasance will not adversely impact the exclusion from gross income for federal income tax purposes of interest on the Obligations and that the Obligations are no longer “Outstanding” under the Trust Agreement;

(2) If the Obligations are being advance-refunded (through a net defeasance), a refunding trust or escrow agreement (the “Defeasance Escrow Agreement”) and an opinion of Special Counsel regarding the validity and enforceability of the Defeasance Escrow Agreement and

(3) The Defeasance Escrow Agreement shall provide that:

(i) Any substitution of securities shall require verification by an independent certified public accountant and the prior written notice of the Insurer.

(ii) The City will not exercise any optional redemption of Obligations secured by the Defeasance Escrow Agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the Defeasance Escrow Agreement and such reservation has been disclosed in detail in the official statement for the refunding obligations and (ii) as a condition of any such redemption, there shall be provided to the Insurer a verification of an independent certified public accountant as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following such redemption.

(iii) The City shall not amend the Defeasance Escrow Agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of the Insurer.

**Section 13.7. Trustee.**

(a) The Insurer shall receive prior written notice of any name change of the Trustee or the removal or resignation of the Trustee.

(b) No removal or resignation of the Trustee shall take effect until a successor, acceptable to the Insurer, shall be appointed.

(c) The Trustee may be removed at any time, at the request of the Insurer, for any breach of its obligations under the Financing Documents.

(d) In determining whether the rights of the Owners will be adversely affected by any action taken pursuant to the terms and provisions hereof, the Trustee shall consider the effect on the Owners as if the Debt Service Insurance Policy did not exist.

**Section 13.8. Amendments and Supplements.** With respect to amendments or supplements to the Financing Documents which do not require the consent of the Owners, the Insurer shall be given prior written notice of any such amendments or supplements. With respect to amendments or supplements to the Financing Documents which do require the consent of the Owners, prior written consent of the Insurer shall be required. Copies of any amendments or supplements to the Financing Documents which are consented to by the Insurer shall be sent to the rating agencies that have assigned a rating to the Obligations.

**Section 13.9. The Insurer as Third Party Beneficiary.** To the extent that the Financing Documents confer upon or give or grant to the Insurer any right, remedy or claim under or by reason of the Financing Documents, the Insurer shall be explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder and thereunder.

**Section 13.10. Control Rights.** The Insurer shall be deemed to be the Owner of all of the Obligations for purposes of (a) exercising all remedies and directing the Trustee (subject to the right of the Trustee to receive adequate indemnification) to take actions or for any

**Section 13.11. Consent Rights of the Insurer.**

(a) Any provision of this Trust Agreement expressly recognizing or granting rights in or to the Insurer may not be amended in any manner that affects the rights of the Insurer hereunder without the prior written consent of the Insurer.

(b) Wherever this Trust Agreement requires the consent of all of the Owners, prior written consent of the Insurer shall also be required.

(c) Any reorganization or liquidation plan with respect to the City must be acceptable to the Insurer. In the event of any such reorganization or liquidation, the Insurer shall have the right to vote on behalf of all of the Owners.

(d) Upon the occurrence and continuance of an Event of Default, the Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners or the Trustee for the benefit of the Owners.

**Section 13.12. Non-Reliance on the Insurer.** The City has made its own independent investigation and decision as to whether to insure the payment when due of the principal of and interest on the Obligations and whether the Debt Service Insurance Policy is appropriate or proper for it based upon its own judgment and upon advice from such legal and financial advisers as it has deemed necessary. The City acknowledges that the Insurer has not made, and therefore the City is not relying on, any recommendation from the Insurer that the City insure the Obligations or obtain the Debt Service Insurance Policy. Communications from the Insurer (whether written or oral) referring to, containing information about or negotiating the terms and conditions of the Debt Service Insurance Policy, any related insurance document or the documentation governing the Obligations do not constitute a recommendation to insure the Obligations or obtain the Debt Service Insurance Policy. The Insurer has not made any representation, warranty or undertaking, and has not given any assurance or guarantee, in each case, expressed or implied, concerning its future financial strength or the rating of financial strength of the Insurer by the rating agencies. The ratings of the Insurer reflect only the views of the rating agencies, and an explanation of the significance of such ratings may be obtained only from the rating agencies. Such ratings may not continue for any given time period and instead may change over time, including without limitation being placed under review for possible downgrade, revised downward, withdrawn entirely by the relevant rating agency if, in the judgment of such rating agency, circumstances so warrant, or withdrawn entirely by the Insurer in its sole discretion. The Insurer pays rating agencies to rate the financial strength of the Insurer, but that such payment is not in exchange for any specific rating or for a rating within any particular range.

### **Section 13.13. Reimbursement Obligations.**

(a) The City shall, but only from amounts provided by Section 1(c) of the Purchase Agreement, pay or reimburse the Insurer (1) all amounts paid by the Insurer under the Debt Service Insurance Policy and (2) to the extent permitted by law, any and all charges, fees, costs and expenses which the Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Debt Service Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of this Trust Agreement or any other Financing Document, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the City or any affiliate thereof) relating to this Trust Agreement or any other Financing Document, any party to this Trust Agreement or any other Financing Document or the transaction contemplated by the Financing Documents, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under this Trust Agreement or any other Financing Document, or the pursuit of any remedies under this Trust Agreement or any other Financing Document, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition or (iv) any amendment, waiver or other action with respect to, or related to, this Trust Agreement or any other Financing Document whether or not executed or completed. Costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Insurer spent in connection with the actions described in clauses (ii) - (iv) above. In addition, the Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this Trust Agreement or any other Financing Document. The City will pay interest on the amounts owed in this paragraph from the date of any payment due or paid, at the per annum rate of interest publicly announced from time to time by JP Morgan Chase Bank, National Association, at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank, National Association) plus three percent (3%) per annum (the "Reimbursement Rate"). The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JPMorgan Chase Bank ceases to announce its prime rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank, as the Insurer shall specify.

(b) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the City shall, but only from amounts provided by Section 1(c) of the Purchase Agreement, pay or reimburse the Insurer, to the extent permitted by law, any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Insurer within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by this Trust Agreement or any other Financing Document by reason of:

(1) any omission or action (other than of or by the Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Obligations;

(2) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the City in connection with any transaction arising from or relating to this Trust Agreement or any other Financing Document;

(3) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it;

(4) the breach by the City of any representation, warranty or covenant under this Trust Agreement or any other Financing Document or the occurrence, in respect of the City, under this Trust Agreement or any other Financing Document of any “event of default” or any event which, with the giving of notice or lapse of time or both, would constitute any “event of default” or

(5) any untrue statement or alleged untrue statement of a material fact contained in any official statement relating to the Obligations, if any, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an official statement, if any, and furnished by the Insurer in writing expressly for use therein.

**Section 13.14. Payment Procedure Under the Debt Service Insurance Policy.**

(a) At least two (2) Business Days prior to each payment date on the Obligations, the Trustee shall determine whether there will be sufficient funds to pay all principal of and interest on the Obligations due on the related payment date and shall immediately notify the Insurer or its designee on the same Business Day by telephone or electronic mail, confirmed in writing by registered or certified mail, of the amount of any deficiency. Such notice shall specify the amount of the anticipated deficiency, the Obligations to which such deficiency is applicable and whether such Obligations will be deficient as to principal or interest or both. If the deficiency is made up in whole or in part prior to or on the payment date, the Trustee shall so notify the Insurer or its designee.

(b) The Trustee shall, after giving notice to the Insurer as provided above, make available to the Insurer and, at the direction of the Insurer, to any Fiscal Agent, the registration books of the City maintained by the Trustee and all records relating to the funds maintained under the Financing Documents.

(c) The Trustee shall provide the Insurer and any Fiscal Agent with a list of the Owners entitled to receive principal or interest payments from the Insurer under the terms of the Debt Service Insurance Policy, and shall make arrangements with the Insurer or the Fiscal Agent to (1) mail checks or drafts to the Owners of Obligations entitled to receive full or partial interest payments from the Insurer and (2) pay principal upon Obligations surrendered to

the Insurer or the Fiscal Agent by the Owners of Obligations entitled to receive full or partial principal payments from the Insurer.

(d) The Trustee shall, at the time it provides notice to the Insurer of any deficiency pursuant to clause (a) above, notify the Owners of Obligations entitled to receive the payment of principal thereof or interest thereon from the Insurer (1) as to such deficiency and its entitlement to receive principal or interest, as applicable, (2) that the Insurer will remit to them all or a part of the interest payments due on the related payment date upon proof of its entitlement thereto and delivery to the Insurer or any Fiscal Agent, in form satisfactory to the Insurer, of an appropriate assignment of the right to payment of the Owner, (3) that, if they are entitled to receive partial payment of principal from the Insurer, they must surrender the related Obligations for payment first to the Trustee, which will note on such Obligations the portion of the principal paid by the Trustee and second to the Insurer or its designee, together with an appropriate assignment, in form satisfactory to the Insurer, to permit ownership of such Obligations to be registered in the name of the Insurer, which will then pay the unpaid portion of principal, and (4) that, if they are entitled to receive full payment of principal from the Insurer, they must surrender the related Obligations for payment to the Insurer, or its designee, rather than the Trustee, together with the an appropriate assignment, in form satisfactory to the Insurer, to permit ownership of such Obligations to be registered in the name of the Insurer.

(e) In addition, if the Trustee has notice that any Owner of the Obligations has been required to disgorge payments of principal or interest on the Obligations previously Due for Payment (as such term is defined in the Debt Service Insurance Policy) pursuant to a final non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy laws, then the Trustee shall notify the Insurer or its designee of such fact by telephone or electronic notice, confirmed in writing by registered or certified mail.

(f) The Trustee shall be hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Obligations as follows:

(1) If and to the extent there is a deficiency in amounts required to pay interest on the Obligations, the Trustee shall execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent for such Owners in any legal proceeding related to the payment of such interest and an assignment to the Insurer of the claims for interest to which such deficiency relates and which are paid by the Insurer, receive as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the Debt Service Insurance Policy payment from the Insurer with respect to the claims for interest so assigned, and disburse the same to such respective Owners; and

(2) If and to the extent of a deficiency in amounts required to pay principal of the Obligations, the Trustee shall execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent for such Owner in any legal proceeding related to the payment of such principal and an assignment to the Insurer of the Obligation surrendered to the Insurer in an amount equal to the principal amount thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be delivered only if payment from the Insurer is received),

receive as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the Debt Service Insurance Policy payment therefore from the Insurer, and disburse the same to such Owners.

(g) Payments with respect to claims for interest on and principal of Obligations disbursed by the Trustee from proceeds of the Debt Service Insurance Policy shall not be considered to discharge the obligation of the City with respect to such Obligations, and the Insurer shall become the owner of such unpaid Obligation and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(h) Irrespective of whether any such assignment is executed and delivered:

(1) to the extent the Insurer makes payments directly or indirectly (e.g, by paying through the Trustee), on account of principal of or interest on the Obligations, the Insurer shall be subrogated to the rights of such Owners to receive the amount of such principal and interest from the City, with interest thereon as provided and solely from the sources stated in the Financing Documents and the Obligations and

(2) the City and the Trustee shall accordingly pay to the Insurer the amount of such principal and interest, with interest thereon as provided in the Financing Documents and the Obligations, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Obligations to Owners, and shall otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

(i) The Insurer shall be entitled to pay principal or interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such term is also defined in the Debt Service Insurance Policy) and any amounts due on the Obligations as a result of acceleration of the maturity thereof in accordance with this Trust Agreement, whether or not the Insurer has received a Notice of Nonpayment (as defined in the Debt Service Insurance Policy) or a claim upon the Debt Service Insurance Policy.

(j) The Insurer shall, to the extent it makes any payment of principal or interest on the Obligations, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Debt Service Insurance Policy, and to evidence such subrogation (1) in the case of claims for interest, the Trustee shall note the rights of the Insurer as subrogee on the registration books of the City maintained by the Trustee, upon receipt of proof of payment of interest thereon to the Owners of the Obligations, and (2) in the case of claims for principal, the Trustee, if any, shall note the rights of the Insurer as subrogee on the registration books of the City maintained by the Trustee, upon surrender of the Obligations together with receipt of proof of payment of principal thereof.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By.....  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CITY OF BENSON, ARIZONA

By.....  
Mayor

ATTEST:

.....  
City Clerk

EXHIBIT A-1

(Form of New Money Obligation)

Number: R-.....

Principal Amount: .....

Unless this Obligation is presented by an authorized representative of The Depository Trust Company of New York, a New York corporation (“DTC”), to the Trustee (or any successor registrar) for registration of transfer, exchange, or payment, and any Obligation issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.\*

EXCISE TAX AND STATE SHARED REVENUE OBLIGATION, SERIES 2010  
Evidencing a Proportionate Interest of the Owner  
Hereof in Payments to be Made by

THE CITY OF BENSON, ARIZONA

to

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

<u>Interest Rate:</u>	<u>Maturity Date:</u>	<u>Dated Date:</u>	<u>CUSIP:</u>
.....%	July 1, 20....	_____, 2010	_____ .....

REGISTERED OWNER: CEDE & CO.\*

PRINCIPAL AMOUNT: ..... DOLLARS

THIS IS TO CERTIFY THAT the registered owner identified above, or registered assigns, as the registered owner of this Excise Tax and State Shared Revenue Obligation, Series 2010 (this “Obligation”) is the owner of an undivided, participatory, proportionate interest in the right to receive certain “Payments” under and defined in that certain Purchase Agreement, dated as of \_\_\_\_\_ 1, 2010 (the “Purchase Agreement”), by and between The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), and the City of Benson, Arizona, a municipal corporation incorporated and existing under the laws of the State of Arizona (the “City”), which Payments and other rights and interests under the Purchase Agreement are held by the Trustee in trust under that certain Trust Agreement, dated as of \_\_\_\_\_ 1, 2010 (the “Trust Agreement”), by and between the City and the Trustee. The Trustee maintains a corporate trust office for payment and transfer of this Obligation (the “Designated Office”).

\* Included only while DTC is the Securities Depository.

The registered owner of this Obligation is entitled to receive, subject to the terms of the Purchase Agreement, on the maturity date set forth above, the principal amount set forth above, representing a portion of the payments due designated as principal coming due and to receive semiannually on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_ (the "Interest Payment Dates"), until payment in full of said portion of principal or redemption prior thereto, the registered owner's proportionate share of the Payments designated as interest coming due during the period commencing on the last date on which interest was paid and ending on the day prior to the Interest Payment Date or, if no interest has been paid, from the Dated Date specified above. Said interest is the result of the multiplication of said principal by the interest rate per annum set forth above. Interest shall be calculated on the basis of a 360-day year composed of twelve (12) months of thirty (30) days each.

Said amounts representing the registered owner's share of the Payments designated as interest are payable in lawful money of the United States of America by check mailed when due by first class mail by the Trustee to the registered owner in whose name this Obligation is registered at the close of business on the fifteenth (15th) day of the calendar month next preceding the Interest Payment Date at the address thereof as it appears on the registration books for the Obligations maintained by the Trustee. Said amounts representing the registered owner's share of the Payments designated as principal are payable when due upon surrender of this Obligation at the Designated Office. Principal, interest or redemption premium, if any, payable to any owner of \$1,000,000 or more in principal amount of the series of obligations of which this Obligation is a part (together with the Excise Tax and State Shared Revenue Refunding Obligations, Series 2010, executed and delivered on the date hereof, the "Obligations") may be paid by wire transfer in immediately available funds to an account in the United States of America if the owner makes a written request of the Trustee at least twenty (20) days before the date of payment specifying the account address. The notice may provide that it shall remain in effect for subsequent payments until otherwise requested in a subsequent written notice.

The Trustee has no obligation or liability to the registered owners of the Obligations for the payment of interest or principal pertaining to the Obligations. The Trustee's sole obligations are to administer, for the benefit of the registered owners of the Obligations, the various funds and accounts established pursuant to the Trust Agreement. (The recitals, statements, covenants and representations made in this Obligation shall be taken and construed as made by and on the part of the City, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.)

This Obligation has been executed and delivered by the Trustee pursuant to the terms of, and for the purposes described in, the Trust Agreement. The City is authorized to enter into the Purchase Agreement and the Trust Agreement under the laws of the State of Arizona and by resolution of the Mayor and Council of the City adopted \_\_\_\_\_, 2010 (the "Resolution"). Reference is hereby made to the Purchase Agreement and the Trust Agreement (copies of which are on file at the Designated Office) for further definitions, the terms, covenants and provisions pursuant to which the Obligations are delivered, the rights thereunder of the registered owners of the Obligations, the terms under which the Trust Agreement or the Purchase Agreement may be modified or supplemented, the rights, duties and immunities of the Trustee and the security for, and the rights and obligations of the City under the Purchase Agreement (including with respect

to certain obligations to be secured on a parity with the security for the Payments and to certain limitations on such security), to all of the provisions of which Purchase Agreement and Trust Agreement the registered owner of this Obligation, by acceptance hereof, assents and agrees. (To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement and the Purchase Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal of all Obligations then outstanding, and may be amended without such consent under certain circumstances but in no event such that the interests of the owners of the Obligations are adversely affected, provided that no such amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Payment thereof in accordance with such owner's Obligation.)

The obligation of the City to make the Payments does not represent or constitute a general obligation of the City for which the City is obligated to levy or pledge any form of taxation nor does the obligation to make the Payments under the Purchase Agreement constitute an indebtedness of the City, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction or otherwise.

Neither the Trustee nor the registered owners of the Obligations shall have any right under any circumstances to accelerate the maturities of the Obligations or otherwise declare any of the Payments not then past due or in default to be immediately due and payable. (This Obligation represents an interest in a limited obligation of the City (as described herein), and no member of the Board of Supervisors, officer or agent, as such, past, present or future, of the City shall be personally liable for the payment hereof.)

The Obligations are executed and delivered only in fully registered form in denominations of \$5,000 of principal due on a specific maturity date or integral multiples thereof. The Obligations shall not be transferable or exchangeable, except as provided in the Trust Agreement.

This Obligation may be exchanged for an Obligation or Obligations of like series and aggregate principal amount in authorized denominations having the same maturity date and interest rate.

This Obligation is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the Designated Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Obligation. Upon such transfer a new Obligation or Obligations, of authorized denomination or denominations, for the same series and aggregate principal amount will be delivered to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Obligation shall be overdue, and the City and the Trustee shall not be affected by any notice to the contrary.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or governmental charges required by law in connection with the exchange or transfer.

