

RESOLUTION 2003-069

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AGREEING TO PARTICIPATION IN THE POOLED COMMERCIAL PAPER LOAN PROGRAM OF THE FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION; AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION; AUTHORIZING THE BORROWING OF NOT EXCEEDING \$4,000,000 PURSUANT TO THE TERMS OF THE LOAN AGREEMENT IN ORDER TO FINANCE THE ACQUISITION OF CERTAIN REAL PROPERTY AND THE ACQUISITION OF AN EXISTING OFFICE FACILITY, INCLUDING REIMBURSEMENT OF CERTAIN COSTS INCURRED BY THE CITY IN CONNECTION THEREWITH, IF ANY; AUTHORIZING THE EXECUTION OF A LOAN NOTE OR LOAN NOTES TO EVIDENCE SUCH BORROWING AND AGREEING TO SECURE SUCH BORROWING WITH A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES AS PROVIDED IN THE LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECT SUCH BORROWING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Commission has been established for the principal purpose of issuing commercial paper notes in order to provide funds to loan to public agencies, such as the Public Agency, desiring to finance the cost of acquiring, constructing and equipping capital improvements and to finance other governmental needs.

WHEREAS, in furtherance of the foregoing, the Commission shall issue, from time to time, commercial paper notes to be known as "Florida Local Government Finance Commission Pooled Commercial Paper Notes, Series A (Governmental Issue)" and shall loan the proceeds of such Series A Notes to public agencies, including the Public Agency.

WHEREAS, pursuant to the authority of the Act, the Commission has agreed to loan, from time to time, to the Public Agency such amounts as shall be authorized herein and in

the Loan Agreement in order to enable the Public Agency to finance, refinance and/or reimburse the costs of the acquisition, construction and equipping of various capital improvements, including Project A-1, and the Public Agency desires to borrow such amounts from the Commission subject to the terms and conditions of the Loan Agreement.

WHEREAS, there is presently a need by the Public Agency to finance the acquisition of Project A-1 and the most cost-effective means by which to finance Project A-1 is by use of moneys obtained pursuant to the Program by means of Loan No. A-1.

WHEREAS, the Public Agency is authorized under and pursuant to the Act to enter into the Loan Agreement for the purposes set forth therein.

WHEREAS, the Public Agency hereby determines that the provision of funds by the Commission to the Public Agency in the form of the Loan pursuant to the terms of the Loan Agreement and the financing of the costs of Project A-1 will assist in the development and maintenance of the public welfare of the residents of the Public Agency, and shall serve a public purpose by improving the health and living conditions, and providing governmental services, facilities and programs and will promote the most efficient and economical development of such services, facilities and programs.

WHEREAS, Loan No. A-1 shall be repaid solely from the Designated Revenues described in the Loan Agreement. Such Designated Revenues shall include moneys derived from a covenant to budget and appropriate legally available Non-Ad Valorem Revenues. The ad valorem taxing power of the Public Agency will never be necessary or authorized to make the Loan Repayments.

WHEREAS, due to the potential volatility of the market for tax-exempt obligations such as the Note or Notes to be issued evidencing Loan No. A-1, the complexity of the transactions relating to such Note or Notes and the uniqueness of the Program, it is in the best interest of the Public Agency to deliver the Note or Notes to the Commission pursuant to the Program by a negotiated sale pursuant to Section 218.385(1), Florida Statutes, allowing the Public Agency to utilize the Program in which it participates from time to time and to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Public Agency to obtain the best possible price, issuance costs and interest rate for such Note or Notes.

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

Section 1. Recitals. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. Definitions. Unless the context of use indicates another meaning or intent, the following words and terms as used in this Resolution shall have the following meanings.

"Act" means, collectively, Part I, Chapter 166, Florida Statutes, Part I, Chapter 163, Florida Statutes, the City Charter of the City of Marathon, Florida, and all other applicable provisions of law.

"Additional Payments" means the payments required to be made by the Public Agency pursuant to Sections 5.02(b), 5.02(c), 5.02(d), 5.05 and 6.06(e) of the Loan Agreement.

"City Clerk" means the City Clerk of the City and such other person as may be duly authorized to act on his or her behalf.

"City Manager" means the City Manager of the City and such other person as may be duly authorized to act on his or her behalf.

"Commission" means the Florida Local Government Finance Commission, and any assigns or successors thereto.

"Council" means the City Council of the Public Agency.

"Designated Revenues" means (1) Public Agency Moneys budgeted and appropriated for purposes of payment of the Loan Repayments and any other amounts due under the Loan Agreement, and (2) the proceeds of the Loan pending the application thereof.

"Loan" means the loan to be made by the Commission to the Public Agency from proceeds of the Series A Notes in accordance with the terms of this Resolution and of the Loan Agreement.

"Loan Agreement" means the Loan Agreement, in substantially the form attached hereto as Exhibit A, between the Public Agency and the Commission, pursuant to which the Commission will loan a portion of the Series A Notes proceeds to the Public Agency, as the same may be amended and supplemented.

"Loan No. A-1" means the loan designated as "Loan No. A-1," the proceeds of which shall be used to finance Project A-1.

"Loan Note" means a note of the Public Agency evidencing the obligations incurred under the Loan Agreement by the Public Agency on account of a Draw made in regard to a Loan, which shall be in substantially the form provided in Exhibit I to the Loan Agreement.

"Loan Rate" has the meaning set forth in the Loan Agreement.

"Loan Repayments" or **"Repayments"** means the payments of principal and interest at the Loan Rate on the Loan amounts payable by the Public Agency pursuant to the provisions of the Loan Agreement and all other payments, including Additional Payments, payable by the Public Agency pursuant to the provisions of the Loan Agreement.

"Mayor" means the Mayor of the Public Agency, and such other person as may be duly authorized to act on his or her behalf.

"Non-Ad Valorem Revenues" means all legally available revenues of the Public Agency derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available to make the Loan Repayments required in the Loan Agreement, but only after provision has been made by the Public Agency for the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Public Agency or which are legally mandated by applicable law.

"Program" means the Pooled Commercial Paper Loan Program established by the Commission.

"Project A-1" means the acquisition of the office facility currently being used by the Public Agency as City Hall, the acquisition of certain other real property located at 98th/99th Street, Ocean, Overseas Highway to be used for recreational and/or municipal purposes, and the acquisition of any additional real property to be used by the Public Agency which is approved for acquisition by the Council, all as more particularly described in the plans and specifications on file with the City, as the same may be amended or modified from time to time.

"Public Agency" means the City of Marathon, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida, sometimes referred to herein as "City."

"Public Agency Moneys" shall mean the moneys budgeted and appropriated by the Public Agency for payment of the Loan Repayments and any other amounts due hereunder from Non-Ad Valorem Revenues pursuant to the Public Agency's covenant to budget and appropriate such Non-Ad Valorem Revenues contained in Section 6.04 of the Loan Agreement.

"Resolution" means this Resolution, as the same may from time to time be amended, modified or supplemented.

"Series A Notes" means the Commission's Pooled Commercial Paper Notes, Series A (Governmental Issue), to be issued from time to time by the Commission.

The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Resolution; the term "heretofore" shall mean before the date of adoption of this Resolution; and the term "hereafter" shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

Section 3. Authority for Resolution. This Resolution is adopted pursuant to the provisions of the Act.

Section 4. Agreement to Participate in Program. Adoption of this Resolution will constitute an agreement of the Public Agency to participate in the Program pursuant to the terms of the Loan Agreement.

Section 5. Authorization of Loan Agreement. In connection with the Loan, the Public Agency hereby authorizes and directs the Mayor to execute, and the City Clerk to attest under the seal of the Public Agency, the Loan Agreement, and to deliver the Loan Agreement to the Commission for its execution. All of the provisions of the Loan Agreement, when executed and delivered by the Public Agency as authorized herein and when duly authorized, executed and delivered by the Commission, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein, and the Loan Agreement shall be in substantially the form attached hereto as Exhibit A, with such changes, amendments, modifications, omissions and additions, including the date of such Loan Agreement, as may be approved by the Mayor. Execution of the Loan Agreement by the Mayor shall be deemed to be conclusive evidence of approval of such changes.

Section 6. **Terms of Loan.** The Public Agency hereby approves of the Loan in an aggregate principal amount of not exceeding \$4,000,000 for the purposes of providing the Public Agency with sufficient funds to finance, refinance or reimburse the costs of Project A-1. The Mayor and the City Clerk are hereby authorized to execute, seal and deliver on behalf of the Public Agency a Loan Note or Notes and other documents, instruments, agreements and certificates necessary or desirable to effectuate Loan No. A-1 as provided in the Loan Agreement. The Loan Notes shall reflect the terms of Loan No. A-1 and shall be substantially in the form attached to the Loan Agreement as Exhibit I. The City Manager shall determine the date of funding of Loan No. A-1 and the amount thereof in accordance with the terms of the Loan Agreement as appropriate to finance Project A-1 and is permitted by the Loan Agreement. Loan No. A-1 shall mature in such amounts and at such times as the City Manager shall determine and shall be permitted by the Loan Agreement. Loan No. A-1 shall bear interest at the Loan Rate in accordance with the terms of the Loan Agreement. The Public Agency further agrees to make all Loan Repayments required of it pursuant to the terms of the Loan Agreement. The letter of credit fee with respect to the Loan shall equal 40 basis points or such other amount as may be agreed upon between the Public Agency and Wachovia Bank.

Section 7. **Authorization of Project A-1.** The Public Agency does hereby authorize the acquisition of Project A-1 and ratifies and confirms all actions taken to date relative to Project A-1.

Section 8. **Security for the Loan.** The Public Agency's obligation to repay the Loan will be secured by a pledge of and lien upon the Designated Revenues in accordance with the terms of the Loan Agreement. The obligation of the Public Agency to repay the Loan shall not be deemed a pledge of the faith and credit or taxing power of the Public Agency and such obligation shall not create a lien on any property whatsoever of or in the Public Agency other than the Designated Revenues.

Section 9. **General Authority.** The members of the Council and the officers, attorneys and other agents or employees of the Public Agency are hereby authorized to do all acts and things required of them by this Resolution and the Loan Agreement, or desirable or consistent with the requirements of this Resolution and the Loan Agreement, for the full punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan Agreement, and each member, employee, attorney and officer of the Public Agency or its Council is hereby authorized and directed to execute and deliver any and all papers and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Loan Agreement.

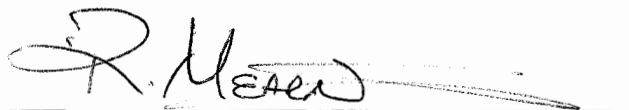
Section 10. Severability. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 11. Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

Section 12. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22 day of April, 2003.

THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

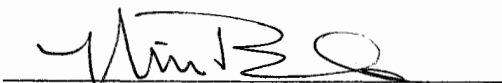
AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None
ABSENT: NOne
ABSTAIN: None

ATTEST:



Cindy L. Becklund
City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney