

RESOLUTION NO. 2009-74

A RESOLUTION SUPPLEMENTING RESOLUTION NO. 2009-73 ADOPTED BY THE CITY MARATHON, FLORIDA, ON JUNE 23, 2009, AUTHORIZING THE ISSUANCE BY THE CITY OF NOT TO EXCEED \$30,000,000 UTILITY SYSTEM REVENUE BONDS TO FINANCE IMPROVEMENTS TO THE UTILITY SYSTEM AND PAY THE COSTS OF ISSUANCE OF SUCH BONDS; AWARD OF THE SALE OF THE SERIES 2009 BONDS TO REGIONS BANK; DESIGNATING SUCH BONDS AS BANK QUALIFIED AND PROVIDING AN EFFECTIVE DATE.

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

Section 1: *Definitions.* The terms used in this Resolution shall have the respective meanings assigned to them in the hereinafter defined Master Resolution and in this Section, unless the text hereof clearly otherwise requires:

“Bond Counsel” shall mean Bryant Miller Olive P.A., Miami, Florida with respect to the issuance of the Series 2009 Bonds.

“Bank Debt Service Coverage Ratio” shall mean for each Fiscal Year of the Issuer, the ratio of (i) Pledged Revenues plus Non-Ad Valorem Revenues to (ii) the payments of principal and interest coming due on the Series 2009 Bonds plus the Bond Service Requirements with respect to all other Bonds, excluding Subordinated Indebtedness. After September 30, 2013, “Bank Debt Service Coverage Ratio” shall mean for each Fiscal Year of the Issuer, the ratio of (i) Pledged Revenues, excluding Local Government Infrastructure Surtax Revenues, to (ii) the payments of principal and interest coming due on the Series 2009 Bonds plus the Bond Service Requirements with respect to all other Bonds, excluding Subordinated Indebtedness. Only the portion of the Stormwater Assessments and Wastewater Assessments collected in such Fiscal Year or Local Government Infrastructure Surtax Revenues transferred into the System and considered Gross Revenues in such Fiscal Year shall be included in the calculation of Pledged Revenues for this purpose.

“Business Day” shall mean any day other than a Saturday, Sunday or other legal holiday on which commercial banks are open for business in Miami, Florida, Birmingham, Alabama and New York, New York; except that when used in connection with a LIBOR Rate loan, such day shall also be a day on which dealings between banks are carried on in London, England in deposits of dollars.

“City Council” shall mean the City Council of the Issuer.

“Interest Period” shall mean the period commencing on the date of issue of the Series 2009 Bonds and ending on the last day of such month, thereafter the commencing on the first day of each month and ending on the last day of each month, and on the last month ending on the maturity date of the Series 2009 Bonds.

“Interest Rate” shall mean the interest rate on the Series 2009 Bonds being the rate per annum for each Interest Period equal to (i) the greater of (x) 30-day LIBOR Rate as the date which is two Business Days prior to the commencement of such Interest Period plus 2.01% or (y) 2.13%, or (ii) if, because of the introduction of or any change in, or because of any judicial, administrative, or other governmental interpretation of, any applicable law or regulation, it becomes unlawful for Purchaser to make, fund, or maintain any advance or balance at a rate based on the 30-Day LIBOR Rate, the prime rate of Regions Bank in effect from time to time as designated by Regions Bank (the “Prime Rate”) on the first day of each Interest Period, the Prime Rate being merely a reference rate and not necessarily the best or lowest rate offered by Regions Bank.

“Issuer” shall mean the City of Marathon, Florida.

“Master Resolution” shall mean Resolution No. 2009-73 adopted by the City Council on June 23, 2009, as amended and supplemented from time to time, which contains the terms for the issuance of debt secured by Pledged Revenues of the Issuer.

“Maturity Date” shall mean July 1, 2019.

“Non-Ad Valorem Revenues” means all legally available non-ad valorem revenues of the Issuer, but shall not include any ad valorem taxes.

“Permitted Investments” shall mean a Public Funds Money Market Savings Account with Regions Bank, a Public Funds Certificate of Deposit of Regions Bank or any other investments approved by the Purchaser.

“Pledged Revenues” shall mean the Net Revenues and a junior and subordinate lien on the Local Government Infrastructure Surtax Revenues.

“Purchaser” shall mean Regions Bank, Coral Gables, Florida.

