

**RESOLUTION NO. 12-13050**

A SUPPLEMENTAL RESOLUTION OF THE CITY OF NAPLES, FLORIDA AUTHORIZING THE ISSUANCE OF A NOT TO EXCEED \$8,525,000 PUBLIC UTILITIES REFUNDING REVENUE BOND, SERIES 2012A AND A NOT TO EXCEED \$4,975,000 PUBLIC UTILITIES REFUNDING REVENUE BOND, SERIES 2012B TO REFUND CERTAIN INDEBTEDNESS AND TO PAY COSTS RELATED THERETO; AWARDING THE SALE THEREOF TO BRANCH BANKING AND TRUST COMPANY BASED ON THE CONDITIONS DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

**Section 1:** Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, Chapter 1598, Laws of Florida, Acts of 1959, as amended, being the municipal charter of the Issuer, and other applicable provisions of law, and Resolution No. 07-11868 adopted by the City Council of the City of Naples, Florida on December 5, 2007 (the "Master Resolution"), as supplemented hereby (collectively, the "Bond Resolution").

**Section 2:** Definitions. Capitalized undefined terms used herein shall have the meanings ascribed to such terms in the Bond Resolution or below:

"2007A Bond" means the City of Naples, Florida Public Utilities Revenue Bond, Series 2007A.

"2007B Bond" means the City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2007B.

"2012 Bonds" means, collectively, the 2012A Bond and the 2012B Bond.

"2012A Bond" means the City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012A.

"2012B Bond" means the City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012B.

"Issuer" means the City of Naples, Florida, a Florida Municipal Corporation.

"Maturity Date" means September 1, 2027.

"Original Purchaser" means Branch Banking and Trust Company, Orlando, Florida.

"Owner" means any persons who shall be the registered owner of the Notes.

"Principal Office" means, with respect to the Original Purchaser, the office located at 5130 Parkway Plaza Boulevard, Building No. 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal, or such other office as the Original Purchaser may designate to the Issuer in writing.

"Refunded Bonds" means, collectively, the 2007A Bond and 2007B Bond.

**Section 3: Findings.**

(A) The Issuer finds, determines and declares that it is in the best interest of the health and welfare of the inhabitants, residents and visitors of the Issuer and other users of the System to issue the 2012 Bonds to currently refund the Refunded Bonds. Issuance of the 2012 Bonds for this purpose satisfies a paramount public purpose.

(B) Debt service on the 2012 Bonds will be payable from Pledged Revenues in the manner and to the extent described in the Bond Resolution, as the same become due, and to make all other deposits required by the Bond Resolution.

(C) The Issuer has received an offer from the Original Purchaser to purchase the 2012A Bond, and separately, has received an offer from the Original Purchaser to purchase the 2012B Bond.

(D) In consideration of the purchase and acceptance of the 2012 Bonds authorized to be issued hereunder by those who shall be the Owner thereof from time to time, the Bond Resolution, as supplemented hereby, shall constitute a contract between the Issuer and the Owner.

**Section 4: Authorization of the 2012 Bonds.** Subject and pursuant to the provisions of the Bond Resolution, an obligation of the Issuer to be known as City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012A is hereby authorized to be issued under and secured by the Bond Resolution in the principal amount of not to exceed \$8,525,000 and an obligation of the Issuer to be known as the City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012B is hereby authorized to be issued under and secured by the Bond Resolution in the principal amount of not to exceed \$4,975,000, both for the purpose of providing funds to refund the Refunded Bonds and pay the allocable costs of issuing the 2012 Bonds. Because of the characteristics of the 2012 Bonds, prevailing market conditions, and additional savings to be realized from an expeditious sale of the 2012 Bonds, it is in the best interest of the Issuer to accept the offers of the Original Purchaser to purchase the 2012 Bonds at a private negotiated sale. Prior to the issuance of the 2012 Bonds, the Issuer shall receive from

Exhibit A and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit B.

**Section 5:** *Description of the 2012 Bonds.* The 2012 Bonds shall be dated the date of the execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, and shall have such other terms and provisions, including the interest rate not exceeding the maximum interest rates permitted by the Act, and principal and interest payment dates and terms, to be determined by the Issuer in accordance with the provisions of the Bond Resolution; provided, further, the interest rate on the 2012 Bonds may not exceed 3.25% and the aggregate principal amount of the 2012 Bonds may not exceed \$13,500,000. The actual interest rate for the 2012B Bond will be established at least 15 days after the establishment of the interest rate for the 2012A Bond. The 2012 Bonds shall mature no later than the Maturity Date. The 2012 Bonds are to be in substantially the form set forth in the Master Resolution.

