

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT, dated as of November __, 2007, by and between the CITY OF NAPLES, FLORIDA (the "Issuer"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, as Escrow Agent and its successors and assigns (the "Escrow Agent");

WITNESSETH:

WHEREAS, the Issuer has previously authorized and issued its Water and Sewer Revenue Refunding Bonds, Series 2002 outstanding as of the date hereof in the principal amount of \$8,805,000 (the "Defeased Bonds"), as to which the Total Debt Service for the Defeased Bonds (as hereinafter defined) is set forth on Schedule A attached hereto; and

WHEREAS, the Issuer has determined to provide for payment of the Total Debt Service for the Defeased Bonds by depositing with the Escrow Agent an amount which, together with investment earnings thereon, is at least equal to such Total Debt Service for the Defeased Bonds; and

WHEREAS, the City desires to legally defease and pay when due, either at maturity or redemption, the principal and interest on the Defeased Bonds; and

WHEREAS, the execution of this Escrow Deposit Agreement and full performance of the provisions hereof shall defease and discharge the Issuer's obligations relating to the Defeased Bonds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Issuer and the Escrow Agent agree as follows:

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

- (a) "Agreement" means this Escrow Deposit Agreement.
- (b) "Annual Debt Service" means the principal, interest, and redemption premium, if any, on the Defeased Bonds coming due in a particular year as shown on Schedule A attached hereto and made a part hereof.
- (c) "Escrow Account" means the account hereby created and entitled Escrow Account established and held by the Escrow Agent pursuant to this Agreement in which cash and investments will be held for payment of the principal, interest, and redemption premium, if any, on the Defeased Bonds as they become due and payable.

(d) "Escrow Agent" means U.S. Bank National Association, having its designated corporate trust office in Jacksonville, Florida, and its successors and assigns.

(e) "Federal Securities" means Federal Securities as such term is defined in the Prior Ordinance, and as more particularly described on Schedule C.

(f) "Issuer" means the City of Naples, Florida, and its successors and assigns.

(g) "Prior Ordinance" means Ordinance No. 84-4448, duly enacted by the City Council of the City on March 21, 1984, as amended and restated by Ordinance No. 84-4564, duly enacted by the City Council of the City on October 3, 1984, as further amended by Ordinance No. 92-6627, duly enacted by the City Council on April 15, 1992.

(h) "Defeased Bonds" means all of the Issuer's Water and Sewer Revenue Refunding Bonds, Series 2002 outstanding as of the date hereof.

(i) "Total Debt Service for the Defeased Bonds" means, as of any date, the sum of the principal of, redemption premium, if any, and interest remaining unpaid with respect to the Defeased Bonds in accordance with Schedule A attached hereto when the callable Defeased Bonds are called for early redemption on September 1, 2012.

SECTION 2. Deposit of Funds. The Issuer hereby deposits \$_____ with the Escrow Agent for deposit into the Escrow Account, in immediately available funds, which funds the Escrow Agent acknowledges receipt of, to be held in irrevocable escrow by the Escrow Agent separate and apart from other funds of the Escrow Agent and applied solely as provided in this Agreement. \$_____ of such funds are being derived from uncommitted and accumulated water and sewer rate revenue, all of which derive from the Issuer's Water and Sewer Utility. \$_____ of such funds are being derived from amounts on deposit in the Sinking Fund (as such term is defined in the Prior Ordinance) and which are attributable to the Defeased Bonds. The Issuer represents that the Federal Securities, the interest to be earned thereon, and the cash deposited to the Escrow Account (i) are at least equal to the Total Debt Service for the Defeased Bonds as of the date of such deposit, and (ii) are sufficient to pay principal, interest and redemption premium on the Defeased Bonds as they become due and payable in accordance with Schedule A attached hereto.

