

**RESOLUTION NO. 2022-01**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FOURTH PURCHASE AGREEMENT, A FOURTH TRUST AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, AN OBLIGATION PURCHASE AGREEMENT AND OTHER NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS; APPROVING THE SALE AND EXECUTION AND DELIVERY OF NOT TO EXCEED \$25,000,000 PRINCIPAL AMOUNT OF EXCISE TAX REVENUE OBLIGATIONS, SERIES 2022, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN SUCH PURCHASE AGREEMENT; APPROVING AN OFFICIAL STATEMENT; DELEGATING AUTHORITY 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 of the City of Sedona, Arizona (the "City"), have determined that it will be beneficial to its citizens to finance the costs of street and transportation improvements and/or parking garage projects in and for the City (collectively, the "Projects"); and

*WHEREAS*, in order to finance the costs of the Projects, the Mayor and Council of the City hereby deem it necessary and desirable to provide for the sale and execution and delivery of Excise Tax Revenue Obligations, Series 2022, Evidencing a Proportionate Interest of the Owner Thereof in Purchase Price Payments to be Made by the City to a trustee bank to be determined as provided herein, as trustee (the "Trustee" and such Obligations, the "Obligations") provided for by this Resolution pursuant to the Fourth 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 purchase payments to be made pursuant to the Fourth Purchase Agreement, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Purchase Agreement"), between the City and the Trustee, in its separate capacity as "Seller"; and

*WHEREAS*, the Mayor and Council of the City will receive a proposal from Stifel, Nicolaus & Company, Incorporated, serving in the capacity of and designated as the underwriter (the "Underwriter"), and not acting as a municipal advisor as defined in the Registration of Municipal Advisors Rule of the Securities and Exchange Commission, and has determined that the Obligations should be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Authorized Representatives (as defined herein) pursuant to the Strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-005-1718; and

*WHEREAS*, pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), Participating Underwriters (as defined in the Rule) are required to reasonably determine that issuers have entered into written undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule, including with respect to the Obligations, to be dated the date of the Obligations (the "Undertaking"); and

*WHEREAS*, the Mayor and Council of the City have determined that procedures should be adopted in order to document practices and describe various procedures for preparing and disseminating such ongoing disclosure for the benefit of the holders of obligations of the City and to

assist the Participating Underwriters in complying with the Rule and such written undertakings (the "Procedures"); and

*WHEREAS*, there have been presented to the Mayor and Council of the City at the meeting of the Mayor and Council of the City at which this Resolution is being adopted the proposed forms of: (1) the Purchase Agreement; (2) the Trust Agreement; (3) the Undertaking; (4) an Obligation Purchase Agreement, to be dated the date of the sale of the Obligations (the "Purchase Contract"), by and between the City and the Underwriter, for the purchase of the Obligations; (5) 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; and (6) the Procedures,

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

**Section 1.** (a) The execution and delivery of the Obligations by the Trustee is hereby approved. The Obligations shall be in the denominations and shall be fully registered without coupons as provided in the Trust Agreement.

(b) The Mayor, the Manager and the Director of Financial Services of the City or the designees of any of them (collectively, the "Authorized Representatives") are hereby authorized to determine on behalf of the City: (1) the entity to serve as the Trustee; (2) the date the Obligations are to be sold to the Underwriter; (3) the aggregate principal amount of the Obligations which are to be issued (but not to exceed \$25,000,000 in aggregate principal amount); (4) the date the Obligations are to be dated; (5) the dates on which interest on the Obligations is to be payable and the interest rates per annum the Obligations are to bear; (6) the dates the Obligations are to mature (but not later than a final maturity in 2047), the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; (7) 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 (8) 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 such determinations must result in a yield for federal income tax purposes of not to exceed four and one-half percent (4.5%) with respect to the Obligations.

(c) The form 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.

(d) The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

**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 Undertaking, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Mayor and Council of the City 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, and in the case of the Purchase Contract, the Manager or Director of Financial Services of the City, the execution of each such document being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor, and in the case of the Purchase Contract, the Manager or Director of Financial Services of the City, 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 Undertaking and to take all action to carry out and comply with the terms of such documents.

**Section 4.** The distribution of the Preliminary Official Statement by the Underwriter is 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 Authorized Representatives, is approved, and the Authorized Representatives are authorized, empowered and directed, in the name and on behalf of the Town, 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 the Rule.

**Section 5.** The Mayor and Council of the City hereby request that the Trustee (including in its capacity as Seller) take any and all action necessary in connection with the execution and delivery of the Purchase Agreement and the Trust Agreement and the sale and execution and delivery of the Obligations and further authorizes and directs the Trustee to enter into such agreements as may be reasonable for the administration of the trusts so held by it.

**Section 6.** The covenants and agreements contained in the Purchase Agreement as to the pledge of and the lien on the Excise Taxes (as defined in the Purchase Agreement) and the restriction on the issuance of further parity obligations secured by the Excise Taxes are approved and confirmed.

**Section 7.** After any of the Obligations are delivered by the Trustee to the Underwriter 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 8.** The Authorized Representatives 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 do all such things and 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 9.** 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.

**Section 10.** 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 11.** 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.

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PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 8th day of February 2022.

\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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Kurt W. Christianson, City Attorney

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**FOURTH PURCHASE AGREEMENT**

by and between

**UMB BANK, N.A.,**  
as Seller

and

**THE CITY OF SEDONA, ARIZONA,**  
as Buyer

Dated as of March 1, 2022

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**EXHIBIT - PAYMENT SCHEDULE**

## FOURTH PURCHASE AGREEMENT

**THIS FOURTH PURCHASE AGREEMENT**, dated as of March 1, 2022 (this “Agreement”), by and between **THE CITY OF SEDONA, ARIZONA**, a municipal corporation and a political subdivision under the laws of the State of Arizona (“City”), and **UMB BANK, N.A.**, a national banking association (“Seller”), in its capacity as trustee (“Trustee”) under the Fourth Trust Agreement, dated as of even date herewith (the “Trust Agreement”), by and between Trustee and City,

### WITNESSETH:

**WHEREAS**, in order to refinance certain outstanding obligations and to finance the costs of construction of certain improvements to the wastewater system of City, the Sedona Wastewater Municipal Property Corporation (the “MPC”) issued its Excise Tax Revenue Bonds, Series 1998, consisting of \$34,730,000 principal amount of current interest bonds (the “Series 1998 Current Interest Bonds”) and \$6,305,000 initial principal amount of capital appreciation bonds (together with the Series 1998 Current Interest Bonds, the “Series 1998 Bonds”); and

**WHEREAS**, the Series 1998 Bonds are payable from rental payments to be made by City pursuant to the provisions of a City Lease, dated as of August 1, 1998, as amended by a First Amendment to City Lease, dated as of November 1, 2000 (as so amended, the “City Lease”), by and between City and the MPC, and the obligation to make such rental payments under the City Lease is secured by a pledge of the Excise Taxes (as that term is hereinafter defined); and

**WHEREAS**, Section 3.3 of the City Lease provides as follows:

(a) The City hereby pledges for the payment of the rental payments under Section 1.3(a) hereof, all Excise Taxes. The City intends that this pledge shall be a first lien upon such amounts of said Excise Taxes (except as described in (h) below), as will be sufficient to make the rental payments pursuant to Section 1.3(a) hereof each month, and the City agrees and covenants to make said rental payments from such Excise Taxes, except to the extent that it chooses to make such payments from other funds pursuant to Section 3.2 above.

(b) For purposes of this the City Lease, “Excise Taxes” means all excise taxes, transaction privilege (sales, license and use) taxes, vehicle license fees, plan review deposit fees, building permit fees, conditional use permit fees, development review fees, franchise fees, fines and forfeitures which the City now collects and which it may collect in the future, together with the City’s portion of any excise taxes, transaction privilege (sales and use) taxes and income taxes imposed and collected by the State, or any political subdivision thereof, or any other governmental unit or agency, and returned, allocated or apportioned to the City, EXCEPT (i) any such taxes, fees, fines and forfeitures which the City may enact in the future which must be used or expended by the City for specific purposes, and (ii) any such taxes which, by State law, rule or regulation must be expended for specific purposes, such as motor vehicle fuel taxes.

