

RESOLUTION NO. 2009-73

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA; AUTHORIZING THE ISSUANCE OF ITS UTILITY SYSTEM REVENUE BONDS IN VARIOUS SERIES TO FINANCE IMPROVEMENTS TO THE UTILITY SYSTEM AND PAY THE COSTS OF ISSUANCE OF SUCH BONDS AS DETERMINED BY SUBSEQUENT RESOLUTION; PLEDGING TO SECURE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SUCH BONDS CERTAIN PLEDGED REVENUES; MAKING CERTAIN COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE HOLDERS OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

TABLE OF CONTENTS

	PAGE
<b>ARTICLE I</b>	<b>GENERAL ..... 1</b>
Section 1.01.	Definitions ..... 1
Section 1.02.	Authority for Resolution ..... 13
Section 1.03.	Resolution to Constitute Contract..... 13
Section 1.04.	Findings ..... 14
<b>ARTICLE II</b>	<b>AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS..... 15</b>
Section 2.01.	Authorization of Bonds ..... 15
Section 2.02.	[Reserved]..... 15
Section 2.03.	Application of Bond Proceeds ..... 16
Section 2.04.	Execution of Bonds ..... 16
Section 2.05.	Authentication ..... 17
Section 2.06.	Temporary Bonds..... 17
Section 2.07.	Bonds Mutilated, Destroyed, Stolen or Lost..... 17
Section 2.08.	Interchangeability, Negotiability and..... 18
Section 2.09.	Global Book-Entry System ..... 19
Section 2.10.	Coupon Bonds ..... 20
Section 2.11.	Form of Bonds ..... 20
<b>ARTICLE III</b>	<b>REDEMPTION OF BONDS ..... 27</b>
Section 3.01.	Privilege of Redemption ..... 27
Section 3.02.	Selection of Bonds to be Redeemed ..... 27
Section 3.03.	Notice of Redemption..... 27
Section 3.04.	Redemption of Portions of Bonds..... 28
Section 3.05.	Payment of Redeemed Bonds..... 29
<b>ARTICLE IV</b>	<b>SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF..... 30</b>
Section 4.01.	Bonds not to be Indebtedness of Issuer ..... 30
Section 4.02.	Security for Bonds..... 30
Section 4.03.	Construction Fund ..... 30

Section 4.04.	Funds and Accounts .....	31
Section 4.05.	Flow of Funds .....	32
Section 4.06.	Rebate Fund .....	39
Section 4.07.	Investments .....	40
Section 4.08.	Separate Accounts .....	41
<b>ARTICLE V</b>	<b>COVENANTS; DISCLOSURE .....</b>	<b>42</b>
Section 5.01.	General.....	42
Section 5.02.	Operation and Maintenance .....	42
Section 5.03.	Annual Budget.....	42
Section 5.04.	Rates .....	42
Section 5.05.	[Reserved].....	43
Section 5.06.	Books and Records .....	43
Section 5.07.	Annual Audit.....	43
Section 5.08.	No Mortgage or Sale of the System .....	43
Section 5.09.	Insurance .....	45
Section 5.10.	No Free Service.....	45
Section 5.11.	No Impairment .....	45
Section 5.12.	Compulsory Connections .....	46
Section 5.13.	Enforcement of Charges .....	46
Section 5.14.	Covenants With Credit Banks and Insurers .....	46
Section 5.15.	Special Covenants Relating to Reserve Fund Insurance Policy or Reserve Fund Letter of Credit .....	46
Section 5.16.	Consulting Engineers .....	47
Section 5.17.	Federal Income Tax Covenants; Taxable Bonds.....	47
Section 5.18.	Continuing Disclosure Regarding Bonds .....	48
<b>ARTICLE VI</b>	<b>SUBORDINATED INDEBTEDNESS AND BONDS.....</b>	<b>49</b>
Section 6.01.	Subordinated Indebtedness .....	49
Section 6.02.	Issuance of Bonds .....	49
Section 6.03.	Bond Anticipation Notes and Grant Anticipation Notes .....	52
Section 6.04.	Accession of Subordinated Indebtedness to Parity Status with Bonds .....	52

<b>ARTICLE VII</b>	<b>DEFAULTS AND REMEDIES .....</b>	<b>53</b>
Section 7.01.	Events of Default .....	53
Section 7.02.	Remedies .....	53
Section 7.03.	Directions to Trustee as to Remedial Proceedings .....	54
Section 7.04.	Remedies Cumulative.....	54
Section 7.05.	Waiver of Default .....	54
Section 7.06.	Application of Moneys After Default.....	55
Section 7.07.	Control by and Notice to Insurer or Credit Bank .....	56
<b>ARTICLE VIII</b>	<b>SUPPLEMENTAL RESOLUTIONS .....</b>	<b>57</b>
Section 8.01.	Supplemental Resolution Without Bondholders' Consent.....	57
Section 8.02.	Supplemental Resolution With Bondholders', Insurer's and Credit Bank's Consent .....	58
Section 8.03.	Amendment with Consent of Insurer and/or Credit Bank Only .....	59
<b>ARTICLE IX</b>	<b>MISCELLANEOUS; DEFEASANCE.....</b>	<b>61</b>
Section 9.01.	Defeasance.....	61
Section 9.02.	Capital Appreciation Bonds .....	62
Section 9.03.	General Authority .....	63
Section 9.04.	No Personal Liability .....	63
Section 9.05.	Third Party Beneficiaries.....	63
Section 9.06.	Sale of Bonds.....	63
Section 9.07.	Severability of Invalid Provisions .....	64
Section 9.08.	Repeal of Inconsistent Resolutions .....	64
Section 9.09.	Table of Contents and Headings not Part Hereof.....	64
Section 9.10.	Effective Date .....	64

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA:

ARTICLE I

GENERAL

Section 1.01. Definitions. When used in this Resolution, the following terms shall have the following meanings, unless the context clearly otherwise requires:

“Accountant” shall mean the independent certified public accountant or firm of certified public accountants at the time employed by the Issuer under the provisions of this Resolution to perform and carry out the duties imposed on the Accountant by this Resolution.

“Accreted Value” shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Interest Date next preceding the date of computation or the date of computation if an Interest Date, such interest to accrue and compound semiannually, plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bonds, if such date of computation shall not be an Interest Date, a portion of the difference between the Accreted Value as of the immediately preceding Interest Date and the Accreted Value as of the immediately succeeding Interest Date, calculated based on the assumption that Accreted Value accrues during any semiannual period in equal daily amounts on the basis of a 360-day year.

“Act” shall mean the Constitution and laws of the State of Florida, Chapter 166, Part II, Florida Statutes, Charter of the Issuer and other applicable provisions of law.

“Additional Bonds” shall mean the obligations issued at any time under the provisions of Section 6.02 hereof on a parity with the Bonds.

“Additional Security” shall mean, with respect to any Series of Bonds, any legally available revenues pledged by a Supplemental Resolution for the payment of such Series of Bonds.

“Amortization Installment” shall mean the amount designated and established as an Amortization Installment with respect to any Term Bonds by Supplemental Resolution.

“Annual Audit” shall mean the annual audit prepared pursuant to the requirements of Section 5.07 hereof.

“Annual Budget” shall mean the annual budget prepared pursuant to the requirements of Section 5.03 hereof.

“Authorized Amount” shall mean, with respect to Commercial Paper, the maximum principal amount of commercial paper which is then authorized by the Issuer to be outstanding at any one time.

“Authorized Depository” shall mean the State Board of Administration of Florida or a bank or trust company in the State which is eligible under the laws of the State to receive funds of the Issuer.

“Authorized Investments” shall mean investments permitted by applicable law and the Issuer's written investment policy, if any, as may be further limited as set forth in a Supplemental Resolution.

“Authorized Issuer Officer” for the performance on the behalf of the Issuer of any act of the Issuer or the execution of any instrument on behalf of the Issuer shall mean any person authorized by resolution or certificate of the Issuer to perform such act or sign such document.

“Bond Amortization Account” shall mean the separate account of that name in the Debt Service Fund established pursuant to Section 4.04 hereof.

“Bond Counsel” shall mean any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America approved by the Issuer.

“Bond Insurance Policy” shall mean the financial guaranty insurance policy or policies issued by an Insurer guaranteeing the payment of the principal of and interest on any portion of the Bonds.

“Bond Service Requirement” for any Series for any Fiscal Year shall mean the sum of that portion of the Debt Service Requirement for such Fiscal Year allocable to the Bonds of such Series and all other payments required by the Resolution to be paid in such Fiscal Year with respect to the Bonds of such Series, which shall include such Series' pro rata share of all deposits to the Reserve Fund in such Fiscal Year, if any, and redemption premiums, if any, payable in such Fiscal Year.

“Bondholder” or “Holder” or “holder” shall mean any Person who shall be the registered owner of any Outstanding Bond or Bonds according to the registration books of the Issuer.

“Bonds” shall mean all Bonds or other indebtedness issued hereunder (such indebtedness not necessarily defined as a “Bond” but being issued on parity under the terms hereof) together with any Additional Bonds and any Subordinated Indebtedness which accedes to the status of Bonds pursuant to Section 6.04 hereof.

“Capital Appreciation Bonds” shall mean those Bonds so designated by Supplemental Resolution, which may be either Serial Bonds or Term Bonds and which shall bear interest payable only at maturity or redemption. In the case of Capital Appreciation Bonds that are convertible to Bonds with interest payable prior to maturity or prior to redemption of such Bonds, such Bonds shall be considered Capital Appreciation Bonds only during the period of time prior to such conversion.

“Capital Appreciation and Income Bonds” shall mean those Bonds so designated by Supplemental Resolution, which may be either Serial Bonds or Term Bonds as to which accruing interest is not paid prior to the specified interest commencement date and is compounded periodically on certain designated dates prior to the interest commencement date for such Series of Capital Appreciation and Income Bonds, all as provided in the Supplemental Resolution of the Issuer authorizing such Capital Appreciation and Income Bonds.

“Cede & Co” shall mean the entity which is the nominee for bond registration purposes for DTC.

“City Clerk” shall mean the City Clerk of the Issuer or her designee.

“City Manager” shall mean the City Manager of the Issuer or his designee.

“Code” shall mean the United States Internal Revenue Code of 1986, as the same may be amended from time to time, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service, and all other promulgations of said service pertaining thereto.

“Commercial Paper” shall mean commercial paper obligations with maturities of not more than two hundred seventy (270) days from the date of issuance thereof which are issued and reissued by the Issuer from time to time and are outstanding up to an Authorized Amount.

“Construction Fund” shall mean any Construction Fund which may be established pursuant to Section 4.03 hereof.

“Consulting Engineers” shall mean one or more qualified and recognized consulting engineers or firm of consulting engineers having favorable repute, skill and experience with respect

to the planning, design and operation of public utility systems similar to the System, who shall be retained from time to time by the Issuer.

“Cost” when used in connection with a Project, shall mean (1) the Issuer's cost of physical construction; (2) costs of acquisition by or for the Issuer of such Project; (3) costs of land and interests therein and the costs of the Issuer incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Bonds and other obligations relating to the Project during the construction period of such Project and for a reasonable period thereafter; (6) engineering, legal and other consultant fees and expenses; (7) costs and expenses incidental to the issuance of the Bonds including bond insurance premium, rating agency fees and the fees and expenses of any auditors, Paying Agent, Registrar, Credit Bank or depository; (8) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any indebtedness of the Issuer (other than the Bonds) incurred for such Project; (9) costs of machinery or equipment required by the Issuer for the commencement of operation of such Project; and (10) any other costs permitted by law and this Resolution and shall include reimbursement to the Issuer for any such items of Cost heretofore paid by the Issuer. Any Supplemental Resolution may provide for additional items to be included in the aforesaid Costs.

“Coupon Bonds” shall mean any Bonds the interest payable on which shall be represented by bearer coupons attached thereto, and the interest on which Bonds shall be payable only upon the presentation and surrender of such coupons to the Paying Agent as they severally fall due.

“Credit Bank” shall mean as to any particular Series of Bonds, the Person (other than an Insurer) providing a letter of credit, a line of credit or another credit or liquidity enhancement facility, as designated in the Supplemental Resolution providing for the issuance of such Bonds.

“Credit Facility” shall mean as to any particular Series of Bonds, a letter of credit, a line of credit or another credit or liquidity enhancement facility (other than an insurance policy issued by an Insurer), as approved in the Supplemental Resolution providing for the issuance of such Bonds.

“Debt Service Fund” shall mean the Debt Service Fund established pursuant to Section 4.04 hereof.

“Debt Service Requirement” for any Fiscal Year shall mean the sum of:

(1) The aggregate amount required to pay the interest becoming due on the Bonds, other than Capital Appreciation Bonds, during such Fiscal Year, except to the extent that such interest shall have been provided by payments into the Interest Account out of Bond proceeds or other sources (other than Net Revenues) for a specified period of time.



(2) The aggregate amount required to pay the principal becoming due on the Bonds, other than Capital Appreciation Bonds, for such Fiscal Year. For purposes of this definition: (a) the stated maturity date of any Term Bonds shall be disregarded and the principal of such Term Bonds shall be deemed to be due in the Fiscal Years and in the amounts of the Amortization Installments applicable to such Term Bonds; and (b) the principal amount of any single maturity of Term Bonds for which the Issuer shall have established no Amortization Installments shall be deemed to be due in the Fiscal Years and in such amounts as shall provide for the amortization of such principal amount over a term equal to the number of years such Term Bonds shall be Outstanding to such maturity and in equal annual installments of combined principal and interest; provided, however, that if the Issuer has employed a Credit Facility in connection with any such Term Bonds having no Amortization Installments the amortization of such Term Bonds shall be deemed to correspond to the applicable terms of such Credit Facility.

(3) The aggregate amount required to pay the Accreted Value due on any Capital Appreciation Bonds maturing in such Fiscal Year.

(4) The following assumptions shall be applicable to calculating the Debt Service Requirement as follows:

(a) The interest on Variable Rate Bonds shall be the interest to accrue on such Variable Rate Bonds for such Fiscal Year; provided, however, that for purposes of determining the Maximum Annual Debt Service, the interest on Variable Rate Bonds shall be assumed to be the greater of (A) one hundred ten percent (110%) of the average interest rate on such Variable Rate Bonds during the twelve months ending with the month preceding the date of calculation or such shorter period that such Variable Rate Bonds shall have been Outstanding, and (B) the actual rate of interest on such Variable Rate Bonds on the date of calculation; provided that if a Series of Variable Rate Bonds had not been Outstanding prior to the date of calculation, the amount set forth in clause (A) above shall be calculated as though said Variable Rate Bonds had been Outstanding for the twelve month period by using the average interest rate for comparable securities for such period as certified by an underwriting or investment banking firm experienced in marketing such securities;

(b) In the case of Option Bonds, the "put" date or dates shall be ignored if said "put" is payable from a Credit Facility, and the stated dates for principal payments shall be used, and in the case of Bonds secured by a Credit Facility, the repayment terms of each Credit Facility (whether or not evidenced by provisions included in the Bonds, such as interest rate adjustments to apply if an unreimbursed drawing on the Credit Facility shall occur) shall be ignored unless the issuer of the Credit Facility has advanced funds thereunder and such amount has not been repaid, in which case annual Debt Service Requirement shall include the repayment schedule and interest rate or rates specified in the

documents relating to such Credit Facility, if the repayment obligation is secured on a parity with the Bonds;

(c) In the case of Capital Appreciation and Income Bonds, the principal and interest portions of the Appreciated Value of Capital Appreciation and Income Bonds shall be included in the year in which said principal and interest portions are due;

(d) In the case of commercial paper or any debt which principal is payable at maturity, the principal due shall be calculated based on 25 year level amortization and shall be calculated based on the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published); and

(e) If all or a portion of the principal of or interest on a Series of Bonds is payable from funds irrevocably set aside or deposited for such purpose, including, but not limited to, interest capitalized from the proceeds of Bonds or other indebtedness, together with projected earnings thereon to the extent such earnings are projected to be from Authorized Investments, such principal or interest shall not be included in calculating the annual Debt Service Requirement.

“DTC” shall mean the Depository Trust Company, New York, New York.

“Federal Securities” shall mean direct obligations of the United States of America and obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, none of which permit redemption prior to maturity at the option of the obligor. Federal Securities shall include any certificates or any other evidences of an ownership interest in the aforementioned obligations or in specified portions thereof (which may consist of specified portions of the interest thereon).

“Fiscal Year” shall mean the fiscal year of the Issuer, being the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law.

“Fitch” shall mean Fitch Ratings, the nationally recognized securities rating firm, and any successor and successors thereto; and if such corporation shall be dissolved or liquidated or shall no longer perform securities rating functions, shall mean any other nationally recognized securities rating firm designated by the Issuer and approved by the Insurer and/or the Credit Bank, as applicable.

“Governing Body” shall mean the City Council of the Issuer, or its successor in function.

“Gross Revenues” shall mean all income and moneys received by the Issuer from the Rates, or otherwise received by the Issuer or accruing to the Issuer in the management and operation of the System, calculated in accordance with generally accepted accounting methods employed in the operation of public utility systems similar to the System, including, without limiting the generality of the foregoing, all earnings and income derived from the investment of moneys under the provisions of this Resolution, including the Stormwater Assessments, the Wastewater Assessments and any transfers into the System from any revenue sources whatsoever.

“Initial Project” shall mean the engineering, design, acquisition, construction and improvement of the System, including land acquisition, in service areas 1 through 7 of the Issuer.

“Insurer” shall mean such Person as shall be in the business of insuring or guaranteeing the payment of principal of and interest on municipal securities, and with respect to any Series of Bonds, the Insurer which shall have insured or guaranteed payment of the principal of or interest on such Bonds, or if such Bonds secure the payment of debt service on obligations of another issuer on behalf of the Issuer, which other obligations are themselves secured by bond insurance if so provided by Supplemental Resolution, then the “Insurer” shall mean the issuer of such bond insurance.

“Interest Account” shall mean the separate account of that name in the Debt Service Fund established pursuant to Section 4.04 hereof.

“Interest Date” shall mean such date or dates for the payment of interest on a Series of Bonds as shall be provided by Supplemental Resolution.

“Issuer” shall mean the City of Marathon, Florida, and any governmental entity acting as its successor.

“Local Government Infrastructure Surtax” shall mean the tax levied and collected within Monroe County, Florida, pursuant to Section 212.055(2), Florida Statutes, and distributed to the City pursuant to Monroe County Ordinance Nos. 13-1989, enacted on May 23, 1989, and 01-2000, enacted on January 19, 2000; as the same may be extended from time to time.

“Local Government Infrastructure Surtax Revenues” shall mean the City’s portion of the Local Government Infrastructure Surtax when, as, and if distributed to the City in each year Bonds are outstanding, pursuant to the provisions of Section 212.055(2)(c), Florida Statutes.

“Maximum Debt Service Requirement” shall mean, as of any particular date of calculation, the greatest annual Debt Service Requirement for the Bonds for the then current or any future Fiscal Year.

“Maximum Interest Rate” shall mean, with respect to any particular Variable Rate Bonds, a numerical rate of interest, which shall be set forth in the Supplemental Resolution delineating the details of such Bonds, that shall be the maximum rate of interest such Bonds may at any time bear in the future in accordance with the terms of such Supplemental Resolution.

“Mayor” shall mean the Mayor or Vice Mayor of the Issuer or his designee.

“Moody's Investors Service” shall mean Moody's Investors Service, the nationally recognized securities rating firm, and any successor or successors thereto; and if such corporation shall be dissolved or liquidated or shall no longer perform securities rating functions, shall mean any other nationally recognized securities rating firm designated by the Issuer and approved by the Insurer and/or the Credit Bank, as applicable.

“Net Revenues” shall mean Gross Revenues less Operating Expenses.

“Operating Expenses” shall mean the Issuer's expenses for operation, maintenance, repairs and replacements with respect to the System and shall include, without limiting the generality of the foregoing, administration expenses, insurance and surety bond premiums, the fees of any rebate compliance service or of Bond Counsel relating to compliance with the provisions of Section 148 of the Code, legal and engineering expenses, ordinary and current rentals of equipment or other property, refunds of moneys lawfully due to others, payments to pension, retirement, health and hospitalization funds, and any other expenses required to be paid for or with respect to proper operation or maintenance of the System, all to the extent properly attributable to the System in accordance with generally accepted accounting principles employed in the operation of public water utility systems similar to the System, and disbursements for the expenses, liabilities and compensation of any Paying Agent or Registrar, or trustee, under this Resolution, but does not include any costs or expenses in respect of original construction or improvement other than expenditures necessary to prevent an interruption or continuance of an interruption of the Gross Revenues or minor capital expenditures necessary for the proper and economical operation or maintenance of the System, or any provision for interest, depreciation, amortization or similar charges.

“Operation and Maintenance Fund” shall mean the Operation and Maintenance Fund created pursuant to Section 4.04 hereof.

“Option Bonds” shall mean Bonds, which may be either Serial Bonds or Term Bonds, which by their terms may be tendered by and at the option of the Holder thereof for payment by the Issuer prior to the stated maturity thereof, or the maturities of which may be extended by and at the option of the Holder thereof, such extension to be within the period, if any, prescribed by the Act.

“Outstanding” shall mean all Bonds being authenticated and delivered, except (1) any Bond in lieu of which another Bond or other Bonds have been issued under an agreement to replace lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the Holder thereof in exchange for another Bond or other Bonds under Sections 2.06, 2.07 and 2.08 hereof, (3) Bonds deemed to have been paid pursuant to Section 9.01 hereof, and (4) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity.

“Paying Agent” shall mean any paying agent for Bonds appointed by or pursuant to Supplemental Resolution and its successors or assigns, and any other Person which may at any time be substituted in its place pursuant to Supplemental Resolution.

“Person” shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or governmental entity.

“Pledged Funds” shall mean the Pledged Revenues and, until applied in accordance with the provisions of this Resolution, the proceeds of the Bonds, and all moneys, including investments thereof, in the funds and accounts established hereunder, except (i) the Rebate Fund and (ii) to the extent moneys on deposit in a subaccount of the Reserve Fund and/or an account of the Construction Fund are pledged solely for the payment of the Series of Bonds for which such account was established in accordance with the provisions hereof.

“Pledged Revenues” shall mean the Net Revenues, Local Government Infrastructure Surtax Revenues and, with respect to any Series of Bonds, any Additional Security.

“Prerefunded Obligations” shall mean any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (1) which are (a) not callable prior to maturity or (b) as to which irrevocable instructions have been given to the fiduciary for such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (2) which are fully secured as to principal, redemption premium, if any, and interest by a fund consisting only of cash or Federal Securities, secured in the manner set forth in Section 9.01 hereof, which fund may be applied only to the payment of such principal of, redemption premium, if any, and interest on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as the case may be, (3) as to which the principal of and interest on the Federal Securities deposited in such fund with any cash on deposit in such fund, are sufficient, as verified by an independent certified public accountant, to pay principal of, redemption premium, if any, and interest on the bonds or other obligations on the maturity date or dates thereof or on the redemption date or dates specified in such irrevocable instructions, and (4) which are rated in the highest rating category of Standard & Poor's Rating Group and of Moody's Investors Service.

“Principal Account” shall mean the separate account of that name in the Debt Service Fund established pursuant to Section 4.04 hereof.

“Project” shall mean the acquisition, construction, erection, renovation or reconstruction of additions, extensions and improvements to the System and shall include all property rights, appurtenances, easements, rights of way, franchises and equipment relating thereto and deemed necessary or convenient for the acquisition, construction, erection, renovation, reconstruction, or the operation thereof which shall be financed in whole or in part with the proceeds of Bonds, as such Project may be further described and defined in a Supplemental Resolution.

“Qualified Independent Consultant” shall mean one or more qualified and recognized independent consultants, having favorable repute, skill and experience with respect to the acts and duties required of a qualified independent consultant to be provided to the Issuer, as shall from time to time be retained by the Issuer to perform the acts and carry out the duties herein provided for such consultants. The Qualified Independent Consultant may also be the Accountant or the Issuer's Consulting Engineers.

“Qualified Swap Agreement” means an agreement between the Issuer and a counterparty creating Qualified Swap Payments.

“Qualified Swap Payment” shall mean a payment obligation created by a Qualified Swap Agreement related to Bonds or Additional Bonds but not Subordinated Indebtedness, such as an interest rate swap, collar, cap or other functionally similar agreement, such payment being equal to interest on a notional amount, based upon a fixed or a variable rate index or formula, provided that (1) the long-term unsecured debt of such counterparty is at all times rated at least “AA” by S&P and “Aa” by Moody's, (2) the payments by such counterparty under such agreement are used in the calculation of Bond Service Requirement and (3) the payments are either insured or regularly scheduled under the swap confirmation. Qualified Swap Payments include only payments under a Qualified Swap Agreement determined by reference to interest on a notional amount and exclude all other payments under such agreement (for example, any termination fees, or payments, indemnification obligations or other fees payable to the counterparty).

“Rates” shall mean the rates, fees, rentals and other charges which shall be made and collected by the Issuer for the use of the product, services and facilities to be provided by the System.

“Rebate Fund” shall mean the Rebate Fund established pursuant to Section 4.04 hereof.

“Redemption Price” shall mean, with respect to any Bond or portion thereof, the principal amount or portion thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or Supplemental Resolution.

“Registrar” shall mean any registrar for the Bonds appointed by or pursuant to Supplemental Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place pursuant to Supplemental Resolution.

“Renewal and Replacement Fund” shall mean the Renewal and Replacement Fund established pursuant to Section 4.04 hereof.

“Renewal and Replacement Fund Requirement” shall mean, on the date of calculation, an amount of money equal to five percent (5%) of the Gross Revenues received by the Issuer in the immediately preceding Fiscal Year, or such other amount as may be recommended to the Issuer by the Qualified Independent Consultant and approved by the Governing Body as an amount appropriate for the purposes of this Resolution.

“Reserve Fund” shall mean the Reserve Fund established pursuant to Section 4.04 hereof.

“Reserve Fund Insurance Policy” shall mean the insurance policy or surety bond deposited in the Reserve Fund in lieu of or in partial substitution for cash on deposit therein pursuant to Section 4.05(C).

“Reserve Fund Letter of Credit” shall mean a Credit Facility (other than a Reserve Fund Insurance Policy) issued by any bank or national banking association, insurance company or other financial institution and then on deposit in the Reserve Fund in lieu of or in partial substitution for cash on deposit therein pursuant to Section 4.05(C) hereof.

“Reserve Fund Requirement” shall mean an amount equal to the lesser of (i) ten (10%) percent of the proceeds of such Series of Bonds, (ii) Maximum Debt Service Requirement for such Series of Bonds or (iii) one hundred twenty-five (125%) percent of the average annual Debt Service Requirement for such Series of Bonds; provided however, the Issuer may establish by Supplemental Resolution a different Reserve Fund Requirement for a subaccount of the Reserve Fund which secures a Series of Bonds.

“Resolution” and “this Resolution” shall mean this instrument, as the same may from time to time be amended, modified or supplemented by any and all Supplemental Resolutions.

“Revenue Fund” shall mean the Revenue Fund established pursuant to Section 4.04 hereof.

“Securities” shall mean Federal Securities and Prerefunded Obligations.

“Senior Bonds” shall mean the outstanding City of Marathon, Florida Improvement Revenue Bonds, Series 2004 (Capital Projects).

“Serial Bonds” shall mean all of the Bonds other than the Term Bonds.

“Series” shall mean all the Bonds delivered on original issuance in a simultaneous transaction identified in a Supplemental Resolution authorizing the issuance by the Issuer of such Bonds as a separate Series, regardless of variations in maturity, interest rate, Amortization Installments or other provisions.

“Series 2009 Bond” means the Issuer’s Series 2009 Bond, authorized by Supplemental Resolution adopted on even date herewith.

“Standard & Poor's Rating Group” shall mean Standard & Poor's Rating Group, the nationally recognized securities rating firm, and any successor and successors thereto; and if such organization shall be dissolved or liquidated or shall no longer perform securities rating functions, shall mean any other nationally recognized securities rating firm designated by the Issuer and approved by the Insurer and/or the Credit Bank, as applicable.

“State” shall mean the State of Florida.

“Stormwater Assessments” shall mean a special assessment (sometimes characterized as a non-ad valorem assessment) levied by the Issuer from time to time for the cost of providing stormwater treatment services and facilities to property within the incorporated area of the City of Marathon, Florida.

“Stormwater System” shall mean the system of conveyances used for collecting, storing and transporting stormwater owned by the Issuer, but not including any facilities intended to be used in accordance with applicable law for collecting, and transporting sanitary or other wastewater.

“Subordinated Indebtedness” shall mean that indebtedness of the Issuer, subordinate and junior to the Bonds, issued in accordance with the provisions of Section 6.01 hereof and any Variable Rate Bonds which become Subordinated Indebtedness in accordance with Section 6.02 hereof.

“Subordinated Qualified Swap Payments” shall mean any payments under a Qualified Swap which are not Qualified Swap Payments.

“Supplemental Resolution” shall mean any resolution of the Issuer amending or supplementing this Resolution, adopted and becoming effective in accordance with the terms of Sections 8.01, 8.02 or 8.03 hereof.



"System" shall mean, collectively, the Wastewater System and Stormwater System of the Issuer. Notwithstanding the foregoing definition of the term System, such term shall not include any properties or interest in properties of the Issuer which the Issuer determines shall not constitute a part of the System for the purpose of this Resolution.