SECTION 3. Use and Investment of Funds. The Escrow Agent acknowledges receipt of the sum described in Section 2 and agrees:

(a) to hold the funds and investments purchased pursuant to this Agreement in irrevocable escrow during the term of this Agreement for the sole benefit of the holders of the Defeased Bonds;

(b) to immediately invest \$_____ of the funds described in Section 2 hereof in the Federal Securities set forth on Schedule C attached hereto and to hold such securities and \$_____ of such funds in cash in accordance with the terms of this Agreement;

(c) in the event the securities described on Schedule C cannot be purchased, substitute securities may be purchased with the consent of the Issuer but only upon receipt of verification from an independent certified public accountant that the Federal Securities, the interest to be earned thereon, and the cash deposited in the Escrow Account will not be less than the Total Debt Service for the Defeased Bonds, and only upon receipt of an opinion of Bryant Miller Olive P.A. that such securities constitute Federal Securities for purposes of this Agreement; and

(d) there will be no investment of funds except as set forth in this Section 3 and except as set forth in Section 5.

SECTION 4. Payment of Defeased Bonds and Expenses.

(a) Defeased Bonds. On the dates and in the amounts set forth on Schedule A, the Escrow Agent shall transfer to U.S. Bank National Association, Jacksonville, Florida, as the Registrar and Paying Agent of the Defeased Bonds, in immediately available funds solely from amounts available in the Escrow Account, a sum sufficient to pay that portion of the Annual Debt Service for the Defeased Bonds coming due on such dates, as shown on Schedule A.

(b) Expenses. The Issuer shall pay the fees and expenses of the Escrow Agent as set forth on Schedule B attached hereto.

(c) Surplus. After making the payments from the Escrow Account described in Subsections 4(a) and (b) above, the Escrow Agent shall retain in the Escrow Account any remaining cash in the Escrow Account in excess of the Total Debt Service for the Defeased Bonds until the termination of this Agreement pursuant to the terms of Section 13 hereof, at which time it will transfer such cash to the Issuer to be used for any lawful purpose..

(d) Priority of Payments. The holders of the Defeased Bonds shall have an express first priority security interest in the funds and Federal Securities in the Escrow Account until such funds and Federal Securities are used and applied as provided in this Agreement.

SECTION 5. Reinvestment. (a) Except as provided in Section 3 and in this Section, the Escrow Agent shall have no power or duty to invest any funds held under this Agreement or to sell, transfer or otherwise dispose of or make substitutions of the Federal Securities held hereunder.

(b) At the written request of the Issuer and upon compliance with the conditions hereinafter stated, the Escrow Agent shall sell, transfer or otherwise dispose of any of the

Federal Securities acquired hereunder and shall substitute other Federal Securities and reinvest any excess receipts in Federal Securities. The Issuer will not request the Escrow Agent to exercise any of the powers described in the preceding sentence in any manner which will cause interest on the Bond to be included in the gross income of the holders thereof for purposes of Federal income taxation. The transactions may be effected only if (i) an independent certified public accountant selected by the Issuer shall certify or opine in writing to the Issuer and the Escrow Agent that Federal Securities, interest to be earned thereon, and cash remaining on hand after the transactions are completed will, assuming no reinvestment or any earnings, be not less than the Total Debt Service for the Defeased Bonds, and that reinvestment in such Federal Securities will not postpone the anticipated transfer of moneys from the Escrow Account to the Paying Agent pursuant to Section 4(a) hereof, and (ii) the Escrow Agent shall receive an opinion from a nationally recognized bond counsel acceptable to the Issuer to the effect that the transactions, in and by themselves, will not cause interest on such Bond or the Defeased Bonds to be included in the gross income of the holders thereof for purposes of Federal income taxation and such substitution is in compliance with this Agreement. Subsection 4(c) above notwithstanding, cash in excess of the Total Debt Service for the Defeased Bonds caused by substitution of Federal Securities shall, as soon as practical, be paid to the Issuer. Notwithstanding any provision of this Agreement to the contrary, no forward purchase agreement relating to the future reinvestment of cash held hereunder shall be executed unless the following condition is met: to the extent either Moody's Investors Service, Inc., Fitch Ratings and/or Standard & Poor's Ratings Services have an outstanding rating on the Defeased Bonds, at least one of such rating agencies must give written confirmation that it will not lower or withdraw the rating as a result of the Issuer's execution of such forward purchase agreement. In the event of any inconsistency between the terms and conditions of such forward purchase agreement and this Agreement, the terms and conditions of this Agreement shall control.