“Registrar and Paying Agent,” with respect to the Series 2009 Bonds, shall mean the City Clerk, or such other institution so designated by the Issuer.

“Series 2009 Bonds” shall mean the Issuer's Utility System Revenue Bonds, Series 2009, authorized pursuant to this Resolution and Section 2.01 of the Master Resolution.

“Series 2009 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, as further described in the Wastewater and Stormwater Utility System Financial Feasibility Report dated March 2009 prepared by Public Resources Management Group, Inc.

“Series 2009 Resolution” shall mean this Supplemental Resolution.

“Total Debt Service Coverage” shall mean for each Fiscal Year of the Issuer, the ratio of (i) Pledged Revenues plus Non-Ad Valorem Revenues to (ii) the payments of principal and interest coming due on the Series 2009 Bonds plus the Bond Service Requirements with respect to any other Bonds, including Subordinated Indebtedness. After September 30, 2013, “Total Debt Service Coverage Ratio” shall mean for each Fiscal Year of the Issuer, the ratio of (i) Pledged Revenues, excluding Local Government Infrastructure Surtax Revenues, to (ii) the payments of principal and interest coming due on the Series 2009 Bonds plus the Bond Service Requirements with respect to any other Bonds, including Subordinated Indebtedness. Only the portion of the Stormwater Assessments and Wastewater Assessments collected in such Fiscal Year or Local Government Infrastructure Surtax Revenues transferred into the System and considered Gross Revenues in such Fiscal Year shall be included in the calculation of Pledged Revenues for this purpose.

“30-Day LIBOR Rate” shall mean the rate of interest (rounded upwards if necessary to the next 100th of one percent) equal to (i) 30-Day LIBOR divided by (ii) 1.00 minus the Eurodollar Reserve Percentage.

“Eurodollar Reserve Percentage” shall mean for any day, the percentage (expressed as a decimal and rounded upwards, if necessary, to the next higher 1/100th of 1%) which is in effect for such day as prescribed by the Federal Reserve Board (or any successor) for determining the maximum reserve requirement (including without limitation any basic, supplemental or emergency reserves) in respect of Eurocurrency liabilities, as defined in Regulation D of the Federal Reserve Board as in effect from time to time, or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“30-Day LIBOR” shall mean, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as designated by the Purchaser from time to time) as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of

each month for a term of thirty (30) days. If for any reason such rate is not available, then "30-Day LIBOR" shall mean the rate per annum at which, as determined by the Purchaser in accordance with its customary practices, U.S. Dollars in an amount comparable to the outstanding principal amount of the Series 2009 Bonds are being offered to leading banks at approximately 11:00 A.M. London time, two (2) Business Days prior to the first day of each month in immediately available funds by leading banks in the London interbank market for a term of thirty (30) days.

Section 2: *Authority For This Resolution.* This Resolution is adopted pursuant to the provisions of the Master Resolution and the Act.

Section 3: *Findings.* It is hereby found and determined that:

(A) For the benefit of the inhabitants of the City of Marathon, Florida, the Issuer owns, operates and maintains the System for the collecting, storing and transportation of stormwater and the collection, treatment and discharge or reuse of wastewater.

(B) The Issuer is without currently available funds to pay the Costs of the Series 2009 Project and desires to authorize the issuance of the Series 2009 Bonds for the purpose of financing Costs of the Series 2009 Project and paying certain costs of issuance incurred with respect to the Series 2009 Bonds.

(C) The Issuer deems it necessary, desirable and in the best interest of the Issuer that the Pledged Revenues be pledged to the payment of the principal of and interest on the Series 2009 Bonds. No part of the Pledged Revenues has been pledged or encumbered in any manner except to the Series 2009 Bonds and to Senior Bonds.

(D) The Pledged Revenues will be sufficient to pay the principal of and interest on the Series 2009 Bonds as the same become due, and all other payments provided for in this Resolution.

(E) The principal of and interest on the Series 2009 Bonds and all other payments provided for in this Series 2009 Resolution and the Master Resolution will be paid solely from the sources herein provided in accordance with the terms hereof; and no ad valorem taxing power of the Issuer will ever be exercised nor will the Bondholder have the right to compel the exercise of such ad valorem taxing power to pay the principal of or interest on the Series 2009 Bonds or to make any other payments provided for in this Resolution or the Master Resolution, and the Series 2009 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 Revenues.