The Trustee may, but shall not be obligated to, exchange or register the transfer of this Obligation (i) if this Obligation has been selected for redemption, in whole or in part, or (ii) during a period of fifteen (15) days preceding the giving of a notice of redemption. If this Obligation is transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee, and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation or Obligations.

The registered owner of this Obligation shall have no right to enforce the provisions of the Trust Agreement or the Purchase Agreement or to institute any action to enforce the covenants thereof, or to take any action with respect to a default thereunder or hereunder, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

The Obligations maturing on or before July 1, 20\_\_, will not be subject to optional redemption prior to maturity. The Obligations maturing on or after July 1, 20\_\_, will be subject to redemption in such order and from such maturities as may be selected by the City, in whole or in part on any date on or after July 1, 20\_\_, at a redemption price equal to the principal amount of each Obligation to be redeemed, together with accrued interest to the date fixed for redemption but without premium.

The Obligations of the series of the Obligations of which this is a part maturing on July 1 of the following years shall be redeemed on July 1 of the years indicated and in the principal amounts indicated at a price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year Redeemed</u>	<u>Principal Amount Redeemed</u>
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
20__	__,000
20__	__,000

Whenever Obligations are purchased, redeemed (other than by mandatory redemption) or are delivered by the City to the Trustee for cancellation, the principal amount of the Obligations so retired shall satisfy and be credited against the mandatory redemption requirements therefor for the same series in any order specified by the City.

If less than all of the outstanding Obligations of any maturity are to be redeemed, the Obligations (or portions hereof) to be redeemed will be selected by the Trustee by lot or in any customary manner as determined by the Trustee. Redemption shall be in authorized denominations or any integral multiples thereof.

The Trustee shall give notice of any redemption of this Obligation as provided above no more than 60 nor less than 30 calendar days prior to the redemption date to the registered owner at its address shown on the registration books maintained by the Trustee. A certificate of the Trustee shall conclusively establish the mailing of any such notice for all purposes.

If at the time of mailing of the notice of redemption there has not been deposited with the Trustee moneys or eligible securities sufficient to redeem all Obligations subject to redemption and other requirements set forth in the Trust Agreement are not met, such notice shall state that it is conditional, subject to the deposit of moneys sufficient for the redemption and satisfaction of such conditions. If Obligations or portions thereof are subject to redemption and if on the redemption date moneys for the redemption thereof are held by the Trustee and those other conditions are met, thereafter those Obligations or portions thereof to be redeemed shall cease to bear interest, and shall cease to be secured by, and shall not be deemed to be outstanding under, the Trust Agreement. The failure to receive any notice of redemption, or any defect in such notice in respect of any Obligation, shall not affect the validity of redemption of any Obligation.

This Obligation shall not be entitled to any security or benefit under the Trust Agreement until executed by the Trustee.

IN WITNESS WHEREOF, this Obligation has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: .....

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By.....  
Authorized Representative

STATEMENT OF INSURANCE

Assured Guaranty Corp. (“Assured Guaranty”), a Maryland-domiciled insurance company, has delivered its financial guaranty insurance policy (the “Policy”) with respect to the scheduled payments of principal of and interest on this Obligation to The Bank of New York Mellon Trust Company, N.A., as paying agent on behalf of the holders of the Obligations (the “Paying Agent”). Such Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from Assured Guaranty or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Obligation acknowledges and consents to the subrogation rights of Assured Guaranty as more fully set forth in the Policy.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned ..... (the "Transferor"), hereby sells, assigns and transfers unto ..... (the "Transferee"), whose address is ..... and whose social security number (or other federal tax identification number) is

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFEREE

.....  
.....

the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints ..... as attorney to register the transfer of the within certificate on the books kept for registration and registration of transfer thereof, with full power of substitution in the premises.

Date: .....  
SIGNATURE(S) GUARANTEED BY:

.....  
Firm or Bank

.....  
Authorized Signature  
Signature(s) guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or other guarantee program acceptable to the Trustee or Registrar

.....  
NOTICE: No transfer will be registered and no new certificate will be issued in the name of the Transferee, unless that signature(s) to this assignment correspond(s) with the name as it appears on the face of the within certificate in every particular, without alteration or enlargement or any change whatever and name, address and the Social Security Number or federal employee identification number of the Transferee is supplied

The following abbreviations when used in the inscription on the face of the within certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANS MIN ACT - ..... Custodian for .....  
(Cust.) (Minor)

under Uniform Gifts/Transfers to Minors Act of .....  
(State)

Additional abbreviations may also be used though not in list above.

EXHIBIT A-2

(Form of Refunding Obligation)

Number: R-.....

Principal Amount: .....

Unless this Obligation is presented by an authorized representative of The Depository Trust Company of New York, a New York corporation (“DTC”), to the Trustee (or any successor registrar) for registration of transfer, exchange, or payment, and any Obligation issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.\*

EXCISE TAX AND STATE SHARED REVENUE REFUNDING OBLIGATION, SERIES  
2010

Evidencing a Proportionate Interest of the Owner  
Hereof in Payments to be Made by

THE CITY OF BENSON, ARIZONA

to

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

<u>Interest Rate:</u>	<u>Maturity Date:</u>	<u>Dated Date:</u>	<u>CUSIP:</u>
.....%	July 1, 20....	_____, 2010	_____ .....

REGISTERED OWNER: CEDE & CO.\*

PRINCIPAL AMOUNT: ..... DOLLARS

THIS IS TO CERTIFY THAT the registered owner identified above, or registered assigns, as the registered owner of this Excise Tax and State Shared Revenue Refunding Obligation, Series 2010 (this “Obligation”) is the owner of an undivided, participatory, proportionate interest in the right to receive certain “Payments” under and defined in that certain Purchase Agreement, dated as of \_\_\_\_\_ 1, 2010 (the “Purchase Agreement”), by and between The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), and the City of Benson, Arizona, a municipal corporation incorporated and existing under the laws of the State of Arizona (the “City”), which Payments and other rights and interests under the Purchase Agreement are held by the Trustee in trust under that certain Trust Agreement, dated as of \_\_\_\_\_ 1, 2010 (the “Trust Agreement”), by and between the City and the Trustee. The

\* Included only while DTC is the Securities Depository.

Trustee maintains a corporate trust office for payment and transfer of this Obligation (the "Designated Office").

The registered owner of this Obligation is entitled to receive, subject to the terms of the Purchase Agreement, on the maturity date set forth above, the principal amount set forth above, representing a portion of the payments due designated as principal coming due and to receive semiannually on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_ (the "Interest Payment Dates"), until payment in full of said portion of principal or redemption prior thereto, the registered owner's proportionate share of the Payments designated as interest coming due during the period commencing on the last date on which interest was paid and ending on the day prior to the Interest Payment Date or, if no interest has been paid, from the Dated Date specified above. Said interest is the result of the multiplication of said principal by the interest rate per annum set forth above. Interest shall be calculated on the basis of a 360-day year composed of twelve (12) months of thirty (30) days each.

Said amounts representing the registered owner's share of the Payments designated as interest are payable in lawful money of the United States of America by check mailed when due by first class mail by the Trustee to the registered owner in whose name this Obligation is registered at the close of business on the fifteenth (15th) day of the calendar month next preceding the Interest Payment Date at the address thereof as it appears on the registration books for the Obligations maintained by the Trustee. Said amounts representing the registered owner's share of the Payments designated as principal are payable when due upon surrender of this Obligation at the Designated Office. Principal, interest or redemption premium, if any, payable to any owner of \$1,000,000 or more in principal amount of the series of obligations of which this Obligation is a part (together with the Excise Tax and State Shared Revenue Obligations, Series 2010, executed and delivered on the date hereof, the "Obligations") may be paid by wire transfer in immediately available funds to an account in the United States of America if the owner makes a written request of the Trustee at least twenty (20) days before the date of payment specifying the account address. The notice may provide that it shall remain in effect for subsequent payments until otherwise requested in a subsequent written notice.

The Trustee has no obligation or liability to the registered owners of the Obligations for the payment of interest or principal pertaining to the Obligations. The Trustee's sole obligations are to administer, for the benefit of the registered owners of the Obligations, the various funds and accounts established pursuant to the Trust Agreement. (The recitals, statements, covenants and representations made in this Obligation shall be taken and construed as made by and on the part of the City, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.)

This Obligation has been executed and delivered by the Trustee pursuant to the terms of, and for the purposes described in, the Trust Agreement. The City is authorized to enter into the Purchase Agreement and the Trust Agreement under the laws of the State of Arizona and by resolution of the Board of Supervisors of the City adopted \_\_\_\_\_, 2010 (the "Resolution"). Reference is hereby made to the Purchase Agreement and the Trust Agreement (copies of which are on file at the Designated Office) for further definitions, the terms, covenants and provisions pursuant to which the Obligations are delivered, the rights thereunder of the

registered owners of the Obligations, the terms under which the Trust Agreement or the Purchase Agreement may be modified or supplemented, the rights, duties and immunities of the Trustee and the security for, and the rights and obligations of the City under the Purchase Agreement (including with respect to certain obligations to be secured on a parity with the security for the Payments and to certain limitations on such security), to all of the provisions of which Purchase Agreement and Trust Agreement the registered owner of this Obligation, by acceptance hereof, assents and agrees. (To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement and the Purchase Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal of all Obligations then outstanding, and may be amended without such consent under certain circumstances but in no event such that the interests of the owners of the Obligations are adversely affected, provided that no such amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Payment thereof in accordance with such owner's Obligation.)

The obligation of the City to make the Payments does not represent or constitute a general obligation of the City for which the City is obligated to levy or pledge any form of taxation nor does the obligation to make the Payments under the Purchase Agreement constitute an indebtedness of the City, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction or otherwise.

Neither the Trustee nor the registered owners of the Obligations shall have any right under any circumstances to accelerate the maturities of the Obligations or otherwise declare any of the Payments not then past due or in default to be immediately due and payable. (This Obligation represents an interest in a limited obligation of the City (as described herein), and no member of the Board of Supervisors, officer or agent, as such, past, present or future, of the City shall be personally liable for the payment hereof.)

The Obligations are executed and delivered only in fully registered form in denominations of \$5,000 of principal due on a specific maturity date or integral multiples thereof. The Obligations shall not be transferable or exchangeable, except as provided in the Trust Agreement.

This Obligation may be exchanged for an Obligation or Obligations of like series and aggregate principal amount in authorized denominations having the same maturity date and interest rate.

This Obligation is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the Designated Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Obligation. Upon such transfer a new Obligation or Obligations, of authorized denomination or denominations, for the same series and aggregate principal amount will be delivered to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Obligation shall be overdue, and the City and the Trustee shall not be affected by any notice to the contrary.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or governmental charges required by law in connection with the exchange or transfer.

The Trustee may, but shall not be obligated to, exchange or register the transfer of this Obligation (i) if this Obligation has been selected for redemption, in whole or in part, or (ii) during a period of fifteen (15) days preceding the giving of a notice of redemption. If this Obligation is transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee, and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation or Obligations.

The registered owner of this Obligation shall have no right to enforce the provisions of the Trust Agreement or the Purchase Agreement or to institute any action to enforce the covenants thereof, or to take any action with respect to a default thereunder or hereunder, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

The Obligations maturing on or before July 1, 20\_\_, will not be subject to optional redemption prior to maturity. The Obligations maturing on or after July 1, 20\_\_, will be subject to redemption in such order and from such maturities as may be selected by the City, in whole or in part on any date on or after July 1, 20\_\_, at a redemption price equal to the principal amount of each Obligation to be redeemed, together with accrued interest to the date fixed for redemption but without premium.

The Obligations of the series of the Obligations of which this is a part maturing on July 1 of the following years shall be redeemed on July 1 of the years indicated and in the principal amounts indicated at a price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year Redeemed</u>	<u>Principal Amount Redeemed</u>
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
<u>Term Obligation Maturing July 1, 20__</u>	
20__	\$ __,000
20__	__,000
20__	__,000
20__	__,000
20__	__,000

Whenever Obligations are purchased, redeemed (other than by mandatory redemption) or are delivered by the City to the Trustee for cancellation, the principal amount of the Obligations

so retired shall satisfy and be credited against the mandatory redemption requirements therefor for the same series in any order specified by the City.

If less than all of the outstanding Obligations of any maturity are to be redeemed, the Obligations (or portions hereof) to be redeemed will be selected by the Trustee by lot or in any customary manner as determined by the Trustee. Redemption shall be in authorized denominations or any integral multiples thereof.

The Trustee shall give notice of any redemption of this Obligation as provided above no more than 60 nor less than 30 calendar days prior to the redemption date to the registered owner at its address shown on the registration books maintained by the Trustee. A certificate of the Trustee shall conclusively establish the mailing of any such notice for all purposes.

If at the time of mailing of the notice of redemption there has not been deposited with the Trustee moneys or eligible securities sufficient to redeem all Obligations subject to redemption and other requirements set forth in the Trust Agreement are not met, such notice shall state that it is conditional, subject to the deposit of moneys sufficient for the redemption and satisfaction of such conditions. If Obligations or portions thereof are subject to redemption and if on the redemption date moneys for the redemption thereof are held by the Trustee and those other conditions are met, thereafter those Obligations or portions thereof to be redeemed shall cease to bear interest, and shall cease to be secured by, and shall not be deemed to be outstanding under, the Trust Agreement. The failure to receive any notice of redemption, or any defect in such notice in respect of any Obligation, shall not affect the validity of redemption of any Obligation.

This Obligation shall not be entitled to any security or benefit under the Trust Agreement until executed by the Trustee.

IN WITNESS WHEREOF, this Obligation has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: .....

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By.....  
Authorized Representative

STATEMENT OF INSURANCE

Assured Guaranty Corp. (“Assured Guaranty”), a Maryland-domiciled insurance company, has delivered its financial guaranty insurance policy (the “Policy”) with respect to the scheduled payments of principal of and interest on this Obligation to The Bank of New York Mellon Trust Company, N.A., as paying agent on behalf of the holders of the Obligations (the “Paying Agent”). Such Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from Assured Guaranty or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Obligation acknowledges and consents to the subrogation rights of Assured Guaranty as more fully set forth in the Policy.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned ..... (the "Transferor"), hereby sells, assigns and transfers unto ..... (the "Transferee"), whose address is ..... and whose social security number (or other federal tax identification number) is

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFEREE

.....  
.....

the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints ..... as attorney to register the transfer of the within certificate on the books kept for registration and registration of transfer thereof, with full power of substitution in the premises.

Date: .....  
SIGNATURE(S) GUARANTEED BY:

.....  
Firm or Bank

.....  
Authorized Signature  
Signature(s) guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or other guarantee program acceptable to the Trustee or Registrar

.....  
NOTICE: No transfer will be registered and no new certificate will be issued in the name of the Transferee, unless that signature(s) to this assignment correspond(s) with the name as it appears on the face of the within certificate in every particular, without alteration or enlargement or any change whatever and name, address and the Social Security Number or federal employee identification number of the Transferee is supplied

The following abbreviations when used in the inscription on the face of the within certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANS MIN ACT - ..... Custodian for .....  
(Cust.) (Minor)

under Uniform Gifts/Transfers to Minors Act of .....  
(State)

Additional abbreviations may also be used though not in list above.

EXHIBIT B

Payment Request Form

Application No. ....

The Trustee is hereby requested to pay from the "Acquisition Fund" established by the Trust Agreement, dated as of \_\_\_\_\_ 1, 2010 (the "Trust Agreement"), between the City of Benson, Arizona (the "City"), and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") to the person or corporation designated below as "Payee," the sum set forth below such designation, in payment of the Project Costs (as such term is and other undefined terms used herein are defined in the Trust Agreement) described below. The amount shown below is due and payable under a purchase order or contract with respect to the Project Costs described below and has not formed the basis of any prior request for payment.

Payee: .....

Address or Wiring Instructions: .....

Amount: .....

Description of Project Costs or portion thereof authorized to be paid to the Payee: .....

The City acknowledges that it has received and inspected each item of the New Projects described above and has found each item of the New Projects so described to be in good condition, in conformity with the City's specifications and satisfactory for the City's purposes and in accordance with the applicable purchase order or contract and the plans for the New Projects. Notwithstanding anything herein to the contrary, the City shall not be deemed to have waived or released the Payee from any liability or obligation to the City in the event the City's acknowledgment herein is discovered to be inaccurate in any respect as to any item of the New Projects described above.

By execution of this Payment Request Form, the City requests and approves the payment of the amount stated above to Payee set forth above.

DATED: ....., 20....

.....  
City Representative

Please forward payment to Payee at the following address:

EXHIBIT C

Reimbursement Request Form

Application No. ....

The Trustee is hereby requested to pay from the "Acquisition Fund" established by the Trust Agreement, dated as of \_\_\_\_\_ 1, 2010 (the "Trust Agreement"), between the City of Benson, Arizona (the "City"), and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), to the City, the sum set forth below as reimbursement of (all/a portion) of the Project Costs (as such term and all other undefined terms used herein are defined in the Trust Agreement) described below. Payment of the amount, shown below was made by the City on ....., 20..., as evidenced by ....., attached hereto, as full/partial payment of ....., also attached hereto. The amount shown below was paid by the City as Project Costs and has not formed the basis of any prior request for payment.

The City acknowledges that it has received and has inspected each item of the New Projects to which the foregoing relates and has found each item of the New Projects so described to be in good condition, in conformity with the City's specifications and satisfactory for the City's purposes. Notwithstanding anything herein to the contrary, the City shall not be deemed to have waived or released any entity named on the attached documentation, from any liability or obligation to the City in the event the City's acknowledgment herein is discovered to be inaccurate in any respect as to any item of the New Projects described below.

Amount: .....

Description of Project Costs or portion thereof for which reimbursement is hereby requested:

DATED: ....., 20....

.....  
City Representative

Dated Received: ....., 20....

OFFICIAL STATEMENT DATED JUNE 17, 2010

NEW ISSUE – BOOK-ENTRY ONLY

RATINGS: See “Ratings” herein.