and Section 3.5 of the City Lease provides as follows:



The City, for itself, its successors and assigns, covenants and agrees with the registered owners and holders of the Corporation's Series 1998 Bonds to be issued under the Indenture, so long as any of said Series 1998 Bonds remain outstanding and the principal and interest on the Series 1998 Bonds shall be unpaid or unprovided for, it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis prior and paramount to the lien and pledge provided for under Section 3.3 hereof and that it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis equal to the lien and pledge provided for in Section 3.3 hereof unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for all Series 1998 Bonds, Prior Obligations, any parity or additional parity bonds or other obligations secured by a parity pledge of the Excise Taxes then outstanding and any parity or additional parity bonds or other obligations so proposed to be secured by a parity pledge of the Excise Taxes.

; and **WHEREAS**, City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of January 1, 2002 (the "2002 Lease"), with National Bank of Arizona, as lessor, and a Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), with such lessor and National Bank of Arizona, as trustee (the "2002 Trustee") and caused the 2002 Trustee, pursuant to the 2002 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2002 (the "2002 Obligations"), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2002 Lease, such lease payments under the 2002 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, further, City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of July 1, 2004 (the "First 2004 Lease"), with U.S. Bank National Association, as lessor, and a Trust Agreement, dated as of July 1, 2004 (the "First 2004 Trust Agreement"), with such lessor and U.S. Bank National Association, as trustee (the "2004 Trustee") and caused the 2004 Trustee, pursuant to the First 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2004, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the First 2004 Lease, such lease payments under the First 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance a portion of the Series 1998 Bonds remaining outstanding, entered into a Second 2004 Lease Agreement, dated as of October 1, 2004 (the "Second 2004 Lease"), with U.S. Bank National Association, as lessor, and a Second 2004 Trust Agreement, dated as of October 1, 2004 (the "Second 2004 Trust Agreement"), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the Second 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Second Series 2004 (the "Second 2004 Obligations"), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the Second 2004 Lease, such lease payments under the Second 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2005 (the “2005 Lease”), with U.S. Bank National Association, as lessor, and a Trust Agreement, dated as of May 1, 2005 (the “2005 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2005 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2005 (the “2005 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2005 Lease, such lease payments under the 2005 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs of certain projects, entered into a First Purchase Agreement, dated as of November 1, 2007 (the “2007 Purchase Agreement”), with U.S. Bank National Association, as seller, and a Trust Agreement, dated as of November 1, 2007 (the “2007 Trust Agreement”), with U.S. Bank National Association, as trustee (the “2007 Trustee”), and caused the 2007 Trustee, pursuant to the 2007 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Obligations, Series 2007 (the “2007 Obligations”), evidencing proportionate interests of owners thereof in purchase payments and prepayments to be made by City pursuant to the 2007 Purchase Agreement, such purchase payments under the 2007 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of February 1, 2012 (the “2012 Lease”), with U.S. Bank National Association, as lessor, and a Trust Agreement, dated as of February 1, 2012 (the “2012 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2012 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2012 (the “2012 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2012 Lease, such lease payments under the 2012 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance all Second 2004 Obligations remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2014 (the “2014 Lease”), with U.S. Bank National Association, as lessor, and a Trust Agreement, dated as of May 1, 2014 (the “2014 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2014 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2014, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2014 Lease, such lease payments under the 2014 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance all 2005 Obligations remaining outstanding, entered into a Lease Agreement, dated as of June 1, 2015 (the “2015 Lease”), with U.S. Bank National Association, as lessor, and a Trust Agreement, dated as of June 1, 2015 (the “2015 Trust Agreement”), with such lessor and the 2004 Trustee

