

RESOLUTION 20-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING THE EXECUTION AND DELIVERY OF A FORWARD FIXED RATE LOCK LETTER AGREEMENT WITH PNC BANK, NATIONAL ASSOCIATION, RELATING TO ISSUANCE OF NOT TO EXCEED \$60,000,000 CITY OF MARCO ISLAND, FLORIDA TAXABLE UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2020; APPOINTING AN ESCROW AGENT; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

Section 1: Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 159, Part VII, Chapter 166, Part II, Florida Statutes, the municipal charter of the City of Marco Island, Florida, and other applicable provisions of law.

Section 2: Findings.

(A) Taking into account other legally available funds, if any, the City of Marco Island, Florida (the "City") intends to issue not to exceed \$60,000,000 City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020 (the "Bond") for the primary purpose of refunding all of its outstanding Utility System Refunding Revenue Bonds, Series 2013, which mature on and after October 1, 2024 (the "Refunded Bonds").

(B) The City, after soliciting proposals in response to a request for loan proposals distributed by the City on February 20, 2020 for the refunding of the Refunded Bonds and receiving multiple proposals complying with the structure described in such request, has determined to accept the proposal from PNC Bank, National Association (the "Bank").

(C) In order to lock in an attractive interest rate, and given the volatility of the financial markets, in advance of execution and delivery of the Bond, the City desires to enter into a Forward Fixed Rate Lock Letter Agreement, in substantially the form attached hereto as Exhibit A, in which case the City shall be subject to the terms and conditions therein.

Section 3: Execution of Forward Fixed Rate Lock Letter Agreement. The Chairman or the Vice Chairman of the City Council of the City is hereby authorized and directed to execute and deliver and the City Clerk of the City is hereby authorized to attest under seal, and the City Attorney of the City is hereby authorized to approve as to

form a Forward Fixed Rate Lock Letter Agreement on behalf of the City, in the form attached hereto as Exhibit A (subject to a not to exceed principal amount of \$60,000,000 and an interest rate not to exceed 2.25%), with the Bank, in order to eliminate the risk that the fixed rate applicable to the Bond will thereafter increase.

Section 4: Appointing an Escrow Agent. The City hereby appoints Wells Fargo Bank, National Association as an escrow agent for the Refunded Bonds (the "Escrow Agent") pursuant to an escrow deposit agreement between the City and the Escrow Agent (the "Escrow Deposit Agreement") to be approved in a subsequent resolution of the City. The Finance Director of the City is hereby authorized to direct the Escrow Agent in writing in substantially the form attached hereto as Exhibit B, to subscribe for the State and Local Government Securities (SLGS) to be deposited in the escrow account pursuant to the Escrow Deposit Agreement.

Section 5: Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions and in no way affect the validity of all the other provisions of this Resolution.

Section 6: Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

Section 7: 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 words are used.

Section 8: Captions. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.


Section 9: Repealer. All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 10: Effective Date. This Resolution shall take effect immediately upon its adoption.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 16th day of March 2020.

(SEAL)

ATTEST:



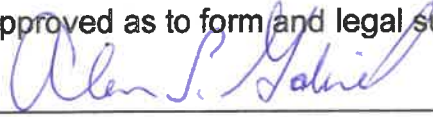
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

EXHIBIT A

FORWARD FIXED RATE LOCK LETTER AGREEMENT

_____, 2020

City of Marco Island, Florida
50 Bald Eagle Drive
Marco Island, Florida 34145

Attention: Mr. Erik Brechnitz, Chairman of the City Council

Re: **Forward Fixed Rate Lock Letter**

Dear Chairman Brechnitz:

The City of Marco Island, Florida (the “**Borrower**”) has requested that PNC Bank, National Association (the “**Bank**”) provide the Borrower with a forward rate commitment (the “**Forward Rates**”) for the Taxable Utility System Refunding Revenue Bond, Series 2020 (the “**Original Facility**”) and the replacement Utility System Refunding Revenue Bond, Series 2020 (the “**Replacement Facility**,” and together with the Original Facility, the “**Facilities**”) described in the PNC Bank Summary of Term and Conditions dated March 10, 2020 (as revised on March 12, 2020) (the “**Summary of Term and Conditions**”). The Forward Rates are offered at, as it relates to the Original Facility, a taxable fixed rate of _____ percent (_____%) per annum for a principal amount of \$ _____ beginning no later than April 17, 2020 (the “**Rate Lock Expiration Date**”), and, as it relates to the Replacement Facility, the NBQ tax-exempt equivalent fixed rate of _____ percent (_____%) to the extent that the Borrower makes the election described on page 2 of the Summary Terms and Conditions for a principal amount equal to what then remains outstanding. Principal under the Facilities shall be repaid as provided in Schedule A attached hereto.