*In the opinion of Special Counsel, assuming compliance with certain tax covenants, the portion of each installment payment made by the City pursuant to the Purchase Agreement and denominated as and comprising interest pursuant to the Purchase Agreement with respect to the Obligations (the “Interest Portion”) and received by the Holders of the Obligations will be excludable from gross income for federal income tax purpose and will not be an item of tax preference for purposes of the alternative minimum tax for individuals and corporations under the Internal Revenue Code of 1986, as amended. The Interest Portion of the New Money Obligations will also not be taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations (as defined for federal income tax purposes), but the Interest Portion of the Refunding Obligations may be taken into account in determining such earnings for purposes of computing such tax imposed on such corporations. The Interest Portion received by the holders of the Obligations will also be exempt from income taxation under the laws of the State of Arizona so long as the Tax Exempt interest portion is excluded from gross income for federal income tax purposes. See “TAX MATTERS” herein for a description of certain federal tax consequences of ownership of the Obligations. See also “ORIGINAL ISSUE DISCOUNT” and “AMORTIZABLE PREMIUM” herein.*

*The City will designate the Obligations as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended, which relates to the ability of certain financial institutions to deduct interest expense allocable to holding and carrying tax-exempt obligations for federal income tax purposes. Representatives of the City will represent and warrant that they do not anticipate that the aggregate amount of tax-exempt obligations that will be issued by or on behalf of the City in calendar year 2010 will exceed \$30,000,000.*

THE CITY OF BENSON, ARIZONA

**\$2,525,000**  
**EXCISE TAX AND STATE SHARED**  
**REVENUE OBLIGATIONS,**  
**SERIES 2010**  
**(BANK QUALIFIED)**

**\$2,715,000**  
**EXCISE TAX AND STATE SHARED**  
**REVENUE REFUNDING**  
**OBLIGATIONS,**  
**SERIES 2010**  
**(BANK QUALIFIED)**

Dated: Date of Delivery

Due: July 1, as shown on the inside front cover

The Excise Tax and State Shared Revenue Obligations, Series 2010 (the “New Money Obligations”); the Excise Tax and State Shared Revenue Obligations, and the Excise Tax and State Shared Revenue Refunding Obligations, Series 2010 (the “Refunding Obligations,” and with the New Money Obligations, the “Obligations”) will be executed and delivered (i) to finance the costs of certain projects for the City of Benson, Arizona (the “City”), (ii) to refinance the costs of other projects for the City and (iii) to pay costs relating to the execution and delivery of the Obligations (including funding a debt service reserve fund). See “THE PROJECTS” and “THE PLAN OF REFUNDING” herein.

Interest on the Obligations will be payable semiannually on each July 1 and January 1, commencing January 1, 2011. The Obligations will be dated the date of delivery and will be issuable as fully registered obligations without coupons and will be initially registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, which will act as securities depository for the Obligations. Beneficial interest in the Obligations will be available to purchasers in amounts of \$5,000 of principal of a series due on a specific maturity date and any integral multiple thereof only under the book-entry only system maintained by DTC through brokers and dealers who are, or act through, DTC Participants (as each defined herein). Purchasers will not receive physical certificates. So long as any purchaser is the beneficial owner of an Obligation, such purchaser must maintain an account with a broker or a dealer who is, or acts through, a DTC Participant to receive payment of principal and interest on such Obligations. See APPENDIX G - “BOOK-ENTRY ONLY SYSTEM” herein.

The Obligations will be subject to optional and mandatory redemption prior to their stated maturities as described herein.

The Obligations will be undivided, proportionate interests in the installment payments to be made by the City pursuant to a First Purchase Agreement, to be dated as of July 1, 2010 (the “Purchase Agreement”), between the City and U.S. Bank National Association (the “Trustee”). The installment payments to be made by the City will be payable from and secured by a limited pledge of the Excise Tax Revenues and the State Shared Revenues (as defined herein). Such pledge will be on a parity with the City’s pledge of the revenues from the Excise Taxes and the State Shared Revenues with certain Parity Lien Obligations (as defined herein) which may hereafter be incurred. See “SECURITY AND SOURCES OF PAYMENT” herein.

**THE OBLIGATIONS WILL BE SPECIAL LIMITED, REVENUE OBLIGATIONS OF THE CITY AND WILL BE PAYABLE SOLELY FROM THE SOURCES DESCRIBED HEREIN. THE OBLIGATIONS WILL NOT BE GENERAL OBLIGATIONS OF THE CITY, THE STATE OF ARIZONA OR ANY POLITICAL SUBDIVISION THEREOF AND THE FULL FAITH AND CREDIT OF THE CITY, THE STATE OF ARIZONA OR ANY POLITICAL SUBDIVISION THEREOF WILL NOT BE PLEDGED FOR THE PAYMENT OF THE OBLIGATIONS.**

The scheduled payment of principal of and interest on the Obligations when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Obligations by **ASSURED GUARANTY MUNICIPAL CORP. (FORMERLY KNOWN AS FINANCIAL SECURITY ASSURANCE INC.)**



The Obligations are offered when, as and if executed and delivered, subject to the approving opinion of Greenberg Traurig, LLP, Phoenix, Arizona, Special Counsel, as to validity and, as described in caption paragraph, tax exemption. Certain matters will be passed upon for the Underwriter by its Counsel, Gust Rosenfeld P.L.C.. It is anticipated that the Obligations in definitive form will be available for delivery through DTC on or about July 1, 2010.

*This cover page contains only a brief description of the Obligations and the security therefor. It is not a summary of material information with respect to the Obligations. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision with respect to the Obligations.*

STONE & YOUNGBERG

**MATURITY SCHEDULE**  
**Base CUSIP® No. 08244P<sup>(1)</sup>**

**NEW MONEY OBLIGATIONS**

<u>Maturity Date (July 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price or Yield</u>	<u>CUSIP® No.</u>
2011	\$100,000	2.500	0.890	AP8
2012	100,000	2.000	1.350	AQ6
2013	105,000	2.000	1.800	AR4
2014	105,000	2.500	2.150	AS2
2015	110,000	2.500	2.550	AT0
2016	110,000	3.000	2.950	AU7
2017	110,000	3.250	3.300	AV5
2018	120,000	4.000	3.550	AW3
2019	125,000	3.750	3.800	AX1
2020	125,000	4.000	3.950	AY9
2021	135,000	4.000	4.050	AZ6

\$590,000 Term Obligation @ 4.25% Due July 1, 2025 – Price 98.042% CUSIP® No. 08244P BA0

\$690,000 Term Obligation @ 4.50% Due July 1, 2029 – Price 97.382% CUSIP® No. 08244P BB8

**REFUNDING OBLIGATIONS**

<u>Maturity Date (July 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price or Yield</u>	<u>CUSIP® No.</u>
2011	\$105,000	2.500	0.890	AA1
2012	110,000	2.000	1.350	AB9
2013	110,000	2.000	1.800	AC7
2014	115,000	2.500	2.150	AD5
2015	115,000	2.500	2.550	AE3
2016	120,000	3.000	2.950	AF0
2017	125,000	3.250	3.300	AG8
2018	125,000	4.000	3.550	AH6
2019	130,000	3.750	3.800	AJ2
2020	135,000	4.000	3.950	AK9
2021	140,000	4.000	4.050	AL7

\$635,000 Term Obligation @ 4.25% Due July 1, 2025 – Price 98.042% CUSIP® No. 08244P AM5

\$750,000 Term Obligation @ 4.50% Due July 1, 2029 – Price 97.382% CUSIP® No. 08244P AN3

<sup>(1)</sup> Copyright© 2010, CUSIP Global Services. CUSIP®, a registered trademark of the American Bankers Association, CUSIP Data provided by the Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. All rights reserved. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services Bureau. CUSIP numbers have been assigned by an independent company not affiliated with the City and are included solely for the convenience of the holders of the Bonds. The City is not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bonds.

## REGARDING THIS OFFICIAL STATEMENT

No dealer, broker, salesperson or other person has been authorized by the City or Stone & Youngberg LLC (the "Underwriter") to give any information or to make any representations with respect to the Obligations, other than those in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of any offer to buy, and there shall not be any sale of the Obligations by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from the City, DTC and other sources that are believed to be reliable, but the Underwriter does not guarantee the accuracy or completeness of the information and such information is not to be construed as a representation by the Underwriter. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City, or DTC since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE OBLIGATIONS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE OBLIGATIONS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAVE THE PURCHASE AGREEMENT OR THE TRUST AGREEMENT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. ANY REGISTRATION OR QUALIFICATION OF THE OBLIGATIONS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES IN WHICH OBLIGATIONS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY OTHER FEDERAL, STATE OR OTHER GOVERNMENTAL ENTITY, NOR ANY AGENCY OR DEPARTMENT THEREOF, HAS PASSED UPON THE MERITS OF THE OBLIGATIONS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

The Trustee assumes no responsibility for this Official Statement and has not reviewed or undertaken to verify any information contained herein.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The City has undertaken to provide continuing disclosure with respect to the Obligations as required by Rule 15c2-12 of the Securities and Exchange Commission. See "CONTINUING DISCLOSURE" and APPENDIX F - "FORM OF CONTINUING DISCLOSURE UNDERTAKING" herein.

Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.) ("AGM") makes no representation regarding the Refunding Bonds or the advisability of investing in the Refunding Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading "BOND INSURANCE" and "APPENDIX H – SPECIMEN MUNICIPAL BOND INSURANCE POLICY".

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# OFFICIAL STATEMENT

## CITY OF BENSON, ARIZONA

**\$2,525,000**  
**EXCISE TAX AND STATE SHARED**  
**REVENUE OBLIGATIONS,**  
**SERIES 2010**  
**(BANK QUALIFIED)**

**\$2,715,000**  
**EXCISE TAX AND STATE SHARED**  
**REVENUE REFUNDING**  
**OBLIGATIONS,**  
**SERIES 2010**  
**(BANK QUALIFIED)**

### INTRODUCTORY STATEMENT

This Official Statement, which includes the cover page, the inside cover page and the appendices hereto provides certain information concerning the Excise Tax and State Shared Revenue Obligations, Series 2010 (the "New Money Obligations"); the Excise Tax and State Shared Revenue Obligations and the Excise Tax and State Shared Revenue Refunding Obligations, Series 2010 (the "Refunding Obligations," and with the New Money Obligations, the "Obligations"), to be executed and delivered in the respective principal amounts indicated hereinabove. The Obligations will be undivided, participating, proportionate interests in installment payments (the "Payments") to be made by the City of Benson, Arizona (the "City"), pursuant to a First Purchase Agreement, to be dated as of July 1, 2010 (the "Purchase Agreement"), between the City, as buyer, and U.S. Bank National Association, in its capacity as trustee (the "Trustee"), as seller. The Obligations are being executed and delivered for the purpose of providing funds (i) to finance the costs of certain projects (the "New Projects") for the City as described under the heading "THE PROJECTS", (ii) to refinance the costs of certain other projects (the "Refinanced Projects," and with the New Projects, the Projects") for the City as described under the heading "PLAN OF REFUNDING") (the "Refunding") and (iii) to pay the costs and expenses relating to the execution and delivery of the Obligations (including depositing the debt service reserve requirement for the Obligations). (Pursuant to the Purchase Agreement, the Trustee will sell and convey to the City, and the City will buy and accept from the Trustee, the Projects.) The Obligations will be executed and delivered pursuant to a First Trust Agreement, to be dated as of July 1, 2010 (the "Trust Agreement"), between the City and the Trustee. Certain of the Trustee's interests under the Purchase Agreement, including, without limitation, the right to receive and collect the Payments and the right to enforce the payment of the Payments, will be held by the Trustee for the benefit of the registered owners of the Obligations. See APPENDIX D - "SUMMARY OF SELECT PROVISIONS OF PRINCIPAL DOCUMENTS" in addition to the information hereinbelow for descriptions of the terms of the Purchase Agreement and the Trust Agreement. See Appendices A and B for information about the City. The Payments will be payable from and secured by a lien on the revenues from the Excise Taxes and the State Shared Revenues (both hereinafter defined).

"Excise Taxes" means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the City imposes; provided that the Mayor and Council of the City may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council.

"State Shared Revenues" means any amounts of excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State or any agency thereof and returned, allocated or apportioned to the City, except the City's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

A brief description of the security for the Obligations and of matters related to the City are included in this Official Statement together with a summary of select provisions of the Purchase Agreement and the Trust Agreement. See APPENDIX D "Summary of Select Provisions of Principal Documents." Such descriptions do not purport to be comprehensive or definitive. Certain defined terms used herein are defined in such Appendix under the subheading "Definition of Certain Terms. All references to the Purchase Agreement and the Trust Agreement are qualified in their entirety by reference to such documents, and references herein to the Obligations are qualified in their entirety by reference to the form thereof included in the Trust Agreement, copies of all of which are available for inspection at the designated corporate trust office of the Trustee.

## THE OBLIGATIONS

### General Provisions

The Obligations will be dated the date of their initial execution and delivery and will bear interest from such date, at the rates, and will mature on the dates and in the amounts, all as set forth on the inside cover page hereof. Interest on the Obligations will be payable on each July 1 and January 1 (each such date is referred to herein as an “Interest Payment Date”), commencing January 1, 2011.

The Obligations will be registered only in the name of Cede & Co., the nominee of the Depository Trust Company, New York, New York (“DTC”), under the book-entry only system described in APPENDIX G. Beneficial ownership interests in the Obligations may be purchased through direct and indirect participants of DTC in amounts of \$5,000 of principal of a series due on a specific maturity date or integral multiples thereof. See APPENDIX G - “BOOK-ENTRY-ONLY SYSTEM.”

### Redemption Provisions

*Optional Redemption.* Obligations maturing before or on July 1, 2020, will not subject to redemption prior to maturity. Obligations maturing on or after July 1, 2021, will be subject to redemption in such order and from such maturities as may be selected by the City and by lot within any maturity by such methods as may be selected by the Trustee from prepayments made at the option of the City pursuant to the Purchase Agreement, in whole or in part on any date, on or after July 1, 2020, at a redemption price equal to the principal amount of Obligations or portions thereof to be redeemed, together with accrued interest to the date fixed for redemption, but without premium.

*Mandatory Redemption.* The Obligations maturing July 1, 2025 and July 1, 2029 (the “Term Obligations”) will be subject to mandatory redemption on the following dates and in the following amounts at a price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

#### New Money Term Obligation Due 2025

Redemption Dates	Principal Amount Redeemed
2022	\$140,000
2023	145,000
2024	150,000
2025	155,000 <sup>(1)</sup>

#### New Money Term Obligation Due 2029

Redemption Dates	Principal Amount Redeemed
2026	\$160,000
2027	170,000
2028	175,000
2029	185,000 <sup>(1)</sup>

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<sup>(1)</sup> Represents final maturity.

Refunding Term Obligation Due 2025

Redemption Dates	Principal Amount Redeemed
2022	\$150,000
2023	155,000
2024	160,000
2025	170,000 <sup>(1)</sup>

Refunding Term Obligation Due 2029

Redemption Dates	Principal Amount Redeemed
2026	\$175,000
2027	185,000
2028	190,000
2029	200,000 <sup>(1)</sup>

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<sup>(1)</sup> Represents final maturity.

Whenever Obligations subject to mandatory redemption are purchased, redeemed (other than by mandatory redemption) or are delivered by the City to the Trustee for cancellation, the principal amount of the Obligations so retired will satisfy and be credited against the mandatory redemption requirements therefor in any order specified by the City.

*Manner of Selection for Redemption.* The Obligations will be redeemed only in principal amounts of \$5,000 each or integral multiples thereof. The City will, at least 45 days prior to the redemption date, notify the Trustee of such redemption date and of the maturities of the Obligations and the principal amount of the Obligations of any such maturity to be redeemed on such date. For the purposes of any redemption of less than all of the Obligations of a single maturity, the particular Obligations or portions of the Obligations to be redeemed shall be selected through the procedures of DTC.

*Notice of Redemption.* Redemption notices will be sent only to DTC by electronic media, not more than 60 nor less than 30 days prior to the date set for redemption. See APPENDIX G - "BOOK-ENTRY ONLY SYSTEM." Such notice will state that if, on the specified redemption date, moneys for redemption of all the Obligations to be redeemed together with interest to the date of redemption, is held by the Trustee, then, from and after said date of redemption, interest with respect to the Obligations will cease to accrue and become payable and that if such moneys are not so held, the redemption will not occur.

## SECURITY AND SOURCES OF PAYMENT

### General

The Obligations will be special, limited, revenue obligations, taking the form of undivided, participating, proportionate interests in the Payments. The obligation of the City to make the Payments will be limited to payment from the revenues from the Excise Taxes and the State Shared Revenues and will in no circumstances constitute a general obligation or a pledge of the full faith and credit of the City or the State or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any *ad valorem* property taxes.

Subject to the rights to the revenues from the Excise Taxes and the State Shared Revenues with respect to obligations hereafter incurred on a parity with the Purchase Agreement pursuant to its terms (the "Parity Lien Obligations"), the revenues from the Excise Taxes and the State Shared Revenues in excess of amounts, if any, required to be deposited

with or held by the Trustee for the Payments will constitute surplus revenues and may be used by the City for any lawful purpose for the benefit of the City. The City, also, may make the Payments from its other funds as permitted by law and as the City determines from time to time, and the Trustee will thereafter have no claim to such other funds. Under the terms of the Trust Agreement, an irrevocable trust will be administered by the Trustee for the equal and proportionate benefit of the Owners of the Obligations, which trust includes: (1) all right, title and interest of the Trustee, as seller, in the Purchase Agreement and the right to (a) make claim for, collect or receive all amounts payable or receivable thereunder, (b) to bring acts and proceedings thereunder or for the enforcement of such rights, and (c) to do any and all other things which the Trustee is entitled to do thereunder; (2) amounts on deposit from time to time in the funds created pursuant to the Trust Agreement; and (3) any and all other property of any kind hereafter conveyed as additional security for the Obligations. See "APPENDIX D - SUMMARY OF SELECT PROVISIONS OF PRINCIPAL DOCUMENTS - THE TRUST AGREEMENT."

### **Pledge**

The Payments will be secured by a first lien pledge by the City of the revenues from the Excise Taxes and a first lien pledge of the State Shared Revenues. If at any time the moneys in the funds held for payment of amounts due under the Purchase Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required, any such deficiency will be made up from the first moneys thereafter received and available for such transfers under the terms of the Purchase Agreement and, with respect to payment from the Excise Tax Revenues and the State Shared Revenues, *pro rata*, as applicable, with amounts due with respect to obligations on a parity therewith. The Purchase Agreement will not terminate so long as any of the Payments are due and owing pursuant to the terms of the Obligations.

