

ESCROW DEPOSIT AGREEMENT

ESCROW DEPOSIT AGREEMENT, dated as of January 8, 2014, by and between the **CITY OF VENICE, FLORIDA** (the "City"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.** (the "Escrow Agent"), a national banking association organized and existing under the laws of the United States of America, having its designated corporate trust office in Jacksonville, Florida, as escrow agent hereunder.

WHEREAS, the City has heretofore issued its City of Venice, Florida General Obligation Bonds, Series 2004 (the "Series 2004 Bonds") pursuant to Ordinance No. 2004-06 adopted by the City Commission of the City on January 13, 2004, as supplemented (the "Ordinance"); and

WHEREAS, the City has determined to exercise its option under the Ordinance to currently refund all of the outstanding Series 2004 Bonds (the "Refunded Bonds"); and

WHEREAS, the City has determined to issue its \$_____ City of Venice, Florida Recreation Capital Improvement General Obligation Refunding Bond, Series 2014 (the "Series 2014 Bond") pursuant to Resolution 2013-25, adopted by the City Commission on December 10, 2013, and a Loan Agreement dated as of January 8, 2014, between the City and TD Bank, N.A., a portion of the proceeds of which Series 2014 Bond will be used to provide payment for the Refunded Bonds and discharge and satisfy the pledge of the full faith, credit and taxing power of the City, without limitation, against all taxable property within the City under the Ordinance in regard to such Refunded Bonds; and

WHEREAS, the issuance of the Series 2014 Bond, the deposit of proceeds thereof into an escrow deposit trust fund to be held by the Escrow Agent and the discharge and satisfaction of the pledges, liens and other obligations of the City under the Ordinance in regard to the Refunded Bonds shall occur as a simultaneous transaction; and

WHEREAS, this Agreement is intended to effectuate such simultaneous transaction;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

SECTION 1. PREAMBLES. The City represents that the recitals stated above are true and correct, and the same are incorporated herein.

SECTION 2. RECEIPT OF ORDINANCE. Receipt of a true and correct copy of the above-mentioned Ordinance and this Agreement is hereby acknowledged by the Escrow Agent. The applicable and necessary provisions of the Ordinance, including, without limitation, Section 11 and Section 19 thereof, are incorporated herein by reference. Reference herein to or citation herein of any provisions of the Ordinance shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Ordinance.

SECTION 3. DISCHARGE OF PLEDGE OF HOLDERS OF REFUNDED BONDS. In accordance with Section 19 of the Ordinance, the City by this writing exercises its option to cause all covenants and pledges made in the Ordinance in favor of the registered owners of the Refunded Bonds to no longer be in effect.

SECTION 4. ESTABLISHMENT OF ESCROW FUND. There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow deposit trust fund designated the "City of Venice, Florida General Obligation Bonds, Series 2004 Escrow Deposit Trust Fund" (the "Escrow Fund"). The Escrow Fund shall be held in the custody of the Escrow Agent as a trust fund for the benefit of the holders of the Refunded Bonds, separate and apart from other funds and accounts of the City and the Escrow Agent. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and deposit to the credit of the Escrow Fund the sum of \$_____ received from the City from proceeds of the Series 2014 Bond (the "Bond Proceeds") and the sum of \$_____ received from the City from other legally available moneys (the "City Moneys" and collectively with the Bond Proceeds, the "Cash Deposit").

SECTION 5. SUFFICIENCY OF CASH DEPOSIT. The City represents that the Cash Deposit is sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, redemption premium, if any, and interest due and to become due on the Refunded Bonds as described in Schedule A attached hereto. If the Cash Deposit shall be insufficient to make such payments, the City shall timely deposit to the Escrow Fund, solely from legally available funds of the City, such additional amounts as may be required to pay the Refunded Bonds as described in Schedule A hereto. Notice of any insufficiency shall be given by the Escrow Agent to the City as promptly as possible, but the Escrow Agent shall in no manner be responsible for the City's failure to make such deposits.

SECTION 6. CASH DEPOSIT IN TRUST FOR HOLDERS OF REFUNDED BONDS. The deposit of the Cash Deposit in the Escrow Fund shall constitute an irrevocable deposit cash in trust solely for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds at such times and in such amounts as set forth in Schedule A hereto, and the Cash Deposit shall be used solely for such purpose.

SECTION 7. ESCROW AGENT TO PAY REFUNDED BONDS FROM ESCROW FUND. The Escrow Agent hereby agrees that it will take all actions required to be taken by it under the provisions of the Ordinance referenced in this Agreement, including the timely transfer of money to the Paying Agent for the Refunded Bonds (The Bank of New York Mellon Trust Company, N.A.) as provided in the Ordinance, in order to effectuate this Agreement and to pay the Refunded Bonds in the amounts and at the times provided in Schedule A hereto. The Cash Deposit shall be used to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds as the same may mature or be redeemed. If any payment date shall be a day on which either the Paying Agent for the Refunded Bonds or the Escrow Agent is not open for the acceptance or delivery of funds, then the Escrow Agent may make payment on the next business day. The liability of the Escrow Agent for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds pursuant to this Agreement shall be limited to the application of the Cash Deposit available for such purposes in the Escrow Fund.

