

# **Attachment D**

Bond Purchase Agreement

§ \_\_\_\_\_  
**CITY OF NEWPORT BEACH  
ASSESSMENT DISTRICT NO. 113  
LIMITED OBLIGATION IMPROVEMENT BONDS  
2021 SERIES A**

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**BOND PURCHASE AGREEMENT**

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\_\_\_\_\_, 2021

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the “**Underwriter**”), acting not as fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement (the “**Purchase Agreement**”) with the City of Newport Beach (the “**City**”) in connection with Assessment District No. 113 (the “**Assessment District**”) which, upon acceptance, will be binding upon the City and upon the Underwriter. This offer is made subject to acceptance of it by the City on the date hereof, and, if not accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof by the City. Capitalized terms that are used in this Purchase Agreement and not otherwise defined herein shall have the respective meanings ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

The City acknowledges and agrees that: (i) the purchase and sale of the Bonds (as such term is defined below) pursuant to this Purchase Agreement is an arm’s-length commercial transaction between the City and the Underwriter; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not and has not been acting as a “municipal advisor” (as such term is defined in Section 15B of the Securities Exchange Act of 1934, as amended) to the City; (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters); (iv) the Underwriter has financial interests that may differ from and be adverse to those of the City; and (v) the City has consulted its own legal, financial and other advisors to the extent that it has deemed appropriate for this transaction. The Underwriter has provided to the City prior disclosures under Rule G-17 of the Municipal Securities Rulemaking Board which have been received by the City.

1. Purchase, Sale and Delivery of the Bonds; Establishment of Issue Price.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter agrees to purchase from the City, and the City agrees to sell to the Underwriter, all (but not less than all) of \$ \_\_\_\_\_ aggregate principal amount of the City of Newport Beach Assessment District No. 113 Limited Obligation Improvement

Bonds 2021 Series A (the “**Bonds**”), bearing interest (payable semiannually on March 2 and September 2 in each year, commencing September 2, 2021) at the rates per annum and maturing on the dates and in the amounts set forth in Appendix A attached hereto and incorporated herein.

(b) The purchase price for the Bonds shall be \$\_\_\_\_\_ (representing a price of par, less a net original issue discount of \$\_\_\_\_\_ and less an Underwriter’s discount of \$\_\_\_\_\_).

(c) The Bonds are being issued to (i) fund the Reserve Fund for the Bonds, (ii) finance capitalized interest on the Bonds through approximately September 2, 2021, (iii) pay costs of issuance, (iv) reimburse for the costs of forming the Assessment District, and (v) pay the costs for the design and undergrounding of certain utilities.

(d) The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Appendix B with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(e) The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the “**initial offering price**”), or at the corresponding yield or yields, set forth in Appendix A attached hereto. Appendix A also sets forth, identified under the column “Subject to Hold the Offering Price Rule,” as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the Underwriter represents that (i) the 10% test has been satisfied (assuming orders are confirmed by the close of the business day immediately following the date of this Purchase Agreement) and (ii) the 10% test has not been satisfied and for which the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “**hold-the-offering-price rule**”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City when it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

(f) The Underwriter confirms that:

(1) Any selling group agreement and any third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A) (i) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(B) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below), and

(C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(2) Any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(g) The City acknowledges that, in making the representation set forth in this section, the Underwriter will rely on (1) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (2) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires.

(h) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party;

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract

directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public);

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and

(4) “sale date” means the date of execution of this Purchase Agreement by all parties.

(i) The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable and subject to redemption as provided in, a Fiscal Agent Agreement, by and between the City and U.S. Bank National Association, as fiscal agent (the “**Fiscal Agent**”), dated as of \_\_\_\_\_ 1, 2021 (the “**Fiscal Agent Agreement**”), approved by a resolution (the “**Resolution**”), adopted by the City Council of the City (the “City Council”) on \_\_\_\_\_, 2021.

(j) Pursuant to the authorization of the City, the Underwriter has distributed copies of the Preliminary Official Statement, dated \_\_\_\_\_, 2021, relating to the Bonds, which, together with the cover page and all appendices thereto, is herein called the “**Preliminary Official Statement**” and which, as amended with the prior approval of the Underwriter and executed by the City, will be referred to herein as the “**Official Statement**.” The City hereby ratifies the use by the Underwriter of the Preliminary Official Statement and the Official Statement and authorizes the Underwriter to use and distribute the Fiscal Agent Agreement, the Official Statement, the Continuing Disclosure Agreement, dated \_\_\_\_\_, 2021 (the “**Disclosure Agreement**”), by and between the City and Digital Assurance Certification, LLC, as dissemination agent, and other documents or contracts to which the City is a party, including this Purchase Agreement, and all information contained therein, and all other documents, certificates and statements furnished by the City to the Underwriter in connection with the transactions contemplated by this Purchase Agreement, in connection with the offer and sale of the Bonds by the Underwriter.

(k) The Underwriter agrees to make a bona fide public offering of the Bonds at the initial offering price set forth in the Official Statement; however, the Underwriter reserves the right to make concessions to dealers and to change such initial offering price as the Underwriter shall deem necessary in connection with the marketing of the Bonds. The Underwriter agrees that, in connection with the public offering and initial delivery of the Bonds to the purchasers thereof from the Underwriter, the Underwriter will deliver or cause to be delivered to each purchaser a copy of the Official Statement prepared in connection with the Bonds. The Underwriter also agrees to notify the City by phone or in writing of the “end of the underwriting period,” as defined in Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“**Rule 15c2-12**”). Terms defined in the Official Statement are used herein as so defined.

(l) The City shall deliver, or cause to be delivered, to the Underwriter two (2) executed copies of the final Official Statement prepared in connection with the Bonds, in such form as shall be approved by the City and the Underwriter and such additional conformed copies thereof as the Underwriter may reasonably request. The City deems the Preliminary Official Statement to be “final” as of its date for purposes of Rule 15c2-12. By acceptance of this Purchase Agreement, the City hereby authorizes the use of copies of the Official Statement in connection with the public offering and sale of the Bonds and ratifies and approves the distribution by the Underwriter of the Preliminary Official Statement.

(m) At approximately 8:30 a.m., Pacific Time, on \_\_\_\_\_, 2021, or at such earlier or later time or date as shall be agreed upon by the City and the Underwriter (such time and date herein referred to as the “**Closing Date**”), the City shall deliver (i) through the facilities of The Depository Trust Company, all Bonds (being in book-entry form, registered in the name of Cede & Co. and having the CUSIP numbers assigned to them printed thereon) duly executed by the officers of the City as provided in the Fiscal Agent Agreement and with facsimile seals printed thereon, and (ii) to the Underwriter at the offices of Stradling Yocca Carlson & Rauth, a Professional Corporation, the other documents herein mentioned, and the Underwriter shall accept such delivery and pay the purchase price of the Bonds in same day funds (such delivery and payment being herein referred to as the “**Closing**”). The Bonds, as so registered, shall be made available to the Underwriter for inspection not later than the first business day before the Closing Date.

2. Representations, Warranties and Agreements of the City. The City represents, warrants and covenants to and agrees with the Underwriter that:

(a) The City is duly organized and validly existing as a municipal corporation under the laws of the State; and has, and at the Closing Date will have, as the case may be, full legal right, power and authority (i) to execute, deliver and perform its obligations under this Purchase Agreement, the Fiscal Agent Agreement, the Resolution and the Disclosure Agreement (collectively, the “**City Documents**”), (ii) to execute and deliver the Official Statement, and to carry out all transactions contemplated by each of the City Documents, (iii) to adopt the Resolution approving the Fiscal Agent Agreement and enter into the other authorizing documents, (iv) to issue, sell and deliver the Bonds to the Underwriter pursuant to the Fiscal Agent Agreement as provided herein, and (v) to carry out, give effect to and consummate the transactions contemplated by the Official Statement and the City Documents;