"Taxable Bond" shall mean any Bond which states, in the body thereof, that the interest income thereon is includable in the gross income of the Holder thereof for federal income taxation purposes.

"Term Bonds" shall mean those Bonds which shall be designated as Term Bonds by Supplemental Resolution and which are subject to mandatory redemption by Amortization Installments.

"Variable Rate Bonds" shall mean Bonds or other such debt instruments issued with a variable, adjustable, convertible or other interest rate which at the date of issue is not fixed as one or more stated percentages for the entire term of such Bonds or other such debt instruments.

"Wastewater Assessments" shall mean a special assessment (sometimes characterized as a non-ad valorem assessment) levied by the Issuer for the cost of providing wastewater treatment collection facilities and wastewater treatment facilities to property within the incorporated area of the City of Marathon, Florida.

"Wastewater System" shall mean the Issuer's system for the collection, treatment and discharge or reuse of wastewater located primarily in the service area of the Issuer, including, without being limited to, all facilities for the collection, treatment and discharge of wastewater, including plants, buildings, machinery, franchises, pipes, fixtures, equipment and all property, real or personal, tangible or intangible, previously used in connection with the Wastewater System.

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 singular number include the plural number, and vice versa.

Section 1.02. Authority for Resolution. This Resolution is adopted pursuant to the provisions of the Act.

Section 1.03. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Bonds by those who shall hold the same from time to time, the provisions of this Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Holders from time to time of the Bonds and shall be a part of the contract of the

Issuer with any Credit Bank and any Insurer. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Holders of any and all of the Bonds and for the benefit, protection and security of any Credit Bank and any Insurer. All of the Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or pursuant to this Resolution.

Section 1.04. Findings. It is hereby ascertained, determined and declared as follows:

(A) The Issuer deems it necessary and desirable to improve and expand the System for the benefit, health and welfare of its citizens.

(B) The Issuer deems it necessary, desirable and in the best interest of the Issuer that the Pledged Funds be pledged to the payment of the principal of and interest on the Bonds. No part of the Pledged Funds has previously been pledged or encumbered in any manner; except the prior pledge on the Senior Bonds described in Section 4.02 hereof..

(C) The estimated Gross Revenues to be derived in each year hereafter from the operation of the System will be sufficient to pay Operating Expenses, fund the Renewal and Replacement Fund, pay the principal of and interest on the Bonds as the same become due, and make all other payments provided for in this Resolution.

(D) The principal of and interest on the Bonds and all other payments provided for in this Resolution will be paid solely from the sources herein provided in accordance with the terms hereof; and no ad valorem taxing power of any political subdivision will ever be exercised nor will any Holder of any Bond or any Credit Bank or any Insurer have the right to compel the exercise of such ad valorem taxing power to pay the principal of or interest on the Bonds or to make any other payments provided for in this Resolution, and the Bonds shall not constitute a lien upon the System or upon any other property of the Issuer or situated within its territorial limits, except the Pledged Funds.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 2.01. Authorization of Bonds. The Issuer hereby authorizes the issuance of Bonds of the Issuer to be designated as "City of Marathon, Florida Utility System Revenue Bonds," or such other designation as may be appropriate for such debt to best describe its nature and purpose as described in the Supplemental Resolution relating thereto, which may be issued in one or more Series as hereinafter provided. The aggregate principal amount of the Bonds which may be executed and delivered under this Resolution is not limited except as may hereafter be provided by Supplemental Resolution or by other applicable law.

The Bonds may have, if and when authorized by the Issuer pursuant to Supplemental Resolution, such further appropriate particular designations added to or incorporated in such title for the Bonds of any particular Series as the Issuer may determine and as may be necessary to distinguish such Bonds from the Bonds of any other Series. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs.

The Bonds shall be issued for such purpose or purposes; shall bear interest at such rate or rates not exceeding the maximum rate permitted by law; and shall be payable in lawful money of the United States of America on such dates; all as determined by this Resolution or by Supplemental Resolution. From and after any maturity date of any of the Bonds (deposit of moneys and/or Securities for the payment of the principal and interest on such Bonds having been made by the Issuer with the Paying Agents), notwithstanding that any of such Bonds shall not have been surrendered for cancellation, no further interest shall accrue upon the principal or upon the interest which shall have accrued and shall then be due on such date, and such Bonds shall cease to be entitled to any lien, benefit or security under this Resolution, and the Holders shall have no rights in respect of such Bonds except to receive payment of such principal and unpaid interest accrued to the maturity date.

The Bonds shall be issued in such denomination or denominations and such form, whether coupon or registered; shall be dated such date or dates; shall bear such numbers; shall be payable at such place or places; shall contain such redemption provisions; shall have such Paying Agents and Registrars; shall mature in such years and amounts; and the proceeds shall be used in such manner all as determined by this Resolution or by Supplemental Resolution. The Issuer may issue Bonds which may be secured by a Credit Facility or by a Bond Insurance Policy all as shall be determined by this Resolution or by Supplemental Resolution.

Section 2.02. [Reserved].

Section 2.03. Application of Bond Proceeds. Except as otherwise provided by Supplemental Resolution, the proceeds derived from the sale of the Bonds, including accrued interest and premium, if any, shall, simultaneously with the delivery of the Bonds to the purchaser or purchasers thereof, be applied by the Issuer as follows:

(A) Accrued interest shall be deposited in the Interest Account.

(B) An amount shall be deposited in the Reserve Fund, or applicable subaccount, which, together with any moneys and securities on deposit therein and any Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit obtained in accordance with Section 4.05(C) hereof, shall equal the Reserve Fund Requirement as described by the Supplemental Resolution for such Series of Bonds.

(C) The Issuer may establish a separate account with an Authorized Depository to be known as the "City of Marathon, Florida Utility System Revenue Bonds Costs of Issuance Account" (the "Costs of Issuance Account"), which shall be used only for the payment of costs and expenses described in this subsection. An amount of money sufficient to pay all costs and expenses in connection with the preparation, issuance and sale of the Bonds, including fees of financial advisors, engineering and other consulting fees, legal fees, bond insurance premiums, printing fees, rating agency fees and other similar costs and may be deposited to the credit of the Costs of Issuance Account, and used to pay such costs and expenses to the persons respectively entitled to receive the same. When all moneys on deposit to the credit of the Costs of Issuance Account shall have been disbursed by the Issuer for the payment of such costs and expenses, the Costs of Issuance Account shall be closed.

(D) The Issuer may deposit any proceeds from a Series of Bonds into a Construction Fund created pursuant to Section 4.03 hereof and may require the deposit of any capitalized interest relating to such Series of Bonds as set forth in a Supplemental Resolution.

Section 2.04. Execution of Bonds. The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of the Mayor and the official seal of the Issuer shall be imprinted thereon, attested and countersigned with the manual or facsimile signature of City Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the

adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold and delivered.

Section 2.05. Authentication. No Bond of any Series shall be secured hereunder or entitled to the benefit hereof or shall be valid or obligatory for any purpose unless there shall be manually endorsed on such Bond a certificate of authentication by the Registrar or such other entity as may be approved by the Issuer for such purpose. Such certificate on any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. The form of such certificate shall be substantially in the form provided in Section 2.10 hereof.

Section 2.06. Temporary Bonds. Until the definitive Bonds of any Series are prepared, the Issuer may execute, in the same manner as is provided in Section 2.04, and deliver, upon authentication by the Registrar pursuant to Section 2.05 hereof, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to the denominations thereof, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in denominations authorized by Supplemental Resolution, such authorization to be evidenced conclusively by their execution of such temporary Bond or Bonds, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer, at its own expense, shall prepare and execute definitive Bonds, which shall be authenticated by the Registrar. Upon the surrender of such temporary Bonds for exchange, the Registrar, without charge to the Holder thereof, shall deliver in exchange therefor definitive Bonds, of the same aggregate principal amount and Series and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this Resolution. All temporary Bonds surrendered in exchange for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith canceled by the Registrar.

Section 2.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver, and the Registrar shall authenticate, a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Registrar proof of such Holder's ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered or otherwise substituted shall be canceled by the Registrar. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same or cause the Bond to be paid, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 2.07 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bond be at any time found by anyone, and such duplicate Bond shall be entitled to equal and proportionate benefits and rights as to lien on the Pledged Funds to the same extent as and shall be entitled to the same benefits and security as the Bond so lost, mutilated, stolen or destroyed.

Section 2.08. Interchangeability, Negotiability and Transfer. Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder thereof or such Holder's attorney-in-fact duly authorized in writing, may, at the option of the Holder thereof, be exchanged for an equal aggregate principal amount of registered Bonds of the same Series and maturity of any other authorized denominations.

The Bonds issued under this Resolution shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds. So long as any of the Bonds shall remain unpaid, the Issuer shall cause to be maintained and kept, at the office of the Registrar, books for the registration and transfer of the Bonds.

Each Bond shall be transferable only upon the books of the Issuer, at the office of the Registrar, under such reasonable regulations as the Issuer may prescribe, by the Holder thereof in person or by such Holder's attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed and guaranteed by the Holder or such Holder's duly authorized attorney. Upon the transfer of any such Bond, the Issuer shall issue, and cause to be authenticated, in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and Series and maturity as the surrendered Bond. The Issuer, the Registrar and any Paying Agent or fiduciary of the Issuer may deem and treat the Person in whose name any Bond shall be registered upon the books of the Issuer as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price, if applicable, and interest on such Bond and for all other purposes, and all such payments so made to any such Holder or upon such Holder's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid and neither the Issuer nor the Registrar nor any Paying Agent or other fiduciary of the Issuer shall be affected by any notice to the contrary.

The Registrar, in any case where it is not also the Paying Agent in respect to any Series of Bonds, shall forthwith (a) following the fifteenth day prior to an interest payment date for such Series, (b) following the fifteenth day next preceding the date of first mailing of notice of redemption of any Bonds of such Series, and (c) at any other time as reasonably requested by the Paying Agent of such Series, certify and furnish to such Paying Agent the names, addresses and holdings of Bondholders and any other relevant information reflected in the registration books.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Issuer shall execute and the Registrar shall authenticate and deliver such Bonds in accordance with the provisions of this Resolution. Execution of Bonds by the Mayor and the City Clerk for purposes of exchanging, replacing or transferring Bonds may occur at the time of the original delivery of the Series of which such Bonds are a part. All Bonds surrendered in any such exchanges or transfers shall be canceled by the Registrar. For every such exchange or transfer of Bonds, the Issuer or the Registrar may make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or transfer. The Issuer and the Registrar shall not be obligated to make any such exchange or transfer of Bonds of any Series which have been selected for redemption, or, in the case of any proposed redemption of Bonds, then for the Bonds subject to redemption, during the fifteen (15) days next preceding the date of the first mailing of the notice of such redemption.

The Issuer may elect to issue any Bonds as uncertificated registered public obligations (not represented by instruments), commonly known as book-entry obligations, provided it shall establish a system of registration therefor by Supplemental Resolution.

Section 2.09. Global Book-Entry System. A blanket issuer letter of representations (the "BLoR") was entered into by the Issuer with The Depository Trust Company ("DTC"). It is intended that the Bonds of each Series be registered so as to participate in a global book-entry system with DTC as set forth herein and in such BLoR, unless provided otherwise by Supplemental Resolution. The terms and conditions of such BLoR shall govern the registration of a Series of Bonds. In such case, such Series of Bonds shall be initially issued in the form of a single fully registered Bond for each maturity of each Series. Upon initial issuance, the ownership of such Bonds shall be registered by the Registrar in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. So long as any Bond is registered in the name of DTC (or its nominee), the Issuer, the Registrar and the Paying Agent may treat DTC (or its nominee) as the sole and exclusive holder of such Bonds registered in its name, and all payments with respect to the principal or redemption price of, if any, and interest on such Bond ("Payments") and all notices with respect to such Bond ("Notices") shall be made or given, as the case may be, to DTC. Transfers of Payments and delivery of Notices to DTC Participants shall be the responsibility of DTC and not of the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time. Transfers of Payments and delivery of Notices to beneficial owners of the Bonds by DTC Participants shall be the responsibility of such participants, indirect participants and other nominees of such beneficial owners and not of the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time.

Upon (a) receipt by the Issuer of written notice from DTC (i) to the effect that a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, is not in the best interest of the beneficial owners of the Bonds or (ii) to the effect that DTC is unable or unwilling to discharge its

responsibilities and no substitute depository willing to undertake the functions of DTC hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, (b) termination, for any reason, of the agreement among the Issuer, the Registrar and Paying Agent and DTC evidenced by the BLoR, or (c) determination by the Issuer that such book-entry only system should be discontinued by the Issuer, and compliance with the requirements of any agreement between the Issuer and DTC with respect thereto, the Bonds shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names Holders shall designate, in accordance with the provisions hereof. In such event, the Issuer shall issue and the Registrar shall authenticate, transfer and exchange Bonds consistent with the terms hereof, in denominations of \$5,000 or any integral multiple thereof to the Holders thereof. The foregoing notwithstanding, until such time as participation in the book-entry only system is discontinued, the provisions set forth in the BLoR previously executed by the Issuer and the Registrar and delivered to DTC in order to induce DTC to act as securities depository for the Bonds shall apply to the payment of principal, interest and redemption premium, if any, on the Bonds.

Section 2.10. Coupon Bonds. The Issuer, at its discretion, may by Supplemental Resolution authorize the issuance of Coupon Bonds, registrable as to principal only or as to both principal and interest. Such Supplemental Resolution shall provide for the negotiability, transfer, interchangeability, denominations and form of such Bonds and coupons appertaining thereto. Coupon Bonds (other than Taxable Bonds) shall only be issued if an opinion of Bond Counsel is received to the effect that issuance of such Coupon Bonds will not adversely affect the exclusion of the interest payable on such Bonds from gross income for federal income tax purposes.

Section 2.11. Form of Bonds. Except as otherwise provided pursuant to Section 2.10 hereof and except for the Series 2009 Bond, Capital Appreciation Bonds, Option Bonds, Commercial Paper, and Variable Rate Bonds, the form of which shall be provided by Supplemental Resolution, the Bonds shall be in substantially the following form with such omissions, insertions and variations as may be necessary and/or desirable and approved by the Mayor prior to the issuance thereof (which necessity and/or desirability and approval shall be evidenced conclusively by the Issuer's delivery of the Bonds to the purchaser or purchasers thereof):



No. R-\_\_\_\_\_

\$\_\_\_\_\_

UNITED STATES OF AMERICA  
 STATE OF FLORIDA  
 COUNTY OF MONROE  
 CITY OF MARATHON  
 UTILITY SYSTEM REVENUE [AND REVENUE REFUNDING] BONDS  
 SERIES \_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
_____ %	_____/____/____	_____/____/____	_____

Registered Holder:

Principal Amount:

KNOW ALL MEN BY THESE PRESENTS, that City of Marathon, Florida, a municipal corporation duly created and existing under and by virtue of the laws of the State of Florida (the "Issuer"), for value received, hereby promises to pay, solely from the sources of payment hereinafter described, to the Registered Holder identified above, or registered assigns as hereinafter provided, the Principal Amount identified above on the Maturity Date identified above and interest (calculated on the basis of a 360-day year of twelve 30-day months) on such Principal Amount from the Date of Original Issue identified above or from the most recent interest payment date to which interest has been paid, at the Interest Rate per annum identified above on \_\_\_\_\_ and \_\_\_\_\_ of each year commencing \_\_\_\_\_, \_\_\_\_\_ until such Principal Amount shall have been paid or provided for, except as the provisions hereinafter set forth with respect to redemption prior to maturity may be or become applicable hereto.

Such Principal Amount and interest and the premium, if any, on this bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. Such Principal Amount and the premium, if any, on this bond, are payable, upon presentation and surrender hereof, at the office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as paying agent, or such other paying agent as the Issuer shall hereafter duly appoint (the "Paying Agent"). Payment of each installment of interest shall be made to the person in whose name this bond shall be registered on the registration books of the Issuer maintained by \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as registrar, or

such other registrar as the Issuer shall hereafter duly appoint (the "Registrar"), at the close of business on the date which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding each interest payment date and shall be paid by a check or draft of the Paying Agent mailed to such Registered Holder at the address appearing on such registration books or at the request and expense of such Registered Holder, by bank wire transfer for the account of such Holder. In the event interest payable on this bond is not punctually paid or duly provided for by the Issuer on such interest payment date, payment of each installment of such defaulted interest shall be made to the person in whose name this bond shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Registered Holder, not less than ten (10) days preceding such special record date.

This bond is one of an authorized issue of bonds of the Issuer in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") of like date, tenor and effect, except as to maturity date, interest rate, denomination and number, issued to finance the cost of \_\_\_\_\_, in and for the Issuer, under the authority of laws of the State of Florida, particularly Chapter 166, Part II, Florida Statutes, as amended, the City Charter of the Issuer and other applicable provisions of law (the "Act"), and a resolution duly adopted by the City Council of the City of Marathon, Florida on \_\_\_\_\_, 20\_\_, as amended and supplemented (the "Resolution"), and is subject to all the terms and conditions of the Resolution.

The principal of, premium, if any, and interest on this bond is payable solely from and secured by a lien upon and a pledge of the Pledged Revenues (as defined in the Resolution), which consists of the Net Revenues (as defined in the Resolution), to be derived from the operation of the Issuer's Utility System (the "System"), the Stormwater Assessments, the Wastewater Assessments and a junior and subordinate lien on the Local Government Surtax Revenues [and Additional Security] and, until applied in accordance with the provisions of the Resolution, the proceeds of the Bonds and all moneys, including investments thereof, in certain of the funds and accounts established pursuant to the Resolution, all in the manner and to the extent described in the Resolution (collectively, the "Pledged Funds"). It is expressly agreed by the Registered Holder of this bond that the full faith and credit of neither the Issuer, Monroe County, the State of Florida, nor any political subdivision thereof, is pledged to the payment of the principal of or premium, if any, or interest on this bond and that the Registered Holder shall never have the right to require or compel the exercise of any taxing power of the Issuer, Monroe County, the State of Florida, or any political subdivision thereof, to the payment of such principal, premium, if any, and interest. This bond and the obligation evidenced hereby shall not constitute a lien upon the System or any other property of the Issuer, except the Pledged Funds, and shall be payable solely from the Pledged Funds in accordance with the terms of the Resolution.

Neither the members of the City Council of the Issuer nor any person executing this bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

(INSERT REDEMPTION PROVISIONS)

Notice of redemption, unless waived, is to be given by the Registrar by mailing an official redemption notice by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the registered holders of the Bonds to be redeemed at such holders' addresses shown on the registration books maintained by the Registrar or at such other addresses as shall be furnished in writing by such registered holders to the Registrar; provided, however, that no defect in any such notice to any registered holder of Bonds to be redeemed nor failure to give such notice to any such registered holder nor failure of any such registered holder to receive such notice shall in any manner defeat the effectiveness of a call for redemption as to all other registered holders of Bonds to be redeemed. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

This bond is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Florida, but may be transferred only in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder in person or by such Holder's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or such Holder's attorney duly authorized in writing, and thereupon a new bond or bonds in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, prescribed in the Resolution. [Each of the Bonds is issuable in fully registered form in the denomination of \$5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds having the same maturity.] The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this bond as the absolute owner hereof for all purposes, whether or not this bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer and the Registrar shall not be obligated to make any exchange or transfer of any Bonds which have been selected for redemption, or, in the case of any proposed redemption of any Bonds, then for the Bonds subject to redemption, during the fifteen (15) days next preceding the date of the first mailing of the notice of such redemption and continuing until such redemption date established for such Bonds.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in connection with the issuance of this bond, exist, have happened and have been performed, in regular and due form and time as required by the Constitution and laws of the State of Florida applicable thereto, and that the issuance of the bonds does not violate any constitutional or statutory limitations or provisions.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Registrar.

IN WITNESS WHEREOF, City of Marathon, Florida has issued this bond and has caused the same to be executed by the manual or facsimile signature of its Mayor and attested and countersigned by the manual or facsimile signature of its City Clerk and its official seal or a facsimile thereof to be affixed or reproduced hereon, all as of the \_\_\_\_\_ day of \_\_\_\_\_.

CITY OF MARATHON, FLORIDA

(SEAL)

By:  
Name:  
Title: Mayor

ATTESTED AND COUNTERSIGNED:

By:  
Name:  
Title: City Clerk

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds of the issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

\_\_\_\_\_  
Registrar

By: \_\_\_\_\_  
Authorized Signatory

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants in common

TEN ENT -- as tenants by the entireties

JT TEN-- as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT --

(Cust.)

Custodian for

under Uniform Transfer to Minors Act of

(State)

Additional abbreviations may also be used though not in list above.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

---

Insert Social Security or Other  
Identifying Number of Assignee

---

(Name and Address of Assignee)

---

the within bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_ as attorneys to register the transfer of the said bond on the books kept for  
registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by  
an institution which is a participant in the  
Securities Transfer Agent Medallion Program  
(STAMP) or similar program.

NOTICE: The signature to this assignment  
must correspond with the name of the  
Registered Holder as it appears upon the face of  
the within bond in every particular, without  
alteration or enlargement or any change  
whatever and the Social Security or other  
identifying number of such assignee must be  
supplied.

## ARTICLE III

### REDEMPTION OF BONDS

Section 3.01. Privilege of Redemption. The terms of this Article III shall apply to redemption of Bonds other than the Series 2009 Bond, Capital Appreciation Bonds, Option Bonds, Commercial Paper or Variable Rate Bonds. The terms and provisions relating to redemption of the Series 2009 Bond, Capital Appreciation Bonds, Option Bonds, Commercial Paper and Variable Rate Bonds shall be provided by Supplemental Resolution. The terms and provisions of this Article III as to a Series of Bonds may be modified by Supplemental Resolution.

Section 3.02. Selection of Bonds to be Redeemed. The Bonds shall be redeemed only in the principal amount of \$5,000 each and integral multiples thereof. The Issuer shall, at least sixty (60) days prior to the redemption date (unless a shorter time period shall be satisfactory to the Registrar) notify the Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected not more than forty-five (45) days prior to the redemption date by the Registrar from the Bonds of the maturity or maturities designated by the Issuer by such method as the Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds in principal amounts of \$5,000 and integral multiples thereof.

If less than all of the Bonds of a single maturity are to be redeemed, the Registrar shall promptly notify the Issuer and Paying Agent (if the Registrar is not the Paying Agent for such Bonds) in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

Section 3.03. Notice of Redemption. Unless waived by any Holder of Bonds to be redeemed, notice of any redemption made pursuant to this section shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to each Holder of Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Registrar or at such other address as shall be furnished in writing by such Holder to the Registrar; provided, however, that no defect in any notice given pursuant to this section to any Holder of Bonds to be redeemed nor failure to give such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Holders of Bonds to be redeemed.

Every official notice of redemption shall be dated and shall state:

- (1) the redemption date,

(2) the Redemption Price,

(3) if less than all outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed,

(4) that on the redemption date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(5) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price plus accrued interest at the office of the Paying Agent.

The Issuer may provide a conditional notice of redemption of Bonds in accordance with the terms set forth below, if the Bonds or any portion thereof are to be redeemed and officials of the Issuer shall be authorized to add to the form of the Bonds authorized by this Resolution a provision reflecting the conditional notice of redemption.

In the case of an optional redemption of the Bonds, the notice of redemption may state that (1) it is conditioned upon the deposit of moneys in the Debt Service Fund or with an escrow agent under an escrow deposit agreement, in amounts necessary to effect the redemption, no later than the redemption date or (2) the Issuer retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described in this paragraph. Any such notice of Conditional Redemption shall be captioned "Conditional Notice of Redemption." Any Conditional Redemption may be rescinded at any time prior to the redemption date if the Issuer delivers a written direction to the Paying Agent directing the Paying Agent to rescind the redemption notice. The Paying Agent shall give prompt notice of such rescission to the affected Owners. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain outstanding and neither the rescission nor the failure by the Issuer to make such funds available shall constitute an event of default under the Bonds or under this Resolution. Upon rescission of a Conditional Redemption, the Issuer shall give immediate notice to the securities information repositories, if applicable, and the affected Owners that the redemption did not occur and that the Bonds called for redemption and not so paid remain outstanding.

Section 3.04. Redemption of Portions of Bonds. Any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the



Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of the same interest rate and maturity, and of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

Section 3.05. Payment of Redeemed Bonds. Official notice of redemption having been given substantially as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. Each check or other transfer of funds issued by the Registrar and/or Paying Agent for the purpose of the payment of the Redemption Price of Bonds being redeemed shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be canceled by the Registrar and shall not be reissued.

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## ARTICLE IV

### SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF

Section 4.01. Bonds not to be Indebtedness of Issuer. The Bonds shall not be or constitute general obligations or indebtedness of the Issuer as “bonds” within the meaning of any constitutional or statutory provision, but shall be special obligations of the Issuer, payable solely from and secured by a lien upon and pledge of the Pledged Funds in accordance with the terms of this Resolution. The Issuer may cause any Series of Bonds to be payable from and secured by a Credit Facility or a Bond Insurance Policy not applicable to any one or more other Series of Bonds. No Holder of any Bond or any Credit Bank or any Insurer shall ever have the right to compel the exercise of the ad valorem taxing power of the State, Monroe County, the Issuer or any governmental entity to pay such Bond or shall be entitled to payment of such Bond from any moneys of the Issuer except the Pledged Funds, in the manner provided herein.

The Pledged Funds shall be subject to the lien of this pledge immediately upon the issuance and delivery of the Bonds, without any physical delivery by the Issuer of the Pledged Funds or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind against the Issuer, in tort, contract or otherwise.

Section 4.02. Security for Bonds. (A) The payment of the principal of or Redemption Price, if applicable, and interest on the Bonds shall be secured forthwith equally and ratably by a pledge of and lien upon the Pledged Funds. The lien on and pledge of the Local Government Infrastructure Surtax Revenues shall be a junior and subordinate lien to the lien of the Senior Bonds. Provided, however, a Series of Bonds may be further secured by a Credit Facility or a Bond Insurance Policy not applicable to any one or more other Series of Bonds, as shall be provided by Supplemental Resolution, in addition to the security provided herein.

(B) The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds.

Section 4.03. Construction Fund. The Issuer covenants and agrees to establish a separate fund to be known as the “City of Marathon, Florida Utility System Revenue Bonds Construction Fund,” hereinafter referred to as the “Construction Fund.” Unless otherwise provided by Supplemental Resolution, upon the issuance of a Series of Bonds for the purpose of financing a Project, the Issuer shall establish within the Construction Fund a separate account for each Series of Bonds, the proceeds of which are to be deposited in whole or in part in the Construction Fund. The Construction Fund shall be used only for payment of the Cost of Projects.

Moneys in each account of the Construction Fund, until applied in payment of any item of the Cost of a Project in the manner hereinafter provided, shall be held in trust and shall be subject to

a lien and charge in favor of the Bondholders of such Series of Bonds for which such account was established and for the further security of such Holders of such Series of Bonds.

There shall be paid into the Construction Fund the amounts required to be so paid by this Resolution or any Supplemental Resolution, and there may be paid into the Construction Fund, at the option of the Issuer, any moneys received for or in connection with a Project by the Issuer from any other source.

The proceeds of insurance maintained pursuant to this Resolution against physical loss of or damage to a Project, or of contractors' payment and performance bonds and/or corporate guaranty with respect thereto pertaining to the period of construction thereof, shall be deposited into the appropriate account of the Construction Fund.

Notwithstanding any of the other provisions of this Section 4.03, to the extent that other moneys are not available therefor, amounts in an account of the Construction Fund shall be applied to the payment of principal of or Redemption Price, if applicable, and interest on such Series of Bonds, for which the account was established, when due.

The date of completion of a Project shall be determined by the Authorized Issuer Officer who shall certify such fact in writing to the Governing Body and to a trustee bank, if one has been appointed to hold the Construction Fund. Promptly after the date of the completion of a Project, and after paying or making provisions for the payment of all unpaid items of the Cost of such Project, the Issuer shall deposit in the following order of priority any balance of moneys remaining in the applicable account of the Construction Fund in (1) another account of the Construction Fund for which the Authorized Issuer Officer has stated that there are insufficient moneys present to pay the Cost of the related Project, (2) the Reserve Fund, to the extent of a deficiency therein, and (3) such other fund or account of the Issuer; including those established hereunder, as shall be determined by the Governing Body, provided the Issuer has received an opinion of Bond Counsel to the effect that such transfer shall not adversely affect the exclusion, if any, of interest on the Bonds from gross income for federal income tax purposes.

Section 4.04. Funds and Accounts. The Issuer covenants and agrees to establish with one or more Authorized Depositories the following separate funds and accounts:

- (A) Utility System Revenue Fund.
- (B) Operation and Maintenance Fund.
- (C) Debt Service Fund. The Issuer shall establish in the Debt Service Fund three accounts: the "Interest Account," the "Principal Account" and the "Bond Amortization Account."

(D) Reserve Fund. The provisions of one or more Supplemental Resolutions authorizing one or more Series of Bonds may provide that such Series of Bonds are not to be secured by a subaccount in the Reserve Fund or may be separately secured by a separate subaccount in the Reserve Fund, in which case a separate subaccount in the Reserve Fund may secure only such Series of Bonds.