SECTION 6. Redemption or Acceleration of Maturity. The Issuer will not accelerate the maturity of, or exercise any option to redeem before maturity, any Defeased Bonds, except as set forth on Schedule A attached hereto.

SECTION 7. Indemnity. To the extent permitted by law and without waiving sovereign immunity, the Issuer hereby assumes liability for, and hereby agrees to indemnify, protect, save and keep harmless, the Escrow Agent and its respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against at any time, the Escrow Agent (whether or not also indemnified against the same by the Issuer or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Escrow Account established hereunder, the acceptance of the funds and securities deposited therein, the purchase of the Federal Securities, the retention of the Federal Securities or the proceeds thereof and any payment, transfer or other application of funds or securities by the Escrow Agent in accordance with the provisions of this Agreement; provided, however, that

the Issuer shall not be required to indemnify the Escrow Agent against its own gross negligence or willful misconduct. In no event shall the Issuer be liable to any person by reason of the transactions contemplated hereby other than to the Escrow Agent as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement. The Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Total Debt Service for the Defeased Bonds. Furthermore, the Escrow Agent shall not be liable for the accuracy of the calculation as to the sufficiency of moneys and the principal amount of Federal Securities and the earnings thereon to pay the Total Debt Service for the Defeased Bonds.

SECTION 8. Responsibilities of Escrow Agent. The Escrow Agent and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Account, the acceptance of the funds deposited therein, the purchase of the Federal Securities, the retention of the Federal Securities or the proceeds thereof or for any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Agreement or by reason of any non-gross negligent or non-willful act, omission or error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall, however, be responsible for its gross negligent or willful failure to comply with its duties required hereunder, and its gross negligent or willful acts, omissions or errors hereunder. The duties and obligations of the Escrow Agent may be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel, who may or may not be counsel to the Issuer, at the Issuer's expense, and in reliance upon the opinion of such counsel, shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Issuer.

SECTION 9. Resignation of Escrow Agent. The Escrow Agent may resign and thereby become discharged from the duties and obligations hereby created, by notice in writing given to the Issuer, any rating agency then providing a rating on either the Defeased Bonds or the Bond, and the Paying Agent for the Defeased Bonds not less than sixty (60) days before such resignation shall take effect. Such resignation shall not take effect until the appointment of a new Escrow Agent hereunder.

SECTION 10. Removal of Escrow Agent.

(a) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of not less than fifty-one percentum (51%) in aggregate principal amount of the Defeased Bonds then outstanding, such instruments to be filed with the Issuer, and notice in writing given by such holders to the original purchaser or purchasers of the Bond and published by the Issuer once in a newspaper of general circulation in the territorial limits of the Issuer, and in a daily newspaper or financial journal of general

circulation in the City of New York, New York, not less than sixty (60) days before such removal is to take effect as stated in said instrument or instruments. A photographic copy of any instrument filed with the Issuer under the provisions of this paragraph shall be delivered by the Issuer to the Escrow Agent.

(b) The Escrow Agent may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Agreement with respect to the duties and obligations of the Escrow Agent by any court of competent jurisdiction upon the application of the Issuer or the holders of not less than five percentum (5%) in aggregate principal amount of the Bond then outstanding, or the holders of not less than five percentum (5%) in aggregate principal amount of the Defeased Bonds then outstanding.

(c) The Escrow Agent may not be removed until a successor Escrow Agent has been appointed in the manner set forth herein.

SECTION 11. Successor Escrow Agent.

(a) If, at any time hereafter, the Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Escrow Agent shall thereupon become vacant. If the position of Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Issuer shall immediately appoint an Escrow Agent to fill such vacancy and, upon such appointment, all assets held hereunder shall be transferred to such successor. The Issuer shall either (i) publish notice of any such appointment made by it once in each week for four (4) successive weeks in a newspaper of general circulation published in the territorial limits of the Issuer and in a daily newspaper or financial journal of general circulation in the City of New York, New York, or (ii) mail a notice of any such appointment made by it to the holders of the Defeased Bonds within thirty (30) days after such appointment.

(b) At any time within one year after such vacancy shall have occurred, the holders of a majority in principal amount of the Bond then outstanding or a majority in principal amount of the Defeased Bonds then outstanding, by an instrument or concurrent instruments in writing, executed by either group of such bondholders and filed with the governing body of the Issuer, may appoint a successor Escrow Agent, which shall supersede any Escrow Agent theretofore appointed by the Issuer. Photographic copies of each such instrument shall be delivered promptly by the Issuer, to the predecessor Escrow Agent and to the Escrow Agent so appointed by the Bondholders. In the case of conflicting appointments made by the Bondholders under this paragraph, the first effective appointment made during the one year period shall govern.

(c) If no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this Section, the holder of any Defeased Bonds then outstanding, or any

retiring Escrow Agent, may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Agent.

(d) Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Escrow Agent hereunder and vested with all the trust, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any parties hereto, anything herein to the contrary notwithstanding, provided such successor shall have reported total capital and surplus in excess of \$15,000,000, provided that such successor Escrow Agent assumes in writing all the trust, duties and responsibilities of the Escrow Agent hereunder.

SECTION 12. Payment to Escrow Agent. The Escrow Agent hereby acknowledges that it has agreed to accept compensation under the Agreement pursuant to the terms of Schedule B attached hereto for services to be performed by the Escrow Agent pursuant to this Agreement, plus out-of-pocket expenses to be reimbursed at cost from legally available funds of the Issuer. The Escrow Agent shall not be compensated from amounts on deposit in the Escrow Account, and the Escrow Agent shall have no lien or claim against funds in the Escrow Account for payment of obligations due it under this Section.

SECTION 13. Term. This Agreement shall commence upon its execution and delivery and shall terminate when the Defeased Bonds have been paid and discharged in accordance with the proceedings authorizing the Defeased Bonds, except as provided in Section 7.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the Issuer or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, notice of such event shall be sent to the municipal bond insurer(s) for the Defeased Bonds, if any, as well as Moody's Investors Service, Inc., Fitch Ratings and Standard & Poor's Ratings Services (but only to the extent such agencies have a rating outstanding on any of the Defeased Bonds), and while such covenant or agreements herein contained shall be null and void, they shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 15. Amendments to this Agreement. This Agreement is made for the benefit of the Issuer and the holders from time to time of the Defeased Bonds and the Bond and it shall not be repealed, revoked, altered or amended in whole or in part without the written consent of all holders of Defeased Bonds, the Escrow Agent and the Issuer; provided, however, that the Issuer and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such

holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Escrow Agent, for the benefit of the holder of the Bond and the Defeased Bonds any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall, at its option, be entitled to request, at the Issuer's expense, and rely exclusively upon an opinion of nationally recognized attorneys on the subject of municipal bonds acceptable to the Issuer with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section. Prior written notice of such amendments, together with proposed copies of such amendments, shall be provided to Moody's Investors Service, Inc., Fitch Ratings and Standard & Poor's Ratings Services (but only to the extent such agencies have a rating outstanding on any of the Defeased Bonds).

SECTION 16. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 17. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

[Remainder of page intentionally left blank]

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

CITY OF NAPLES, FLORIDA

(SEAL)

By: _____

Name: Bill Barnett

Title: Mayor

ATTEST:

By: _____

Name: Tara A. Norman

Title: City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: _____

Name: Robert D. Pritt

Title: City Attorney

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

By: _____

Name: _____

Title: _____

SCHEDULE A

TOTAL DEBT SERVICE

<u>Date</u>	<u>Principal</u>	Redemption <u>Premium</u>	<u>Interest</u>	Total Debt <u>Service</u>
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SCHEDULE B

PAYMENTS TO BE MADE TO ESCROW AGENT

Upfront fee of \$___ at closing, plus out-of-pocket expenses, including, but not limited to, legal fees, telephone, facsimile, courier, wire transfer, postage, publication and supply expense.

SCHEDULE C

SCHEDULE OF FEDERAL SECURITIES

Purchase <u>Date</u>	<u>Maturity Date</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Type</u>
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