

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2008-142**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT TO ENGAGE RBC CAPITAL MARKETS CORPORATION AS FINANCIAL ADVISOR TO ASSIST THE CITY WITH THE FINANCING OF THE WASTEWATER AND STORMWATER UTILITY PROJECTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.**

**WHEREAS**, RBC Capital Markets Corporation has recently assisted the City with placing a ten million dollar wastewater system revenue bond series 2008 through the Florida Rural Utility Financing Commission (FRUFC) in conjunction with the Florida Department of Environmental Protection (DEP) / State Revolving Loan Fund Program (SRF); and

**WHEREAS**, RBC has specialized knowledge and experience with financing related to municipal and other government capital infrastructure and utility projects, and as such, this procurement process is exempt from the competitive bidding requirements of Florida Statutes and the City of Marathon; and

**WHEREAS**, FRUFC has recently created its Flexible Term Finance Program (“the Program”) to finance water and sewer projects throughout the State of Florida, specifically for projects on the SRF contingency list; and

**WHEREAS**, through the Program, FRUFC has provided a funding commitment to the City of Marathon for its projects in the approximate amount of \$60,000,000; which will provide the City with the remaining funds necessary to complete the Capital Wastewater and Stormwater projects in accordance with its’ CIP; and

**WHEREAS**, the engagement of RBC will provide the City important assistance in completing the financing transactions in furtherance of the best interest of the City and the customers of the utilities.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:**

**Section 1.** The above recitals are true and correct and incorporated herein.


**Section 2.** Council hereby approves the Agreement with RBC Capital Markets Corporation As Financial Advisor To Assist The City With The Financing Of The Wastewater & Stormwater Utility Projects, a copy of which is attached hereto as Exhibit "A", together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

**Section 3.** The City Manager or his designee is authorized to execute the agreement on behalf of the City.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 23<sup>rd</sup> day of September, 2008.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Edward P. Worthington, Mayor

AYES: Cinque, Bull, Tempest, Worthington  
NOES: Vasil  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
Jimmy Morales, City Attorney



100 Second Avenue South, Suite 800  
St. Petersburg, Florida 33701  
(727) 895-8800  
(727) 895-8895 Fax

September 2, 2008

Mr. Peter Rosasco, CPA  
Finance Director  
City of Marathon  
9805 Overseas Hwy  
Marathon, FL 33050

Dear Mr. Rosasco,

1. **Retention of RBC Capital Markets Corporation.** We understand that the City of Marathon (“Issuer”, “City”, or “you”) will have under consideration the issuance of obligations evidencing indebtedness (“Obligations”), either in a single financing or in a series of financings, and that in connection with the issuance of such Obligations you hereby agree to retain RBC Capital Markets Corporation (“RBC CM”) as your financial advisor in accordance with the terms of this financial advisory agreement (“Agreement”). This Agreement shall apply to all Obligations that may be authorized and/or issued or otherwise created or assumed during the period in which this Agreement is effective.
  
2. **Scope of Services.** As financial advisor, we agree to perform the following services:
  - (a) Analyze the financing alternatives available to the Issuer, taking into account its borrowing capacity, future financing needs, policy considerations, and such other factors as we deem appropriate to consider.
  - (b) Recommend a plan for the issuance of Obligations that will include: (1) the type of bonds (current interest, capital appreciation, deferred income, etc.); (2) the date of issue; (3) principal amount; (4) interest structure (fixed or variable); (5) interest payment dates; (6) a schedule of maturities; (7) early redemption options; (8) security provisions; (9) appropriate management fee and takedown; and (10) other matters that we consider appropriate to best serve the Issuer’s interests. To the extent appropriate, the plan will address strategies in addition to the issuance of obligations, such as interest rate derivative transactions.
  - (c) Advise you of current conditions in the relevant debt market, upcoming bond issues, and other general information and economic data which might reasonably be expected to influence interest rates, bidding conditions or timing of issuance.
  - (d) Organize and coordinate the financing team. Upon request, we will assist the Issuer in selecting the paying agent, escrow agent and verification agent, as the particular transaction may require, each of whom will be retained and compensated by you. In a negotiated offering, we will solicit and evaluate underwriter proposals upon request and make a recommendation for the hiring of the underwriter(s).

- (e) Work with counsel on the transaction, including bond counsel whom you retain, who will be recognized municipal bond attorneys, whose fees will be paid by you, and who will prepare the proceedings, provide legal advice concerning the steps necessary to be taken to issue the Obligations, and issue an unqualified opinion (in a form standard for the particular type of financing) approving the legality of the Obligations and (as applicable) tax exemption of the interest paid thereon. In addition, bond counsel will issue an opinion to the effect that the disclosure document does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Generally, working with counsel will mean coordinating with the attorneys and assisting in the financial advisory aspects of preparing appropriate legal proceedings and documents, including documents concerning any required election.
- (f) Assist in the Issuer's preparation of the Preliminary Official Statement ("POS") and the Official Statement ("OS") or equivalent document as the particular transaction may require (such as a private placement memorandum), if any.
- (g) Make recommendations as to the need for credit rating(s) for the proposed Obligations and, should the Issuer seek a rating, coordinate the process of working with the rating agency or agencies and assist in the preparation of presentations as necessary.
- (h) Make recommendations as to obtaining credit enhancement for the Obligations, if appropriate, and, should the issuer seek any such credit enhancement, coordinate the process and assist in the preparation of presentations as necessary.
- (i) Attend meetings of governing bodies of the Issuer, its staff, representatives or committees as requested.
- (j) After closing, we will deliver to the Issuer and the paying agent(s) definitive debt records, including a schedule of annual debt service requirements on the Obligations.

You acknowledge that advice and recommendations involve professional judgment on our part and that the results cannot be, and are not, guaranteed.

3. **Information to be Provided to RBC CM.** You agree (upon our request) to provide or cause to be provided to us information relating to the Issuer, the security for the Obligations, and other matters that we consider appropriate to enable us to perform our duties under this Agreement. With respect to all information provided by you or on your behalf to us under this Agreement, you agree upon our request to obtain certifications (in a form reasonably satisfactory to us) from appropriate Issuer representatives as to the accuracy of the information and to use your best efforts to obtain certifications (in a form reasonably satisfactory to us) from representatives of parties other than the Issuer. You acknowledge that we are entitled to rely on the accuracy and completeness of all information provided by you or on your behalf.
4. **Official Statement.** You acknowledge that you are responsible for the contents of any POS and OS and will take all reasonable steps to ensure that the governing body of the Issuer has reviewed and approved the content of the POS and OS. You acknowledge that you are subject to and may be held liable under federal or state securities laws for misleading or incomplete disclosure. To the extent permissible by law, you agree to indemnify and hold us harmless against any losses, claims, damages or liabilities to which we may become subject under federal or state law or regulation insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon omission or alleged omission to state in the disclosure document a material fact required to be stated therein or necessary to make the statements therein not

misleading, other than any claims that arise from the willful misconduct or gross negligence of RBC CM and its officers, employees or agents; and will reimburse us for any legal or other expenses reasonably incurred by us in connection with investigating or defending any such loss, claim, damage, liability or action.

5. **Fees and Expenses.** In connection with the authorization, issuance, and sale of Obligations, you agree that our fee will be computed as shown on the "Fee Schedule" attached hereto. Our fee will become due and payable simultaneously with the delivery of the Obligations to the Purchaser. Our fee does not include and we will be entitled to reimbursement from you for any actual "out-of-pocket" expenses incurred in connection with the provision of our services, including reasonable travel expenses or any other expenses incurred on your behalf. These expenses will be due and payable when presented to the Issuer, which normally will be simultaneously with the delivery of the Obligations to the Purchaser.
6. **Interest Rate Derivatives.** If you decide to consider the use of interest rate derivative products as part of the financing plan for Obligations covered by this Agreement, we will be pleased to provide our assistance upon request. The nature of our assistance will be set forth in an amendment to this Agreement or in another separate document.
7. **Term of Agreement and Waiver of Sovereign Immunity.** This Agreement shall be for a period of 12 months (the "Term") from its date; however, this Agreement may be terminated by either party upon 30 days written notice. If neither party provides written termination prior to the end of the Term, this Agreement will automatically renew for another Term. You agree and understand that this Agreement is a contract for services and waive any claims you may have that you are immune from suit by virtue of any law, statute, or claim for any matter arising from or relating to this Agreement. Paragraphs 5 (insofar as it concerns reimbursable expenses) and 7 (insofar as it concerns waiver of sovereign immunity) will survive any termination of this Agreement.
8. **Nondiscrimination.** During the term of this Agreement, RBC CM shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination.
9. **Ownership and Access to Records and Audits.** All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from RBC CM providing services to the City under this Agreement shall be the property of the City. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of RBC CM involving transactions related to this Agreement. The City may cancel this Agreement for refusal by RBC CM to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
10. **Independent Contractor.** RBC CM and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

11. **Compliance with Laws.** RBC CM shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to services provided hereunder.
12. **Prohibition Of Contingency Fees.** RBC CM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for RBC CM, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for RBC CM, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
13. **Miscellaneous Provisions.** This Agreement is submitted in duplicate originals. Your acceptance of this Agreement will occur upon the return of one original executed by an authorized Issuer representative, and you hereby represent that the signatory below is so authorized. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of the Agreement, which shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties as to the subject matter thereof and supersedes any prior understandings or representations. This Agreement may be amended or modified only by a writing signed by both parties. This Agreement is solely for the benefit of you and RBC CM, and no other person. RBC CM may not assign this Agreement without your prior written consent.

Respectfully submitted,

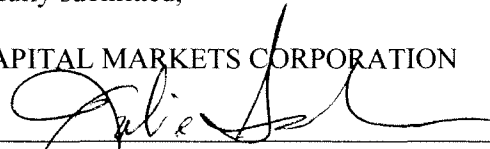
RBC CAPITAL MARKETS CORPORATION

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

Name: Julie A. Santamaria

Title: Director

Date: \_\_\_\_\_

  
9/23/08

**ACCEPTANCE**

ACCEPTED pursuant to motion adopted by the governing body of the City of Marathon on 9/23, 2008.

By Clyde Burnett  
Name CLYDE BURNETT  
Title CITY MANAGER

Attest:

By Diane Clavier  
Name Diane Clavier  
Title City Clerk  
Date 10-24-08

## FEE SCHEDULE

1. In connection with the issuance of debt, RBC CM shall be paid at closing in accordance with the following schedule, with a minimum fee of \$15,000 per transaction:

<b>Par Amount of Debt Issued</b>	<b>Fee Per \$1,000</b>
First \$10,000,000	\$1.50
\$10,000,000 - \$25,000,000	\$1.25
\$25,000,000 - \$40,000,000	\$1.00
\$40,000,000 - \$100,000,000	\$0.75
\$100,000,000 and more	\$0.50

An exception to this minimum fee is the Issuer's 2008 interim utility financing to be taken out by the Department of Environmental Protection, for which RBC CM shall be paid a fee of \$7,500 upon closing pursuant to the terms of that program.

2. For services not involving the issuance of debt and of a comprehensive nature agreed upon by both parties, RBC CM shall be paid on an hourly basis for time expended by its personnel, as follows:

Managing Director and Director	\$185 per hour
Vice President	\$175 per hour
Assistant Vice President and Financial Analyst	\$130 per hour
Support Staff	\$ 25 per hour

Our fee does not include and we will be entitled to direct reimbursement from the Issuer for any "out-of-pocket" expenses incurred in connection with the services described above, including but not limited to reasonable travel expenses or any other expenses incurred on behalf of the Issuer. Reimbursement for these expenses will be due upon receipt of an invoice from RBC CM and is not contingent on completion of the transaction.