and caused the 2004 Trustee, pursuant to the 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2015, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2015 Lease, such lease payments under the 2015 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance a portion of the 2007 Obligations remaining outstanding, entered into a Second Purchase Agreement, dated as of December 1, 2015 (the “Second Series 2015 Purchase Agreement”), with U.S. Bank National Association, as seller, and a Second Trust Agreement, dated as of December 1, 2015 (the “Second Series 2015 Trust Agreement”), with U.S. Bank National Association, as trustee (the “2015 Trustee”), and caused the 2015 Trustee, pursuant to the Second Series 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Second Series 2015 (the “Second Series 2015 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by City pursuant to the Second Series 2015 Purchase Agreement, such purchase payments under the Second Series 2015 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance the 2012 Obligations remaining outstanding, entered into a Third Purchase Agreement, dated as of August 1, 2021 (the “Series 2021 Purchase Agreement”), with U.S. Bank National Association, as seller, and a Third Trust Agreement, dated as of August 1, 2021 (the “Series 2021 Trust Agreement”), with U.S. Bank National Association, as trustee (the “2021 Trustee”), and caused the 2021 Trustee, pursuant to the Series 2021 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Taxable Series 2021-1 (the “Series 2021 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by City pursuant to the Series 2021 Purchase Agreement, such purchase payments under the Series 2021 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, City has now determined that it will be beneficial for its citizens to finance the costs of street and transportation improvements and parking garage projects in and for the City (collectively, the “Projects”); and

**WHEREAS**, City is a political subdivision duly organized and validly existing under the laws of the State (as such term and all other terms not otherwise defined herein are defined in the Trust Agreement); 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; and

**WHEREAS**, Seller 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) For the amounts payable pursuant hereto (including the Payments), Seller hereby sells and conveys to City, without warranty, and City hereby purchases from Seller, the Projects. (In order to evidence such sale, Seller has executed and delivered to City a bill of sale on the date of original execution and delivery of the Obligations.) City shall be entitled to sole and exclusive possession of the Projects.

(b) To provide the funds necessary for Seller to facilitate the financing of the Projects, Seller, in its capacity as Trustee, shall execute and deliver the Obligations. (Seller shall have no further obligation to provide funds for the Projects.)

(c) As the purchase price for the Projects, City shall make the payments to Seller at the address specified pursuant to Section 19 hereof (or such other address as Seller may designate in writing) on the fifth Business Day immediately preceding the dates and in the amounts set forth in the payment schedule attached hereto and made a part hereof as the Exhibit hereto (the "Payments"). The obligation of City to make the Payments shall be limited to amounts from all Excise Taxes. City shall receive a credit against amounts due equal to any amounts held in the Payment Fund and available for such purpose. 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. City shall also pay to Trustee its fees and expenses in accordance with the provisions of the Trust Agreement, to the United States of America any amounts required by Section 14(c), and all amounts necessary for compliance with the Continuing Disclosure Undertaking, provided, however, that failure of City to pay such amounts with respect to the Continuing Disclosure Undertaking shall not be considered an event of default. City shall further also pay or reimburse Insurer on demand any and all Administrative Costs. City agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semiannually, from the date that payment is first due to Insurer until the date Insurer is paid in full. Notwithstanding anything herein to the contrary, City shall further also pay to Insurer the Insurer Reimbursement Amounts. City hereby covenants and agrees that the Insurer Reimbursement Amounts are payable from and secured by a lien on and pledge of Excise Taxes

on a parity with the pledge described in Section 2(a). This Agreement shall be deemed and construed to be a “*net purchase agreement*,” and the Payments shall be an absolute net return to Seller, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein.

(d) The obligations of City to make 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 by Seller of any obligation to City or otherwise, or out of indebtedness or liability at any time owing to City by Seller. Until such time as all of the Payments shall have been fully paid or provided for, City (i) shall not suspend or discontinue the Payments, (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 Seller or any other person to complete the Projects, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Projects, the taking by *eminent domain* of title to or temporary use of any or all of the Projects, commercial frustration of purpose or abandonment of the 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 Seller 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 Seller from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event Seller shall fail to perform any such agreements on its part, City may institute such action against Seller 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 (d).

(e) This Agreement shall not terminate so long as any payments are due and owing pursuant to the Obligations or to Insurer. Subject to Section 9, upon full payment or provision for payment and in consideration of the timely payment of all of 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. Upon the expiration of this Agreement as provided in this Section, City shall cause Trustee to release any interest which Trustee may have in the Projects or the revenues thereof from the lien of the Trust Agreement.