(b) The City Council has duly and validly (i) taken or caused to be taken, all proceedings necessary under the Constitution and the laws of the State of California in order to form the Assessment District and to confirm assessments (the “**Assessments**”) on the parcels located within the Assessment District in the respective amounts shown in the report of the Assessment Engineer, approved by the City Council on \_\_\_\_\_, 2018 (the “**Engineer’s Report**”), to cause each of the Assessments to be a valid lien upon the parcel upon which it was confirmed and to authorize the sale and issuance of the Bonds, (ii) authorized and approved the execution and delivery of the City Documents and the Bonds, (iii) authorized the preparation and delivery of the Preliminary Official Statement and the Official Statement and (iv) approved the performance by the City of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by each of the City Documents (including, without limitation, the collection of the Assessments) and the Assessment District has been validly formed, the Assessments have been validly confirmed and constitute liens on the respective parcels within the Assessment District, and (assuming due authorization, execution and delivery by other parties thereto, where necessary) the City Documents and the Bonds will constitute the valid, legal

and binding obligations of the City and will be enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights in general and to the application of equitable principles if equitable remedies are sought;

(c) The City is not in breach of or default under any applicable law or administrative rule or regulation of the State, the United States of America, or of any department, division, agency or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, a consequence of which could be to materially and adversely affect the performance by the City of its obligations under the Bonds or the City Documents, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, the United States of America, or of any department, division, agency or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound;

(d) Except as may be required under the "blue sky" or other securities laws of any jurisdiction, all approvals, consents, authorizations, elections and orders of or filings or registrations with any State governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations hereunder, or under the City Documents or the Bonds have been obtained and are in full force and effect;

(e) Except as disclosed in the Official Statement, there are, to the best knowledge of the City, no outstanding assessment liens against any of the properties within the City which are senior to or on a parity with the Assessments;

(f) Each of the Assessments has been duly and lawfully confirmed, may be collected in installments under the laws of the State, and constitutes a valid and legally binding lien on the property on which it has been confirmed;

(g) As of the date thereof, to the best knowledge of the City, the Preliminary Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The information contained in the Official Statement is, as of the date hereof and will be, as of the Closing Date and as of the date of any supplement or amendment thereto pursuant to paragraph (i) below, true, correct and complete in all material respects and does not, as of the date hereof and will not, as of the Closing Date or as of the date of any supplement or amendment thereto pursuant to paragraph (i) below, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(h) Until the date which is twenty-five (25) days after the "end of the underwriting period" (as hereinafter defined) if any event shall occur of which the City becomes aware as a result of which it may be necessary to supplement the Official Statement in order to make the statements therein, in light of the circumstances existing at such time, not misleading, the City shall forthwith notify the Underwriter of any such event, and shall cooperate fully in furnishing any

information available to it for any supplement to the Official Statement necessary so that the statements therein as so amended or supplemented will not be misleading in light of the circumstances existing at such time; and the City shall promptly furnish to the Underwriter a reasonable number of copies of such supplement (as used herein, the term “end of the underwriting period” means the later of such time as (i) the City delivers the Bonds to the Underwriter, or (ii) the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public);

(i) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (h) above, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph), at all times subsequent thereto up to and including the Closing Date, the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such information therein, in light of the circumstances under which it was presented, not misleading;

(j) The Fiscal Agent Agreement creates a valid pledge of the Assessments and the moneys in the Assessment Fund, the Redemption Fund, the Improvement Fund and the Reserve Fund established pursuant to the Fiscal Agent Agreement, including the investments thereof, subject in all cases to the provisions of the Fiscal Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth therein; and said pledge constitutes a first lien on and security interest in all of the foregoing;