(F) It is necessary and appropriate that the Issuer appoint a Registrar and a Paying Agent for the Series 2009 Bonds, and the City Clerk is qualified to serve as Registrar and Paying Agent for the Series 2009 Bonds in accordance with the terms hereof and of the Master Resolution.

(G) Upon issuance in accordance with the terms hereof, the Series 2009 Bonds will constitute the first Series of Bonds under the Master Resolution entitled to all the security and benefits thereof.

(I) The Issuer does hereby find and determine that it is in the best interest of the Issuer that a private negotiated placement of the Series 2009 Bonds be authorized.

(J) The Issuer has received a commitment letter dated May 27, 2009 from the Purchaser (the "Commitment") for the Series 2009 Bonds and it is the in the best interest of the Issuer that the Commitment is accepted.

(K) The Issuer desires to qualify the Series 2009 Bonds for the exception contained in Section 265(b)(3) of the Code to the provisions contained in Section 265(b) of the Code which deny financial institutions any deduction for interest expense allocable to tax-exempt obligations acquired after August 7, 1986, and to designate the Series 2009 Bonds for the purpose of qualifying for such exception.

(L) The Issuer acknowledges that the purchase of the Series 2009 Bonds by the Purchaser is in the form of a loan to the Issuer, and that the Purchaser shall be deemed a "Credit Bank" and the loan evidenced by the Series 2009 Bonds shall be deemed a "Credit Facility" under the Master Resolution and this Series 2009 Resolution.

Section 4: *Authorization of Series 2009 Bonds.* Subject and pursuant to the provisions hereof and in accordance with the provisions of the Master Resolution and the Commitment, the issuance by the Issuer of the Utility System Revenue Bond, Series 2009, in an aggregate principal amount not to exceed Thirty Million Dollars (\$30,000,000), is authorized to be dated, to bear interest, to be payable, to mature, to be subject to redemption and to have such other characteristics as provided in the Series 2009 Bond, the Master Resolution and the Commitment.

Section 5: *Authorization and Description of Series 2009 Bonds.* A series of Bonds entitled to the benefit, protection and security of the Master Resolution is hereby authorized to be issued pursuant to the Master Resolution in an aggregate principal amount of not to exceed \$30,000,000 for the purpose of financing the cost of the Project and paying certain costs of issuance incurred with respect to such Series. Such Series 2009 Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title "City of Marathon, Florida, Utility System Revenue Bonds, Series 2009."

The Series 2009 Bonds shall be issued in a single denomination equal to, at any particular time, the amount of the outstanding Series 2009 Bonds; shall be dated the date of their delivery; shall be issued as a fully registered Bond; shall be numbered "R-1;" and shall bear interest on the outstanding principal amount of the Series 2009 Bonds at the Interest Rate for each Interest Period. Interest accrued shall be payable on the 1st day of each month, commencing August 1, 2009 and thereafter until the Maturity Date (the "Interest Payment Date"). Principal shall be payable on the 1st day of each month, commencing on August 1, 2011 and thereafter until the Maturity Date in the amounts specified in the Bond.

Notwithstanding anything to the contrary in the Master Resolution, the Series 2009 Bonds shall not be held in book-entry only form. As of the date hereof, the Issuer is the only Obligated Person with respect to the Series 2009 Bonds.

Section 6: *Redemption.* The Series 2009 Bonds shall be subject to prepayment at the option of the Issuer in whole or in part on any Interest Payment Date, in installments of \$1,000,000 plus increments at a price equal to the principal amount thereof to be prepaid, plus accrued interest thereon to the date fixed for prepayment, but only upon at least thirty (30) days prior written notice to the Purchaser specifying the amount to be prepaid and date of prepayment.

Section 7: *Form, Execution and Delivery of Series 2009 Bonds.* The Series 2009 Bonds shall be manually signed by the Mayor and shall be attested by the manual signature of the City Clerk. The official seal of the Issuer shall be imprinted on the Series 2009 Bonds. The Series 2009 Bonds shall be authenticated by the Registrar. In case any officer whose signature appears on any Series 2009 Bonds shall cease to be such officer before the delivery of such Series 2009 Bonds, such signature shall nevertheless be valid for all purposes the same as if he or she had remained in office until such delivery. Any Series 2009 Bonds may be signed by such persons as at the actual time of the execution of such Series 2009 Bonds shall be proper officers to execute such Series 2009 Bonds although at the date of such Series 2009 Bonds such persons may not have been such officers. The Series 2009 Bonds will not be issued as book-entry only bonds.

The substantially final form of the Series 2009 Bonds attached hereto as Exhibit A is hereby approved, with such omissions, insertions or variations as shall be necessary or desirable prior to the delivery thereof, such necessity and/or desirability and approval by the Mayor to be presumed by the execution and delivery thereof.

Upon the order of the Purchaser, the Series 2009 Bonds shall be executed and delivered to the Purchaser upon payment of the purchase price therein set forth to the Issuer as conditioned upon the receipt by the Issuer from the Purchaser of the Purchaser's Certificate, the form of which is attached hereto as Exhibit B, and the Disclosure Letter containing the

information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

Section 8: *Registration of Series 2009 Bonds.* The person in whose name the Series 2009 Bonds shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal on any such Series 2009 Bonds, and the interest on such Series 2009 Bonds, shall be made only to or upon the order of the registered owner thereto or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2009 Bonds, and interest thereon to the extent of the sum or sums so paid.

Section 9: *Registrar and Paying Agent.* The City Clerk is hereby appointed as Registrar and Paying Agent under the Master Resolution, to serve as Registrar and Paying Agent for the Series 2009 Bonds.

Section 10. *Security For The Series 2009 Bonds.* In addition to the security provided by Section 4.02 of the Master Resolution, to the extent any deficiency exists in the Pledged Funds, the Issuer covenants and agrees to appropriate in its annual budget for each Fiscal Year in which the Series 2009 Bonds remains outstanding, sufficient amounts of Non-Ad Valorem Revenue for the payment of principal of and interest on the Series 2009 Bonds in each such fiscal year. Such covenant and agreement on the part of the Issuer shall be cumulative and shall continue until all payments of principal of and interest on the Series 2009 Bonds shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement shall be deemed to be entered into for the benefit of the holders of the Series 2009 Bonds and that this obligation may be enforced in a court of competent jurisdiction. This covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenue for other legally permissible purposes. Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage upon any assets owned by the Issuer and no person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder. The Series 2009 Bonds shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida, and no Holder or Holders of any Series 2009 Bonds issued hereunder shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real or personal property therein. The obligation of the Issuer to appropriate Non-Ad Valorem Revenue shall be subject in all respects to the obligation of the Issuer to provide for essential governmental services and further shall be subject to the provisions of Section 166.241, Florida Statutes. Notwithstanding any provisions of this Resolution to the contrary, the Issuer shall not be obligated to exercise ad valorem taxing power to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or other Non-Ad Valorem Revenue.

Section 11: Application of Series 2009 Bonds Proceeds. The proceeds derived from the sale of the Series 2009 Bonds shall, simultaneously with the delivery of the Series 2009 Bonds to the Purchaser, be applied as provided in Section 2.03 of the Master Resolution and Section 7 herein.

Section 12: Funds and Accounts. (A) There is hereby established a separate account in the Construction Fund for the Series 2009 Bonds (the "Series 2009 Construction Account"). At least half of such sub-account shall be maintained with the Purchaser. The proceeds of the Series 2009 Bonds shall be deposited in the Series 2009 Construction Account and shall be applied to the Costs of the Series 2009 Project and the costs of issuance of the Series 2009 Bonds. Funds on deposit in the Series 2009 Construction Account shall be invested only in Permitted Investments. Any excess monies in the Series 2009 Construction Account shall be applied to redeem the Series 2009 Bonds, and no transfers shall be made upon completion of the Series 2009 Project pursuant to Section 4.03 of the Master Resolution without the prior approval of the Purchaser.

(B) There shall be no Reserve Fund required for the Series 2009 Bonds.

Section 13. Covenants of the Issuer.

(A) **Financial Information.** So long as the Purchaser is the holder of the Series 2009 Bonds, the Issuer shall submit its Comprehensive Annual Financial Report to the Purchaser within 210 days of the end of each Fiscal Year and a current year operating budget to the Purchaser within 30 days following approval thereof, or when available, whichever is sooner, and such other information as the Purchaser may reasonably request from time to time. If not provided as part of the documents above, the Issuer shall also submit the Annual Audit together with the certificate of the accountants within 210 days of the end of each Fiscal Year as specified in Section 5.07 of the Master Resolution and the Annual Budget within 30 days following the approval thereof as specified in Section 5.03 of the Master Resolution to the Purchaser when available.

(B) **Debt Service Coverage Ratios.** (i) The Issuer shall maintain a Bank Debt Service Coverage ratio greater than or equal to 120%.

(ii) The Issuer shall maintain a Total Debt Service Coverage ratio greater than or equal to 115%.

(iii) The Issuer shall provide a certificate to the Purchaser stating that both Debt Service Coverage Ratios have been met and attaching all calculations related to the Debt Service coverage Ratios as an exhibit to such certificate. Such certificate shall be submitted at the time the audited financial statements are submitted pursuant to paragraph (A) above.

(C) Pledged Revenues. The Issuer represents that it has full power to irrevocably pledge the Pledged Revenues to the payment of the Series 2009 Bonds, and as long as the Series 2009 Bonds are outstanding, it will take all lawful action required on its part to continue to collect and receive the Pledged Revenues.

(D) Depository Account. The Issuer shall maintain with Regions Bank, until the Maturity Date, a depository account. Such account, together with any monies on deposit in the Series 2009 Construction Account held at Regions Bank, shall maintain a minimum balance equal to 15% of the outstanding amount of the Series 2009 Bonds. Such minimum balance will be tested semiannually. In the event that the minimum balance is not maintained as of any testing date the Issuer will have 30 days to deposit funds sufficient to meet the minimum balance requirements

(E) Master Resolution. Issuer covenants to comply with the applicable provisions and covenants of the Master Resolution.

(F) Registered Owner. While the Series 2009 Bonds are Outstanding and the Purchaser is the Registered Owner thereof, notwithstanding anything to the contrary contained in the Master Resolution or this Series 2009 Resolution,

(1) the Issuer shall not amend any provision of the Master Resolution or the Series 2009 Resolution affecting the Series 2009 Bonds without the prior written consent of the Purchaser;

(2) the Issuer, to the full extent permitted by law, will not grant to parties other than the Issuer or another governmental entity, any franchise, license or permit, for the construction or operation of any facilities which will be competitive with the services and facilities of the System; provided, however, that this covenant shall not affect any vested rights of any persons, firms or corporations now owning or operating such facilities within the boundaries of the Issuer;

(3) the Issuer shall promptly notify the Purchaser in writing upon the occurrence of an Event of Default and of the issuance of any Series of Bonds subsequent to the issuance of the Series 2009 Bonds.

(G) Payment. The Issuer shall, prior to the date of issuance of the Series 2009 Bonds, enter into appropriate written arrangements with the Purchaser to provide for automatic debiting by the Purchaser of payments of principal and interest when due with respect to the Series 2009 Bonds.

(H) Event of Default. Upon the happening and continuance of any Event of Default, then the Purchaser may, by a notice in writing to the Issuer, declare the principal of the Series 2009 Bonds then Outstanding to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Series 2009 Bonds or in this Series 2009 Resolution to the contrary notwithstanding; provided, however, that if at any time after the principal of the Series 2009 Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Series 2009 Resolution, monies shall have accumulated sufficient to pay the principal of the Series 2009 Bond then Outstanding, other than the principal of Series 2009 Bonds not then due except by virtue of such declaration, and the interest accrued on such Series 2009 Bonds since the last Interest Payment Date, and all amounts then payable by the Issuer hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited by the Issuer with the Registrar and Paying Agent, and every other default in the observance or performance of any covenant, condition, agreement or provision contained in the Series 2009 Bonds, in the Master Resolution or this Series 2009 Resolution (other than a default in the payment of the principal of such Series 2009 Bonds then due only because of a declaration under this Section) shall have been remedied, then the Purchaser may, by written notice to the Issuer, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

(I) Rate Covenant. So long as the Series 2009 Bonds are Outstanding, Section 5.04 of the Master Resolution shall not apply, if the Issuer has met the requirements of Section 13(B) hereof.

Section 14: This Instrument To Constitute Contract. Upon and in consideration of the acceptance of the Series 2009 Bonds by the Purchaser, this Resolution, together with the Master Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the Series 2009 Bondholder. The covenants and agreements set forth in the Master Resolution to be performed by the Issuer shall be for the equal and proportionate benefit, protection and security of the holder of the Series 2009 Bonds and any Additional Bonds issued pursuant to the Master Resolution and the terms thereof shall be of equal rank, without preference, priority or distinction over any other thereof, except as expressly provided in the Master Resolution.

Section 15: Designation of Series 2009 Bonds. The Issuer hereby designates the Series 2009 Bonds as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during the calendar year 2009 to issue more than \$30,000,000 of "tax-exempt" obligations including the Series 2009 Bonds, exclusive of any private activity bonds as defined in Section 141(a) of the Code.

Section 16: Tax Covenant.

(A) The Issuer covenants with the holder of the Series 2009 Bonds that it shall not use the proceeds of such Series 2009 Bonds in any manner which would cause the interest on such Series 2009 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 holder of the Series 2009 Bonds that neither the Issuer nor any person under its control or direction will make any use of the proceeds of such Series 2009 Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series 2009 Bonds to be a "private activity bond" within the meaning of Section 141 of the Code or an "arbitrage bond" within the meaning of Section 148 of the Code, and neither the Issuer nor any other person under its control or direction shall do any act or fail to do any act which would otherwise cause the interest on such Series 2009 Bonds to become includable in the gross income of the holder thereof for federal income tax purposes.

(C) The Issuer hereby covenants with the holder of the Series 2009 Bonds that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Series 2009 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 U.S. Treasury pursuant to the Code.

Section 17: Sale of Series 2009 Bonds. The offer of Regions Bank, Coral Gables, Florida to purchase the Series 2009 Bonds is hereby accepted, and the sale of the Series 2009 Bonds is hereby awarded to the Purchaser. Sale of the Series 2009 Bonds is subject to satisfaction of the conditions precedent of the Purchaser, the satisfaction of which shall be evidenced by acceptance of the Series 2009 Bonds and payment therefor by the Purchaser. Prior to the issuance of the Series 2009 Bonds, the Issuer shall receive from the Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit "B."

Section 18: Authorization of Execution of Other Certificates and Other Instruments. The Mayor, the City Clerk, the City Manager, and the City Attorney are hereby authorized and directed, either alone or jointly, under the official seal of the Issuer, to execute and deliver certificates of the Issuer certifying such facts as the City Attorney, counsel to the Purchaser or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2009 Bonds and to execute and deliver such other instruments as shall be necessary or desirable to perform the Issuer's obligations under the Master Resolution and to consummate the transactions contemplated hereby and thereby.

Section 19: *Severability.* 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 the Enabling Instrument and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Series 2009 Bonds issued under the Master Resolution.

Section 20: *Third Party Beneficiaries.* Except as may be expressly described in the Master Resolution, nothing in the Master Resolution or in the Series 2009 Bonds, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Series 2009 Bondholder any right, remedy or claim, legal or equitable, or any provision thereof, or of the Series 2009 Bonds, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Series 2009 Bondholder from time to time.

Section 21: *No Personal Liability.* Neither the members of the City Council nor any person executing the Series 2009 Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 22: *Master Resolution In Full Force and Effect.* Except as hereby amended and supplemented, the Master Resolution shall remain in full force and effect.

Section 23: *Repealing Clause.* All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

Section 24: *Effective Date.* This Resolution shall become effective immediately upon its passage and adoption.

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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, Worthington, Ramsay, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Approved as to Form:



City Clerk



City Attorney

EXHIBIT A

Form of
Series 2009 Bonds

ANY OWNER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH OWNER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

No. R- _____

\$ _____

UNITED STATES OF AMERICA
STATE OF FLORIDA
COUNTY OF MONROE
CITY OF MARATHON
UTILITY SYSTEM REVENUE BONDS
SERIES 2009

Interest
Rate

Maturity
Date

Date of
Original Issue

Variable

_____/____

_____/____

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. The Series 2009 Bonds shall bear interest at the Interest Rate (defined below), subject to adjustment as set forth on Schedule 2 hereto. Interest accrued on the outstanding principal amount shall be paid monthly commencing on August 1, 2009 and on the 1st day of each month thereafter until the Maturity Date identified above. Principal payments in the amounts specified on Schedule 1, attached hereto and incorporated herein by reference, shall be made monthly commencing August 1, 2011 and on the 1st day of each month thereafter until the Maturity Date,

at which time the unpaid and outstanding principal amount together with all accrued interest shall be due and payable.

“Interest Rate” means the rate per annum for each Interest Period equal to (i) the greater of (x) 30-day LIBOR Rate as the date which is two Business Days prior to the commencement of such Interest Period plus 2.01% and (y) 2.13%, , or (ii) if, because of the introduction of or any change in, or because of any judicial, administrative, or other governmental interpretation of, any applicable law or regulation, it becomes unlawful for Purchaser to make, fund, or maintain any advance or balance at a rate based on the 30-Day LIBOR Rate, the prime rate of Regions Bank in effect from time to time as designated by Regions Bank (the “Prime Rate”) on the first day of each Interest Period, the Prime Rate being merely a reference rate and not necessarily the best or lowest rate offered by Regions Bank.

“Interest Period” means the period commencing on the date of issue of the Series 2009 Bonds and ending on the last day of such month, thereafter the commencing on the first day of each month and ending on the last day of each month, and on the last month ending on the maturity date of the Series 2009 Bonds.

“30-Day LIBOR Rate” shall mean the rate of interest (rounded upwards if necessary to the next 100th of one percent) equal to (i) 30-Day LIBOR divided by (ii) 1.00 minus the- Eurodollar Reserve Percentage.

“Eurodollar Reserve Percentage” shall mean for any day, the percentage (expressed as a decimal and rounded upwards, if necessary, to the next higher 1/100th of 1%) which is in effect for such day as prescribed by the Federal Reserve Board (or any successor) for determining the maximum reserve requirement (including without limitation any basic, supplemental or emergency reserves) in respect of Eurocurrency liabilities, as defined in Regulation D of the Federal Reserve Board as in effect from time to time, or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“30-Day LIBOR” shall mean, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as designated by the Purchaser from time to time) as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of each month for a term of thirty (30) days. If for any reason such rate is not available, then “30-Day LIBOR” shall mean the rate per annum at which, as determined by the Purchaser in accordance with its customary practices, U.S. Dollars in an amount comparable to the outstanding principal amount of the Series 2009 Bonds are being offered to leading banks at approximately 11:00 A.M. London time, two (2) Business Days prior to the first day of each month in immediately available funds by leading

banks in the London interbank market for a term of thirty (30) days.

“Business Day” shall mean any day other than a Saturday, Sunday or other legal holiday on which commercial banks are open for business in Miami, Florida, Birmingham, Alabama and New York, New York; except that when used in connection with a LIBOR Rate loan, such day shall also be a day on which dealings between banks are carried on in London, England in deposits of dollars.

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.

The Paying Agent shall be the City Clerk of the Issuer having an address at City Clerk, 9805 Overseas Highway, Marathon, Florida 33050, as paying agent, or such other paying agent as the Issuer shall hereafter duly appoint (the “Paying Agent”). Payment of each installment of interest and principal shall be made to the person in whose name this bond shall be registered on the registration books of the Issuer maintained by the City Clerk, 9805 Overseas Highway, Marathon, Florida 33050, 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 all of an authorized issue of bonds of the Issuer in the aggregate principal amount of \$30,000,000 (the “Series 2009 Bonds”) issued to finance the cost of improvement to the System, 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 Resolution No. ____ duly adopted by the City Council of the City of Marathon, Florida on _____, 2009, (the “Master Resolution”) as supplemented by Resolution No. ____ duly adopted by the City Council of the City of Marathon, Florida on _____, 2009 (the “Supplemental Resolution”), (the Master Resolution and the Supplemental Resolution are collectively referred to herein as 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, the Stormwater Assessments, the Wastewater Assessments and a junior and subordinate lien on the Local Government Infrastructure Surtax Revenues and until applied in accordance with the provisions of the Resolution, the proceeds of the Series 2009 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").

The Issuer has further covenanted and agreed that to the extent of any deficiency in the Pledged Funds, it will appropriate in its annual budget for each Fiscal Year in which the Series 2009 Bonds remain outstanding, sufficient amounts of Non-Ad Valorem Revenue for the payment of principal of and interest on the Series 2009 Bonds in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be cumulative and shall continue until all payments of principal of and interest on the Series 2009 Bonds shall have been budgeted, appropriated and actually paid.

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.

The Series 2009 Bonds shall be subject to prepayment at the option of the Issuer in whole or in part on any Interest Payment Date in installments of \$1,000,000 plus increments of \$100,000 at a price equal to the principal amount thereof to be prepaid plus accrued interest thereon to the date fixed for prepayment, but only upon at least thirty (30) days prior written notice to the Purchaser specifying the amount to be prepaid and the date of prepayment.

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. 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. 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 _____, 2009.

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 Signator

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.

SCHEDULE 1

AMORTIZATION SCHEDULE

SCHEDULE 2

If for any reason the interest on the Series 2009 Bonds becomes includable in the gross income of the Registered Owner for Federal income tax purposes as the result of an "Event of Taxability", the Series 2009 Bonds shall bear interest from the earliest effective date of such Event of Taxability at a rate per annum equal to a taxable equivalent rate as determined by the Purchaser. In addition to the foregoing, the Issuer shall pay any additions to tax, penalties and interest, and any arrears in interest, imposed upon the registered owner of the Series 2009 Bonds on account of any Event of Taxability. All such additional interest, additions to tax and penalties shall be paid on the next succeeding Interest Payment Date.

The City shall promptly advise the Registered Owner in writing of any notice or inquiry received by it from the United States Internal Revenue Service (the "Service") questioning the exemption from federal income tax of the interest on this Bond or the bank-qualified status of this Bond and the Registered Owner shall promptly advise the City in writing of any such notice or inquiry by the Service received by it. The City, to the extent permitted by law, shall have an opportunity to participate in and seek, at the City's own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of an Event of Taxability. No Event of Taxability shall be deemed to occur until a final administrative determination by the Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Event of Taxability.

EXHIBIT B

Form of
Purchaser's Certificate

This is to certify that Regions Bank, Coral Gables, Florida (the "Purchaser"), a State of Alabama chartered financial institution, has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the City of Marathon, Florida (the "Issuer") in connection with the issuance of the Issuer's \$30,000,000 in aggregate principal amount of Utility System Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), dated _____, 2009, and no inference should be drawn that the Purchaser, in the acceptance of said Series 2009 Bonds, is relying on -Bond Counsel, Bryant Miller Olive P.A. or the City Attorney, _____, as to any such matters other than the legal opinions rendered by such attorneys. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in Resolution No. _____ adopted by the City Council of the Issuer on _____, as supplemented by Resolution No. _____ adopted by the City Council of the Issuer on _____, 2009 (collectively, the "Resolution").

We are aware that investment in the Series 2009 Bonds involves various risks, that the Series 2009 Bonds are not a general obligation of the Issuer or payable from ad valorem tax revenues, that the payment of the Series 2009 Bonds is secured solely from the sources described in the Resolution (the "Security").

We have made such independent investigation of the Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the Issuer.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Series 2009 Bonds and can bear the economic risk of our investment in the Series 2009 Bonds.

We acknowledge and understand that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Series 2009 Bonds as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Series 2009 Bonds may not be transferred by us except to an "accredited investor" as described below.

We are an accredited investor under 17 CFR 230.501. We are not purchasing the Series 2009 Bond for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

DATED this _____ day of June, 2009.

REGIONS BANK

By: _____
Name: _____
Its: _____

EXHIBIT C

Form of
Disclosure Letter

The undersigned, as purchaser, proposes to negotiate with the City of Marathon, Florida (the "Issuer") for the private purchase of \$30,000,000 principal amount of its Utility System Revenue Bonds, Series 2009 (the "Series 2009 Bonds"). Prior to the award of the Series 2009 Bonds, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Series 2009 Bonds (such fees and expenses to be paid by the Issuer):

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Series 2009 Bonds to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Bank as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2009 Bonds.

3. The amount of the underwriting spread expected to be realized by the Bank is \$0.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Series 2009 Bonds is being for the purpose of financing improvements to the utility system of the Issuer and paying certain costs of issuance incurred with respect to the Series 2009 Bonds.

Unless earlier prepaid as described in the Series 2009 Bonds, the Series 2009 Bonds is expected to be repaid over a term of approximately _____ years. Interest on the Series 2009 Bonds is a variable rate. At an assumed interest rate equal to _____%, total interest paid over the life of the Series 2009 Bonds will be \$_____.

The Series 2009 Bonds are secured by the Pledged Revenues (as such term is defined in Resolution No. ____ adopted by the City Council of the Issuer on ____, 2009. Issuance of the Series 2009 Bonds will result in a maximum of \$_____ of revenues of the Issuer not being available to finance the services of the Issuer in any year while the Series 2009 Bonds remains outstanding (approximately ____ years).

7. The name and address of the Bank is as follows:

Regions Bank
2800 Ponce de Leon Boulevard, 9th Floor
Coral Gables, Florida 33134

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Bank this ____ day of _____, 2009.

REGIONS BANK

By: _____
Name: _____
Its: _____