(f) Any of 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 pledges for the payment of the Payments under Section 1(c) hereof all Excise Taxes. (*Notwithstanding the provision in the City Lease with regard to Excise Taxes that, as of the date thereof, the transaction privilege (sales, license and use) tax collected by City is 3.0%, 2.5% of which has not been enacted for use or expenditure by City for specific purposes, retroactive to the date of the City Lease and for purposes hereof, the whole 3.0% will be treated as not having been enacted for use or expenditure by the City for specific purposes*.) City intends that this pledge shall be a first lien upon such amounts of said Excise

Taxes as will be sufficient to make the Payments pursuant to Section 1(c) hereof. (City shall, unless made from its other funds as permitted by law and as determined from time to time by City, first make all of the Payments accruing under Section 1(c) hereof out of the Excise Taxes and thereafter may use the remaining Excise Taxes for any other lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts of the Excise Taxes, such Excise Taxes will not be reduced to such a level that City will be unable to make the next of the Payments under Section 1(c) hereof. City shall continue to deposit all Excise Taxes received by it in the “Excise Tax Revenue Fund” established pursuant to the City Lease, and City shall maintain the Excise Tax Revenue Fund throughout the life of this Agreement for the purpose of paying the Payments and all other payments due and owing under this Agreement and the City Lease. City shall transfer a sufficient amount of its Excise Taxes from the Excise Tax Revenue Fund to pay all amounts due and owing under Section 1(c) hereof in a timely manner, and after such transfer, the remaining Excise Taxes in the Excise Tax Revenue Fund may be used by City for any lawful purpose. City shall maintain the integrity of the segregated Excise Tax Revenue Fund by (i) charging a responsible person in its employ with the duty of segregating its Excise Taxes and depositing them in the Excise Tax Revenue Fund, and (ii) faithfully making all Payments in accordance with the terms of this Agreement.

(b) City shall remit to Trustee from the Excise Taxes 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 Excise Taxes 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.

**Section 3. Surplus and Deficiency of Revenues from Excise Taxes.** 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 Excise Taxes, *pro rata*, as applicable, with amounts due with respect to obligations on a parity herewith 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. Excise Taxes in excess of amounts, if any, required to be deposited with or held by Trustee for payments due under this Agreement or the Trust Agreement shall constitute surplus revenues and may be used by City for any lawful purpose for the benefit of City.

**Section 4. Use of Other Funds at the Option of City.** As indicated in Section 2, 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 Seller acknowledges that it has no claim hereunder to such other funds. The Payments shall not 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 5. Additional Parity Lien Obligations.** So long as the Obligations remain outstanding and the principal and interest on the Obligations shall be unpaid or unprovided for, City will not further encumber the Excise Taxes pledged under Section 2(a) hereof on a basis prior and paramount to the lien and pledge provided for under Section 2(a) hereof and will not further encumber the Excise Taxes pledged under Section 2(a) hereof on a basis equal to the lien and pledge provided for in Section 2(a) hereof unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for the Series 1998 Bonds, the Second Series 2015 Obligation, the Series 2021 Obligation, the Obligations, any parity or additional parity bonds or other obligations secured by a parity pledge of the Excise Taxes then outstanding and any parity or additional parity bonds or other obligations so proposed to be secured by a parity pledge of the Excise Taxes.

**Section 6. City Control over Revenue Collection.** The Excise Taxes will be maintained so that the amount of all such Excise Taxes received for the next preceding fiscal year shall be equal to at least one and fifty hundredths (1.50) times the total of the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement and rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes in any current fiscal year. City further covenants and agrees that if such receipts of Excise Taxes for any such preceding fiscal year shall not equal one and fifty hundredths (1.50) times the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes in any current fiscal year, or if at any time it appears that the current receipts of Excise Taxes will not be sufficient to meet the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes, it will, to the extent permitted by law, either impose new excise, transaction privilege and franchise taxes or will increase the rates for such taxes currently imposed in order that (1) the current receipts of Excise Taxes will be sufficient to meet all current requirements for the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes, and (2) the current year's receipts of such Excise Taxes will be reasonably calculated to attain the level as required above for the succeeding fiscal year's requirements for the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase

Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes.