(k) Except as disclosed in the Preliminary Official Statement and the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body is pending or, to the knowledge of the City, threatened against the City (i) which would materially adversely affect the ability of the City to perform its obligations under the City Documents or the Bonds, or (ii) seeking to restrain or to enjoin: (A) the development of any of the land within the Assessment District, (B) the issuance, sale or delivery of the Bonds, (C) the application of the proceeds thereof in accordance with the Fiscal Agent Agreement, or (D) the collection or application of the Assessments, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the City Documents, any tentative or final subdivision map or building permits applicable to property within the Assessment District, any other instruments relating to the development of any of the property within the Assessment District, or any action contemplated by any of said documents, or (iii) in any way contesting the completeness or accuracy of the Preliminary Official Statement, or the Official Statement or the powers or authority of the City with respect to the Bonds, the City Documents, or any action of the City contemplated by any of said documents; nor is there any action pending or, to the knowledge of the City, threatened against the City which alleges that interest on the Bonds is not excludable from gross income for federal income tax purposes or is not exempt from California personal income taxation;

(l) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order for the Underwriter to qualify the Bonds for offer and sale under the “blue sky” or other securities laws and regulations of such states and other jurisdictions of the United States of America as the Underwriter may designate; *provided, however*, the City shall not be required to register as a dealer or a broker of securities or to consent to service of process in connection with any “blue sky” filing;



(m) Any certificate signed by any authorized official of the City authorized to do so shall be deemed a representation and warranty to the Underwriter as to the statements made therein;

(n) The City will apply the proceeds of the Bonds in accordance with the Fiscal Agent Agreement and as described in the Official Statement;

(o) Based upon projections which the City believes are reasonable, the Assessments supporting the Bonds, when levied and collected by the City in accordance with the terms of the Assessments formula, assuming normal and reasonable delinquency rates, will provide a yearly cash flow sufficient to make timely payment of principal and interest on the Bonds;

(p) The City is not aware of any toxic waste conditions or adverse soils condition which would impair development within the Assessment District;

(q) The City will undertake, pursuant to the Disclosure Agreement, to provide annual reports and notice of certain events. Except as described in the Preliminary Official Statement and the Official Statement, the City has not failed to comply, in any material respects, with any continuing disclosure undertaking previously entered into by it pursuant to the provisions of Rule 15c2-12 for each of the past five (5) years;

(r) The Official Statement (except the portions thereof relating to DTC or its book-entry only system and the information under the sections entitled "CONCLUDING INFORMATION - Legal Opinion" and " - Tax Matters," and APPENDIX E - "BOOK-ENTRY ONLY SYSTEM," as to which no view need be expressed) is, as of the date thereof, and will be, as of the Closing Date, true, correct and complete in all material respects; and the Official Statement (except the portions thereof mentioned above, as to which no view need be expressed) does not, as of the date thereof, and will not, as of the Closing Date, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(s) The Preliminary Official Statement heretofore delivered to the Underwriter has been deemed final by the City as of its date, except for the omission of such information as is permitted to be omitted in accordance with paragraph (b)(1) of Rule 15c2-12. The City hereby covenants and agrees that, within seven (7) business days from the date hereof, or (upon reasonable written notice from the Underwriter) within sufficient time to accompany any confirmation requesting payment from any customers of the Underwriter, the City shall cause a final printed or electronic form of the Official Statement to be delivered to the Underwriter in a quantity mutually agreed upon by the Underwriter and the City so that the Underwriter may comply with paragraph (b)(4) of Rule 15c2-12 and Rules G-12, G-15, G-32 and G-36 of the Municipal Securities Rulemaking Board.

3. Conditions to the Obligations of the Underwriter. The obligations of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations and agreements on the part of the City contained herein, as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the City made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder at or prior to the Closing Date and to the following additional conditions:

(a) At the Closing Date, the City Documents, the Resolution of Formation and any other applicable agreements shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the transactions contemplated thereby and by this Purchase Agreement, all such actions as, in the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel for the City, shall be necessary and appropriate;

(b) Between the date hereof and the Closing Date, the market price or marketability of the Bonds at the initial offering prices set forth in the Official Statement shall not have been materially adversely affected, in the reasonable judgment of the Underwriter (evidenced by a written notice to the City terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