(E) Renewal and Replacement Fund.

(F) Rebate Fund.

(G) Subordinated Indebtedness Fund.

The Issuer may establish by Supplemental Resolution such other funds and accounts as it shall deem necessary or advisable.

The Issuer shall at any time and from time to time appoint one or more Authorized Depositories to hold, for the benefit of the Issuer and/or the Bondholders, any one or more of the funds and accounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds and accounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agent and employees.

#### Section 4.05. Flow of Funds.

(A) Revenues. The Issuer shall deposit all Gross Revenues into the Revenue Fund, promptly upon the receipt thereof. On or before the last day of each month, commencing with the month in which delivery of the Bonds shall be made to the purchasers thereof, the moneys in the Revenue Fund shall be deposited or credited in the following manner and in the following order of priority:

(1) Operation and Maintenance. The Issuer shall deposit into or credit to the Operation and Maintenance Fund such sums as are necessary to pay Operating Expenses for the ensuing month. Amounts in the Operation and Maintenance Fund shall be paid out from time to time by the Issuer for reasonable and necessary Operating Expenses; provided, however, that no such payment shall be made unless the provisions of Section 5.03 hereof in regard to the current Annual Budget are complied with.

(2) Debt Service Fund. Next, the Issuer shall deposit into or credit to the Debt Service Fund such sums as are described in Section 4.05(B) hereof.

(3) Reserve Fund. Next, the Issuer shall deposit into or credit to the Reserve Fund such sums as are described in Section 4.05(C) hereof.

(4) Renewal and Replacement Fund. Next, the Issuer shall deposit into or credit to the Renewal and Replacement Fund such sums as shall be sufficient to pay one-twelfth (1/12) of the Renewal and Replacement Fund Requirement until the balance on deposit in the Renewal and Replacement Fund equals the Renewal and Replacement Fund Requirement. If the balance on deposit in the Renewal and Replacement Fund exceeds the Renewal and Replacement Fund Requirement such excess amount shall be transferred by the Issuer from the Renewal and Replacement Fund and deposited into the Revenue Fund. The moneys in the Renewal and Replacement Fund shall be applied by the Issuer for the purpose of paying the cost of extensions, improvements or additions to, or the replacement or renewal of capital assets of, the System, or extraordinary repairs of the System; provided, however, that on or prior to each principal and interest payment date for the Bonds (in no event earlier than the fifteenth day of the month next preceding such payment date), moneys in the Renewal and Replacement Fund shall be applied for the payment into the Interest Account in the Principal Account and the Bond Amortization Account when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys available in the Reserve Fund for such purpose pursuant to Section 4.05(C) hereof shall be inadequate to fully provide for such insufficiency.

(5) Subordinated Indebtedness Fund. Next, the Issuer shall deposit into or credit to the Subordinated Indebtedness Fund such sums as are necessary to pay the principal of, premium, if any, and interest on any Subordinated Indebtedness hereafter issued by the Issuer.

(6) Surplus Moneys. The balance of any moneys remaining in the Revenue Fund after the payments and deposits required by part (1) through (5) of this subsection (A) may be used for any lawful purpose.

(B) Debt Service Fund. The Issuer shall deposit into or credit to the Debt Service Fund from moneys in the Revenue Fund sufficient to make all of the deposits required by this subsection (B). The moneys on deposit in the Debt Service Fund shall be applied in the manner provided herein solely for the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds and shall not be available for any other purpose. The moneys transferred from the Revenue Fund to the Debt Service Fund shall be deposited or credited in the following manner and in the following order of priority:

(1) Interest Account. The Issuer shall deposit into or credit to the Interest Account the sum which, together with the balance in said account, shall equal the interest on all Outstanding Bonds accrued and unpaid and to accrue to the end of the then current

calendar month (assuming that a year consists of twelve (12) equal calendar months of thirty (30) days each). Moneys in the Interest Account shall be applied by the Issuer to pay interest on the Bonds as and when the same shall become due, whether by redemption or otherwise, and for no other purpose. The Issuer shall adjust the amount of the deposit into the Interest Account not later than the month immediately preceding any Interest Date so as to provide sufficient moneys in the Interest Account to pay the interest coming due on the Bonds on such Interest Date.

(2) Principal Account. Next, the Issuer shall deposit into or credit to the Principal Account the sum which, together with the balance in said account, shall equal (a) the principal amount of all Outstanding Bonds other than Term Bonds due and unpaid, (b) that portion of the principal amount of the Bonds other than Term Bonds next due which would have accrued on such Bonds next due during the then current calendar month if such principal amount thereof were deemed to accrue monthly (assuming that a year consists of twelve (12) equal calendar months of thirty (30) days each) in equal installments from a date one year preceding the due date of such Bonds next due and (c) the portion of the principal amount of the Bonds other than Term Bonds next due which shall have accrued on such basis in prior months. Serial Capital Appreciation Bonds (including their respective interest components) shall be payable entirely from moneys in the applicable Principal Account on their respective maturity dates, and monthly deposits or credits to the Principal Account to provide funds for such purpose shall commence in the month which is one year prior to each such maturity date. Not later than the month immediately preceding any principal payment date, the Issuer shall adjust the amount of the deposit into the Principal Account so as to provide sufficient moneys in the Principal Account to pay the principal on the Bonds other than Term Bonds becoming due on such principal payment date. Moneys in the Principal Account shall be applied by the Issuer to pay the principal of the Bonds other than Term Bonds as and when the same shall become due, whether at maturity or otherwise, and for no other purpose.

(3) Bond Amortization Account. Payments to the Bond Amortization Account shall be on a parity with payments to the Principal Account. Commencing in the month which is one year prior to the due date of each Amortization Installment, the Issuer shall deposit into or credit to the Bond Amortization Account the sum which, together with the balance in said account held for the credit of such Amortization Installment and all Outstanding Term Bonds due and unpaid, shall equal (a) the principal amount of all such Outstanding Term Bonds due and unpaid, (b) that portion of such Amortization Installment which would have accrued during the then current calendar month if such Amortization Installment were deemed to accrue monthly (assuming that a year consists of twelve (12) equal calendar months of thirty (30) days each) in equal amounts from a date one year preceding such due date and (c) the portion of such Amortization Installment which shall have accrued on such basis in prior months. Term Capital Appreciation Bonds (including

their respective interest components) shall be payable entirely from moneys in the Bond Amortization Account on the respective due dates of the Amortization Installments applicable thereto, and monthly deposits or credits to the Bond Amortization Account to provide funds for such purpose shall commence in the month which is one year prior to each such Amortization Installment due date. The Issuer shall adjust the amount of the deposit into the Bond Amortization Account not later than the month immediately preceding any date for payment of an Amortization Installment so as to provide sufficient moneys in the Bond Amortization Account to pay such Amortization Installment on such date. Moneys in the Bond Amortization Account shall be applied by the Issuer to purchase or redeem Term Bonds in the manner herein provided, and for no other purpose.

Amounts accumulated in the Bond Amortization Account with respect to any Amortization Installment may be applied by the Issuer, on or prior to the sixtieth (60th) day preceding the due date of such Amortization Installment (i) to the purchase of Term Bonds of the Series and maturity for which such Amortization Installment was established, at a price not greater than the Redemption Price at which such Term Bonds may be redeemed on the first date thereafter on which such Term Bonds shall be subject to redemption, or (ii) to the redemption at the applicable Redemption Price of such Term Bonds. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Bond Amortization Account until such Amortization Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the sixtieth (60th) day preceding the due date of any such Amortization Installment, the Issuer shall proceed to call for redemption on such due date, by causing notice to be given as provided in Section 3.03 hereof, Term Bonds of the Series and maturity for which such Amortization Installment was established (except in the case of Term Bonds maturing on an Amortization Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Amortization Installment. The Issuer shall pay out of the Bond Amortization Account and the Interest Account to the respective Paying Agents, on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment).

(C) Reserve Fund. The Issuer shall deposit into or credit to the Reserve Fund such sum, if any, as will be necessary to immediately restore the funds on deposit therein to an amount equal to the Reserve Fund Requirement therefor including the reinstatement of any Reserve Fund Insurance Policy or Reserve Fund Letter of Credit on deposit therein or the cash replacement thereof. In the event the amounts available for such purpose shall be insufficient to make all payments required by the preceding sentence, the available amount shall be prorated among the various subaccounts in the Reserve Fund in the same proportion that the Reserve Fund Requirement for each subaccount bears to the total Reserve Fund Requirement for all such

subaccounts. On or prior to each principal and interest payment date for the Bonds, moneys in the Reserve Fund shall be applied by the Issuer to the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds to the extent moneys in the Interest Account, the Principal Account and the Bond Amortization Account shall be insufficient for such purpose. Whenever there shall be surplus moneys in the Reserve Fund by reason of a decrease in the Reserve Fund Requirement or as a result of a deposit therein of a Reserve Account Insurance Policy and/or a Reserve Account Letter of Credit, such surplus moneys shall be deposited by the Issuer into the Principal Account, or such other appropriate fund or account of the Issuer or used to pay or provide for necessary rebate through the Rebate Fund or to pay the premium on the Reserve Fund Insurance Policy, provided such deposit to such other fund or account shall not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Upon the issuance of any Additional Bonds under the terms, limitations and conditions as herein provided, the Issuer may, on the date of delivery of such Additional Bonds, increase the sum required to be accumulated and maintained on deposit in the Reserve Fund to be at least equal to the Reserve Fund Requirement on all Outstanding Bonds secured by such Reserve Fund including the Additional Bonds then issued. Such required sum may be paid in full or in part from the proceeds of such Additional Bonds or may be accumulated in equal monthly payments to the Reserve Fund over a period of months from the date of issuance of the Additional Bonds, which shall not exceed the greater of (a) twelve (12) months, or (b) the number of months for which interest on such Additional Bonds has been capitalized, as determined by Supplemental Resolution. In the event moneys in the Reserve Fund are accumulated as provided above, (i) the amount in said Reserve Fund on the date of delivery of the Additional Bonds shall not be less than the Reserve Fund Requirement on all Bonds Outstanding secured by such Reserve Fund (excluding the Additional Bonds) on such date, and (ii) the incremental difference between the Reserve Requirement on all Bonds Outstanding secured by such Reserve Fund (excluding the Additional Bonds) on the date of delivery of the Additional Bonds and the Reserve Fund Requirement on all such Bonds and the Additional Bonds shall be fifty percent (50%) funded upon delivery of the Additional Bonds.

The Issuer may also establish a separate subaccount in the Reserve Fund for any Series of Bonds and provide a pledge of such subaccount to the payment of such Series of Bonds apart from the pledge provided herein. To the extent a Series of Bonds is secured separately by a subaccount of the Reserve Fund, the Holders of such Bonds shall not be secured by any other moneys in the Reserve Fund. Moneys in a separate subaccount of the Reserve Fund shall be maintained at the Reserve Fund Requirement applicable to such Series of Bonds secured by the subaccount; provided the Supplemental Resolution authorizing such Series of Bonds may establish the Reserve Fund Requirement relating to such separate subaccount of the Reserve Fund at such level as the Issuer deems appropriate. Moneys shall be deposited in the separate subaccounts in the Reserve Fund on a pro-rata basis.



Notwithstanding the foregoing provisions, in lieu of the required deposits into the Reserve Fund, the Issuer may, at its sole option and discretion, cause to be deposited a Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit in an amount equal to the difference between the Reserve Fund Requirement applicable thereto and the sums, if any, remaining on deposit in Reserve Fund after the deposit of such Reserve Account Insurance Policy and/or Reserve Account Letter of Credit. Such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit shall be payable to the Paying Agent for such Series (upon the giving of notice as required thereunder) on any interest payment or redemption date on which a deficiency exists which cannot be cured by funds in any other fund or account held pursuant to this Resolution and available for such purpose. The issuer providing such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit shall be either (a) an insurer, or (b) a commercial bank, insurance company or other financial institution the bonds payable or guaranteed by which have, or whose obligation to pay is guaranteed by a commercial bank, insurance company or other financial institution.

If fifteen (15) days prior to an interest payment or mandatory redemption date, the Issuer or a related Bond trustee shall determine that a deficiency exists in the amount of moneys available to pay in accordance with the terms hereof interest and/or principal due on Bonds on such date, the Issuer shall immediately notify (a) the issuer of the applicable Reserve Fund Insurance Policy and/or the issuer of the Reserve Fund Letter of Credit, and (b) the Insurer, if any, of the amount of such deficiency and the date on which such payment is due, and shall take all action to cause such issuer or Insurer to provide moneys sufficient to pay all amounts due on such interest payment or redemption date. Any available funds on deposit in the Reserve Fund shall be drawn upon and expended prior to a draw upon the Reserve Fund Insurance Policy and/or a Reserve Fund Line of Credit.

If a disbursement is made from a Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit provided pursuant to this Section 4.05(C), the Issuer shall reinstate the maximum limits of such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit immediately following such disbursement from moneys available in the Reserve Fund in accordance with the provisions of the first paragraph of this Section 4.05(C), by depositing funds in the amount of the disbursement made under such instrument, with the issuer thereof, together with interest thereon to the date of reimbursement at the rate set forth in such Reserve Fund Insurance Policy or such Reserve Fund Letter of Credit, but in no case greater than the maximum rate of interest permitted by law. In addition, and in the same manner, the Issuer shall reimburse the issuer of the Reserve Fund Insurance Policy and/or the issuer of the Reserve Fund Letter of Credit for all reasonable expenses incurred by such issuer in connection with the draw on such Reserve Fund Insurance Policy or the Reserve Fund Letter of Credit, as the case may be.

The Issuer may evidence its obligation to reimburse the issuer of any Reserve Fund Letter of Credit or Reserve Fund Insurance Policy by executing and delivering to such issuer a promissory note therefor, provided, however, any such note (a) shall not be a general obligation of the Issuer

the payment of which is secured by the full faith and credit or taxing power of the Issuer, and (b) shall be payable solely from the Pledged Funds in the manner provided herein.

To the extent the Issuer causes to be deposited into the Reserve Fund, a Reserve Fund Insurance Policy and/or a Reserve Fund Letter of Credit for a term of years shorter than the life of the Bonds so insured or secured, then the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit shall provide, among other things, that the issuer thereof shall provide the Issuer with notice as of each anniversary of the date of the issuance of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit of the intention of the issuer thereof to either (a) extend the term of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit beyond the expiration dates thereof, or (b) terminate the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit on the initial expiration dates thereof or such other future date as the issuer thereof shall have established. If the issuer of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit notifies the Issuer pursuant to clause (b) of the immediately preceding sentence or if the Issuer terminates the Reserve Fund Letter of Credit and/or Reserve Fund Insurance Policy, then the Issuer shall deposit into the Reserve Fund, on or prior to the fifteenth (15th) day of the first full calendar month following the date on which such notice is received by the Issuer, such sums as shall be sufficient to pay an amount equal to a fraction, the numerator of which is one (1) and the denominator of which is equal to the number of months remaining in the term of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit of the Reserve Fund Requirement on the date such notice was received (the maximum amount available, assuming full reimbursement by the Issuer, under the Reserve Fund Letter of Credit and/or the Reserve Fund Insurance Policy to be reduced annually by an amount equal to the deposit to the Reserve Fund during the previous twelve (12) month period) until amounts on deposit in the Reserve Fund, as a result of the aforementioned deposits, and no later than upon the expiration of such Reserve Fund Insurance Policy and/or such Reserve Fund Letter of Credit, shall be equal to the Reserve Fund Requirement.