**Section 7. 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, Seller 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 Projects for any particular purpose or the conformity of the 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 Seller shall not be liable to City for any damages on account of such risks. Except with respect to any acts by Seller which constitute negligence or willful misconduct on the part of the Seller and are not undertaken at the request of City or with the prior approval of City, City waives all claims against Seller growing out of the acquisition, construction, installation or otherwise of the Projects. Seller shall have no liability to City for any failure of any contractor to perform any contract or other undertaking with respect to the Projects in any respect. Seller 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 Projects or other claim with respect to the Projects, recourse of City shall be against the contractors, manufacturers, suppliers, etc. of the Projects and, where applicable, the person selling the property to Seller, and not against Seller. For such purpose, Seller hereby assigns and transfers to City the right, title and interest of Seller in and to all representations, warranties, guarantees and service agreements relating to the Projects made or entered into by Seller and by any contractor, manufacturers, suppliers, etc. of the Projects. Seller 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. Seller 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 Seller be listed in the chain of title to the Projects.

(b) City has the power to enter into this Agreement; 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 hereof, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner and all Payments hereunder will be paid when due out of funds which are legally available for such purposes.

(c) The 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 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 such Act and regulations apply to the Projects.

**Section 8. 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 Seller and City, by a national firm of certified public accountants acceptable to City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with Seller 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 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.

**Section 9. Continuation of Agreement.** 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 10. Default; Remedies Upon Default.**

(a) (i) Upon (A) failure by City to pay any of the Payments at the time specified herein, (B) failure by City to pay any other payment required to be paid hereunder at the time specified herein, and the continuation of such failure for a period of five (5) days after notification thereof by Trustee, (C) failure by City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clauses (A) and (B) of this Section 10(a)(i), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to City by Trustee or the Owners of not less than a majority in aggregate principal amount of Obligations then Outstanding; provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, Trustee and such Owners shall not unreasonably withhold their consent to an extension of such

time if corrective action is instituted by City within the applicable period and diligently pursued until the default is corrected, or (D) the filing by City of a voluntary petition in bankruptcy, or failure by City promptly to lift any execution, garnishment or attachment, or adjudication of City as a bankrupt, or assignment by City for the benefit of creditors, or the entry by City into an agreement of composition with creditors, or the petition applicable to City in any proceedings instituted under the provisions of the United States Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted, then

(ii) subject to the limitations of the Trust Agreement and the rights of Insurer provided therein, Seller may enforce this Agreement by appropriate action to collect amounts due or to become due under Section 1(c) hereof (including the making and collection of sufficient revenues and the segregation of the Excise Taxes and the proper application thereof) or to cause City to perform its obligations hereunder, in which event City shall be liable for all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by Seller. Upon the bringing of a suit to collect such amounts, Seller may request enforcement of the pledge and foreclosure of the lien set forth in Section 2 hereof, in which event Trustee, as a matter of right, without notice and without giving any bond or surety to City or anyone claiming on behalf of City, may have a receiver appointed of the Excise Taxes which are so pledged for the payment of such amounts, with such powers as the court making such appointment shall confer, and City does hereby irrevocably consent to such appointment.

No remedy herein conferred upon or reserved to Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, now or hereafter existing, at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Seller to exercise any remedy reserved to it by this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Such rights and remedies as are given to Seller pursuant to this Section have been assigned by Seller to Trustee under the Trust Agreement, to which assignment City hereby consents. Such rights and remedies shall be exercised by Trustee and the Owner as provided in the Trust Agreement.

(b) Seller shall in no event be in default in the performance of any of its obligations hereunder unless and until Seller 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 Seller has failed to perform any such obligation. No default by Seller 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 Seller 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 11. 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, Seller sells, pledges, assigns, transfers and encumbers all and every part of its right, title and interest in and to this Agreement and all payments of any kind due or which become due to Seller hereunder to Trustee; provided, however, that such transfer or assignment shall not impair the Obligations, Trustee shall be bound by the terms hereof and all related agreements executed by Seller in connection herewith and 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, of Seller hereunder for all purposes of this Agreement, except that City agrees and acknowledges that Trustee made 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 Seller. 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 12. City Appointed Agent for Seller.** Seller hereby irrevocably appoints City as its sole and exclusive agent to act for and on behalf of Seller in refinancing the costs of the Refinanced Projects which have not been paid to date. As such agent, City shall have full authority to do all things necessary to accomplish such purpose. Seller 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.