Notwithstanding anything herein to the contrary, if (i) the interest on either the 2012A Bond or the 2012B Bond becomes includable in the gross income of the Holder thereof for Federal income tax purposes (an "Event of Taxability"), including, but not limited to, because of any amendments to existing law which would adversely affect the Holder's after-tax yield, or (ii) the 2012A Bond or 2012B Bond shall not be "a qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, then the Holder shall have the right to adjust the applicable interest rate in order to maintain the same after-tax yield as if the events in (i) or (ii) had not occurred. This adjustment shall survive payment of the 2012A Bond or 2012B Bond until such time as the federal statutes of limitations under which the interest on the 2012A Bond or 2012B Bond could be declared taxable under the Internal Revenue Code of 1986, as amended, shall have expired.

**Section 6:** *Redemption.* The 2012 Bonds shall be subject to redemption on any interest payment date at the option of the Issuer in whole but not in part at a price equal to 101% of the principal amount thereof to be redeemed, plus accrued interest to the date fixed for redemption, without penalty.

At least five (5) days prior to the optional redemption date, written notice of any such redemption identifying the date of redemption shall be mailed, postage prepaid to all registered Owners at their respective addresses as they appear upon the registration books of the Issuer; provided, however, that failure to mail such notice to one or more Owners of the 2012 Bonds shall not affect the validity of the proceedings for such optional redemption with respect to Owners of the 2012 Bonds to which notice was duly mailed hereunder.

**Section 7:** *Application of Proceeds of 2012 Bonds.* At the time of delivery of the 2012 Bonds herein authorized, proceeds from the sale of the 2012 Bonds shall be used to currently refund the Refunded Bonds and pay the associated costs of issuance (including but not limited to legal and financial advisory fees and expenses).

**Section 8:** *Tax Covenant; Bank Qualification Status.* (A) The Issuer covenants to the purchasers of the 2012 Bonds provided for in the Bond Resolution that the Issuer will not make any use of the proceeds of the 2012 Bonds at any time during the term of the 2012 Bonds which, if such use had been reasonably expected on the date the 2012 Bonds were issued, would have caused such 2012 Bonds to be "arbitrage bonds" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the 2012 Bonds from the gross income of the Holder thereof for purposes of federal income taxation.

(B) The City Council of the Issuer designates any portion of the 2012A Bond and the 2012B Bond that exceeds the principal amount of the 2007A Bond and the 2007B Bond, respectively (collectively, the "Bank Qualified Amount") as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during the calendar year 2012 to issue more than \$10,000,000 of "tax-exempt" obligations including the Bank Qualified Amount designated as described in this Section 8(B), exclusive of any private activity bonds as defined in Section 141(a) of the Code (except for qualified 501(c)(3) bonds as defined in Section 145 of the Code).

The portion of the 2012A Bond and the 2012B Bond that is not being designated as "qualified tax-exempt obligations" under the preceding paragraph is deemed designated as "qualified tax-exempt obligations" under Section 265(b)(3) of the Code.

**Section 9:** *Amendment.* The Bond Resolution shall not be modified or amended in any respect subsequent to the issuance of the 2012 Bonds except with the written consent of all of the Owners of the 2012 Bonds.

**Section 10:** *Limitation of Rights.* With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Bond Resolution or the 2012 Bonds is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to the Bond Resolution or any covenants, conditions and provisions herein contained; the Bond Resolution and all of the covenants, conditions and provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**Section 11:** *Impairment of Contract.* The Issuer covenants with the Owners of the 2012 Bonds that it will not, without the written consent of the Owners of the 2012 Bonds, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owners the rights granted to the Owners of the 2012 Bonds under the Bond Resolution.

**Section 12:** *Further Covenants.* The Issuer shall provide the Holder of the 2012 Bonds with a copy of its annual budget within 30 days of its adoption and such other financial

**Section 13:** *Severability.* If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**Section 14:** *Business Days.* In any case where the due date of interest on or principal of a 2012 Bonds is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

**Section 15:** *Applicable Provisions of Law.* This Resolution shall be governed by and construed in accordance with the laws of the State.

**Section 16:** *Rules of Interpretation.* Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**Section 17:** *Captions.* The captions and headings in this Resolution is for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**Section 18:** *City Council of the Issuer Exempt from Personal Liability.* No recourse under or upon any obligation, covenant or agreement of this Resolution or the 2012 Bonds or for any claim based thereon or otherwise in respect thereof, shall be had against any City Council member of the Issuer, as such, of the Issuer, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council member of the Issuer, the City Manager, the Finance Director and other appropriate officials of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or

**Section 19:** *Authorizations.* The Mayor and any member of the City Council, the City Manager, the City Attorney, the City Clerk, the Finance Director and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the 2012 Bonds and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the 2012 Bonds, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**Section 20:** *Amendment and Repealer.* This Resolution is supplemental to Resolution Nos. 07-11868 and 07-11869, both adopted by the City Council on December 5, 2007. To the extent of any inconsistencies between this Resolution and the previous resolutions, this resolution shall control. All other resolutions or parts thereof in conflict herewith are hereby repealed.

**Section 21:** *No Third Party Beneficiaries.* Except such other persons as may be expressly described in the Bond Resolution or in the 2012 Bonds, nothing in the Bond Resolution or in the 2012 Bonds, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the 2012 Bonds, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the Holder.

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**Section 22:** Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, THIS 15<sup>th</sup> DAY OF FEBRUARY, 2012.

CITY OF NAPLES, FLORIDA

\_\_\_\_\_  
John F. Sorey, III, Mayor

ATTEST:

Approved as to Form and Legality:

\_\_\_\_\_  
Tara A. Norman, City Clerk

\_\_\_\_\_  
Robert D. Pritt, City Attorney

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Date filed with City Clerk: \_\_\_\_\_

## EXHIBIT A

### FORM OF PURCHASER'S CERTIFICATE

This is to certify that Branch Banking and Trust Company (the "Purchaser") has not required the City of Naples, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of the \$\_\_\_\_\_ City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012A, dated \_\_\_\_\_, 2012 (the "2012A Bond") and the \$\_\_\_\_\_ City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012B (the "2012B Bond" and together with the 2012A Bond, the "Bonds"), and no inference should be drawn that the Purchaser, in the acceptance of the Bonds, is relying on Bond Counsel or Issuer's Counsel as to any such matters other than the legal opinion rendered by Bond Counsel, Bryant Miller Olive P.A. and by Issuer's Counsel, Roetzel & Andress, L.P.A. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in Resolution No. 07-11868 adopted by the City Council of the Issuer on December 5, 2007, as amended and supplemented from time to time, as particularly supplemented by a resolution adopted by the City Council of the Issuer on February 15, 2012 (collectively, the "Resolution").

We are aware that investment in the Bonds involves various risks, and that the payment of the Bonds is secured solely from the sources described in the Resolution (the "Bond Security").

We have made such independent investigation of the Bond Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the Issuer.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Bonds and can bear the economic risk of our investment in the Bonds.

We acknowledge and understand that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended, and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor Issuer's Counsel shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Bonds as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Bonds may not be transferred except to a bank, savings

association, insurance company or other "accredited investor" as described below in accordance with the restrictions set forth in the Bonds.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer, as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Bonds for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" as such term is defined in the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this \_\_\_\_ of \_\_\_\_\_, 2012.

BRANCH BANKING AND TRUST  
COMPANY

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

**EXHIBIT B**

**FORM OF DISCLOSURE LETTER**

The undersigned, as purchaser, proposes to negotiate with the City of Naples, Florida (the "Issuer") for the private purchase of the \$\_\_\_\_\_ City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012A (the "2012A Bond") and the \$\_\_\_\_\_ City of Naples, Florida Public Utilities Refunding Revenue Bond, Series 2012B (the "2012B Bond" and together with the 2012A Bond, the "Bonds"). Prior to the award of the Bonds, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Purchaser") in connection with the issuance of the Bonds (such fees and expenses to be paid by the Issuer):

Greenberg Traurig, P.A.  
Bank's Counsel Fees -- \$5,000

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Purchaser in connection with the issuance of the Bonds to any person not regularly employed or retained by the Purchaser (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Purchaser, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Purchaser, or to the knowledge of the Purchaser, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Purchaser or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bonds.

3. The amount of the underwriting spread expected to be realized by the Bank is \$\_\_\_\_\_.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Bonds are being issued to refund all of the Issuer's outstanding Public Utilities Revenue Bond, Series 2007A and the Public Utilities Refunding Revenue Bond, Series 2007B.

Unless earlier prepaid, the 2012A Bond is expected to be repaid on September 1, 2027. At an interest rate of 2.65%, total interest paid over the life of the 2012A Bond is estimated to be \$\_\_\_\_\_.

Unless earlier prepaid, the 2012B Bond is expected to be repaid on September 1, 2027. At an interest rate of \_\_\_\_%, total interest paid over the life of the 2012B Bond is estimated to be \$\_\_\_\_\_.

The Bonds will be payable in the manner and to the extent described in Resolution No. 07-11868 adopted by the City Council of the Issuer on December 5, 2007, as amended and supplemented from time to time, as particularly supplemented by a resolution adopted by the City Council of the Issuer on February 15, 2012 (collectively, the "Resolution"). See the Resolution for a definition of Pledged Revenues. Issuance of the Bonds is estimated to result in an annual average of approximately \$\_\_\_\_\_ of revenues of the Issuer not being available to finance the services of the Issuer during the life of the Bonds.

6. The name and address of the Purchaser is as follows:

Branch Banking and Trust Company  
5130 Parkway Plaza Boulevard  
Building No. 9  
Charlotte, North Carolina 28217

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Purchaser this \_\_\_\_ day of \_\_\_\_\_, 2012.

BRANCH BANKING AND TRUST  
COMPANY

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