If any Reserve Fund Letter of Credit or Reserve Fund Insurance Policy shall terminate prior to the stated expiration date thereof, the Issuer agrees that it shall fund the Reserve Fund over a period not to exceed sixty (60) months or such other term agreed to by the provider of the Reserve Fund Letter of Credit or the Reserve Fund Insurance Policy during which it shall make consecutive equal monthly payments in order that the amount on deposit in such account at the end of such period shall equal the Reserve Fund Requirement; provided, the Issuer may, with the prior written consent of the Insurer, if any, obtain a new Reserve Fund Letter of Credit or a new Reserve Fund Insurance Policy in lieu of making the payments required by this paragraph.

(D) Purchase or Redemption of Bonds. The Issuer, in its discretion, may use moneys in the Principal Account and the Interest Account or other legally available monies to purchase or redeem Bonds coming due on the next principal payment date, provided such purchase

or redemption does not adversely affect the Issuer's ability to pay the principal or interest coming due on such principal payment date on the Bonds not so purchased or redeemed.

(E) Deposit of Moneys with Paying Agents. On or before the date established for payment of any principal of or Redemption Price, if applicable, or interest on the Bonds, the Issuer shall withdraw from the Debt Service Fund sufficient moneys to pay such principal or Redemption Price, if applicable, or interest and deposit such moneys with the Paying Agent for the Bonds to be paid.

(F) Reimbursement of Credit Bank. In the case of Bonds secured by a Credit Facility or Insurer, amounts on deposit in any funds or accounts established for such Bonds may be applied as provided in the applicable Supplemental Resolution to reimburse the Credit Bank or Insurer for amounts drawn under such Credit Facility or Bond Insurance Policy to pay the principal of or Redemption Price, if applicable, and interest on such Bonds or to pay the purchase price of any such Bonds which are tendered by the Holders thereof for payment.

Section 4.06. Rebate Fund. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States Treasury (except to the extent the same may be transferred to the Revenue Fund) and the Bondholders shall have no right to have the same applied for debt service on the Bonds. The Issuer agrees to undertake all actions required of it in its arbitrage certificate relating to each Series of Bonds (other than Taxable Bonds), and other instructions from Bond Counsel, delivered in connection with or subsequent to the issuance of such Bonds, including, but not limited to:

(A) making a determination in accordance with the Code of the amount required to be deposited in the Rebate Fund;

(B) depositing from moneys in the Revenue Fund or from other moneys of the Issuer derived from sources other than ad valorem taxation and legally available for such purpose the amount determined in subsection (A) above into the Rebate Fund;

(C) paying on the dates and in the manner required by the Code to the United States Treasury from the Rebate Fund and any other legally available moneys of the Issuer such amounts as shall be required by the Code to be rebated to the United States Treasury; and

(D) keeping such records of the determinations made pursuant to this Section 4.06 as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Bonds.

The provisions of the above-described arbitrage certificate and instructions of Bond Counsel may be amended from time to time as shall be necessary, in the opinion of Bond Counsel, to comply with the provisions of the Code.

The Issuer agrees to retain or cause to be retained a rebate administrator who shall be a professional qualified to assure compliance by the Issuer with the requirements of this section. The rebate administrator so retained is hereby authorized to hire counsel, accountants, and other experts whom the rebate administrator may, in its sole discretion, determine advisable for the purpose of obtaining the required calculations of the rebate amounts and other matters necessary for compliance with Section 148(f) of the Code as the same relates to the Bonds. The rebate administrator will not be liable for any loss occasioned by its reliance upon the instructions of such experts or upon the Issuer's certification of the amounts earned on nonpurpose investments, as such term is defined in Section 148(b)(2) of the Code, in which gross proceeds of the Bonds shall be invested. The duties and responsibilities of the rebate administrator may be performed by more than one Person.

Section 4.07. Investments. Each fund and account established hereby shall be continuously secured in the manner by which the deposit of public funds are authorized to be secured by the laws of the State. Moneys on deposit in each fund and account may be invested and reinvested in Authorized Investments maturing not later than the date on which the moneys therein will be needed.

Any and all income received by the Issuer from the investment of moneys in the Revenue Fund, the Construction Fund and the Rebate Fund, in the Interest Account, the Principal Account and the Bond Amortization Account in the Debt Service Fund, in the Renewal and Replacement Fund (to the extent such income and the other amounts in the Renewal and Replacement Fund do not exceed the Renewal and Replacement Fund Requirement), and in the Reserve Fund (to the extent such income and the other amounts in the Reserve Fund do not exceed the Reserve Fund Requirement) shall either be retained in such respective fund or account, or shall be deposited as provided by Supplemental Resolution.

Any and all income received from the investment of moneys in the Renewal and Replacement Fund (only to the extent such income and other amounts therein exceed the Renewal and Replacement Fund Requirement) shall be deposited upon receipt thereof in the Revenue Fund. Any and all income received from the investment of moneys in the Reserve Fund (only to the extent such income and other amounts therein exceed the Reserve Fund Requirement) shall be deposited in the Revenue Fund.

All investments shall be valued at fair market value. Nothing contained in this Resolution shall prevent any Authorized Investments acquired as investments of or security for funds held

under this Resolution from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

Section 4.08. Separate Accounts. The moneys required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various funds and accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

The designation and establishment of the various funds and accounts in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided.

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## ARTICLE V

### COVENANTS; DISCLOSURE

Section 5.01. General. In addition to all of the other covenants of the Issuer contained in this Resolution, the Issuer hereby covenants with each and every successive Holder of any of the Bonds so long as any of the Bonds that shall remain Outstanding the Issuer will comply with each and every one of the covenants contained in this Article V.

Section 5.02. Operation and Maintenance. The Issuer will maintain or cause to be maintained the System and all portions thereof in good condition and will operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation and maintenance thereof.

Section 5.03. Annual Budget. The Issuer shall annually prepare and adopt, prior to the beginning of each Fiscal Year, an Annual Budget in accordance with applicable law. Total expenditures for the operation and maintenance of the System made in any Fiscal Year shall not be in excess of the amount provided therefor in the Annual Budget unless such expenditures have been approved by amendment to the Annual Budget.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any Fiscal Year, other than the first Fiscal Year, the preliminary budget for such Fiscal Year shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year shall be adopted.

The Issuer shall mail copies of such Annual Budgets and amended Annual Budgets and all resolutions authorizing increased expenditures for operation and maintenance to any Holder who shall file an address with the City Clerk and request in writing that copies of all such Annual Budgets and resolutions be furnished to such Holder and shall make available all such Annual Budgets and resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder or to anyone acting for or on behalf of any Holder. The Issuer shall be permitted to make a reasonable charge for furnishing to any Holder such Annual Budgets and resolutions.

Section 5.04. Rates. The Issuer shall fix, establish, maintain and collect such Rates and revise the same from time to time, whenever necessary, as will always provide in each Fiscal Year Net Revenues adequate at all times to pay in each Fiscal Year at least one hundred ten percent (110%) of the current annual Debt Service Requirement becoming due in such Fiscal Year on each Series of Outstanding Bonds and at least one hundred percent (100%) of any amounts required by the terms hereof to be deposited in the Reserve Fund, with any issuer of a Reserve Fund Letter of

Credit or Reserve Fund Insurance Policy, or to be deposited in the Renewal and Replacement Fund or to be paid for debt service on Subordinated Indebtedness in such Fiscal Year. Such Rates shall not be so reduced so as to be insufficient to provide Net Revenues fully adequate for the purposes provided therefore by this Resolution.

If, upon making such determination in any Fiscal Year, the Issuer shall determine that it has failed to comply with the requirements contained in the above paragraph, it shall cause as soon as practicable the Consulting Engineers to review its Rates, Gross Revenues, Operating Expenses and methods of operation and to make written recommendations and file such written report as to the methods by which the Issuer may promptly seek to comply with the requirements set forth above. The Issuer shall forthwith commence to implement such recommendations to the extent required within a reasonable period following the filing of the report, as to cause it to thereafter comply with said requirements. To the extent the Issuer causes the Consulting Engineers to undertake such review and implements such recommendations, the failure to comply with Section the paragraph above shall not constitute an event of default hereunder; provided that no other default exists including without limitation a failure to pay debt service on any Bond.

Section 5.05. [Reserved]

Section 5.06. Books and Records. The Issuer shall keep books, records and accounts of the operation of the System, Gross Revenues and Operating Expenses and the Holders of any Bonds Outstanding or the duly authorized representatives thereof and the Insurer, if any, shall have the right at all reasonable times to inspect all books, records and accounts of the Issuer relating thereto.

Section 5.07. Annual Audit. The Issuer shall, immediately after the close of each Fiscal Year, cause the books, records and accounts relating to the System to be properly audited by a recognized independent firm of certified public accountants, and shall require such accountants to complete their report of such Annual Audit in accordance with applicable law. Such Annual Audits shall contain, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a statement of changes in retained earnings, a statement of the number and classification of users and services of the System and rates associated with such services, a statement of insurance coverage, and any other statements as required by law or accounting convention, and a certificate by such accountants disclosing any material default on the part of the Issuer of any covenant or agreement herein. Each Annual Audit shall be in conformity with generally accepted accounting principles. A copy of each Annual Audit shall regularly be furnished to any Insurer, to any Credit Bank and to any Holder who shall have furnished an address to the City Clerk and requested in writing that the same be furnished to such Holder. The Issuer shall be permitted to make a reasonable charge for furnishing to any Holder such Annual Audit.

Section 5.08. No Mortgage or Sale of the System. The Issuer irrevocably covenants, binds and obligates itself not to sell, lease, encumber or in any manner dispose of the System as a whole or

any substantial part thereof (except as provided below) until all of the Bonds and all interest thereon shall have been paid in full or provision for payment has been made in accordance with Section 9.01 hereof.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System in the following manner, if any one of the following conditions exist: (A) such property is not necessary for the operation of the System, (B) such property is not useful in the operation of the System, (C) such property is not profitable in the operation of the System, or (D) the disposition of the property will be advantageous to the System and will not adversely affect the security for the Bondholders or any Insurer or Credit Bank.

Prior to any such sale, lease or other disposition of said property: (1) if the amount to be received therefor is not in excess of ten percent (10%) of the value of the gross plant of the System at original cost, an Authorized Issuer Officer shall make a finding in writing determining that one or more of the conditions for sale, lease or disposition of property provided for in the second paragraph of this Section 5.08 have been met; or (2) if the amount to be received from such sale, lease or other disposition of said property shall be in excess of ten percent (10%) of the value of the gross plant of the System at original cost, an Authorized Issuer Officer and the Consulting Engineers shall each first make a finding in writing determining that one or more of the conditions for sale, lease or other disposition of property provided for in the second paragraph of this Section 5.08 have been met, and the Governing Body of the Issuer shall, by resolution, duly adopt, approve and concur in the finding of an Authorized Issuer Officer and the Consulting Engineers.

The proceeds from such sale, lease or other disposition shall be deposited into the Renewal and Replacement Fund to the extent necessary to make the amount therein equal to the Renewal and Replacement Fund Requirement, and second, into the Revenue Fund.

The transfer of the System as a whole from the control of the Governing Body to some other board or authority which may hereafter be created for such purpose and which constitutes a governmental entity, interest on obligations issued by which is excluded from gross income of the holders thereof for federal income tax purposes under Section 103 of the Code, shall not be deemed prohibited by this Section 5.08 and such successor board or authority shall fall within the definition of "Issuer" in Section 1.01 hereof. Upon the transfer, the Pledged Revenues together with revenues of such other board or authority shall be sufficient to pay the principal and interest on the Bonds. The Issuer also reserves the right to enter into management or operations contracts from time to time for all or any portion of the System, provided that such management or operations contract are consistent with the requirements of the Resolution.

Notwithstanding the foregoing provisions of this Section 5.08, the Issuer shall have the authority to sell for fair and reasonable consideration any land comprising a part of the System



which is no longer necessary or useful in the operation of the System and the proceeds derived from the sale of such land shall be disposed of in accordance with the provisions of the fourth paragraph of this Section 5.08.

The Issuer may make contracts or grant licenses for the operation of, or grant easements or other rights with respect to, any part of the System if such contract, license, easement or right does not, in the opinion of the System engineers, as evidenced by a certificate to that effect kept on file by the Issuer, impede or restrict the operation by the Issuer of the System, but any payments to the Issuer under or in connection with any such contract, license, easement or right in respect of the System or any part thereof shall constitute Gross Revenues.

Section 5.09. Insurance. The Issuer will carry such insurance as is ordinarily carried by private or public corporations owning and operating utilities similar to the System with a reputable insurance carrier or carriers, including public and product liability insurance in such amounts as the Issuer shall determine to be sufficient and such other insurance against loss or damage by fire, explosion (including underground explosion), hurricane, tornado or other hazards and risks, and said property loss or damage insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures and equipment of the System, or such other amount or amounts as the System's engineers shall deem sufficient.

The Issuer may establish certain minimum levels of insurance for which the Issuer may self-insure. Such minimum levels of insurance shall be to the same extent customary with utilities operating properties similar to the System.

In the event of any loss or damage to the System covered by insurance, the Issuer will, with respect to each such loss, promptly repair, reconstruct or replace the parts of the System affected by such loss or damage to the extent necessary to the proper conduct of the operation of the business of the System, shall cause the proceeds of such insurance to be applied for that purpose to the extent required therefor, and pending such application, shall hold the proceeds of any insurance policy covering such damage or loss in trust to be applied for that purpose to the extent required therefor.

Section 5.10. No Free Service. The Issuer will not render, or cause to be rendered, any free services of any nature by its System or any part thereof, nor will any preferential rates be established for users of the same class. Distinctions among classes shall be undertaken by the Governing Body in its discretion. This section does not apply to the Issuer or any department or entity of the Issuer.

Section 5.11. No Impairment. The Issuer will not enter into any contract or contracts, nor take any action, the results of which might impair the rights of the Holders and will not permit the operation of any competing stormwater or wastewater service facilities within the service area of the Issuer; provided, however, the Issuer reserves the right to permit the ownership and operation

of stormwater or wastewater service facilities or both by itself or by others in any territory which is not in any service area now or hereafter served by the System.