**Section 13. Federal Law Provisions.**

(a) (i) As described in further detail in the Tax Certificate, no direction for the making of any investment or other use of the proceeds of any of the Obligations or of the Projects shall be made, permitted to be made or omitted from being 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 such 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 thereof.) 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 in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury. 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, 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 Bond Counsel's Opinion (as such term is defined in the next Section) 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 Bond 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) Written procedures have been established for City to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which City will comply.

(iv) The procedures required by any arbitrage rebate provision or separate agreement executed in connection with the execution and delivery of the Obligations (initially, those in the next Section) shall be complied with for so long as compliance is necessary pursuant to the Code.

(b) City shall comply with and carry out all of the provisions of the Continuing Disclosure Undertaking, provided that such costs of compliance shall be payable solely from the Excise Taxes. Notwithstanding any other provision of this Agreement, failure of City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default; however, Trustee may (and, at the request of 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.

(c) Trustee has no duty or obligations under this Section 13 and has no duty to monitor compliance by City with this Section 13.

**Section 14. Rebate Provisions.**

(a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the Tax Certificate.

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

Bond 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 execution and delivery 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 the Tax 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 execution and delivery of the Obligations and using semiannual compounding on the basis of a 360-day year.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

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 execution and delivery 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 the Tax Certificate and 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.

Obligation 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 Obligation Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Obligation 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.

(c) Within 60 days after the end of each Bond Year, unless an exception to the requirement to do is properly established, City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) 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

(2) 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 on or before the date such payment is due, with the Internal Revenue Service at the appropriate location and with required forms and other materials, currently by addressing it to IRS Service Center, Ogden, Utah 84201, and accompanying it with IRS Form 8038-T.

(d) 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.

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

(1) 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.

(2) Except as provided in Subsection (f) or (g), 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.

(3) 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.

(f) 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:

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

(2) 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.

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

(1) 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.

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

(3) 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.

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

(5) 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.

(6) 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).

(7) 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.



(8) City retains until three years after the last outstanding Obligation is retired, (i) a copy of the guaranteed investment contract, (ii) 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 (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviate from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) 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. Trustee has no duties or obligations under this Section 14 and no duty to monitor compliance by City with this Section 14.

**Section 15. Quiet Possession; City's Easement to Seller.** 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 Projects, without suit, trouble or hindrance from Seller. City hereby grants and conveys to Seller, and all persons claiming by, through or under Seller, 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.

**Section 16. Covenant as to Conflict of Interest; Other Statutory Restrictions.**

(a) To the extent applicable by provision of law, Seller acknowledges that this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, 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.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, 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. The breach by Seller of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of Seller by City. City retains the legal right to randomly inspect the papers and records of Seller to ensure that Seller is complying with the above-mentioned warranty. Seller shall keep such papers and records open for random inspection during normal business hours by City. Seller 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 Section 35-393 et seq., Arizona Revised Statutes, Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in Section 35-393, Arizona Revised Statutes. If City determines that Trustee's certification above is false or that it has breached such agreement, City may impose remedies as provided by law.

**Section 17. Seller's Limited Authority.** Notwithstanding any other terms or provisions of this Agreement, the interest of Seller in the Projects, if any, is solely in its capacity as Trustee for the purpose of facilitating the financing of the Projects, and Seller shall not have the power, authority or obligation to assume any responsibility for the overall management or maintenance of the Projects, including, without limitation, any day-to-day decision-making or operational aspects of the Projects.

**Section 18. Seller as Trustee.** Seller is acting hereunder in its capacity as Trustee under the Trust Agreement and the term "Seller", when used herein, shall mean Trustee as defined in the Trust Agreement.