(1) legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America or recommended to the Congress by the President of the United States, the Department of the Treasury, the Internal Revenue Service, or any member of Congress, or favorably reported for passage to either House of Congress by any committee of such House to which such legislation had been referred for consideration or a decision rendered by a court established under Article III of the Constitution of the United States of America or by the Tax Court of the United States of America, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Treasury Department or the Internal Revenue Service of the United States of America, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon the interest that would be received by the owners of the Bonds beyond the extent to which such interest is subject to taxation as of the date hereof;

(2) legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America, or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or that the Fiscal Agent Agreement is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Bonds, or of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise is or would be in violation of the federal securities laws, rules or regulations as amended and then in effect;

(3) any amendment to the federal or State Constitution or action by any federal or State court, legislative body, regulatory body or other authority materially adversely affecting the tax status of the City, its property, income, securities (or interest thereon), the validity or enforceability of the Assessments or the ability of the City to construct or acquire the improvements as contemplated by the City Documents, the Resolution of Formation and the Official Statement;

(4) any event occurring, or information becoming known, which, in the reasonable judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or results in the Official Statement containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein or

necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(5) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere or the escalation of such calamity or crisis;

(6) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on the New York Stock Exchange or other national securities exchange, whether by virtue of determination by that exchange or by order of the Securities and Exchange Commission (the "SEC") or any other governmental authority having jurisdiction that, in the Underwriter's reasonable judgment, makes it impracticable for the Underwriter to market the Bonds or enforce contracts for the sale of the Bonds;

(7) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Bonds or obligations of the general character of the Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(8) a material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred;

(9) there shall have been any material adverse change in the affairs of the City that in the Underwriter's reasonable judgment will materially adversely affect the market for the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(10) there shall be established any new restriction on transactions in securities materially affecting the free market for securities (including the imposition of any limitation on interest rates) or the extension of credit by, or a change to the net capital requirements of, underwriters established by the New York Stock Exchange, the SEC, any other federal or State agency or the Congress of the United States, or by Executive Order; or

(11) any proceeding shall have been commenced or be threatened in writing by the SEC against the City; or

(12) the commencement of any action of the character described in Section 2(r); or

(13) a stop order, release, regulation, or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made to the effect that the issuance, offering, or sale of the Bonds, including all the underlying obligations as contemplated hereby or by the Official Statement, or any document relating to the issuance, offering or sale of the Bonds is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act of 1933, as amended, the Exchange Act, and the Trust Indenture Act of 1939, as amended.

(c) On the Closing Date, the Underwriter shall have received counterpart originals or certified copies of the following documents, in each case satisfactory in form and substance to the Underwriter:

(1) The City Documents and the Resolution of Formation together with a certificate dated as of the Closing Date of the City Clerk of the City, as applicable, to the effect that each such document is a true, correct and complete copy of the one duly adopted by the City Council and that it has not been amended, modified or rescinded since its adoption (except as may have been agreed to by the Underwriter) and is in full force and effect as of the Closing Date;

(2) The Official Statement duly executed;

(3) An unqualified approving opinion, dated the Closing Date and addressed to the City, of Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel for the City, substantially in the form set forth in Appendix D to the Official Statement and a reliance letter dated the Closing Date and addressed to the Underwriter, to the effect that such approving opinion addressed to the City may be relied upon by the Underwriter to the same extent as if such opinion was addressed to it;

(4) A supplemental opinion, dated the Closing Date and addressed to the Underwriter, of Bond Counsel to the effect that (i) the statements contained in the Official Statement on the cover and under the captions “INTRODUCTION,” “THE BONDS,” “SECURITY FOR THE BONDS,” “CONCLUDING INFORMATION – Legal Opinion” and “CONCLUDING INFORMATION – Tax Matters,” APPENDIX C – “SUMMARY OF THE FISCAL AGENT AGREEMENT” and APPENDIX D – “OPINION OF BOND COUNSEL,” insofar as such statements purport to summarize certain provisions of the Fiscal Agent Agreement, Bond Counsel’s final approving legal opinion with respect to the Bonds, and federal and State tax law, present an accurate summary of such provisions; (ii) the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Fiscal Agent Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended; and (iii) the Fiscal Agent Agreement, the Purchase Agreement and the Disclosure Agreement have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding agreements of the City enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and the application of equitable principles if equitable remedies are sought;