SECTION 8. NO INVESTMENT OF MONEYS IN ESCROW FUND. NO PORTION OF THE CASH DEPOSIT SHALL BE INVESTED.

The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment to the Paying Agent for the Refunded Bonds in an amount sufficient to pay the Refunded Bonds, as described in Schedule A hereto, whereupon the Escrow Agent shall remit to the City any portion of the Cash Deposit then remaining in the Escrow Fund.

SECTION 9. REDEMPTION OF REFUNDED BONDS. The Refunded Bonds maturing on February 1, 2015 and thereafter shall be redeemed on February 1, 2014, at a price of 100% of the principal amount thereof plus accrued interest, if any, to such date of redemption. The Refunded Bonds maturing on February 1, 2014 shall be paid at their respective maturity.

SECTION 10. ESCROW FUND IRREVOCABLE. The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an express lien on the Cash Deposit deposited in the Escrow Fund pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Agreement and the Ordinance. Neither the City nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

SECTION 11. AMENDMENTS TO AGREEMENT. This Agreement is made for the benefit of the City and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such holders and the written consent of the Escrow Agent; provided, however, that the City 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, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded 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 or properties.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of nationally recognized Bond Counsel with respect to compliance with this Section 11, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 11.

SECTION 12. FEES AND EXPENSES OF ESCROW AGENT; INDEMNIFICATION; LIABILITY. In consideration of the services rendered by the Escrow Agent under this Agreement, the City agrees to and shall pay to the Escrow Agent the fees and expenses as set forth on Schedule B hereto. The Escrow Agent shall have no lien whatsoever upon any of the Cash Deposit in said Escrow Fund for the payment of such proper fees and expenses. The City further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or misconduct. Indemnification provided under this Section 12 shall survive the termination of this Agreement.

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 City. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the City or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance

herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the City of its intention.

The Escrow Agent and its successors, agents and servants shall not be held to any personal liability whatsoever, in tort, contract or otherwise, by reason of the execution and delivery of this Agreement, the establishment of the Escrow Fund, the acceptance and disposition of the various moneys and funds described herein, the purchase, retention or payment, transfer or other application of funds by the Escrow Agent in accordance with the provisions of this Agreement or any nonnegligent act, omission or error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall, however, be liable to the City and to holders of the Refunded Bonds to the extent of their respective damages for negligent or willful acts, omissions or errors of the Escrow Agent which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement.

SECTION 13. REPORTING REQUIREMENTS OF ESCROW AGENT.

As soon as practicable after February 1, 2014, the Escrow Agent shall forward in writing to the City a statement in detail of the activity of the Escrow Fund.

SECTION 14. RESIGNATION OR REMOVAL OF ESCROW AGENT.

The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than 20 days' written notice to the City and mailing notice thereof, specifying the date when such resignation will take effect, to the holders of the Refunded Bonds then outstanding, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding or by the City as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be replaced at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and signed by either the City or the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding. Such instrument shall provide for the appointment of a successor Escrow Agent, which appointment shall occur simultaneously with the removal of the Escrow Agent.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding by an instrument or concurrent instruments in writing,

signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the City shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding in the manner above provided, and any such temporary Escrow Agent so appointed by the City shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders. The City shall mail notice of any such appointment made by it at the times and in the manner described in the first paragraph of this Section 14.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the City pursuant to the foregoing provisions of this Section 14 within 20 days after written notice of resignation of the Escrow Agent has been given to the City, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall have no further liability hereunder and the City shall indemnify and hold harmless Escrow Agent, to the extent allowed by law from any such liability, including costs or expenses incurred by the Escrow Agent or its counsel.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$30,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the City an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the City execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all funds and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from the City be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 15. TERMINATION OF AGREEMENT. Except for provisions hereof which are stated to survive the termination hereof, this Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the City.

SECTION 16. GOVERNING LAW. This Agreement shall be governed by the applicable laws of the State of Florida.

SECTION 17. SEVERABILITY. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 18. 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 19. NOTICES. Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Agreement shall be in writing and sent by overnight express mail with fees prepaid, or registered or certified mail addressed to:

The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway, 2nd Floor
Jacksonville, Florida 32256
Attention: Corporate Trust Department

City of Venice, Florida
City Hall
401 West Venice Avenue
Venice, FL 34285
Attention: City Manager

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Deposit Agreement to be executed by their duly authorized officers and appointed officials and the seal of the City to be hereunder affixed and attested as of the date first written herein.

CITY OF VENICE, FLORIDA

(SEAL)

Mayor

ATTEST:

City Clerk

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Escrow Agent**

SCHEDULE A

DEBT SERVICE REQUIREMENTS FOR REFUNDED BONDS

<u>Period Ending</u>	<u>Interest</u>	<u>Maturing Principal</u>	<u>Redeemed Principal</u>	<u>Total</u>
2/1/14		\$350,000	\$6,895,000	

SCHEDULE B

FEES AND EXPENSES OF THE ESCROW AGENT

\$_____ one-time fee payable in advance, plus expenses at cost.