The Bank is willing to commit to the Forward Rates upon the terms and conditions specified herein, subject to execution and delivery of the definitive documentation for the Facilities in form and content satisfactory to the Bank and satisfaction of the other terms and conditions as are set forth in the Summary of Term and Conditions. The documentation must be executed and delivered and funding of the Original Facility must occur by a date (the “**Closing Date**”) which is no later than the Rate Lock Expiration Date, provided, however, the Bank is not obligated to fund the Replacement Facility if the funding of the Original Facility did not occur on or prior to the Rate Lock Expiration Date.

By accepting this letter, the Borrower agrees that in the event that for any reason, other than a failure of the Bank to fund the Original Facility as described in the first paragraph hereof, the Closing Date does not occur on or before the Rate Lock Expiration Date, or any of the

provisions of the Forward Rates set forth above (rate, principal amount, Rate Lock Expiration Date or principal payment schedule set forth in the attached Schedule A) is changed, the Bank shall not be obligated to provide the Forward Rates and the Borrower shall pay to the Bank the amount of any loss or expense which the Bank may sustain or incur as a result of the Borrower's failure to close the Original Facility by such date or any such change in the Forward Rates provisions, including but not limited to any loss of margin, loss or expense incurred in liquidating or employing deposits from third parties and any loss or expense incurred in connection with funds acquired by the Bank to fund the Original Facility. Such payment shall be due two (2) business days after the Bank gives notice to the Borrower of the amount thereof, setting forth in reasonable detail the basis for the calculation thereof. A certificate by the Bank as to such amount shall be conclusive if made in good faith. The Borrower acknowledges and agrees that such amount represents reasonable compensation for loss of bargain and is not a penalty.

This letter is governed by the laws of the State of Florida. No modification or waiver of any of the terms of this letter will be valid unless agreed to in writing by the Bank. When accepted, this letter will constitute the entire agreement between the Bank and the Borrower concerning the Forward Rates, and shall supersede all prior and contemporaneous understandings and agreements (written or oral) relating thereto.

To accept this letter, please sign the enclosed copy where indicated below and return it to the Bank no later than the Bank's close of business on _____, 2020. If this letter is not accepted by said date, this letter will automatically terminate without liability or further obligation of the Bank.

Very truly yours,

PNC BANK, NATIONAL ASSOCIATION

By: _____

Name: Nick Ayotte

Title: Vice President

ACCEPTANCE

The Borrower hereby agrees to the above provisions, intending to be legally bound hereby. The Borrower understands that the above provisions may obligate the Borrower to make a significant payment to the Bank in the event the Closing Date does not occur by the Rate Lock Expiration Date or any of the provisions of the Forward Rates set forth above (rate, principal amount, Rate Lock Expiration Date or principal payment schedule set forth in the attached Schedule A) is changed, and the amount of any such payment cannot be predicted in advance of such event. The Borrower is fully informed of and is capable of evaluating, and has evaluated, the potential financial risks and benefits and the appropriateness in light of its individual circumstances, of this letter. The Borrower is entering into this letter in reliance only upon its own judgment, and is not relying upon any representations, warranty, views or advice of the Bank.

Concurrently with the execution and delivery of this Forward Fixed Rate Lock Letter to the Bank, the Borrower shall provide to the Bank a copy of a certified resolution, in form and substance satisfactory to the Bank, authorizing the Borrower to enter into this Forward Fixed Rate Lock Letter.

City of Marco Island, Florida

By: _____

Name: Erik Brechnitz

Title: Chairman of the City Council

Attest:

By: _____

Name: Laura M. Litzan

Title: City Clerk

[SEAL]

Approved as to Form:

By: _____

Name: Alan L. Gabriel

Title: City Attorney

Attachment: Schedule A – Principal Payment Schedule

SCHEDULE A

PRINCIPAL PAYMENT SCHEDULE

EXHIBIT B

FORM OF DIRECTION LETTER

[Date]

Wells Fargo Bank, National Association
Corporate Trust Services
123 S. Broad Street
Philadelphia, PA 19109
Attention: Relationship Manager

Re: _____ [insert name of new Bond Issue]

Dear Relationship Manager:

You are hereby directed to subscribe for U.S. Treasury State and Local Government Series (“SLGS”) securities that will be purchased pursuant to the Escrow Agreement dated [Date of Agreement] between [Issuer’s name] (the “Issuer”) and Wells Fargo Bank, N.A. (the “Escrow Agent”). The SLGS listed in the attached Exhibit A are to be issued on [Closing Date] and are to be issued in the name of the Issuer, using the Issuer’s Tax Identification Number, which is _____ [insert Issuer’s TIN].

Thank you for your assistance on this matter and please do not hesitate to contact me should you have any questions.

Sincerely,

[Name of Issuer]

By _____
Name:
Title:

Attachment: Exhibit A – SLGS Subscription Information

Exhibit A

SLGS Subscription Information

Principal Amount

Interest Rate

Maturity Date

First Interest Payment Date