(5) An opinion, dated the Closing Date and addressed to the City and the Underwriter, of Stradling Yocca Carlson & Rauth, a Professional Corporation, Disclosure Counsel, to the effect that, without passing upon or assuming any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement or making any representation that they have independently verified the accuracy, completeness or fairness of any such statements, but on the basis of their participation in telephone conferences with the City’s representatives, Bond Counsel, representatives of the Underwriter and others, during which conferences the contents of the Official Statement and related matters were discussed and in reliance thereon and on the records, documents, certificates and opinions herein mentioned (as set forth above), during the course of their representation of the City on the matter, no facts came to the attention of the attorneys in such firm rendering legal services in connection with such representation which caused such firm to believe that the Preliminary Official Statement as of its date and the Official Statement as of its date and as of the Closing Date contained any untrue statement of a material fact or omitted to state any material

fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except that no opinion need be expressed as to the Appendices of the Official Statement or any financial, statistical, economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion or any information about feasibility, valuation, appraisals, absorption, real estate, archaeological or environmental matters, or any information about book-entry, tax exemption or The Depository Trust Company included or referred to therein);

(6) A Certificate, dated the Closing Date and signed by an authorized representative of the City, ratifying the use and distribution by the Underwriter of the Preliminary Official Statement and the Official Statement in connection with the offering and sale of the Bonds; and certifying that (i) the representations and warranties of the City contained in Section 2 hereof are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (ii) to the best of his or her knowledge, no event has occurred since the date of the Official Statement affecting the matters contained therein which should be disclosed in the Official Statement for the purposes for which it is to be used in order to make the statements and information contained in the Official Statement not misleading in any material respect and the Bonds and the City Documents conform as to form and tenor to the descriptions thereof contained in the Official Statement and (iii) the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under the City Documents and the Official Statement at or prior to the Closing Date;

(7) An opinion, dated the Closing Date and addressed to the Underwriter, of the City Attorney, to the effect that (i) to the best of his or her knowledge, except as described in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body is pending or threatened in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the development of property within the Assessment District, the issuance, sale or delivery of the Bonds or the exclusion from gross income for federal income tax purposes or State personal income taxes of interest on the Bonds, or the application of the proceeds thereof in accordance with the Fiscal Agent Agreement, or the collection or application of the Assessments to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds, the Fiscal Agent Agreement, the Resolution of Formation, the Purchase Agreement or any action of the City or which the City contemplated by any of said documents; (ii) the City is duly organized and validly existing under the laws of the State, with, as the case may be, full legal right, power and authority to issue the Bonds and to perform all of its obligations under the Purchase Agreement, the Bonds and the Fiscal Agent Agreement; (iii) the Resolution, which authorized issuance of the Bonds and approved the form and substance of the Fiscal Agent Agreement, the Purchase Agreement and the Disclosure Agreement has been duly adopted by the City Council of the City, (iv) to the best of his or her knowledge after due inquiry, the City has obtained all approvals, consents, authorizations, elections and orders of or filings or registrations with any State governmental authority, board, agency or commission having jurisdiction which constitute a condition precedent to the levy of the Assessments, the issuance of the Bonds or the performance by the City of its obligations thereunder or under the Fiscal Agent Agreement, except that no opinion is expressed regarding compliance with “blue sky” or other securities laws or regulations whatsoever; (v) the City Council has duly and validly adopted the resolutions and the Resolution of Formation at meetings of the City Council which were called and held pursuant to law and with all public notice required by law, and the resolutions and the Resolution of Formation are now in full force and effect and have not been amended; (vi) the City has duly authorized, executed

and delivered the Purchase Agreement, the Fiscal Agent Agreement and the Bonds and has duly authorized the preparation and delivery of the Official Statement; and (vii) the Purchase Agreement, the Disclosure Agreement, the Bonds and the Fiscal Agent Agreement constitute legal, valid and binding agreements of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights in general and to the application of equitable principles if equitable remedies are sought;

(8) One counterpart original or copy certified by the Clerk of the City of a transcript of all proceedings relating to the authorization, issuance, sale and delivery of the Bonds;

(9) The Certificate of the Fiscal Agent, dated the Closing Date, to the effect that (i) the Fiscal Agent is duly organized and existing as a national association under the laws of the State having the full power and authority to perform its duties under the Fiscal Agent Agreement; (ii) the Fiscal Agent is duly authorized to accept the obligations created by the Fiscal Agent Agreement and to authenticate the Bonds pursuant to the terms of the Fiscal Agent Agreement; (iii) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Fiscal Agent that has not been obtained is or will be required for the authentication of the Bonds or the consummation by the Fiscal Agent of the other transactions contemplated to be performed by the Fiscal Agent in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Fiscal Agent Agreement; and (iv) compliance with the terms of the Fiscal Agent Agreement will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, indenture, bond, note, resolution or any other agreement or instrument to which the Fiscal Agent is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Fiscal Agent or any of its activities or properties;

(10) A certified copy of the general resolution of the Fiscal Agent authorizing the execution and delivery of any City Documents to which the Fiscal Agent is a party;

(11) An opinion, dated the Closing Date and addressed to the Underwriter and the City, of counsel to the Fiscal Agent in form and substance acceptable to the Underwriter;

(12) The Disclosure Agreement;

(13) A certificate of Harris & Associates, Inc., dated the Closing Date, to the effect that (i) the statements contained in the Official Statement relating to the size and location of the Assessment District, the amounts of the Assessments and the Engineer's Report and all other information furnished by it therein do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) in the opinion of Harris & Associates, Inc., the assessments, as set forth in the Engineer's Report, have been spread in conformance with the requirements of the Municipal Improvement Act of 1913 (Division 12 of the California Streets and Highways Code);

(14) A certificate of the City, dated the Closing Date, in a form acceptable to Bond Counsel, that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

(15) A copy of Internal Revenue Service Form 8038-G, executed by an authorized officer of the City;

(16) An opinion of Kutak Rock LLP, counsel to the Underwriter, addressed to the Underwriter and in form and substance acceptable to the Underwriter; and

(17) Such additional legal opinions, certificates, instruments and other documents as the Underwriter or Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the statements and information contained in the Preliminary Official Statement and the Official Statement, of the City's representations and warranties contained herein, and the due performance or satisfaction by the City and the Fiscal Agent at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by either of them in connection with the transactions contemplated hereby by the City Documents and by the Official Statement.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Purchase Agreement, or if the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the Underwriter nor the City shall be under any further obligation hereunder, except that the respective obligations of the City and the Underwriter set forth in Section 4 and Section 5 hereof shall continue in full force and effect.

4. Conditions of the City's Obligations. The City's obligations hereunder are subject to the Underwriter's performance of their obligations hereunder, and are also subject to the following conditions:

(a) As of the Closing Date, no litigation shall be pending or, to the knowledge of the duly authorized officer of the City executing the certificate referred to in Section 3 hereof, threatened, to restrain or enjoin the issuance or sale of the Bonds or in any way affecting any authority for or the validity of the Bonds or the City Documents or the existence or powers of the City; and

(b) As of the Closing Date, the City shall receive the approving opinions of Bond Counsel and Disclosure Counsel referred to in Section 3 hereof, dated as of the Closing Date.

5. Expenses.

Whether or not the Bonds are delivered to the Underwriter set forth herein:

(a) The Underwriter shall be under no obligation to pay, and the City shall pay or cause to be paid (out of any legally available funds of the City) all expenses incident to the performance of the City's obligations hereunder, including, but not limited to, the cost of printing and delivering the Bonds to DTC, the cost of printing, distribution and delivery of the Fiscal Agent Agreement, the Preliminary Official Statement, the Official Statement and all other agreements and documents contemplated hereby (and drafts of any thereof) in such reasonable quantities as requested by the Underwriter; the cost of the overlapping debt statement and the fees and disbursements of the Fiscal Agent for the Bonds, Disclosure Counsel and Bond Counsel and any accountants, engineers or any other experts or consultants the City have retained in connection with the Bonds; and

(b) The City shall be under no obligation to pay, and the Underwriter shall pay, CUSIP Bureau and CDIAC fees; the cost of preparation of any “blue sky” or legal investment memoranda; expenses to qualify the Bonds for sale under any “blue sky” or other state securities laws; and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds (except those specifically enumerated in paragraph (a) of this Section), including the fees and disbursements of its counsel and any advertising expenses.

The City acknowledges that the Underwriter will pay from the underwriter’s expense allocation of the underwriting discount certain fees, including the applicable per bond assessment charged by the California Debt and Investment Advisory Commission.

6. Notices. Any notice or other communication to be given to the City under this Purchase Agreement may be given by delivering the same in writing to the City of Newport Beach, 100 Civic Center Drive, Newport Beach, California 92660; any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Stifel, Nicolaus & Company, Incorporated, One Montgomery Street, 35<sup>th</sup> Floor, San Francisco, California 94104.

7. Parties in Interest. This Purchase Agreement is made solely for the benefit of the City and the Underwriter (including their successors or assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. This Purchase Agreement shall not be assigned by the City or the Underwriter.

8. Survival of Representations, Warranties and Agreements. The representations, warranties and agreements of the City set forth in or made pursuant to this Purchase Agreement shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Agreement and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the City and regardless of delivery of and payment for the Bonds.

9. Effective. This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance. This Purchase Agreement may be signed in counterparts by each party.

10. No Prior Agreements. This Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of Bonds by the City and represents the entire agreement of the parties as to the subject matter herein.

11. Governing Law. This Purchase Agreement shall be governed by the laws of the State of California.



12. Counterparts. This Purchase Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Very truly yours,

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

By: \_\_\_\_\_  
Managing Director

ACCEPTED:

**CITY OF NEWPORT BEACH**

By: \_\_\_\_\_  
Authorized Officer

Time of Execution: \_\_\_\_\_ p.m.  
California time

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

**APPENDIX A  
MATURITY SCHEDULE**

\$ \_\_\_\_\_  
**CITY OF NEWPORT BEACH  
ASSESSMENT DISTRICT NO. 113  
LIMITED OBLIGATION IMPROVEMENT BONDS  
2021 SERIES A**

Maturity (September 2)	Principal Amount	Interest Rate	Yield	Price	10% Test Satisfied*	10% Test Not Satisfied	Subject to Hold-The- Offering- Price Rule
2021							
2022							
2023							
2024							
2025							
2026							
2027							
2028							
2029							
2030							
2031							
2032							
2033							
2034							
2035							
2036							
2037							
2038							
2039							

\* At the time of execution of this Purchase Agreement and assuming orders are confirmed by the close of the business day immediately following the date of this Purchase Agreement.

**APPENDIX B**

**FORM OF ISSUE PRICE CERTIFICATE**

**§ \_\_\_\_\_  
CITY OF NEWPORT BEACH  
ASSESSMENT DISTRICT NO. 113  
LIMITED OBLIGATION IMPROVEMENT BONDS  
2021 SERIES A**

The undersigned, on behalf of Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Sale of the Bonds. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.

2. Defined Terms.

(a) Issuer means City of Newport Beach.

(b) Maturity means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) Underwriter means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate relating to the Bonds and with respect to compliance with the federal income tax rules affecting the Bonds, and by Stradling Yocca Carlson & Rauth, a Professional Corporation in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021