Payment of the Obligations will not be secured by the Projects, and the Owners of the Obligations have no claim or lien on the Projects or any part thereof.

THE PAYMENTS WILL NOT CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE CITY NOR WILL THE CITY BE LIABLE FOR THE PAYMENTS FROM AD VALOREM PROPERTY TAXES. PURSUANT TO THE TRUST AGREEMENT, THE OBLIGATIONS WILL BE SPECIAL, LIMITED REVENUE OBLIGATIONS, PAYABLE SOLELY FROM THE PAYMENTS MADE PURSUANT TO THE AGREEMENT. THE OBLIGATIONS WILL NOT BE GENERAL OBLIGATIONS OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND WILL NOT REPRESENT OR CONSTITUTE A DEBT OR A DIRECT OR INDIRECT PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY, THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF.

### **Covenant to Maintain Debt Service Coverage**

In the Purchase Agreement, the City covenants and agrees that the revenues from the Excise Taxes will be retained and maintained so that the amounts received from the revenues from the Excise Taxes and State Shared Revenues, all within and for the most recently completed fiscal year of the City shall be equal to at least two (2.0) times the total of interest and principal requirements for the current fiscal year for this Agreement and the Parity Lien Obligations. If the revenues from the Excise Taxes and the State Shared Revenues for any such fiscal year have not been equal to at least two (2.0) times the total of the interest and principal requirements for the current fiscal year for the Purchase Agreement and the Parity Lien Obligations or if at any time it appears that the revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such requirements, the City will, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which will be part of the Excise Taxes or increase the rates for the Excise Taxes currently imposed fully sufficient at all times, after making allowance for contingencies and errors, in each fiscal year in order that (a) the revenues from the Excise Taxes and the State Shared Revenues will be sufficient to meet all current requirements hereunder and (b) the revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level as required by the first sentence of this paragraph. See "THE EXCISE TAXES AND THE STATE SHARED REVENUES" herein.

### **Reserve Fund**

The Trust Agreement establishes the Debt Service Reserve Fund to secure payment of the Obligations, but provides that no deposit needs to be made into the Debt Service Reserve Fund if the Debt Service Coverage is greater than three (3.0) times. On the June 15 following the fiscal year of the City which the Debt Service Coverage is three (3.0) times

or less on each December 15 and June 15 thereafter, the City will deposit into the Debt Service Reserve Fund, one-tenth (1/10) of the amount required to fund and maintain the Debt Service Reserve Fund in an amount equal to the Reserve Requirement.

**Additional Parity Lien Obligations**

So long as any of the Obligations remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the City may not further encumber the revenues from the Excise Taxes and the State Shared Revenues on a basis equal to the pledge for the Payments unless the revenues from the Excise Taxes and the State Shared Revenues in the most recently completed fiscal year of the City, shall have amounted to at least two (2.0) times the highest combined interest and principal requirements for any succeeding fiscal year pursuant to the Purchase Agreement and the Parity Lien Obligations (i.e. those already, or so proposed to be, secured by such pledge).

**THE EXCISE TAXES AND THE STATE SHARED REVENUES**

The major categories of the Excise Taxes and the State Shared Revenues are discussed more fully hereinafter.

**Excise Taxes**

*City Sales Taxes.* City Sales Taxes are levied by the City upon persons on account of their business activities within the City. The amount of taxes due are calculated by applying the tax rate against the gross proceeds of sales or gross income derived from the business activities shown in the table hereafter. City Sales Taxes are collected by the Arizona Department of Revenue and remitted to the City on a monthly basis.

**TABLE 1**

**CITY TRANSACTION PRIVILEGE (SALES) TAX RATES BY CATEGORY**

<u>Business Activity Category</u>	<u>Rate</u>
Publishing	2.5%
Printing and Advertising	2.5
Contracting	2.5
Construction Contracting	4.0
Rental & Leasing	2.5
Retail Sales	2.5
Restaurants and Bars	2.5
Amusements	2.5
Miscellaneous	2.5
Transient Lodging	4.0

Source: Finance Director of the City.

*Licenses and Franchise Fees.* The City requires a business license for all business transacted within the City limits. Those entities transacting more than one type of business are required to have separate business license for each activity they engage. The City has the authority and ability to set the charge for the business license at whatever rate it determines.

*Parks and Recreation Fees.* The City imposes and collects fees for parks and recreation to engage in certain activities within the City and the right to utilize certain City property.

*Permits.* The City imposes and collects fees for permits to engage in certain activities within the City and the right to utilize certain City property.

*Fines and Forfeitures.* The City imposes and collects fines and forfeitures for violations of State laws or City ordinances relating to traffic, parking, animal control and other offenses.

*Transient Lodging Tax.* The City levies a transient lodging tax on any hotel, motel, apartment or individual charging for lodging space to any person for less than thirty (30) consecutive days.

### **State-Shared Revenues**

*State Shared Income Taxes.* Under current State law, Arizona cities and towns are preempted from imposing a local income tax. Cities and towns are, however, entitled by statutory formula to receive typically 15.0% of the net revenues of the State's personal and corporate income tax collections for the two fiscal years prior to the current fiscal year. Distribution of such funds is made monthly based on the proportion of each city's or town's population to the total population of all incorporated cities and towns in the State as determined by the latest census. Reduced economic activity or reductions in the statutory formula share could adversely affect the Town's revenues.

*State-Shared Sales Taxes.* Pursuant to statutory formula, cities and towns in Arizona receive a portion of the State-levied transaction privilege (sales) tax. The State transaction privilege (sales) tax is levied against the same categories of business activity as the City's transaction privilege (sales) tax with the exception of food sales, which the State exempts from tax. As Table 3 indicates, the rate of taxation varies among the different types of business activities taxed, with the most common effective rate being subject to the hereinafter described distribution share being 5.60% of the amount or volume of business transacted.

Under current State law, the aggregate amount distributed to all Arizona cities and towns is equal to 25% of the "distribution share" of revenues attributable to each category of taxable activity. The allocation of each city and town of the revenues available to all cities and towns is based on their population relative to the aggregate population of all cities and towns as shown by the latest decennial or special census. State-levied transaction privilege (sales) taxes are collected by the State and are distributed monthly to cities and towns.

**TABLE 2**

**STATE TRANSACTION PRIVILEGE (SALES) TAX RATES  
TAXABLE ACTIVITIES AND DISTRIBUTION BASE**

Taxable Activities (a)	State Rate (b)	Distribution Base
Non-metal mining oil/gas	3.125%	32.00
Utilities	5.600	20.00
Communications	5.600	20.00
Transporting	5.600	20.00
Private car/pipelines	5.600	20.00
Publishing	5.600	20.00
Job Printing	5.600	20.00
Restaurants and bars	5.600	40.00
Amusements	5.600	40.00
Rental of personal property	5.600	40.00
Contracting	5.600	20.00
Retail (excluding food sales)	5.600	40.00
Mining severance	2.500	80.00
Hotel/motel	5.500	50.00

(a) Does not include \$0.0305 per gallon State tax on the retail sale of jet fuel, which tax is only levied on the first ten million gallons sold to each purchaser in each calendar year.

(b) Exclusive of the State transaction privilege (sales) tax rate on certain of the categories of business activity at 0.6%. The 0.6% tax collections are dedicated exclusively to education and are not distributed to the City or pledged to the payment of debt service with respect to the Obligations. The rate of the City Excise Tax is a percentage of the State Rate exclusive of this 0.6% tax.

Source: Arizona Department of Revenue.

From time to time bills are introduced in the State Legislature to make changes in the formula to allot the State Shared Revenues. The City cannot determine whether any such measures will become law or how such measures might affect the revenues that comprise the State Shared Revenues. In addressing State budgetary deficiencies, the Governor and members of the State Legislature have occasionally proposed certain adjustments that would reduce the distribution of the State Shared Revenues to cities, towns and counties. The City cannot determine whether such measures will become law in the future or how they might affect the State Shared Revenues.

In addition, initiative measures may be circulated from time to time seeking to place on the ballot changes in State law which repeal or modify the State Shared Revenues. The City cannot predict if any such initiative measures will ever actually be submitted to the electors, what form the measures might take or the outcome of any such election.

## Historical and Estimated Excise Tax Revenues and State Shared Revenues

TABLE 3 sets forth actual and estimated revenues from the Excise Taxes and actual and estimated State Shared Revenues since fiscal year 2005-06.

TABLE 3

### CITY OF BENSON, ARIZONA HISTORICAL AND ESTIMATED EXCISE TAX REVENUES AND STATE SHARED REVENUES 2005/06 to 2010/11

Category	Actual				Projected (a)	
	Fiscal Year 2005/06	Fiscal Year 2006/07	Fiscal Year 2007/08	Fiscal Year 2008/09	Fiscal Year 2009/10	Fiscal Year 2010/11
City Sales Tax	\$ 1,922,730	\$ 2,681,798	\$ 2,919,257	\$ 2,670,289	\$ 2,625,000	\$ 2,625,000
License and franchise fees	104,528	141,814	172,942	183,298	170,000	170,000
Parks and recreation fees	521	16,991	4,277	15,842	12,850	12,600
Permits	345,725	310,184	228,230	150,102	100,000	100,000
Fines and forfeitures	23,714	40,992	39,445	119,367	39,600	39,600
Transient Lodging Tax	72,684	100,425	100,212	95,122	75,000	150,000
State-Shared Income Taxes	497,805	538,159	667,060	710,393	611,965	461,288
State-Shared Sales Taxes	493,238	450,525	435,625	378,109	360,000	355,606
<b>TOTAL</b>	<b>\$ 3,460,945</b>	<b>\$ 4,280,888</b>	<b>\$ 4,567,048</b>	<b>\$ 4,322,522</b>	<b>\$ 3,994,415</b>	<b>\$ 3,914,094</b>

(a) Projections provided by the City. These projections were made during May of 2010. Such projections are “forward looking” statements and no assurance can be given that the projected collections will be realized at the times or in the amounts shown.

Source: The Finance Department of the City.

## PLAN OF REFUNDING

To accomplish the Refunding, the proceeds from the sale of the Refunding Obligations, remaining after payment of certain costs of sale and execution and delivery thereof, along with moneys remaining in the debt service fund of the hereinafter described Obligations Being Refunded, will be used to pay the principal of and premium and interest on such Obligations Being Refunded at their maturity or redemption prior to maturity as shown below. Such Obligations were executed and delivered to refinance a portion of the costs of the following Refinanced Projects: wastewater treatment plant, the newest water storage tank and related appurtenances and the swimming pool for the City. See “SOURCES AND USES OF FUNDS.”

Issue	Maturity Date	Coupon	Principal Amount Outstanding	Principal Being Refunded	Redemption Date (July 1)*	Redemption Premium as a Percentage of Principal	CUSIP @ No. * (a)
United States Department of Agriculture, Farmers Home Administration Loan	6/3/2019	4.50%	\$ 2,600,634.96*	\$ 2,600,634.96*	N/A	N/A	N/A
Zions Bank Loan from Zions Bank	7/1/2010	4.75	333,500.00	333,500.00	2010	N/A	N/A

(a) See footnote (1) to the inside cover page.

## BOND INSURANCE

### **Bond Insurance Policy**

Concurrently with the issuance of the Obligations, Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.) ("AGM") will issue its Municipal Bond Insurance Policy for the Obligations (the "Policy"). The Policy guarantees the scheduled payment of principal of and interest on the Obligations when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.)**

AGM is a New York domiciled financial guaranty insurance company and a wholly owned subsidiary of Assured Guaranty Municipal Holdings Inc. ("Holdings"). Holdings is an indirect subsidiary of Assured Guaranty Ltd. ("AGL"), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol "AGO". AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. No shareholder of AGL, Holdings or AGM is liable for the obligations of AGM.

On July 1, 2009, AGL acquired the financial guaranty operations of Holdings from Dexia SA ("Dexia"). In connection with such acquisition, Holdings' financial products operations were separated from its financial guaranty operations and retained by Dexia. For more information regarding the acquisition by AGL of the financial guaranty operations of Holdings, see Item 1.01 of the Current Report on Form 8-K filed by AGL with the Securities and Exchange Commission (the "SEC") on July 8, 2009.

Effective November 9, 2009, Financial Security Assurance Inc. changed its name to Assured Guaranty Municipal Corp.

AGM's financial strength is rated "AAA" (negative outlook) by Standard and Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P") and "Aa3" (negative outlook) by Moody's Investors Service, Inc. ("Moody's"). On February 24, 2010, Fitch, Inc. ("Fitch"), at the request of AGL, withdrew its "AA" (Negative Outlook) insurer financial strength rating of AGM at the then current rating level. Each rating of AGM should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of any security guaranteed by AGM. AGM does not guarantee the market price of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

### *Recent Developments*

#### Ratings

On May 17, 2010, S&P published a Research Update in which it affirmed its "AAA" counterparty credit and financial strength ratings on AGM. At the same time, S&P continued its negative outlook on AGM. Reference is made to the Research Update, a copy of which is available at [www.standardandpoors.com](http://www.standardandpoors.com), for the complete text of S&P's comments.

In a press release dated February 24, 2010, Fitch announced that, at the request of AGL, it had withdrawn the "AA" (Negative Outlook) insurer financial strength rating of AGM at the then current rating level. Reference is made to the press release, a copy of which is available at [www.fitchratings.com](http://www.fitchratings.com), for the complete text of Fitch's comments.

On December 18, 2009, Moody's issued a press release stating that it had affirmed the "Aa3" insurance financial strength rating of AGM, with a negative outlook. Reference is made to the press release, a copy of which is available at [www.moodys.com](http://www.moodys.com), for the complete text of Moody's comments.

There can be no assurance as to any further ratings action that Moody's or S&P may take with respect to AGM.

For more information regarding AGM's financial strength ratings and the risks relating thereto, see AGL's Annual Report on Form 10-K for the fiscal year ended December 31, 2009, which was filed by AGL with the SEC on March 1, 2010, and AGL's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010, which was filed by AGL with the SEC on May 10, 2010. Effective July 31, 2009, Holdings is no longer subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended (the "Exchange Act").

#### *Capitalization of AGM*

At March 31, 2010, AGM's consolidated policyholders' surplus and contingency reserves were approximately \$2,220,015,145 and its total net unearned premium reserve was approximately \$2,228,912,193 in accordance with statutory accounting principles.

#### *Incorporation of Certain Documents by Reference*

Portions of the following documents filed by AGL with the SEC that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- (i) The Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (which was filed by AGL with the SEC on March 1, 2010); and
- (ii) The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010 (which was filed by AGL with the SEC on May 10, 2010).

All information relating to AGM included in, or as exhibits to, documents filed by AGL pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the filing of the last document referred to above and before the termination of the offering of the Obligations shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC's website at <http://www.sec.gov>, at AGL's website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.): 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Communications Department (telephone (212) 826-0100).

Any information regarding AGM included herein under the caption "BOND INSURANCE – Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.)" or included in a document incorporated by reference herein (collectively, the "AGM Information") shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

AGM makes no representation regarding the Obligations or the advisability of investing in the Obligations. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading "BOND INSURANCE".

## **BOND INSURANCE AND RELATED RISK FACTORS**

In the event of default of the payment of principal or interest with respect to any of the Obligations when all or some becomes due, any owner of the Obligations on which such principal or interest was not paid will have a claim under the Policy for such payments. In the event AGM is unable to make payment of principal and interest as such payments become due under the Policy, the Obligations will remain payable solely from Excise Taxes and the State Shared Revenues. In the event AGM becomes obligated to make payments with respect to the Obligations, no assurance will be given that such event will not adversely affect the market price of the Obligations and the marketability (liquidity) of the Obligations.

The long-term ratings on the Obligations will be dependent in part on the financial strength of AGM and its claim paying ability. AGM's financial strength and claims paying ability will be predicated upon a number of factors which could change over time. No assurance will be given that the long-term rating of AGM and of the rating on the Obligations insured by AGM will not be subject to downgrade, and such event could adversely affect the market price of the Obligations and the marketability (liquidity) of the Obligations. See "RATINGS."

The obligations of AGM will be obligations of AGM, and in an event of default by AGM, the remedies available may be limited by applicable bankruptcy law or other similar laws related to insolvency.

None of the City, the Underwriter, or their respective agents or consultants have made independent investigation into the claims paying ability of AGM and no assurance or representation regarding the financial strength or projected financial strength of AGM will be given. Thus, when making an investment decision, potential investors should carefully consider the ability of the City to pay principal of and interest on the Obligations and the claims paying ability of AGM, particularly over the life of the investment.

## **THE PROJECTS**

Proceeds of the New Money Obligations will be used to pay for the New Projects as follows: the costs of (1) wastewater system improvements described as follows: wastewater plant software upgrade and wastewater plant roaders upgrade; (2) water system improvement described as follows: Ocotillo water line replacement, ball park reuse well, upper system water line extension, Union Street water line and Sue Juan well cap and close ; (3) natural gas system improvements described as follows: regulator station and upper system gas line extension; and (4) street improvements described as follows: signage upgrades (collectively, the "New Projects"). The Refinanced Projects consist of a wastewater treatment plant, a water storage tank and a swimming pool.

## SOURCES AND USES OF FUNDS

	New Money Obligations	Refunding Obligations
Principal Amount of the Obligations	\$ 2,525,000.00	\$ 2,715,000.00
Net Original Issue Discount	(21,853.70)	(23,811.05)
Debt Service Reserve Fund Contribution from Refunded Obligations	0.00	383,928.00
Total Sources of Funds	\$ 2,503,146.30	\$ 3,075,116.95
Deposit to Acquisition Fund	\$ 2,401,648.55	\$ 0.00
Deposit to		
Deposit to Costs of Issuance Fund (a)	101,497.75	109,148.55
Deposit to Payment Fund		3,167.99
Total Uses of Funds	\$ 2,503,146.30	\$ 3,075,116.95

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(a) *Includes premium on the municipal bond insurance policy, Underwriter's compensation and other costs of issuance.*

## GENERAL FUND

The following table sets forth the City's general fund revenues, expenditures, other financing sources and uses, excess of revenues and other sources over expenditures and other uses, and beginning and ending general fund balances for the fiscal years indicated. Figures for fiscal years 2005/06 through 2008/09 are taken from the audited financial statements of the City which are prepared using generally accepted accounting principles. Fiscal Year 2009/10 figures are estimated actual as provided by the Finance Department of the City. Projected figures may not be realized and should be viewed with an abundance of caution. Historical trends should not be used to indicate future trends. See **"SECURITY AND SOURCES OF PAYMENT"** for a description of the source of payment for the Obligations. This information is not intended to indicate that the Obligations will be payable from any source other than described under such heading or to indicate future or continuing trends of the financial affairs of the City.