Section 5.12. Compulsory Connections. In order to better secure the prompt payment of principal and interest on the Bonds, as well as for the purpose of protecting the health and welfare of the inhabitants of the Issuer, and acting under authority of the Act or other applicable laws of the State, the Issuer will require every owner of each lot in the area of operation of the Issuer which abuts upon any street or public way containing a wastewater line which shall be a part of the facilities of the System and upon which lot a building shall exist and be used for residential, commercial or industrial use, to connect such building to such facilities and to cease to use any other method for the wastewater transmission.

Section 5.13. Enforcement of Charges. The Issuer shall compel the prompt payment of Rates, Wastewater Assessments, Stormwater Assessments or other amounts owed for service rendered on every lot or parcel connected with the System, and to that end will vigorously enforce all of the provisions of any contract, rules, or resolution of the Issuer having to do with connections to the facilities of the System and charges therefor, and all of the rights and remedies permitted the Issuer under law, including the requirement for the making of a reasonable deposit by each user. The Issuer also covenants in order to better secure the prompt payment of principal and interest on the Bonds to cease providing stormwater or wastewater service to any user of the System of all premises delinquent in the payment, and the securing of injunction against the use of the facilities of the System, by any premises delinquent in the payment of such charges.

Section 5.14. Covenants With Credit Banks and Insurers. The Issuer may make such covenants as it may in its sole discretion determine to be appropriate with any Insurer, Credit Bank or other financial institution that shall agree to insure or to provide for Bonds of any one or more Series credit or liquidity support that shall enhance the security or the value of such Bonds, provided the same does not have an adverse effect on the Holder of any Outstanding Bonds or the security therefor. Such covenants may be set forth in the applicable Supplemental Resolution and shall be binding on the Issuer, the Registrar, the Paying Agent and all the Holders the same as if such covenants were set forth in full in this Resolution.

Section 5.15. Special Covenants Relating to Reserve Fund Insurance Policy or Reserve Fund Letter of Credit.

(A) The Issuer shall annually submit to the issuer of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit, records of withdrawals on such Reserve Fund Insurance Policy or such Reserve Fund Letter of Credit, as the case may be, received by the Paying Agent and remaining unpaid, the respective dates of such withdrawals, the interest accrued on such withdrawals and the aggregate amount of interest due by the Issuer to the issuer of such Reserve Fund Insurance Policy or such Reserve Fund Letter of Credit, as the case may be.

(B) The Issuer hereby acknowledges that the issuer of the Reserve Fund Insurance Policy and/or the Reserve Fund Letter of Credit shall be deemed a third-party beneficiary of this Resolution for the purpose of enforcing the terms, conditions and obligations of this Resolution which benefit the issuer of such Reserve Fund Insurance Policy or such Reserve Fund Letter of Credit, as the case may be.

(C) The Issuer may provide by Supplemental Resolution adopted prior to the issuance of any Series of Bonds certain additional terms regarding a Reserve Fund Insurance Policy for funding the Reserve Fund for such Series of Bonds.

Section 5.16. Consulting Engineers. The Issuer shall employ Consulting Engineers from time to time whenever necessary for compliance with the provisions of this Resolution, whose duties shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineers under this Resolution.

Section 5.17. Federal Income Tax Covenants; Taxable Bonds.

(A) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds), that it shall not use the proceeds of such Series of Bonds in any manner which would cause the interest on such Series of Bonds to be or become includable in the gross income of the Holder thereof for federal income tax purposes.

(B) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that neither the Issuer nor any Person under its control or direction will make any use of the proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on such Series of Bonds to become includable in the gross income of the Holder thereof for federal income tax purposes.

(C) The Issuer hereby covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Bonds from the gross income of the Holder thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the United States Treasury pursuant to the Code.

(D) The Issuer may, if it so elects, issue one or more Series of Taxable Bonds the interest on which is (or may be) includable in the gross income of the Holder thereof for federal income taxation purposes, so long as each Bond of such Series states in the body thereof that interest payable thereon is (or may be) subject to federal income taxation and provided that the

issuance thereof will not cause the interest on any other Bonds theretofore issued hereunder to be or become includable in the gross income of the Holder thereof for federal income tax purposes. The covenants set forth in subsections (A), (B) and (C) of this Section 5.17 shall not apply to any Taxable Bonds.

Section 5.18. Continuing Disclosure Regarding Bonds. The Issuer hereby covenants and agrees that, in order to provide for compliance by the Issuer with the secondary market disclosure requirements of Rule 15c2-12 of the United States Security and Exchange Commission (the "Rule"), that it will enter into a continuing disclosure certificate to be executed by the Issuer and dated the date of issuance and delivery of any Series of Bonds subject to the Rule.

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## ARTICLE VI

### SUBORDINATED INDEBTEDNESS AND BONDS

Section 6.01. Subordinated Indebtedness. The Issuer will not issue any other obligations, except under the conditions and in the manner provided herein, payable from the Pledged Revenues, or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien thereon in favor of the Bonds and the interest thereon. The Issuer may at any time or from time to time issue evidences of indebtedness that are not Additional Bonds and that are payable in whole or in part out of the Pledged Revenues and which may be secured by a pledge of the Pledged Revenues; provided, however, that such pledge shall be, and shall be expressed to be, subordinated in all respects to the pledge of the Pledged Revenues created by this Resolution. The Issuer shall have the right to covenant with the holders from time to time of any Subordinated Indebtedness to add to the conditions, limitations and restrictions under which any Additional Bonds may be issued pursuant to Section 6.02 hereof. The Issuer agrees to pay promptly any Subordinated Indebtedness as the same shall become due. The Issuer agrees that Subordinated Qualified Swap Payments shall constitute Subordinated Indebtedness and may not accede to the status of complete parity as set forth in Section 6.04 hereof.

Section 6.02. Issuance of Bonds. The Issuer may issue one or more Series of Bonds for any one or more of the following purposes: financing the Cost of Projects, or the completion thereof or refunding any or all Outstanding Bonds or any Subordinated Indebtedness or other debt of the Issuer or any other purpose permitted by law. Additional Bonds shall be deemed to have been issued pursuant to this Resolution the same as any Outstanding Bonds, and all of the other covenants and other provisions of this Resolution (except as to details of such Additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Holders of all Bonds issued pursuant to this Resolution; provided, however, any Supplemental Resolution authorizing the issuance of Bonds may provide that any of the covenants herein contained will not be applicable to such Bonds, provided that such provision shall not, in the opinion of Bond Counsel, adversely affect the rights of the Holders of any Bonds which shall then be Outstanding. Except as provided in Sections 4.02 and 4.05 hereof, all Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Pledged Funds and their sources and security for payment therefrom without preference of any Bonds over any other; provided, however, that the Issuer shall include a provision in any Supplemental Resolution authorizing the issuance of Variable Rate Bonds pursuant to this Section 6.02 that in the event the principal thereof is accelerated due to such Bonds being held by the issuer of a Credit Facility, the lien of such Bonds on the Pledged Funds shall be subordinate in all respects to the pledge of the Pledged Funds created by this Resolution.

No such Additional Bonds shall be issued by the Issuer, as the case may be, unless the following conditions are complied with:

(A) The Issuer shall certify that it is current in all deposits into the various funds and accounts established hereby and all payments theretofore required to have been deposited or made by it under the provisions of this Resolution and has complied with the covenants and agreements of this Resolution.

(B) There shall have been obtained and filed with the Issuer a certificate of a Qualified Independent Consultant: (1) stating that such consultant has examined the books and records of the Issuer relating to the collection and receipt of Gross Revenues and relating to Operating Expenses; (2) setting forth the amount of Net Revenues, for the most recent Fiscal Year for which audited financial statements for the System are available or any twelve (12) consecutive months selected by the Issuer of the twenty four (24) months immediately preceding the issuance of such Additional Bonds; (3) stating that such Net Revenues, adjusted as provided in Section 6.02(E) hereof, equal at least 1.15 times the Maximum Debt Service Requirement for all Outstanding Bonds and such Additional Bonds then proposed to be issued.

(C) In computing the Maximum Debt Service Requirement for purposes of this Section 6.02, the interest rate on outstanding Variable Rate Bonds, and on additional parity Variable Rate Bonds then proposed to be issued, shall be calculated as provided in the definition of Debt Service Requirement.

(D) For the purpose of this Section 6.02, the phrase "the most recent Fiscal Year audited financial statements for the System are available or any twelve (12) consecutive months selected by the Issuer of the twenty-four (24) months immediately preceding the issuance of such Additional Bonds" shall be sometimes referred to as "twelve (12) consecutive months."

(E) Such Net Revenues may be adjusted by the Qualified Independent Consultant, at the option of the Issuer, as follows:

(1) If the Issuer, prior to the issuance of the proposed Additional Bonds, shall have adopted and implemented an increase in the Rates, the Net Revenues for the twelve (12) consecutive months shall be adjusted to show the Net Revenues which would have been derived from the System in such twelve (12) consecutive months as if such increased Rates had been in effect during all of such twelve (12) consecutive months.

(2) If the Issuer, prior to the issuance of the proposed Additional Bonds, shall have acquired or has contracted to acquire any privately or publicly owned existing utility system, the cost of which shall be paid from all or part of the proceeds of the issuance of the proposed Additional Bonds, then the Net Revenues derived from the System during

the twelve (12) consecutive months immediately preceding the issuance of said Additional Bonds shall be increased by adding to the Net Revenues for said twelve (12) consecutive months the Net Revenues which would have been derived from said existing utility system as if such existing utility system had been a part of the System during such twelve (12) consecutive months. For the purposes of this paragraph, the Net Revenues derived from said existing utility system during such twelve (12) consecutive months shall be adjusted to determine such Net Revenues by deducting the cost of operation and maintenance of said existing utility system from the gross revenues of said system. Such Net Revenues shall take into account any increase in rates imposed on customers of such acquired wastewater system on or prior to the acquisition thereof by the Issuer.

(3) If the Issuer, in connection with the issuance of Additional Bonds, shall enter into a contract (with a duration not less than the final maturity of such Additional Bonds) with any public or private entity whereby the Issuer agrees to furnish services in connection with any wastewater system, then the Net Revenues of the System during the twelve (12) consecutive months immediately preceding the issuance of said Additional Bonds shall be increased by the least amount which said public or private entity shall guarantee to pay in any one year for the furnishing of said services by the Issuer, after deducting therefrom the proportion of operating expenses and repair, renewal and replacement cost attributable in such year to such services.

(4) In the event the Issuer shall be constructing or acquiring additions, extensions or improvements to the System from the proceeds of such Additional Bonds and shall have established Rates to be charged and collected from users of such facilities when service is rendered, such Net Revenues may be adjusted by adding thereto the Net Revenues estimated by the Consulting Engineers to be derived during the first twelve (12) months of operation after completion of the construction or acquisition of said additions, extensions and improvements from the proposed users of the facilities to be financed by Additional Bonds together with other funds on hand or lawfully obtained for such purpose.

(5) If the Issuer, prior to the issuance of the proposed Additional Bonds, shall have obtained new ongoing customers of the System the Net Revenues for the twelve (12) consecutive months shall be adjusted to reflect the additional Net Revenues which would have been derived from the System with respect to such customers, as if such customers had been utilizing the System during all of such twelve (12) consecutive months.

(F) In the event any Additional Bonds are issued for the purpose of refunding any Bonds then Outstanding, the conditions of Section 6.02(A) and (B) shall not apply, provided that the issuance of such Additional Bonds shall not result in an increase in the aggregate amount of principal of and interest on the Outstanding Bonds becoming due in the current Fiscal Year or any subsequent Fiscal Years. The conditions of Section 6.02(B) hereof shall apply to Additional Bonds

issued to refund Subordinated Indebtedness and to Additional Bonds issued for refunding purposes which cannot meet the conditions of this paragraph.

(G) In the event that the total amount of any Series of Bonds authorized to be issued shall not be issued simultaneously, such Bonds which shall be issued subsequently shall be subject to the conditions of Section 6.02(B) hereof.

(H) If at any time the Issuer shall enter into an agreement or contract for an ownership interest in any public or privately owned wastewater system or for the reservation of capacity therein whereby the Issuer has agreed as part of the cost thereof to pay part of the debt service on the obligations of such public or privately owned wastewater system issued in connection therewith, such payments to be made by the Issuer shall be junior, inferior and subordinate in all respects to the Bonds issued hereunder, unless such obligations (when treated as Additional Bonds) shall meet the conditions of Section 6.02(B) hereof, in which case such obligations shall rank on parity as to lien on the Pledged Funds with the Bonds.

(I) In addition to all of the other requirements specified in this Section 6.02, the Issuer must comply with any applicable provisions of any financing documents relating to outstanding Subordinated Indebtedness to the extent such provisions impact on the ability of the Issuer to issue Additional Bonds.

Section 6.03. Bond Anticipation Notes and Grant Anticipation Notes. The Issuer may issue notes in anticipation of the issuance of Bonds and grants which shall have such terms and details and be secured in such manner, not inconsistent with this Resolution, as shall be provided by subsequent resolution of the Issuer.

Section 6.04. Accession of Subordinated Indebtedness to Parity Status with Bonds. The Issuer may provide for the accession of Subordinated Indebtedness (other than Subordinated Indebtedness which relates to Subordinated Qualified Swap Payments) to the status of complete parity with the Bonds, if (A) the Issuer shall meet all the requirements imposed upon the issuance of Additional Bonds by Section 6.02 hereof, assuming, for purposes of said requirements, that such Subordinated Indebtedness shall be Additional Bonds, (B) the facilities financed by such Subordinated Indebtedness shall be, or become part of the System, and (C) the Issuer shall provide for the funding of the Reserve Fund, upon such accession, in an amount equal to any increase in the amount of the Reserve Fund Requirement occasioned by such accession in accordance with Section 4.05(C) hereof. If the aforementioned conditions are satisfied and the Issuer adopts a Supplemental Resolution providing for such accession, the Subordinated Indebtedness shall be deemed to have been issued pursuant to this Resolution the same as the Outstanding Bonds, and such Subordinated Indebtedness shall be considered Bonds for all purposes provided in this Resolution.



## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.01. Events of Default. The following events shall each constitute an “Event of Default” hereunder:

(A) Default shall be made in the payment of the principal of, Amortization Installment, redemption premium or interest on any Bond when due and continues for a period of ten (10) days.

(B) There shall occur the dissolution or liquidation of the Issuer, or the filing by the Issuer of a voluntary petition in bankruptcy, or the commission by the Issuer of any act of bankruptcy, or adjudication of the Issuer as a bankrupt, or assignment by the Issuer for the benefit of its creditors, or appointment of a receiver for the Issuer or the System, or the entry by the Issuer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Issuer or the System in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter enacted.

