Pinellas County
OFFICE OF THE COUNTY ADMINISTRATOR

Mark S. Woodard
County Administrator

September 4, 2018

Holly L. Kuhlman, Senior Vice President
Bank of America, N.A.
FL9-858-01-00
9128 Strada Place, Suite 10110
Naples, FL 34108

RE: Pinellas County, Florida- Sewer Revenue Bond, Series 2008A and Sewer Revenue Refunding Bond, Series 2008B-1 (the "Bonds").

Ms. Kuhlman:

I have had the opportunity to review your letter of July 16, 2018, relating to the Bank's assertion that it is required for the Bank to raise the interest rates on the above referenced Bonds in accordance with the Bank's interpretation of a portion of a paragraph within the Bonds.

The County emphatically disagrees that the language quoted in your letter of July 16, 2018 allows for an adjustment in the interest rate as you have asserted, much less that any such adjustment is required by the language of the Bonds. Accordingly, the County respectfully requests that the decision makers at the Bank reconsider this position. Please consider the implications of this position and the possible effect this may have on maintaining the Bank's credibility and status as a good corporate citizen in Pinellas County.

The Actual Language of the Bonds.

The July 16, 2018 letter from Bank of America indicates, for the first time, the specific language on which the Bank is relying to assert that it will raise the interest rates on the Bonds as a result of the windfall that the Bank received when Congress lowered the maximum corporate tax rate from 35% to 21% effective January 1, 2018. The language on which the Bank relies is an excerpted portion of the language that constitutes a single paragraph within the Bonds. The excerpt quoted language from your letter is:

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315 Court St. • Room 601
Clearwater, FL 33756
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...for so long as this Bond is owned by the Registered Holder, the Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Bond is held by the Registered Holder, or its successors or assigns, the Registered Holder shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

The full paragraph from which this fragment was lifted reads:

If any interest on this Bond becomes includable in the gross income of the Registered Holder for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Registered Holder's after-tax yield with respect to this Bond, then the Registered Holder shall have the right to adjust the Interest Rate with the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of this Bond until such time as the federal statute of limitations under which the interest on this Bond could be declared taxable under the Internal Revenue Code of 1986, as amended, shall have expired. For so long as this Bond is owned by the Registered Holder, the Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Bond is owned by the Registered Holder, or its successors and assigns, the Registered Holder shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

As a fundamental element of English writing structure, a paragraph is written to address a single concept. New ideas or concepts lead to the beginning of a new paragraph. Reading portions of a paragraph or a sentence without regard to the context of the rest of a paragraph leads to potential for distortion or misinterpretation.

The language of the full paragraph is very clear. The paragraph relates to changes to facts or law that lead to a situation where, "any interest on this Bond becomes includable in the gross income of the Registered Holder for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Registered Holder's after-tax yield with respect to this Bond...." Neither of these situations have occurred. It is undisputed that the interest on these Bonds have never become includable in the gross income of the Bank (Registered Holder). It is also undisputed that the after-tax yield has not changed as a result of the changes to the maximum corporate income tax rate – precisely because the interest is not gross income to the bank for tax purposes. The remainder of the paragraph relates to how any adjustment to the interest rate necessitated by one of these non-occurrences would be determined, <u>should the Bank elect to exercise its right if and when it were to arise.</u>

The Bank's interpretation is based on cherry-picked language read out of context. Standing alone, this language neither constitutes a basis to adjust the interest rate, nor does the language reflect that such an action is required. Read in context with the rest of the paragraph, the Bank's interpretation is invalid.

The Language NOT in the Bonds

"Margin Rate Factor." Beginning with its letter of January 9, 2018, to Claretha Harris with the Office of the Clerk of the Circuit Court and Comptroller, and again in the email sent to the County on May 9, 2018, the Bank relies upon and indeed calculates changes to the County's fixed interest rate based on the "Margin Rate Factor." The "Margin Rate Factor" is a phrase and concept not utilized or found within the Bonds.

The Bank also introduces a new phrase in its letter of July 16, 2018 – "tax exempt interest rate." This concept is introduced to essentially argue that the windfall of receiving a dramatic reduction in the corporate tax rate not only justifies, but requires that the Bank receive greater interest payments to be borne on the backs of public sewer system rate payers. In doing so, the Bank appears to see itself as "harmed" for the lost opportunity to invest in other types of investments in 2008. Notwithstanding that lost opportunity, the Bank continues to receive the benefit for which it bargained in 2008.

Bank of America, N.A. is a savvy and sophisticated lender and participant in global financial markets. A savvy and sophisticated lender and participant in global financial markets is fully capable of drafting and requiring specific language in negotiating and documenting a transaction. The actual final language of a transaction is what is used in interpreting its effect, and does not require the introduction of new terms in order to arrive at a valid reading of language. The interpretation of the Bank would require additional language and concepts not present within the actual language of the Bonds as finalized. For example, the Bank did provide for a very specific formula, including defined terms, regarding the "Redemption Premium" due to the Bank if the County decided to pay the Bond off early. No such similar language or definitions were included regarding this so-called mandatory gross up. Clearly the intent of the parties, the Bank and the County, was for the Bonds to bear interest at a fixed rate, short of an Event of Taxability.

Bank of America, N.A. has been a partner with the County in numerous avenues of financial business. To date, the County has not had to be concerned for the corporate citizenship of the Bank during the County's continued association with the Bank and utilization of the Bank's services. In light of both the invalidity of the Bank's interpretation, coupled with the Bank's responsibility as a corporate citizen, the County respectfully requests that the Bank reconsider its interpretation and leave the interest rates on the Bonds undisturbed.

Should the Bank elect otherwise, please accept this letter as the County's dispute to the Bank's position. As a function of that dispute, the County hereby demands that the Bank maintain all records associated with the competition for the right to purchase and secure these Bonds, including but not limited to all records in any form - paper or electronic, oral or video recordings, calculations, internal and external correspondence, tax documents, for all years applicable to the calculations or subsequent to the issuance of the Bonds. Please also retain any and all documents relating to other taxable or tax exempt financings (bonds or other "Credit Facility" as that term in used in your letter of January 9, 2018) from 2007 through the present.

Sincerely,

Mark S. Woodard

Mark S. Woodard
County Administrator