**Section 19. Notices; Mailing Addresses.** All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to Seller:                                      UMB Bank, n.a.  
2777 East Camelback Road, Suite 350  
Phoenix, Arizona 85016  
Attention: Corporate Trust & Escrow Services

If to City:    City of Sedona, Arizona  
102 Roadrunner Drive  
Sedona, Arizona 86336  
Attention: City Manager

**Section 20. Miscellaneous.**

(a) No covenant or obligation herein to be performed by City may be waived except by the written consent of Seller, 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 Seller 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 Seller 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) Seller hereunder shall have the right at any time or times, by notice to City, to designate or appoint any person or entity to act as agent or trustee for Seller for any purposes hereunder.

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

(g) 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 Seller herein shall be and have the rights of a third-party beneficiary hereunder. Insurer is recognized as and shall be deemed to be a third-party beneficiary of this Agreement. As provided in the Trust Agreement, the rights of Insurer described herein are effective only so long as the Policy is in effect or amounts are owed or owing to Insurer and Insurer is not in default or contesting its obligations under the Policy; provided that, to the extent the Insurer has incurred any charges, fees, costs and expenses pursuant to Section 1(c) hereof, such amounts shall continue to be due and payable to Insurer.

(h) 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.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of March 2022.

**Seller:**

**UMB BANK, N.A., as Trustee**

By  .....  
Authorized Representative

**City:**

**CITY OF SEDONA, ARIZONA, a municipal corporation and political subdivision under the laws of the State of Arizona**

By .....  
Mayor

**ATTEST:**

.....  
City Clerk

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of March 2022.

**Seller:**

**UMB BANK, N.A., as Trustee**

By .....  
Authorized Representative

**City:**

**CITY OF SEDONA, ARIZONA, a municipal corporation and political subdivision under the laws of the State of Arizona**

By *Sandra J. Moriarty* .....  
Mayor

**ATTEST:**

*Jo Anne Cook* .....  
City Clerk

**EXHIBIT**

**PAYMENT SCHEDULE**

Payment Date	Principal	Interest	Total Payment
01/01/2023		\$ 761,450.00	\$ 761,450.00
07/01/2023		471,000.00	471,000.00
01/01/2024		471,000.00	471,000.00
07/01/2024		471,000.00	471,000.00
01/01/2025		471,000.00	471,000.00
07/01/2025		471,000.00	471,000.00
01/01/2026		471,000.00	471,000.00
07/01/2026		471,000.00	471,000.00
01/01/2027		471,000.00	471,000.00
07/01/2027	\$ 940,000	471,000.00	1,411,000.00
01/01/2028		447,500.00	447,500.00
07/01/2028	975,000	447,500.00	1,422,500.00
01/01/2029		423,125.00	423,125.00
07/01/2029	1,025,000	423,125.00	1,448,125.00
01/01/2030		397,500.00	397,500.00
07/01/2030	1,100,000	397,500.00	1,497,500.00
01/01/2031		370,000.00	370,000.00
07/01/2031	1,150,000	370,000.00	1,520,000.00
01/01/2032		341,250.00	341,250.00
07/01/2032	1,200,000	341,250.00	1,541,250.00
01/01/2033		311,250.00	311,250.00
07/01/2033	1,250,000	311,250.00	1,561,250.00
01/01/2034		280,000.00	280,000.00
07/01/2034	1,325,000	280,000.00	1,605,000.00
01/01/2035		253,500.00	253,500.00
07/01/2035	1,375,000	253,500.00	1,628,500.00
01/01/2036		226,000.00	226,000.00
07/01/2036	1,425,000	226,000.00	1,651,000.00
01/01/2037		197,500.00	197,500.00
07/01/2037	1,500,000	197,500.00	1,697,500.00
01/01/2038		167,500.00	167,500.00
07/01/2038	1,550,000	167,500.00	1,717,500.00
01/01/2039		136,500.00	136,500.00
07/01/2039	1,600,000	136,500.00	1,736,500.00
01/01/2040		104,500.00	104,500.00
07/01/2040	1,675,000	104,500.00	1,779,500.00
01/01/2041		71,000.00	71,000.00
07/01/2041	1,750,000	71,000.00	1,821,000.00
01/01/2042		36,000.00	36,000.00
07/01/2042	1,800,000	36,000.00	1,863,000.00
<b>Total</b>	<b>\$21,640,000</b>	<b>\$12,526,700.00</b>	<b>\$34,166,700.00</b>