**TABLE 4**  
**CITY OF BENSON, ARIZONA**  
**GENERAL FUND**  
**SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**

	Audited (a)				Projected (b)	Budgeted (b)
	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
<b>REVENUES:</b>						
Taxes	\$ 2,225,245	\$ 3,503,018	\$ 2,935,069	\$ 2,597,520	\$ 2,671,000	3,145,000
Intergovernmental Grants & Aid	1,252,859	1,250,151	1,377,268	1,358,132	1,230,765	1,082,563
Fines and Forfeitures	23,713	6,679	39,445	119,367	57,600	57,600
Licenses and Permits	377,389	334,041	270,930	270,489	184,500	184,500
Charges for Services	1,810	23,737	34,800	55,197	45,645	45,645
Interest	39,655	118,988	129,444	2,506	6,000	5,000
Other	67,923	101,128	109,356	120,689	146,451	188,105
<b>TOTAL REVENUES</b>	<b>\$ 3,988,594</b>	<b>\$ 5,337,742</b>	<b>\$ 4,896,312</b>	<b>\$ 4,523,900</b>	<b>\$ 4,341,961</b>	<b>\$ 4,708,413</b>
<b>EXPENDITURES:</b>						
<b>Current</b>						
General Government	\$ 774,228	\$ 1,458,631	\$ 1,463,889	\$ 1,299,481	\$ 1,224,557	1,146,632
Public Safety	1,530,609	1,675,019	2,236,864	2,079,037	2,003,026	2,086,591
Shop	84,614	60,755	24,477	22,635	20,380	18,633
Culture and Recreation	739,488	788,994	700,393	849,823	808,832	742,765
Public Works	-	-	167,615	244,714	97,458	90,949
Debt Service Interest	-	-	19,250	38,358	16,848	10,548
Debt Service Principal	-	-	-	56,761	60,200	66,500
Capital Outlay	1,009,569	444,346	177,480	68,951	22,521	5,750
<b>TOTAL EXPENDITURES</b>	<b>\$ 4,138,508</b>	<b>\$ 4,427,745</b>	<b>\$ 4,789,968</b>	<b>\$ 4,659,760</b>	<b>\$ 4,253,822</b>	<b>\$ 4,168,368</b>
<b>OTHER FINANCING SOURCES:</b>						
Capital Lease Agreements	\$ 562,973	\$ -	\$ -	\$ -	\$ -	\$ -
Installment Purchase Agreement	202,500	-	-	-	-	-
Bond Proceeds	-	500,000	-	-	-	-
Sale of Assets	-	-	-	66,574	-	-
Operating Transfer In	-	-	-	71,656	-	-
Operating Transfer Out	(45,794)	(34,946)	-	-	(82,987)	(536,828)
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<b>\$ 719,679</b>	<b>\$ 465,054</b>	<b>\$ -</b>	<b>\$ 138,230</b>	<b>\$ (82,987)</b>	<b>\$ (536,828)</b>
Excess (Deficiency) of Revenue Over Expenditures and Other Sources (Uses)	\$ 569,765	\$ 1,375,051	\$ 106,344	\$ 2,370	\$ 5,152	\$ 3,217
Fund Balance at Beginning of Year	\$ 2,209,318	\$ 2,779,083	\$ 4,154,134	\$ 4,311,455 (c)	\$ 4,313,825	\$ 4,318,977
<b>FUND BALANCE AT END OF YEAR</b>	<b>\$ 2,779,083</b>	<b>\$ 4,154,134</b>	<b>\$ 4,260,478 (c)</b>	<b>\$ 4,313,825</b>	<b>\$ 4,318,977</b>	<b>\$ 4,322,194</b>

(a) Although these figures are taken from audited financial statements, this table has not been audited. For further information please refer to the actual audited financial statements for the City. The most recent audited financial statements for the City (representing figures for 2008/09) are included in this Official Statement as APPENDIX E.

(b) These amounts are "forward looking" statements which may not be realized and should be considered with an abundance of caution.

(c) The June 30, 2008 balance did not include record of \$50,977 in contributions received by various donors for the restoration of the City swimming pool. The July 1, 2008 fund balance was restated to record the increase in cash for donations totally \$50,977.

## DEBT SERVICE REQUIREMENTS AND COVERAGE

TABLE 5

**Schedule of Debt Service Requirements and Coverage (a)**  
**City of Benson, Arizona**

Fiscal Year	Excise Tax Revenues and State Shared Revenues (b)	New Money Obligations		Refunding Obligations (c)		Total Annual Debt Service Requirements	Projected Fiscal Year Coverage from State Shared Revenues and Excise Tax Requirements
		Principal	Interest	Principal	Interest		
2009/10	\$ 3,994,415						
2010/11		\$ 100,000	\$ 94,863 (d)	\$ 105,000	\$ 102,050 (d)	\$ 401,913	9.93x
2011/12		100,000	92,363	110,000	99,425	401,788	9.94x
2012/13		105,000	90,363	110,000	97,225	402,588	9.92x
2013/14		105,000	88,263	115,000	95,025	403,288	
2014/15		110,000	85,638	115,000	92,150	402,788	
2015/16		110,000	82,888	120,000	89,275	402,163	
2016/17		110,000	79,588	125,000	85,675	400,263	
2017/18		120,000	76,013	125,000	81,613	402,625	
2018/19		125,000	71,213	130,000	76,613	402,825	
2019/20		125,000	66,525	135,000	71,738	398,263	
2020/21		135,000	61,525	140,000	66,338	402,863	
2021/22		140,000	56,125	150,000	60,738	406,863	
2022/23		145,000	50,175	155,000	54,363	404,538	
2023/24		150,000	44,013	160,000	47,775	401,788	
2024/25		155,000	37,638	170,000	40,975	403,613	
2025/26		160,000	31,050	175,000	33,750	399,800	
2026/27		170,000	23,850	185,000	25,875	404,725	
2027/28		175,000	16,200	190,000	17,550	398,750	
2028/29		185,000	8,325	200,000	9,000	402,325	
		<u>\$ 2,525,000</u>		<u>\$ 2,715,000</u>			

(a) Prepared by Stone & Youngberg LLC, the Underwriter.

(b) See TABLE 3 – “HISTORICAL AND ESTIMATED EXCISE TAX REVENUES AND STATE SHARED REVENUES.” This amount is projected and, as such, is a “forward looking” statement and should be considered with an abundance of caution.

(c) See APPENDIX B - “CITY OF BENSON, ARIZONA FINANCIAL INFORMATION.” Net of Obligations Being Refunded.

(d) The first interest payment is due on January 1, 2011. Thereafter, interest on the Obligations will be payable semiannually on July 1 and January 1 until maturity or prior redemption.

## TAX MATTERS

In the opinion of Special Counsel, under existing law, the portion of each of the Payments made by the City pursuant to the Purchase Agreement and denominated as and comprising interest pursuant to the Purchase Agreement and received by the Owners of the Obligations (the "Interest Portion") will be excluded from gross income for federal income tax purposes pursuant to Section 103(a) of Internal Revenue Code of 1986, as amended (the "Code"), will not be treated as an item of tax preference under Section 57 of the Code for purposes of the alternative minimum tax imposed on individuals and corporations and will be exempt from State of Arizona income taxation so long as the Interest Portion is excluded from gross income for federal income tax purposes. The Tax-Exempt Portion of the New Money Obligations will also not be taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations (as defined for federal income tax purposes), but the Interest Portion of the Refunding Obligations may be taken into account in determining such earnings for purposes of computing such tax imposed on such corporations. Special Counsel expresses no other opinion as to the treatment for federal or State of Arizona income tax purposes on the Interest Portion as to any other tax consequence relating to the Obligations.

The Code prescribes a number of qualifications and conditions for such interest to be and to remain excluded from gross income for federal income tax purposes, some of which, including provisions for potential payments by the City to the federal government, require future or continuing compliance after delivery of the Obligations in order for the Interest Portion to be and to remain so excluded from the date of execution and delivery. Such opinion on such tax matters will be based on and will assume the accuracy of certain representations and certifications and compliance with certain continuing covenants of the City contained in documents which are part of the transcript of proceedings for the Obligations and which are intended to evidence and assure that the Interest Portion will remain excluded from gross income for federal income tax purposes. Special Counsel will not independently verify the accuracy of the certifications and representations, or compliance with the covenants, made by the City. Noncompliance with these requirements could cause the Interest Portion to be included in gross income for federal income tax purposes and to be subject to federal and State of Arizona income taxation retroactive to the date of execution and delivery of the Obligations. The City has covenanted in the Purchase Agreement to take all such actions that may be required of them for the Interest Portion to be and remain excluded from gross income for federal income tax purposes and not to take any actions that would adversely affect that exclusion.

Pursuant to provisions of the Code applicable only to corporations (as defined for federal income tax purposes), a portion of the excess of adjusted current earnings (including the Interest Portion for the Refunding Obligations) over other alternative minimum taxable income is included in alternative minimum taxable income which may be subject to a corporate alternative minimum tax. In addition, the Interest Portion may be subject to a branch profits tax imposed on certain foreign corporations doing business in the United States and to a tax imposed on excess net passive income of certain S corporations. Also, pursuant to the Code, the exclusion of the Interest Portion from gross income for federal income tax purposes can have certain adverse federal income tax consequences on items of income, deductions or credits for certain taxpayers, including financial institutions, certain insurance companies, recipients of Social Security and Railroad Retirement benefits, those that are deemed to incur or continue indebtedness to acquire or carry tax-exempt obligations and individuals otherwise eligible for the earned income credit. The applicability and extent of these or other tax consequences will depend upon the particular tax status of the Owners of the Obligations or other tax-related matters. As noted hereinabove, Special Counsel expresses no opinion regarding these or other consequences.

Special Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Special Counsel as of the date thereof. Special Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Special Counsel's attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Special Counsel's opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Special Counsel's professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinion.

## **ORIGINAL ISSUE DISCOUNT**

The initial offering prices of the Obligations maturing on July 1, 2015, July 1, 2017, and July 1, 2019, July 1, 2021, July 1, 2025 and July 1, 2029 (referred to in this section as the “Discount Obligations”), are less than the stated principal amounts thereof. Under the Code, the difference between the principal amounts of the Discount Obligations and the initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Discount Obligations of the same maturity was sold, constitutes to an initial purchaser “original issue discount.” Original issue discount represents interest that is excluded from gross income; however, such interest is taken into account for purposes of determining the alternative minimum tax imposed on corporations and may result in the collateral federal tax consequences described above under “TAX MATTERS.” Original issue discount will accrue actuarially over the term of a Discount Obligation at a constant interest rate. A purchaser who acquires a Discount Obligation in the initial offering to the public at an initial offering price thereof as set forth on the inside front cover page of this Official Statement will be treated as receiving an amount of interest excludable from gross income for federal income tax purposes equal to the original issue discount accruing during the period such purchaser holds such Discount Obligation and will increase its adjusted basis in such Discount Obligation by the amount of such accruing discount for purposes of determining taxable gain or loss on the sale or other disposition of such Discount Obligation. The federal income tax consequences of the purchase, ownership and redemption, sale or other disposition of the Discount Obligation that are not purchased in the initial offering at the initial offering price may be determined according to rules that differ from those described above. Prospective purchasers of the Discount Obligations should consult their own tax advisors with respect to the precise determination for federal income tax purposes of interest accrued upon sale, redemption or other disposition of the Discount Obligations and with respect to the state and local tax consequences of owning and disposing of the Discount Obligations.

## **AMORTIZABLE PREMIUM**

The difference between the stated principal amounts of the Obligations maturing on July 1, 2011, through and including July 1, 2014, July 1, 2016, July 1, 2018, and July 1, 2020 (referred to in this section as the “Premium Obligations”), and the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Premium Obligations of the same maturity was sold constitutes to an initial purchaser amortizable premium that is not deductible from gross income for federal income tax purposes. The amount of amortizable premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Obligation. For purposes of determining gain or loss on the sale or other disposition of a Premium Obligation, a purchaser who acquires such Premium Obligation in the initial offering to the public at the initial offering price thereof as set forth on the inside front cover page of this Official Statement is required to decrease such purchaser’s adjusted basis in such Premium Obligation annually by the amount of amortizable premium for the taxable year. The amortization of premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Premium Obligations. Prospective purchasers of the Premium Obligations should consult their own tax advisors with respect to the tax consequences of owning and disposing of the Premium Obligations.

## **LEGAL MATTERS**

Legal matters incident to the authorization, sale and execution and delivery by the City of the Obligations and with regard to the tax-exempt status of the Obligations will be passed upon by Greenberg Traurig, LLP, Phoenix, Arizona, Special Counsel. A signed copy of that opinion, dated and speaking only as of the date of delivery of the Obligations, will be delivered to the City. A draft of the form of that opinion is included as APPENDIX C hereto.

While Special Counsel has participated in the preparation of portions of this Official Statement, it has not been engaged to confirm or verify, and expresses and will express no opinion as to, the accuracy, completeness or fairness of any statements in this Official Statement, or in any other reports, financial information, offering or disclosure documents or other information pertaining to the City or the Obligations that may be prepared or made available by the City or others to the bidders for or holders of the Obligations or others.

From time to time, there are legislative proposals (and interpretations of such proposals by courts of law and other entities and individuals) which, if enacted, could alter or amend the property tax system of the State and numerous matters, both financial and nonfinancial, impacting the operations of municipalities which could have a material impact on the City and could adversely affect the secondary market value of the Obligations. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to obligations (such as the Obligations) issued prior to enactment.

The legal opinion to be delivered concurrently with the delivery of the Obligations will express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

### **QUALIFIED TAX-EXEMPT OBLIGATIONS**

The City will designate the New Money Obligations as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code, which relates to the ability of certain financial institutions to deduct interest expense allocable to holding and carrying tax-exempt obligations for federal income tax purposes. Representatives of the City will represent and warrant that they do not anticipate that the aggregate amount of tax-exempt obligations which will be issued by or on behalf of the City in calendar year 2010 will exceed \$30,000,000.

### **LITIGATION**

No litigation or administrative action or proceeding is pending restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Obligations, the collection and pledge of the Excise Tax Revenues and the State Shared Revenues to pay the debt service on the Obligations, contesting or questioning the proceedings and authority under which the Obligations have been authorized and are to be issued, sold, executed or delivered, or the validity of the Obligations. Authorized representatives of the City will deliver a certificate to that effect at the time of the original delivery of the Obligations.

### **FINANCIAL STATEMENTS**

The financial statements of the City for the period ended June 30, 2009, which are included as APPENDIX E of this Official Statement, have been audited by Colby & Powell, PLC Certified Public Accountants. All financial information presented herein should be read in conjunction with the financial statements and accompanying Notes in APPENDIX E. **The City neither requested nor obtained the consent of Colby & Powell, PLC to include such financial statements and Colby & Powell, PLC has not reviewed this Official Statement nor performed any procedures subsequent to rendering its opinion on such financial statements.**

**THE FINANCIAL STATEMENTS INCLUDED IN APPENDIX E OF THIS OFFICIAL STATEMENT ARE NOT CURRENT AND MAY NOT REPRESENT THE CURRENT FINANCIAL CONDITION OF THE CITY.**

### **CONTINUING DISCLOSURE**

The City will covenant for the benefit of certain owners of the Obligations to provide certain financial information and operating data relating to the City by not later than February 1 in each year commencing February 1, 2011 (the “Annual Reports”), and to provide notices of the occurrence of certain enumerated events, if material (the “Notices of Material Events”). The form of the undertaking which describes the content of the Annual Reports and the Notices of Material Events and the method for their dissemination is included as APPENDIX F - “FORM OF CONTINUING DISCLOSURE UNDERTAKING.”

A failure by the City to comply with these covenants must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Obligations in the secondary market. *Also pursuant to Arizona Law, the ability of the City to comply with such covenants is subject to annual appropriation of funds sufficient to provide for the costs of compliance with such covenants.* Should the City not comply with the covenants regarding providing the Annual Reports due to a failure to appropriate for such purpose, the City has covenanted to provide notice of such fact as it does the Notices of Material Events. Absence of continuing disclosure, due to non-appropriation or otherwise, could adversely affect the Obligations and specifically their market price and transferability. The City has not entered into any prior undertakings.

## UNDERWRITING

The Obligations are being purchased by the Underwriter. The Underwriter has agreed to purchase from the City the Obligations at an aggregate purchase price of \$5,115,735.25 pursuant to an obligation purchase agreement between the City and the Underwriter. The aggregate purchase price reflects compensation to the Underwriter of \$78,600.00. The Obligations may be offered and sold to certain dealers (including the Underwriter and other dealers depositing Obligations into investment trusts) at prices lower than the public offering prices stated on the inside cover page hereof, and such public offering prices may be changed, from time to time, by the Underwriter. The Underwriter's obligations are subject to certain conditions precedent, and the Underwriter will be obligated to purchase all of the Obligations if any Obligations are purchased.

## RATINGS

S&P is expected to assign a rating of "AAA" (negative outlook) to the Obligations with the understanding the Policy will be delivered simultaneously with the issuance of the Obligations by AGM. The Obligations will also be rated "AA-," by Standard & Poor's Ratings Services ("S&P"). Such ratings reflect only the view of S&P, at the time such ratings were issued and an explanation of the significance of such rating may be obtained from S&P. The ratings are not a recommendation to buy, hold or sell the Obligations. There is no assurance that such ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by the respective rating agency if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of any rating can be expected to have an adverse effect on the market price of the Obligations. The City has undertaken to file notice of any formal change in any rating that relates to the City that could affect the value of the Obligations. See "CONTINUING DISCLOSURE."

## CONCLUDING STATEMENT

The summaries or descriptions of provisions in the Purchase Agreement and the Trust Agreement contained herein and all references to other materials not purporting to be quoted in full are only brief outlines of certain provisions thereof and do not constitute complete statements of such provisions and do not summarize all the pertinent provisions of such documents.

All projections, forecasts and other information in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or holders of any of the Obligations.

The attached Appendices A through F are integral parts of this Official Statement and must be read together with all of the foregoing statements.

This Official Statement has been prepared on direction of the City and has been approved by and executed for and on behalf of the City by its authorized representative indicated below.

CITY OF BENSON, ARIZONA

By: /s/ Mark M. Fenn  
Mayor

**CITY OF BENSON, ARIZONA –  
GENERAL INFORMATION**

**General**

The City serves as the western gateway to the scenic and historic attractions of the County and has copyrighted the name “Home of Kartchner Caverns State Park.” Located in the historical San Pedro Valley, it offers proximity to both the Cities of Tucson, Arizona (“Tucson”) (45 miles northwest) and Sierra Vista, Arizona (“Sierra Vista”) (30 miles south). Its rugged mountains, grassy valleys, moderate climate and proximity to many historical sites makes it a popular tourist attraction and retirement community. The City was founded in 1880, when the Southern Pacific Railroad came through southern Arizona and was the railroad hub of southern Arizona until 1910.

The following table illustrates respective population statistics for the City, the County and the State of Arizona.

**POPULATION STATISTICS**

	<u>City of Benson</u>	<u>Cochise County</u>	<u>State of Arizona</u>
2009 Estimate (a)	5,162	140,263	6,683,129
2000 Census	4,711	117,775	5,130,632
1990 Census	3,824	97,624	3,665,339
1980 Census	4,190	85,686	2,716,546
1970 Census	2,839	61,918	1,775,399
1960 Census	2,494	55,039	1,302,161

(a) Data as of July 1, 2009.

Source: Arizona Department of Commerce, Population Statistics Unit and the U.S. Census Bureau.

**Municipal Government Organization and Services**

The City operates under the Council-Manager form of government. The Mayor and six council members are elected at-large for staggered four-year terms. The City Council appoints a City Manager who has full responsibility for carrying out council policies and administering the City’s operations. Functions of government and operation are provided by a staff of approximately 80 full-time employees. The City provides police, fire, natural gas, water, sanitation and sewer services to its residents. Electricity is provided by Sulphur Springs Valley Electric Co-op and telephone by Qwest Communications.

**Economy**

The City is situated along several trade routes – Interstate 10, Highways SR-80 and SR-90 and the main line of the Union Pacific Railroad. The City’s economy is also closely tied to Fort Huachuca, established as a cavalry outpost in 1877. Many residents also commute to Tucson and Sierra Vista for employment. The City supports a large retired population, serving as a winter refuge. Nearby historic and scenic sites also attract tourists.

The following table illustrates unemployment averages for the City, the County, the State and the United States.

**UNEMPLOYMENT AVERAGES**

<u>Calendar Year</u>	<u>City of Benson</u>	<u>Cochise County</u>	<u>State of Arizona</u>	<u>United States</u>
2010 (a)	13.9%	8.0%	9.5%	9.7%
2009	12.9	7.4	9.1	9.3
2008	9.9	5.6	5.9	5.8
2007	7.6	4.3	3.8	4.6
2006	8.1	4.5	4.1	4.6
2005	8.5	4.7	4.6	5.1

(a) Data through May 2010.

Source: Arizona Department of Commerce, Research Administration and the U.S. Department of Labor, Bureau of Labor Statistics.

The following table is a partial list of major employers within the City.

**MAJOR EMPLOYERS  
City of Benson, Arizona**

<u>Employer</u>	<u>Description</u>	<u>Approximate Number of Employees</u>
Sierra Southwest Cooperative Services, Inc.	Electric Utility	250
Wal-Mart Supercenter	Retail	200
Arizona Electric Power Co-Op (AEPCO)	Electric Utility	160
Benson Unified School District	Education	155
Southeastern Arizona Behavioral Health Services, Inc.	Medical Facility	155
Benson Hospital Corporation	Medical Hospital	175
Gas City/Desert Rose Hotel	Gas Station & Hotel Complex	95
Safeway Inc.	Grocery Store	95
Cochise County Community College	Education	85
Apache Nitrogen Products, Inc.	Manufactures Fertilizers	80
City of Benson	Government	70
Healthcare Innovations Inc.	Ambulance Service	30
Quiburi Mission Samaritan Center	Nursing Care Facility	60
San Pedro Golf Course	Public Golf Course	50

Source: *The 2010 Arizona Industrial and 2010 Arizona Services Directory*, publications of Harris Infosource, Cochise College Center for Economic Research and an individual employer survey.

## Construction

The following charts illustrate a building permit summary for residential and non-residential construction and new housing starts for the City.

### VALUE OF BUILDING PERMITS City of Benson, Arizona (000s omitted)

<u>Calendar Year</u>	<u>Residential</u>	<u>Commercial and Industrial</u>	<u>Other</u>	<u>Total</u>
2010(a)	\$ 4,763	\$ 231	\$ -	\$ 4,994
2009	4,542	1,784	-	6,326
2008	28,192	11,502	-	39,694
2007	51,386	17,999	-	69,385
2006	192,597	72,202	-	264,799
2005	15,354	6,785	-	22,139

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(a) Data through April 2010.

Source: The City.

### NEW HOUSING STARTS City of Benson, Arizona

<u>Calendar Year</u>	<u>Total New Housing Units</u>
2010 (a)	25
2009	52
2008	88
2007	57
2006	145
2005	47

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(a) Data through April 2010.

Source: The City.

## Transportation

The City is situated along Interstate 10 and along State Highways 90 and 92. The City's commerce is served by a variety of interstate and intrastate freight carriers and by the Southern Pacific Railroad and Amtrak. Air travelers have access to regularly scheduled commuter flights and various air-charter services from the Benson Municipal Airport.

## **Education**

Elementary and secondary education is provided to residents of the City by the Benson Unified School District and two private schools. The neighboring communities of St. David and Pomerene offer K-12 and K-8 schools, respectively. Vocation education is available at the high school. Cochise College has a Benson Campus, with special emphasis on computer aided learning.

**CITY OF BENSON, ARIZONA –  
FINANCIAL INFORMATION**

**Statistics for Fiscal Year 2009/10  
City of Benson, Arizona**

General Obligation Bonds	None
Excise Tax Revenue Obligations	\$ 5,015,000 (a)
Secondary Assessed Valuation	53,323,644 (b)
Primary Assessed Valuation	46,579,041 (b)
Estimated Full Cash Value	356,225,888 (c)

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*The City's preliminary fiscal year 2010/11 secondary assessed valuation is estimated at \$54,862,967, an increase of approximately 2.89% from the fiscal year 2009/10 secondary assessed valuation. The City's preliminary fiscal year 2010/11 primary assessed valuation is estimated at \$49,642,462, an increase of approximately 6.58% from the fiscal year 2009/10 primary assessed valuation. The City's preliminary fiscal year 2010/11 estimated net full cash value is estimated at \$373,736,867, an increase of approximately 4.92% from the fiscal year 2009/10 estimated net full cash value. Although the final official valuations are not expected to differ materially from the estimated valuations, the valuations are subject to positive or negative adjustments until approved by the Board of Supervisors of the County no later than August 16, 2010.*

- (a) *Includes the Obligations, Net of Obligations Being Refunded.*
- (b) *State property taxes are divided into two categories: primary and secondary. Secondary property taxes are those taxes and assessments imposed to pay principal and interest on bonded indebtedness and certain other obligations, those imposed for special districts other than school districts and those imposed to exceed a budget, expenditure or tax limitation pursuant to voter approval. Primary property taxes are all ad valorem taxes other than secondary property taxes. Annual increases in the valuation of certain types of property for primary property tax purposes and the amount of primary property taxes which may be levied in any year are subject to certain limitations. These limitations do not apply with respect to secondary property taxes. See "PROPERTY TAXES – Ad Valorem Taxes – Property Tax Assessment Ratios" for the method of determination of such categories.*
- (c) *Estimated net full cash value is the total market value of the property less net exempt property within the City.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue and Property Tax Rates and Assessed Values, Arizona Tax Research Foundation.*

**General Obligation Bonded Debt Outstanding  
City of Benson, Arizona (a)**

None

**Excise Tax Revenue Obligations to be Outstanding  
City of Benson, Arizona (a)**

Issue	Purpose	Original Amount	Maturity Dates	Balance Outstanding	Less: Obligations Being Refunded*	Balance Outstanding and to be Outstanding
1997	United States Department of Agriculture Federal Housing Administration Loan	\$ 4,892,000	6-3-99/19	\$2,600,634.96	(\$2,600,634.96)	\$ -
2007	Zions Bank Loan	100,600,000	7-1-07/10	330,500	(330,500)	-
Total Excise Tax Obligations Outstanding						\$ -
Plus: The New Money Tax-Exempt Obligations						2,525,000
Plus: The Refunding Tax-Exempt Obligations						2,715,000(b)
Total Excise Tax Obligations Outstanding and to be Outstanding						<u>\$ 5,240,000</u>

(a) Payable from pledge of Excise Taxes.

(b) Includes the Obligations, Net of Obligations Being Refunded.

Source: The City.

**Other Obligations  
City of Benson, Arizona**

Debt	Annual Payment	Annual Period Due
Note Payable for Land	\$ 6,018	August 2015
Fire Truck	70,241	November 2014

Source: The City.

**RETIREMENT SYSTEM**

**Retirement Plan**

The City’s employees are covered by the Arizona State Retirement System (the “System”), a cost-sharing, multiple-employer defined benefit plan. Annual contributions are set by the Arizona Legislature. For fiscal year 2009/10, the City’s annual contribution is expected to be 9.40% of payroll amounts. The City is current on its contributions to the System. See Note 8 in APPENDIX E – “Audited Financial Statements of Benson, Arizona for Fiscal Year Ended June 30, 2009” for further discussion of the City’s contributions to the State Retirement System.

The City currently provides OPEB to Public Safety Personnel Retirement System (“PSPRS”), an agent multiple-employer, public employee retirement system that acts as a common investment and administrative agent to provide retirement and death and disability benefits for public safety personnel who are regularly assigned hazardous duty in the employ of the State or a political subdivision, such as City, thereof. For year ended June 30, 2009, active PRPRS members were required by statute to contribute 7.65 percent of the members’ annual covered payroll and the City was required to contribute at the actuarially determined rate of 14.39 and 5.00 percent for police and fire personnel respectively. Annual Pension Cost for year ended June 30, 2009 was \$160,724 for police and \$7,724 for fire.

### **Other Post-Employment Benefits**

Beginning with the current fiscal year that commenced on July 1, 2008, the City must implement Government Accounting Standards Board Statement Number 45, *Accounting by Employers for Post-Employment Benefits Other than Pensions* ("GASB 45"), which requires reporting the actuarially accrued cost of post-employment benefits, other than pension benefits ("OPEB"), such as health and life insurance for current and future retirees. GASB 45 requires that such benefits be recognized as current costs over the working lifetime of employees and, to the extent such costs are not pre-funded, will require the reporting of such costs as a financial statement liability.

The City does not offer OPEB. The City's employees, their spouses and survivors may be eligible for certain retiree health care benefits under health care programs provided by the State. Employees on long-term disability and their spouses may also qualify for retiree health care benefits through the State. It is expected that substantially all of the City's employees that reach normal or early retirement age while working for the City will become eligible for such benefits. Currently such retirees may obtain the health care benefits offered by the State by paying 100% of the applicable health care insurance premium, net of any subsidy provided by the State. The benefits are available to all retired participants in the State's health care program. The City does not currently make payments for OPEB costs for such retirees.

PROPOSED FORM OF APPROVING OPINION

[Closing Date]

U.S. Bank National Association  
101 N. First Avenue, Suite 1600  
Phoenix, AZ 85003

Re: Excise Tax and State Shared Revenue Obligations, Series 2010 Evidencing a Proportionate Interest of the Owners Thereof in Purchase Price Payments to be Made by the City of Benson, Arizona to U.S. Bank National Association, as Trustee

We have examined the transcript of proceedings (the "Transcript") relating to the execution and delivery by U.S. Bank National Association (the "Trustee") of the Excise Tax and State Shared Revenue Obligations, Series 2010 (the "New Money Obligations") and the Excise Tax and State Shared Revenue Refunding Obligations, Series 2010 (the "Refunding Obligations" and, with the New Money Obligations, the "Obligations"), pursuant to a First Trust Agreement, dated as of July 1, 2010 (the "Trust Agreement"), between the Trustee and the City of Benson, Arizona (the "City"). Each of the Obligations is an undivided, participating, proportionate interest in certain payments to be made by the City pursuant to a First Purchase Agreement, dated as of July 1, 2010 (the "Purchase Agreement"), between the Trustee as seller and the City as buyer pursuant to which the Trustee has contracted to finance and refinance certain projects for the City. In addition, we have examined such other proceedings, proofs, instruments, certificates and other documents as well as such other materials and such matters of law as we have deemed necessary or appropriate for the purposes of the opinions rendered herein below.

In such an examination, we have examined originals (or copies certified or otherwise identified to our satisfaction) of the foregoing and have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the accuracy of the statements contained in such documents. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid documents contained in the Transcript. We have also relied upon the opinions of the City Attorney delivered even date herewith as to the matters provided therein.

Based upon such examination, we are of the opinion that, under the law existing on the date of this opinion:

1. The Obligations, the Trust Agreement and the Purchase Agreement are legal, valid, binding and enforceable in accordance with their respective terms, except that the binding effect and enforceability thereof and the rights thereunder are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally; except to the extent that the enforceability thereof and the rights thereunder may be limited by the application of general principles of equity and, as to the Trust Agreement, except to the extent that the enforceability of the indemnification provisions thereof may be affected by applicable securities laws.

2. The obligations of the City for payment of principal and interest with respect to the Obligations are solely from the revenues and other moneys pledged and assigned pursuant to the Trust Agreement to secure such payments. Those revenues and other moneys include payments required to be made by the City pursuant to the Purchase Agreement, and the obligation of the City to make those payments is secured by a limited pledge of the revenues from the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and

recreation fees and permits and fines and forfeitures which the City imposes; provided that the Mayor and Council of the City may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council, and from any amounts of excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the City, except the City's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes, all as more fully described in, and provided by, the Purchase Agreement. Such payments are not secured by an obligation or pledge of any monies raised by taxation other than the specified taxes; the Obligations do not represent or constitute a debt or pledge of the general credit of the City and the Purchase Agreement, including the obligation of the City to make the payments required thereunder, does not represent or constitute a debt or pledge of the general credit of the City.

3. (a) Subject to the assumption stated in the last sentence of this paragraph, the portion of each payment made by the City pursuant to the Purchase Agreement, denominated and comprising interest and received by the beneficial owners of the Obligations (the "Interest Portion"), is excludable from the gross income of the owners thereof for federal income tax purposes. Furthermore, the Interest Portion is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, the Interest Portion of the Refunding Obligations is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations while that of the New Money Obligations is not taken into account in determining such earnings for purposes of computing such tax on such corporations. (We express no opinion regarding other federal tax consequences resulting from the ownership, receipt or accrual of the Interest Portion on, or disposition of, the Obligations.) The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which the City must continue to meet after the execution and delivery of the Obligations in order that the Interest Portion not be included in gross income for federal income tax purposes. The failure of the City to meet these requirements may cause the Interest Portion to be included in gross income for federal income tax purposes retroactive to their date of issuance. The City has covenanted in the Purchase Agreement to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion. In rendering the opinion expressed in this paragraph, we have assumed continuing compliance with the tax covenants referred to hereinabove that must be met after the execution and delivery of the Obligations in order that the Interest Portion not be included in gross income for federal tax purposes.

(b) Assuming the Interest Portion is so excludable for federal income tax purposes, the Interest Portion is exempt from income taxation under the laws of the State of Arizona. (We express no opinion regarding other State tax consequences resulting from the ownership of, receipt or accrual of the Interest Portion on or the disposition of the Obligations.)

Our opinion represents our legal judgment based upon our review of the law and the facts we deem relevant to render such opinion and is not a guarantee of a result. This opinion is given as of the date hereof, and we assume no obligation to review or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

SUMMARY OF SELECT PROVISIONS OF PRINCIPAL DOCUMENTS

DEFINITIONS OF CERTAIN TERMS

In addition to the terms defined under the heading “INTRODUCTORY STATEMENT”, the following terms shall, for all purposes of the Trust Agreement and the Purchase Agreement have the following meanings:

“**Acquisition Fund**” means the fund established and held by the Trustee pursuant to the Trust Agreement to pay Project Costs.

“**Annual Debt Service Requirement**” means for any Fiscal Year the amount to be paid in such year with respect to the Purchase Agreement and the Parity Obligations (or portion thereof in question) for payment of principal and interest requirements (or portion thereof in question) during such year.

“**Certificate of Completion**” means the notice of completion, filed with the Trustee by the authorized representative of the City, stating that the Projects have been substantially completed.

“**Costs of Issuance Fund**” means the fund established and held by the Trustee pursuant to the Trust Agreement to pay Delivery Costs.

“**Debt Service Coverage**” means the amount of the revenues from the Excise Taxes and the State Shared Revenues for the most recently completed Fiscal Year divided by the Maximum Annual Debt Service.

“**Debt Service Reserve Fund**” means the fund established and held by the Trustee pursuant to the Trust Agreement.

“**Defeasance Obligations**” are those described in clause 1 of the definition of Permitted Investments. Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“**Delivery Costs**” means costs of sale and execution and delivery of the Obligations.

“**Depository Trustee**” means any bank or trust company, which may include the Trustee, designated by the City, with a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or State of Arizona authority.

“**Event of Default**” means an event of default under the Purchase Agreement as described under the subheading “THE PURCHASE AGREEMENT - Remedies Upon Default”.

“**Maximum Annual Debt Service**” means, at the time of computation, the greatest Annual Debt Service Requirement for the then-current or any succeeding Fiscal Year.

“**Outstanding**”, when used with respect to Obligations, refers to Obligations issued in accordance with the Trust Agreement, excluding: (i) Obligations which have been exchanged or replaced, or delivered to the Trustee therefor for credit against a sinking fund installment; (ii) Obligations which have been paid; (iii) Obligations which have become due and for the payment of which moneys have been duly provided to the Trustee therefor; and (iv) Obligations for which there have been irrevocably set aside with a Depository Trustee sufficient moneys or permitted by the Purchase Agreement obligations bearing interest at such rates and with such maturities as will provide sufficient funds to pay the principal of, premium, if any, and interest on such Obligations as provided in the proceedings under which such Obligations were issued, provided, however, that if any such Obligations are to be

redeemed prior to maturity, the City shall have taken all action necessary to redeem such Obligations and notice of such redemption shall have been duly mailed in accordance with the proceedings under which such Obligations were issued or irrevocable instructions so to mail shall have been given to the Trustee therefor.

“**Owner**” or any similar term, when used with respect to any Obligation means the person in whose name such Obligation shall be registered in the books of registration maintained by the Trustee.

“**Payment Fund**” means the fund by that name established and held by the Trustee pursuant to the Trust Agreement to which the Payments are deposited.

“**Permitted Investments**” means any of the following, to the extent permitted by law:

1. (A) Cash (fully insured by the Federal Deposit Insurance Corporation), (B) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America (“U.S. Treasury Obligations”), (C) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (D) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (E) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

A. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”) Participation Certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts) and Senior debt obligations;

B. Farm Credit Banks (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) Consolidated system-wide bonds and notes;

C. Federal Home Loan Banks (FHL Banks) Consolidated debt obligations and

D. Federal National Mortgage Association (FNMA or “Fannie Mae”) Senior debt obligations and Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding the portion of their unpaid principal amounts).

4. Unsecured certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the City, time deposits, and bankers’ acceptances (having maturities of not more than 365 days) of any bank, including the Trustee or any of its affiliates, the short-term obligations of which are rated “A-1+” or better by S&P and “Prime-1” or better by Moody’s.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$15 million.

6. Commercial paper (having original maturities of not more than 270 days) rated “A-1+” or better by S&P and “Prime-1” or better by Moody’s.

7. Money market mutual funds rated “AAm” or “AAm-G” or higher by S&P or, if rated by Moody’s, “Prime-1” or better by Moody’s, including, without limitation any mutual fund for which the

Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, the Trustee collects fees for services rendered pursuant to this Trust Agreement, which fees are separate from the fees received from such funds and services performed for such funds and pursuant to this Trust Agreement may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee.

8. "State Obligations", which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state, the unsecured general obligation debt of which is rated "A3" by Moody's and "A" by S&P, or higher, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated;

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated "A-1+" or better by S&P and "MIG-1" by Moody's and

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (B) above and rated "AA-" or better by S&P and "Aa-3" or better by Moody's.

9. Pre-refunded municipal obligations rated "AAA" by S & P and "Aaa" by Moody's meeting the following requirements:

A. The municipal obligations are not subject to redemption prior to maturity or the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. The municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. The principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

D. The cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. No substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification and

F. The cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements: With any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P and "A-3" by Moody's; or any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P and "A-3" by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or any

other entity rated “A-“ or better by S&P and “A-3” for better by Moody’s and acceptable to the Insurer (each a “Provider”), provided that:

A. Permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA’s and 104% of the total principal when the collateral type is FNMA and FHLMC (“Collateral”);

B. The Trustee or a third party acting solely as agent therefore or for the City (the “Custodian”) has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor’s books) and such collateral shall be marked to market;

C. The collateral shall be marked to market on a daily basis and the provider or the Custodian shall send monthly reports to the Trustee, the City and the Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

D. The repurchase agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Insurer;

E. The repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof and

F. The repurchase agreement shall provide that if during its term the provider’s rating by either Moody’s or S&P is withdrawn or suspended or falls below “A-“ by S&P or “A-3” by Moody’s, as appropriate, the provider must, notify the City, the Trustee and the Insurer within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: provide a written guarantee acceptable to the Insurer, post Collateral or assign the agreement to a Provider. If the provider does not perform a remedy within ten (10) Business Days, the provider shall, at the direction of the trustee (who shall give such direction if so directed by the Insurer) repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the City or the Trustee.

11. Investment agreements with a domestic or foreign bank or corporation, the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least “AA-“ by S&P and “Aa3” by Moody’s; and acceptable to the Insurer (each an “Eligible Provider”); provided that:

A. Interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the Acquisition Fund, construction draws) on the Obligations;

B. The invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days’ prior notice; the Trustee and the City hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

C. The provider shall send monthly reports to the Trustee, the City and the Insurer setting forth the balance the City or the Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

D. The investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

E. The investment agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Insurer;

F. The City, the Trustee and the Insurer shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;

G. The City, the Trustee and the Insurer shall receive an opinion of foreign counsel to the provider (if applicable) that the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and any judgment rendered by a court in the United States would be recognized and enforceable in such country;

H. The investment agreement shall provide that if during its term:

(1) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3," the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (A) provide a written guarantee acceptable to the Insurer, (B) post Eligible Collateral (as hereinafter defined) with the City, the Custodian free and clear of any third party liens or claims, or (C) assign the agreement to an Eligible Provider, or (D) repay the principal of and accrued but unpaid interest on the investment;

(2) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A-3", the provider must, at the direction of the issuer or the trustee (who shall give such direction if so directed by the Insurer), within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the issuer or trustee;

I. In the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee, the City and the Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

J. The investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof and

K. the investment agreement must provide that if during its term: the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the issuer or the trustee (who shall give such direction if so directed by the Insurer),

be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or the Trustee, as appropriate, and the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or the Trustee, as appropriate.

12. Interests in the Local Government Investment Pool established pursuant to Arizona Revised Statutes Section 35-326.

**"Project Costs"** means, with respect to the Projects, all architectural, engineering, soils, survey, archaeology, demolition, construction management fees, development fees, contingencies and other related costs of acquiring and constructing the Projects and all costs payable to a contractor under a construction contract, or incurred by the Trustee or the City with respect to the transaction to which the Trust Agreement pertains.

**"Record Date"** means, the close of business of the Trustee on the fifteenth day of the month preceding each Interest Payment Date.

**"Reserve Requirement"** means \$ \_\_\_\_\_.

Words importing persons include firms, associations and corporations, and the singular and plural forms of words shall be deemed interchangeable wherever appropriate.

#### **THE TRUST AGREEMENT**

The following, in addition to the information under the headings "THE OBLIGATIONS" and "SECURITY AND SOURCES OF PAYMENT", is a summary of certain provisions of the Trust Agreement to which document, in its entirety, reference is hereby made for a more complete description of its terms.

**Acquisition Fund and Costs of Issuance Fund.** The Acquisition Fund and the Costs of Issuance Fund will be established by the Trustee from which the Trustee will pay Project Costs and Delivery Costs, respectively. On the earlier of December 1, 2010, or when all Delivery Costs have been paid, the Trustee will transfer any amounts remaining in the Costs of Issuance Fund to the Payment Fund. Amounts in the Acquisition Fund will be used to pay principal of and interest on the Obligations if insufficient funds are otherwise available to make such payments when due. On the Completion Date, all remaining moneys in the Acquisition Fund shall be transferred to the Payment Fund and applied by the Trustee to the Payments due from the City on the next succeeding Interest Payment Date.

**Payment Fund.** The Payment Fund will also be established by the Trustee. The moneys in the Payment Fund will be applied by the Trustee solely to pay principal of and premium, if any, and interest with respect to on the Obligations.

**Debt Service Reserve Fund.** The Debt Service Reserve Fund will also be established by the Trustee. No deposit needs to be made into the Reserve Fund if the Debt Service Coverage is greater than three (3) times. The Trustee will deposit into the Debt Service Reserve Fund amounts paid pursuant to the Purchase Agreement as described under the subheading "SECURITY AND SOURCES OF PAYMENT-Reserve Fund". Commencing on the fifteenth (15th) business day of the month following a payment made from the Debt Service Reserve Fund, the Trustee will deposit into the Debt Service Reserve Fund pursuant to the Purchase Agreement one-twelfth (1/12) of the amount required to restore the Debt Service Reserve Fund to an amount equal to the Reserve Requirement. Amounts in the Debt Service Reserve Fund will be withdrawn (i) on the fourth (4th) business day immediately preceding any payment date for the Obligations and used solely for the purpose of paying the scheduled interest on or principal of the Obligations in the event that no money of the City is made available therefor pursuant to the Purchase Agreement or (ii) otherwise for the retirement of all of the Obligations then Outstanding. The Trustee will withdraw the amount of any excess from such fund and deposit it to the Payment Fund.

**Separate Funds.** Moneys and investments properly paid into and held in the funds established under the Trust Agreement will not be subject to the claims of the owners of the Parity Lien Obligations, and the Owners of the Obligations shall have no claim or lien upon any moneys or investments properly paid into and held in the funds and accounts established under the proceedings for the Parity Lien Obligations.

**Protection of Lien.** The Trustee and the City will agree not to make or create or suffer to be made or created any assignment or lien having priority or preference over the assignment and lien of the Trust Agreement and that no obligations the payment of which is secured by a superior or equal claim on or interest in property or revenues pledged will be issued or delivered by either except in lieu of, or upon transfer of registration or exchange of, any Obligation.

**Investments Authorized; Allocation of Earnings.** Upon order of the City, moneys held by the Trustee will be invested and re-invested in Permitted Investments having the highest yield reasonably obtainable. The Trustee may purchase from, or sell to, itself or any affiliate, as principal or agent, investments and may invest in funds to which the Trustee or any of its affiliates provide services as an investment advisor. The Trustee may act as purchaser or agent in the making or disposing of any investment.

Any income, profit or loss on such investments will be deposited in or charged to the respective funds from which such investments were made, and any interest on any deposit of funds will be deposited in the fund from which such deposit was made, except as otherwise provided. At the direction of the City, any such income, profit or interest will be applied if necessary to pay any rebate due with respect to the Obligation pursuant to the Internal Revenue Code.

**Appointment of the Trustee.** The City will maintain as the Trustee a bank or trust company with a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal or State authority so long as any of the Obligations are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority, then the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

**Liability of the Trustee; Standard of Care.** Except with respect to its authority and power generally and authorization to execute the Trust Agreement, the recitals of facts, covenants and agreements in the Trust Agreement and the Obligations will be taken as statements, covenants and agreements of the City, and the Trustee will assume no responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of the Trust Agreement or of the Obligations or will incur any responsibility in respect thereof, other than in connection with the duties or obligations in the Trust Agreement or in the Obligations assigned to or imposed upon them, respectively. Prior to the occurrence of an Event of Default, or after the timely cure of an Event of Default, the Trustee will perform only such duties as are specifically set forth in this Trust Agreement. After the occurrence of an Event of Default, the Trustee will exercise such of the rights and powers vested in it, and use the same degree of care and skill in such exercise, as a prudent indenture trustee would exercise under the circumstances in the conduct of the affairs of the Trustee.

**Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible as described hereinabove, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Protection and Rights of the Trustee.** The Trustee will be protected and will incur no liability in acting or proceeding in good faith upon any document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of the Trust Agreement, and the Trustee will be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such document, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee will not be bound to recognize any person as an Owner of any Obligation or to take any action at the request thereof unless such Obligation will be deposited with the Trustee and satisfactory evidence of the ownership of such Obligation will be furnished to the Trustee. The Trustee may consult with counsel with regard to legal questions, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by it in good faith.

Whenever in the administration of its duties under the Trust Agreement, the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action thereunder, such matter (unless other evidence in respect thereof be specifically prescribed) will be deemed to be conclusively proved and established by the certificate of the appropriate representative of the City and such certificate will be full warranty to the Trustee for any action taken or suffered under the provisions of the Trust Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Trustee may become the Owner of the Obligations with the same rights it would have if it were not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Obligations, whether or not such committee shall represent the Owners of the majority in principal amount of the Obligations then Outstanding.

The Trustee will not be answerable for the exercise of any discretion or power under the Trust Agreement or for anything whatever in connection with the funds established thereunder, except only for its own willful misconduct or negligence.

No provision in the Trust Agreement will require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee will not be required to take notice or be deemed to have notice of an Event of Default, except for nonpayment of amounts due under the Trust Agreement or the Purchase Agreement, unless the Trustee has actual notice thereof or is specifically notified in writing of such default by the City or the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Obligations then Outstanding.

The will from time to time, as agreed upon between the City and the Trustee, pay to the Trustee reasonable compensation for its services, including an hourly rate based fee after an Event of Default and will reimburse the Trustee for all its advances and expenditures, including but not limited to advances to, and reasonable fees and expenses of, independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties.

**Removal of the Trustee.** The Trustee may be removed by the City (if not in default) or by the Owners of a majority in aggregate principal amount of the Obligations or the Bond Insurer.

The Trustee may also resign effective upon the appointment of a successor the Trustee by the City.

**Amendments Permitted.** The Trust Agreement and the Purchase Agreement may be modified or amended at any time by a supplemental or amending agreement which will become effective upon the written consent of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding, exclusive of certain disqualified Obligations. No such modification or amendment will (1) extend or have the effect of extending the fixed maturity of any Obligation or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon redemption thereof, without the express consent of the Owner of such Obligation, or (2) reduce or have the effect of reducing the percentage of Obligations required for the affirmative vote or written consent to an amendment or modification of the Trust Agreement or the Purchase Agreement, or (3) modify any of the rights or obligations of the Trustee without its written assent thereto.

For the purpose of any supplemental agreement to make any amendment which may be made upon consent of the Owners of a majority of the Obligations pursuant to the Trust Agreement, and so long as the Municipal Bond Insurance Policy is in full force and effect and the Bond Insurer is not in default or contesting its obligations under the Municipal Bond Insurance Policy and is not in bankruptcy, receivership, insolvency or similar proceedings, then the consent of the Bond Insurer shall constitute and satisfy the requirement for the consent of the Owners of a majority of

the Obligations and any such supplemental agreement shall become effective upon execution and delivery by the parties hereto and consent of the Bond Insurer.

The Trust Agreement and the Purchase Agreement may be modified or amended at any time by a supplemental or amending agreement, without the consent of any Owners, but only (1) to provide for additions or modifications to the Project, (2) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power reserved in the Trustee (for its own behalf) or the City, (3) to secure additional revenues or provide additional security or reserves for payment of the Obligations, (4) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder, (5) to provide for the appointment of a successor trustee pursuant to the terms hereof, (6) to preserve the exclusion of the interest on the Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the City to continue to issue bonds or other obligations the interest on which is likewise exempt from federal and State income taxes, (7) to cure, correct or supplement any ambiguous or defective provision in the Trust Agreement and Purchase Agreement, (8) to facilitate the incurrence of the Parity Lien Obligations, (9) with respect to rating matter, or (10) in regard to questions arising thereunder, as the parties thereto may deem necessary or desirable and which will not adversely affect the interests of the Owners of the Obligations. Any such supplemental or amending agreement will become effective upon execution and delivery by the parties thereto, provided that notice of any such supplemental or amending agreement has been given to the Bond Insurer.

**Procedure for Amendment With Written Consent of Obligation Owners.** A copy of the proposed supplemental or amending agreement, together with a consent request, must be mailed to each Owner of an Obligation, but failure to mail copies of such supplemental or amending agreement and request does not affect the validity of the supplemental or amending agreement when assented to by a majority in principal amount of the Obligations then Outstanding (exclusive of Obligations then disqualified). The supplemental or amending agreement will not become effective until the required Owners have consented and the Trustee has mailed notice to the Owners of the Obligations stating in substance that such supplemental or amending agreement has been consented to by the Owners of the required percentage of Obligations and will become effective (but failure to mail copies of said notice shall not affect the validity of such supplemental or amending agreement or consents thereto).

**Disqualified Obligations.** Obligations owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or indirect common control with the City (except any Obligations held in any pension or retirement fund) will not be deemed Outstanding for the purpose of any vote, consent, waiver or other action or any calculation of Outstanding Obligations provided for in the Trust Agreement, and will not be entitled to vote upon, consent to, or take any other action provided therein.

**No Liability of the City for the Trustee Performance.** The City will have no obligation or liability to any of the other parties or to the Owners with respect to the performance by the Trustee of any duty imposed upon it under the Trust Agreement

**Remedies Upon Default; No Acceleration.** If an Event of Default shall happen, then and in each and every such case during the continuance of such Event of Default, the Trustee may, or upon request of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding and receiving indemnity satisfactory to it shall, exercise one or more of the remedies granted pursuant to the Purchase Agreement; provided, however, that notwithstanding anything in the Trust Agreement or in the Purchase Agreement to the contrary, there will be no right under any circumstances to accelerate the maturities of the Obligations or otherwise to declare any of the Payments not then past due or in default to be immediately due and payable.

**Application of Funds.** All moneys received by the Trustee pursuant to any right given or action taken pursuant to the provisions of the Trust Agreement or the Purchase Agreement shall be applied by the Trustee in the order following, in the case of the Obligations, upon presentation of the several Obligations, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee and then of the Obligation Owners in declaring such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel and

Second, to the payment of the whole amount then owing and unpaid with respect to the Obligations and, with interest on the overdue principal and installments of interest at the rate of twelve percent (12%) per annum (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest and interest on overdue principal, as aforesaid), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Obligations, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

**Institution of Legal Proceedings.** If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners of Obligations by a suit in equity or action at law for the specific performance of any covenant or agreement contained in the Trust Agreement.

**Power of the Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, it will have full power, in the exercise of its discretion for the best interests of the Owners of the Obligations, with respect to the continuance, or disposal of such action; provided, however, that the Trustee will not discontinue, or otherwise dispose of any litigation, without the consent of a majority in aggregate principal amount of the Obligations Outstanding.

**Limitation on Obligation Owners' Right to Sue.** No Owner of any Obligation will have the right to institute any action, for any remedy, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of at least a majority in aggregate principal amount of all the Obligations then Outstanding shall have made written request upon the Trustee to exercise the powers granted or to institute such action, in its own name; (c) said Owners shall have tendered to the Trustee reasonable indemnity; and (d) the Trustee shall have not complied with such request for a period of sixty (60) days.

No one or more Owners of Obligations will have any right in any manner whatever by their action to enforce any right under the Trust Agreement, except in the manner therein provided, and all proceedings with respect to an Event of Default will be pursued in the manner therein provided and for the equal benefit of all Owners of the Outstanding Obligations.

The right of any Owner of any Obligation to receive payment of said Owner's proportionate interest in the Payments as the same become due, or to institute suit for the enforcement of such payment, will not be impaired or affected without the consent of such Owner.

**Defeasance.** If and when all Outstanding Obligations shall be paid and discharged in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest and redemption premium, if any, with respect to all Obligations Outstanding, as and when the same become due and payable;

(b) by depositing with a Depository Trustee, in trust for such purpose, at or before maturity, money which, together with the amounts then on deposit in the Payment Fund is fully sufficient to pay or cause to be paid all Obligations Outstanding, including all principal, interest and redemption premium; or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Defeasance Obligations which are non-callable in such amount as shall be certified to the Trustee and the City by a national firm of certified public accountants acceptable to both the Trustee and the City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit in the Payment Fund together with the interest to accrue thereon, to pay and discharge or cause to be paid and discharged all Obligations (including all principal, premium and interest) at their respective maturity dates or prior redemption;

notwithstanding that any Obligations shall not have been surrendered for payment, all obligations of the Trustee and the City with respect to all Outstanding Obligations will cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from funds deposited pursuant to paragraphs (b) or (c) above and paid to the Trustee by the Depository Trustee, to the Owners of the Obligations not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to paragraphs (b) or (c), the Obligations will continue to represent direct and proportionate interests of the Owners thereof in such funds.

If any Obligation or portion thereof will not mature within sixty (60) days of the deposit referred to in paragraphs (b) or (c) above, the Trustee shall give notice of such deposit by first class mail to the Owners.

No Payment or Obligation may be so provided for based on redemption prior to maturity unless the Trustee has mailed irrevocable notice of redemption for such Obligations or the City has given the Trustee irrevocable instructions to redeem such Obligations.

### **THE PURCHASE AGREEMENT**

The following, in addition to the information under the headings "INTRODUCTORY STATEMENT" and "SECURITY AND SOURCES OF PAYMENT," is a summary of certain provisions of the Purchase Agreement to which document, in its entirety, reference is hereby made for a more complete description of its terms.

**Payments.** The obligation of the City to make the Payments will be limited to amounts from the revenues from the Excise Taxes and the State Shared Revenues. The City will receive a credit against amounts due with respect to the Payments and to replenish the Debt Service Reserve Fund equal to any amounts held and available in the Payment Fund and the Debt Service Reserve Fund, respectively.

The obligations of the City to make the Payments from the sources described and to perform and observe the other agreements contained in the Purchase Agreement will be absolute and unconditional and will not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of the Trustee of any obligation to the City or otherwise, or out of indebtedness or liability at any time owing to the City by the Trustee. Until such time as all of the Payments shall have been fully paid or provided for, the City (i) will not suspend or discontinue the Payments, (ii) will perform and observe all other agreements contained in the Purchase Agreement, and (iii) will not terminate the Purchase Agreement for any cause.

**Providing for Payment.** The City may provide for the payment of any of the Payments in any one or more of the following ways:

(a) by paying such Payment as and when the same becomes due and payable at its scheduled due date or on a date on which it can be prepaid;

(b) by depositing the with a Depository Trustee, in trust for such purposes, money which, together with the amounts then on deposit with the Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid; or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Defeasance Obligations which are non-callable, in such amount as shall be certified by a national firm of certified public accountants acceptable to the Trustee and the City as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with the Trustee and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid.

Upon any partial payment of a Payment resulting in a partial payment of redemption of Obligations, each installment of interest which shall thereafter be payable as a part of the subsequent Payments shall be reduced, taking into account the interest rate or rates on the Obligations remaining outstanding after the partial payment or redemption of Obligations from the proceeds of such payment so that the interest remaining payable as a part of the subsequent Payments shall be sufficient to pay the interest on such outstanding Obligations when due.

**Default; Remedies Upon Default.**

(a) (i) Upon (A) the nonpayment of the whole or any part of certain amounts due pursuant to the Purchase Agreement (including the Payments and amounts to replenish the Debt Service Reserve Fund) at the time when the same are to be paid as provided in the Purchase Agreement or the Trust Agreement, (B) the violation by the City of any other covenant or provision of the Purchase Agreement or the Trust Agreement, (C) the occurrence of an event of default with respect to any of the Loan Repayment Agreements or the other of the Parity Lien Obligations, or (D) the insolvency or bankruptcy of the City as the same may be defined under any law of the United States of America or the State of Arizona, or any voluntary or involuntary action of the City or others to take advantage of, or to impose, as the case may be, any law for the relief of debtors or creditors, including a petition for reorganization, and

(ii) if such default has not been cured (A) in the case of nonpayment of such amounts as required under the Purchase Agreement or the Trust Agreement on the due date, or the nonpayment of the payments on their due dates with respect to the Loan Repayment Agreements or any other of the Parity Lien Obligations; (B) in the case of the breach of any other covenant or provision of the Trust Agreement or the Purchase Agreement not cured within sixty (60) days after notice in writing from the Trustee specifying such default; and (C) in the case of any default under any of the Loan Repayment Agreements or the other of the Parity Lien Obligations after any notice and passage of time provided for under the proceedings under which such obligations were issued then,

(iii) subject to the limitations of the Trust Agreement, the Trustee may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect such amounts payable by the City under the Trust Agreement or the Purchase Agreement then due (but not the Payments and such other amounts accruing), or to enforce performance and observance of any pledge, obligation, agreement, or covenant of the City under the Trust Agreement or the Purchase Agreement and with respect to the Excise Tax Revenues, without notice and without giving any bond or surety to the City or anyone claiming under the City, have a receiver appointed of the amounts of the Excise Tax Revenues which are pledged to the payment of amounts due thereunder, with such powers as the court making such appointment shall confer (and the City will irrevocably consent to such appointment); provided, however, that under no circumstances may the Payments be accelerated.

The obligations of the City under the Purchase Agreement, including, without limitation, its obligation to pay the Payments, will survive any action brought, and the City will continue to pay the Payments and perform all other obligations provided in the Purchase Agreement; provided, however, that the City will be credited with any amount received by the Trustee.

**The City Appointed Agent for Seller.** The Trustee will irrevocably appoint the City as its sole agent in constructing and installing of the Projects. As such agent, the City will have full authority to do all things necessary to bring about the financing of the Projects. The Trustee shall not be accountable for the acts of the City as its agent, and the City will assume all responsibility for the performance of such duties.

Notwithstanding any other terms or provisions of the Purchase Agreement, the interest of the Trustee as seller in the Projects and responsibility for causing the construction and installation of the Projects is solely for the purpose of facilitating the financing of the purchase acquisition by the City of the Projects, and the Trustee will not have the power, authority or obligation to assume any responsibility for the overall management of the Projects, including, without limitation, any day-to-day decision-making or operational aspects of the Projects. The elements of the Projects and the sites therefor were selected by the City, and all design and engineering criteria and specifications for the Projects to be constructed or installed were or will be determined by the City.

**APPENDIX E**

**AUDITED FINANCIAL STATEMENTS OF  
CITY OF BENSON, ARIZONA  
FOR THE FISCAL YEAR ENDED JUNE 30, 2009**

**SEE "FINANCIAL STATEMENTS"**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

**\$5,240,000**  
**EXCISE TAX AND STATE SHARED REVENUE OBLIGATIONS, SERIES 2010**

Evidencing a Proportionate Interest of the Owners  
Thereof in Purchase Price Payments to be Made by

**THE CITY OF BENSON, ARIZONA**  
to  
**U.S. BANK NATIONAL ASSOCIATION**  
as Trustee

**Closing Date:** [Closing Date]  
**(CUSIP Base No. 08244P)**

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**FIRST CONTINUING DISCLOSURE UNDERTAKING**

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This First Continuing Disclosure Undertaking (this "*Undertaking*") is executed and delivered by the City of Benson, Arizona (the "*City*"), in connection with the execution and delivery of \$4,920,000 aggregate principal of Excise Tax and State Shared Revenue Obligations, Series 2010 Evidencing a Proportionate Interest of the Owners Thereof in Purchase Price Payments to be Made by the City of Benson, Arizona, to U.S. Bank National Association, as Trustee (the "*Obligations*"). The Obligations are being issued pursuant to a First Trust Agreement, dated as of July 1, 2010 (the "*Trust Agreement*"), by and between the City and U.S. Bank National Association, as trustee (the "*Trustee*"). The City covenants and agrees as follows:

1. *Definitions.* In addition to those defined hereinabove, the terms set forth below shall have the following meanings in this Undertaking, unless the context clearly otherwise requires:

*Annual Financial Information* means the financial information and operating data set forth in *Exhibit I*.

*Annual Financial Information Disclosure* means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

*Audited Financial Statements* means the audited financial statements of the City prepared pursuant to the standards and as described in *Exhibit I*.

*Commission* means the Securities and Exchange Commission.

*Dissemination Agent* means any agent designated as such in writing by the City and which has filed with the City a written acceptance of such designation, and such agent's successors and assigns.

*EMMA* means the Electronic Municipal Market Access system of the MSRB. Information regarding submissions to EMMA is available at <http://emma.msrb.org>.

*Event* means the occurrence of any of the events set forth in *Exhibit II*.

*Exchange Act* means the Securities Exchange Act of 1934, as amended.

*Final Official Statement* means the Final Official Statement relating to the Obligations, dated June 17, 2010.

*GAAP* means generally accepted accounting principles, as applied to governmental units as modified by the laws of the State.

*Material Event* means the occurrence of events set forth in *Exhibit II* that are material, as materiality is interpreted under the Exchange Act.

*Material Events Disclosure* means dissemination of disclosure concerning a Material Event as set forth in Section 5.

*MSRB* means the Municipal Securities Rulemaking Board.

*Participating Underwriter* means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Obligations.

*Purchase Agreement* means the First Purchase Agreement, dated as of June 1, 2010, by and between the City and the Trustee, in its separate capacity as "Seller."

*Rule* means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

*State* means the State of Arizona.

2. *Purpose of this Undertaking.* This Undertaking is executed and delivered by the City as of the date set forth below, for the benefit of the beneficial owners of the Obligations and in order to assist the Participating Underwriter in complying with the requirements of the Rule. The City represents that it will be the only obligated person with respect to the Obligations at the time the Obligations are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after such delivery of the Obligations.

3. *CUSIP Number/Final Official Statement.* The CUSIP Numbers of the Obligations are as follows:

[Will fill in for New Money and Refunding Obligations]	
CUSIP No.	Maturity Date
08244P	7/1/11

4. *Annual Financial Information Disclosure.* Subject to Section 8 of this Undertaking, the City shall disseminate its Annual Financial Information and its Audited Financial Statements, if any (in the form and by the dates set forth in *Exhibit I*), through EMMA.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will disseminate a statement to such effect as part of its Annual Financial Information for the year in which such event first occurs.

If any amendment is made to this Undertaking, the Annual Financial Information for the year in which such amendment is made shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. *Material Events Disclosure.* Subject to Section 8 of this Undertaking, the City shall disseminate in a timely manner its Material Events Disclosure through EMMA. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any of the Obligations or defeasance of any Obligations need not be given under this Undertaking any earlier than the notice (if any) of such redemption or defeasance is given to the owners of the Obligations pursuant to the terms of the Obligations.

6. *Consequences of Failure of the City to Provide Information.* The City shall give notice in a timely manner through EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of the City to comply with any provision of this Undertaking, the beneficial owner of any Obligation may seek mandamus or specific performance by court order, to cause the City to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an event of default under the Purchase Agreement or the Trust Agreement, and the sole remedy available to such owners of the Obligations under this Undertaking in the event of any failure of the City to comply with this Undertaking shall be an action to compel performance.

7. *Amendments; Waiver.* Notwithstanding any other provision of this Undertaking, the City by certified resolution or ordinance authorizing such amendment or waiver, may amend this Undertaking, and any provision of this Undertaking may be waived only if:

(a) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted;

(b) This Undertaking, as amended or affected by such waiver, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interests of the beneficial owners of the Obligations, as determined by parties unaffiliated with the City (such as the Trustee) or by approving vote of the owners of the Obligations pursuant to the Trust Agreement at the time of the amendment.

The Annual Financial Information containing amended operating data or financial information resulting from such amendment or waiver, if any, shall explain, in narrative form, the reasons for the amendment or waiver and the impact of the change in the type of operating data or financial information being provided. If an amendment or waiver is made specifying GAAP to be followed in preparing financial statements and such changes are material, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles. Such comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles in the presentation of the financial information in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible,

such comparison also shall be quantitative. If the accounting principles of the City change or the fiscal year of the City changes, the City shall file a notice of such change in the same manner as for a notice of material event.

8. *Termination of Undertaking.* This Undertaking shall be terminated hereunder if the City shall no longer have liability for any obligation on or relating to repayment of the Obligations under the Trust Agreement. This Undertaking shall also be subject to amounts being appropriated as necessary to pay the costs of expenses to comply herewith in each fiscal year of the City. The City shall give notice in a timely manner if it no longer has such liability of, if any, such non-appropriation occurs, through EMMA.

9. *Dissemination Agent.* The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Undertaking, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

10. *Additional Information.* Nothing in this Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Material Event, in addition to that which is required by this Undertaking. If the City chooses to include any information from any document or notice of occurrence of a Material Event in addition to that which is specifically required by this Undertaking, the City shall have no obligation under this Undertaking to update such information or include it in any future Annual Financial Information Disclosure or Material Events Disclosure.

11. *Beneficiaries.* This Undertaking has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Undertaking shall inure solely to the benefit of the City, the Dissemination Agent, if any, and the beneficial owners of the Obligations, and shall create no rights in any other person or entity.

12. *Recordkeeping.* The City shall maintain records of all Annual Financial Information Disclosure and Material Events Disclosure including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. *Assignment.* The City shall not transfer obligations under the First Purchase Agreement unless the transferee agrees to assume all obligations of the City under this Undertaking or to execute an undertaking meeting the requirements of the Rule.

14. *Governing Law.* This Undertaking shall be governed by the laws of the State. To the extent applicable by provision of law, this Undertaking is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein by the reference.

Dated: [Closing Date]

THE CITY OF BENSON, ARIZONA

By.....  
Mayor

ATTEST:

.....  
City Clerk

ACKNOWLEDGED FOR PURPOSES OF  
SECTION 13(b) OF THE PURCHASE  
AGREEMENT BY U.S. BANK, NATIONAL  
ASSOCIATION, AS TRUSTEE

By.....

Title:.....

## EXHIBIT I

### ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

“Annual Financial Information” means financial information and operating data of the type contained in the Final Official Statement under the following caption in Table 3 thereof, actual results for most recently completed fiscal year only).

All or a portion of the Annual Financial Information and the Audited Financial Statements as set forth below may be included by reference to other documents which have been submitted through EMMA or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available from the MSRB. The City shall clearly identify each such item of information included by reference.

Annual Financial Information exclusive of Audited Financial Statements will be provided through EMMA by February 1 of each year, commencing February 1, 2011, 210 days after the last day of the City’s fiscal year. Audited Financial Statements as described below should be filed at the same time as the Annual Financial Information. If Audited Financial Statements are not available when the Annual Financial Information is filed, unaudited financial statements shall be included, to be followed up by Audited Financial Statements when available.

Audited Financial Statements will be prepared according to GAAP. Audited Financial Statements will be provided through EMMA within 30 days after availability to the City.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Agreement, the City will disseminate a notice of such change as required by Section 4, including changes in fiscal year or GAAP.

## EXHIBIT II

### EVENTS FOR WHICH MATERIAL EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Non-payment related defaults
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions or events affecting the tax-exempt status of the security
7. Modifications to the rights of security holders
8. Bond calls
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities
11. Rating changes

## BOOK-ENTRY ONLY SYSTEM

**The following information concerning DTC and DTC's book-entry system is based solely on information provided by DTC. Accordingly, the City takes no responsibility for the accuracy thereof. The Beneficial Owners should confirm this information with DTC or the DTC participants.**

DTC will act as securities depository for the Obligations. The Obligations will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Obligation certificate will be issued for each maturity of the Obligations in the aggregate principal amount of the Obligations and will be deposited with DTC.

DTC is a limited purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("*Direct Participants*") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("*Indirect Participants*"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchase of Obligations under the DTC system must be made by or through Direct Participants, which will receive a credit for the Obligations on DTC's records. The ownership interest of each actual purchaser of each Obligation ("*Beneficial Owner*") is in turn to be recorded on the Direct Participants' and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct Participant or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Obligations are to be accomplished by entries made on the books of Direct Participants and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Obligations, except in the event that use of the book-entry system for the Obligations is discontinued.

To facilitate subsequent transfers, all Obligations deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Obligations with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Obligations; DTC's records reflect only the identity of the Direct Participants to whose accounts such Obligations are credited, which may or may not be the Beneficial Owners. The Direct Participants and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to DTC. If less than all of the Obligations within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC or Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Obligations, unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Obligations are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments on the Obligations will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the City or Trustee on payable date in accordance with their respective holdings shown on DTC's records. Payments by Direct Participants and Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct Participant or Indirect Participant and not of DTC, the Trustee or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payments on the Obligations to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct Participants and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Obligations at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Obligation certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Obligation certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

THE CITY WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DTC PARTICIPANT, ANY BENEFICIAL OWNER OR ANY OTHER PERSON CLAIMING A BENEFICIAL OWNERSHIP INTEREST IN THE OBLIGATIONS UNDER OR THROUGH DTC OR ANY DIRECT PARTICIPANT, INDIRECT PARTICIPANT, OR ANY OTHER PERSON WITH RESPECT TO: THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT IN RESPECT OF THE PRINCIPAL OF OR INTEREST ON THE OBLIGATIONS; THE GIVING OF ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN TO OWNERS OF THE OBLIGATIONS UNDER THE TRUST AGREEMENT; OR ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS AN OWNER.

**SPECIMEN MUNICIPAL BOND INSURANCE POLICY**



## MUNICIPAL BOND INSURANCE POLICY

ISSUER:

Policy No.: -N

BONDS: \$ in aggregate principal amount of

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP (FORMERLY KNOWN AS FINANCIAL SECURITY ASSURANCE INC.) ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. (FORMERLY KNOWN AS FINANCIAL SECURITY ASSURANCE INC.) has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.  
(FORMERLY KNOWN AS FINANCIAL  
SECURITY ASSURANCE INC.)

By \_\_\_\_\_  
Authorized Officer

(212) 826-0100