(C) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the Issuer to be performed, and such default shall continue for a period of ninety (90) days after written notice of such default shall have been received from any Insurer or the Holders of not less than twenty-five percent (25%) of the aggregate principal amount of Bonds Outstanding or any Credit Bank. Notwithstanding the foregoing, if the default in is related to debt service coverage, then the cure period shall be extended to one hundred eighty days (180), if the ratio is at least 1.0 and the Issuer provides a consultant report and plan of action acceptable to the Insurer, Credit Bank and Bondholders.

Section 7.02. Remedies. Any Insurer, Credit Bank or Holder of Bonds issued under the provisions of this Resolution or any trustee or receiver acting for such Bondholders may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent

jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and contained in this Resolution and the Bonds, and may enforce and compel the performance of all duties required by this Resolution and the Bonds or by any applicable statutes to be performed by the Issuer or by any officer thereof.

The Holder or Holders of Bonds in an aggregate principal amount of not less than twenty-five percent (25%) of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders and such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding and the trust instrument under which the trustee shall have agreed to serve shall be filed with the Issuer and the trustee and notice of appointment shall be given to all Holders of Bonds in the same manner as notices of redemption are given hereunder. After the appointment of the first trustee hereunder, no further trustees may be appointed; however, the Holders of a majority in aggregate principal amount of all the Bonds then Outstanding may remove the trustee initially appointed and appoint a successor and subsequent successors at any time.

Section 7.03. Directions to Trustee as to Remedial Proceedings. The Holders of a majority in principal amount of the Bonds then Outstanding (or any Insurer insuring, or any Credit Bank providing a Credit Facility for, any then Outstanding Bonds) have the right, by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct the method and place of conducting all remedial proceedings to be taken by the trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions hereof, and that the trustee shall have the right to decline to follow any such direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

Section 7.04. Remedies Cumulative. No remedy herein conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.05. Waiver of Default. No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 7.02 of this Resolution to the Bondholders may be exercised from time to time, and as often as may be deemed expedient.

Section 7.06. Application of Moneys After Default. If an Event of Default shall happen and shall not have been remedied, the Issuer or a trustee or receiver appointed for the purpose shall apply all Pledged Funds as follows and in the following order:

(A) To the payment of the reasonable and proper charges, expenses and liabilities of the trustee or receiver, Registrar and Paying Agent hereunder, including without limitation attorney's fee and expenses, court costs and costs of appeals; and

(B) To the payment of the interest and principal or Redemption Price, if applicable, then due on the Bonds, as follows:

(1) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference;

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 9.01 of this Resolution), in the order of their due dates, with interest upon such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD: to the payment of the Redemption Price of any Bonds called for optional redemption pursuant to the provisions of this Resolution.

(2) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest thereon as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

Section 7.07. Control by and Notice to Insurer or Credit Bank. Upon the occurrence and continuance of an Event of Default, each Insurer or Credit Bank, if such Insurer or Credit Bank shall have honored all of its commitments under its Bond Insurance Policy or its Credit Facility, as the case may be, shall be entitled to direct and control the enforcement of all rights and remedies with respect to the Bonds it shall insure or for which such Credit Facility is provided. The Issuer agrees to immediately notify each Insurer or Credit Bank if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any event of default hereunder.

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## ARTICLE VIII

### SUPPLEMENTAL RESOLUTIONS

Section 8.01. Supplemental Resolution without Bondholders' Consent. The Issuer, from time to time and at any time, may adopt such Supplemental Resolutions without the consent of the Bondholders (which Supplemental Resolution shall thereafter form a part hereof) at any time prior to the issuance of any Bonds hereunder for any purpose whatsoever, and after the issuance of Bonds for any of the following purposes:

(A) To cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or to clarify any matters or questions arising hereunder.

(B) To grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders.

(C) To add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed.

(D) To add to the covenants and agreements of the Issuer in this Resolution other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer.

(E) To specify and determine at any time prior to the delivery of any Series of Bonds the matters and things referred to herein, including but not limited to Sections 2.01 or 2.09 hereof, and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination.

(F) To authorize Additional Projects or to change or modify the description of any Additional Project.

(G) To specify and determine matters necessary or desirable for the issuance of Capital Appreciation Bonds or Variable Rate Bonds.

(H) To authorize Bonds as Additional Bonds or Subordinated Indebtedness.

(I) To make any other change that, in the opinion of Bond Counsel, would not materially adversely affect the security for the Bonds. In making such determination, Bond Counsel shall not take into consideration any Bond Insurance Policy.

(J) To make any change approved by every Insurer.

Except Supplemental Resolutions described in subsections (B), (E), (F), (G), (H) and (I) of this Section 8.01, no Supplemental Resolution adopted pursuant to this Article VIII shall become effective unless approved by every Insurer; and the Issuer covenants and agrees to furnish to each Insurer an executed original transcript of the Issuer's proceedings with respect to the adoption of each Supplemental Resolution. A copy of the Supplemental Resolution shall be provided to Standard & Poor's Rating Group, Fitch, and to Moody's Investors Service, if such rating agencies are then rating the Bonds.

Section 8.02. Supplemental Resolution With Bondholders', Insurers' and Credit Banks' Consent. Subject to the terms and provisions contained in this Section 8.02 and Section 8.01 hereof, the Holder or Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such Supplemental Resolution or Resolutions hereto as shall be deemed necessary or desirable by the Issuer for the purpose of supplementing, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified Series or maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 8.02. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 8.02 shall also require the written consent of the Insurer of, or any Credit Bank providing a Credit Facility for, any Bonds which are Outstanding at the time such Supplemental Resolution shall take effect. A copy of the Supplemental Resolution shall be provided to Standard & Poor's Rating Group, Fitch and to Moody's Investors Service, if such rating agencies are then rating the Bonds. No Supplemental Resolution may be approved or adopted which shall permit or require (A) an extension of the maturity of the principal of or the payment of the interest on any Bond issued hereunder, (B) reduction in the principal amount of any Bond or the Redemption Price or the rate of interest thereon, (C) the creation of a lien upon or a pledge of the Pledged Funds other than the lien and pledge created by this Resolution which adversely affects any Bondholders, (D) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (E) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders or the Credit Bank of the adoption of any Supplemental Resolution as authorized in Section 8.01 or the Insurer as authorized in Sections 8.01(A), (C) and (D) hereof.

If at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 8.02, the City Clerk shall cause the Registrar to

give notice of the proposed adoption of such Supplemental Resolution and the form of consent to such adoption to be mailed, postage prepaid, to all Bondholders at their addresses as they appear on the registration books and to all Insurers of, and Credit Banks providing a Credit Facility for, Bonds Outstanding. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the offices of the City Clerk and the Registrar for inspection by all Bondholders. The Issuer shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 8.02 to be mailed and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 8.02.

Whenever the Issuer shall deliver to the City Clerk an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Issuer may adopt such Supplemental Resolution in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such Supplemental Resolution shall have consented to and approved the adoption thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption of such Supplemental Resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any Supplemental Resolution pursuant to the provisions of this Section 8.02, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Issuer and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

Section 8.03. Amendment with Consent of Insurer and/or Credit Bank Only. If all of the Bonds Outstanding hereunder are insured or secured as to payment of principal and interest by an Insurer or Insurers and/or by a Credit Facility provided by a Credit Bank or Credit Banks, and the Insurer or Insurers and/or the Credit Bank or Credit Banks, as applicable, are not in default, and the Bonds, at the time of the hereinafter described amendment, shall be rated by the rating agencies which shall have rated the Bonds at the time such Bonds were insured or such Credit Facility was provided no lower than the ratings assigned thereto by such rating agencies on the date such Bonds were insured or such Credit Facility was provided, the Issuer may enact one or more Supplemental

Resolutions amending all or any part of Articles I, III, IV, V, VI, VII and VIII (to the extent such Article VIII provision relates to the Insurer or Credit Bank) hereof with the written consent of said Insurer or Insurers and/or said Credit Bank or Credit Banks, as applicable, and the acknowledgment by said Insurer or Insurers and/or said Credit Bank or Credit Banks that its Bond Insurance Policy or its Credit Facility, as the case may be, will remain in full force and effect. The consent of the Holders of any Bonds shall not be necessary. The foregoing right of amendment, however, does not apply to any amendment to Section 5.19 hereof with respect to the exclusion, if applicable, of interest on said Bonds from the gross income of the Holders thereof for federal income tax purposes nor may any such amendment deprive the Holders of any Bond of right to payment of the Bonds from, and their lien on, the Pledged Funds and any additional security pledged hereunder. Upon filing with the City Clerk of evidence of such consent of the Insurer or Insurers and/or the Credit Bank or Credit Banks as aforesaid, the Issuer may adopt such Supplemental Resolution. After the adoption by the Issuer of such Supplemental Resolution, notice thereof shall be mailed in the same manner as notice of an amendment under Section 8.02 hereof.

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## ARTICLE IX

### MISCELLANEOUS; DEFEASANCE

Section 9.01. Defeasance. If the Issuer shall pay or cause to be paid or there shall otherwise be paid to the Holders of all Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of the Pledged Funds and any additional security pledged hereunder, and all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Paying Agents shall pay over or deliver to the Issuer all money or securities held by them pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Any Bonds or interest installments appertaining thereto, whether at or prior to the maturity or redemption date of such Bonds, shall be deemed to have been paid within the meaning of this Section 9.01 if (A) in case any such Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, (B) there shall have been deposited in irrevocable trust with a banking institution or trust company by or on behalf of the Issuer either moneys in an amount which shall be sufficient, or Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with such bank or trust company at the same time shall be sufficient, to pay the principal of or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be and (C) there shall be available a copy of the Accountant's verification report. Neither the Securities nor any moneys so deposited with such bank or trust company nor any moneys received by such bank or trust company on account of principal of or Redemption Price, if applicable, or interest on said Securities shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of or Redemption Price, if applicable, of the Bonds for the payment or redemption of which they were deposited and the interest accruing thereon to the date of maturity or redemption thereof; provided, however, the Issuer may substitute new Securities and moneys for the deposited Securities and moneys if the new Securities and moneys are sufficient to pay the principal of or Redemption Price, if applicable, and interest on such Bonds.

Notwithstanding anything in this Resolution to the contrary, in the event that the principal and/or interest due on any Bonds shall be paid by an Insurer pursuant to a municipal bond insurance policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Pledged Funds and all covenants, agreements and other obligations of the Issuer to the registered owners

shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such registered owners.

For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or the redemption date thereof, as the case may be, by the deposit of moneys, or specified Securities and moneys, if any, in accordance with this Section 9.01, the interest to come due on such Variable Rate Bonds on or prior to the maturity or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than the Maximum Interest Rate for any period, the total amount of moneys and specified Securities on deposit for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited on such date in respect of such Variable Rate Bonds in order to satisfy this Section 9.01, such excess shall be paid to the Issuer free and clear of any trust, lien, pledge or assignment securing the Bonds or otherwise existing under this Resolution.

In the event the Bonds for which moneys are to be deposited for the payment thereof in accordance with this Section 9.01 are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall cause the Registrar to mail a notice to the Holders of such Bonds that the deposit required by this Section 9.01 of moneys or Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 9.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of or Redemption Price, if applicable, and interest on said Bonds.

Nothing herein shall be deemed to require the Issuer to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption.

In the event that the principal of or Redemption Price, if applicable, and interest due on the Bonds or any portion thereof shall be paid by an Insurer or Insurers or a Credit Bank or Credit Banks, such Bonds or any portion thereof shall remain Outstanding, shall not be defeased and shall not be considered paid by the Issuer, and the pledge of the Pledged Funds and any additional security pledged hereunder, and all covenants, agreements and other obligations of the Issuer to the Bondholders shall continue to exist and such Insurer or Insurers or such Credit Bank or Credit Banks shall be subrogated to the rights of such Bondholders.

Section 9.02. Capital Appreciation Bonds. For the purposes of (A) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity, or (B) receiving payment of a Capital Appreciation Bond if the principal of all Bonds becomes due and payable under the provisions of this Resolution, or (C) computing the amount of Bonds held by the Holder of a Capital Appreciation Bond in giving to the Issuer or any trustee or receiver appointed to

represent the Bondholders any notice, consent, request or demand pursuant to this Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value. For the purpose of determining the aggregate principal amount of Capital Appreciation Bonds which may be issued hereunder, only the aggregate principal amount of such Bonds at their initial offering shall be counted, without regard to the aggregated Accreted Value or face amount of such Bonds which shall be payable at their respective maturities.

Section 9.03. General Authority. The members of the Governing Body and the Issuer's officers, attorneys and other agents and employees are hereby authorized to do all acts and things required of them by this Resolution or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds and this Resolution, and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel or the initial purchasers of the Bonds to effectuate the sale of the Bonds to said initial purchasers.

Section 9.04. No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Bonds, or in any certificate or other instrument to be executed on behalf of the Issuer in connection with the issuance of the Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member of the Governing Body, officer, employee or agent of the Issuer in his or her individual capacity, and none of the foregoing persons nor any officer of the Issuer executing the Bonds, or any certificate or other instrument to be executed in connection with the issuance of the Bonds, shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 9.05. Third Party Beneficiaries. Except such other Persons as may be expressly described herein or in the Bonds, nothing in this Resolution, or in the Bonds, expressed or implied, is intended or shall be construed to confer upon any Person other than the Issuer, the Insurer, if any, and the Holders any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Bonds, all provision hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer, the Insurer, if any, and the Persons who shall from time to time be the Holders.

To the extent that this Resolution confers upon or gives or grants to the Insurer any right, remedy or claim under or by reason of this Resolution, the Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Section 9.06. Sale of Bonds. The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with

the provisions of the Act, the requirements of this Resolution and other applicable provisions of law.

Section 9.07. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Resolution 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 and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

Section 9.08. Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

Section 9.09. Table of Contents and Headings not Part Hereof. The Table of Contents preceding the body of this Resolution and the headings preceding the several articles and sections hereof shall be solely for convenience of reference and shall not constitute a part of this Resolution or affect its meaning, construction or effect.

Section 9.10. Effective Date. This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED by the City Council of the City of Marathon, Florida at a regular meeting assembled this 23rd day of June, 2009.

[OFFICIAL SEAL]


CITY OF MARATHON, FLORIDA

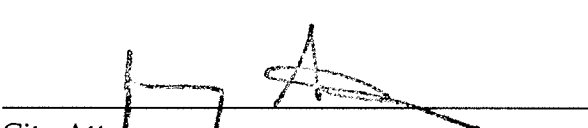
  
\_\_\_\_\_  
Mayor Mike Cinque

AYES: Vasil, Snead, Ramsay, Worthington, Cinque  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

Approved as to Form:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney