

RESOLUTION NO. 2013-88

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE ISSUANCE OF ITS PUBLIC IMPROVEMENT REFUNDING REVENUE BOND, SERIES 2013A IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 AND PUBLIC IMPROVEMENT REFUNDING REVENUE BOND, SERIES 2013B IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$335,000 TO REFUND THE OUTSTANDING PRINCIPAL BALANCE OF ITS CITY OF MARATHON, FLORIDA IMPROVEMENT REVENUE BOND, SERIES 2004 (CAPITAL PROJECTS), AS MORE FULLY DESCRIBED HEREIN, AND FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN CAPITAL PROJECTS; AUTHORIZING AND DELEGATING TO THE MAYOR OR CITY MANAGER THE SALE OF THE SERIES 2013 BONDS TO TD BANK, N.A. PURSUANT TO THE TERMS AND CONDITIONS OF A LOAN AGREEMENT WITH TD BANK, N.A.; APPROVING THE EXECUTION AND DELIVERY OF SAID LOAN AGREEMENT; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD THE BOND "BANK QUALIFIED" STATUS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE BOND; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the "Issuer") is a municipal corporation duly created and existing pursuant to the Constitution and laws of the State of Florida; and

WHEREAS, the Issuer determined that it is necessary and desirable and in the best interest of the inhabitants of the Issuer to refinance the outstanding principal balance of its City of Marathon, Florida Improvement Revenue Bond, Series 2004 (Capital Projects) dated as of July 20, 2004 (the "Refunded Bond") in order to achieve debt service savings; and

WHEREAS, the Issuer has determined that it is necessary and desirable and in the best interest of the inhabitants of the Issuer to finance the construction and acquisition of certain capital projects, including a city hall (the "Project"); and

WHEREAS, it is determined to be in the best interest of the Borrower to issue its not to exceed \$10,000,000 Public Improvement Refunding Revenue Bond, Series 2013A (the "Series 2013A Bond") and not to exceed \$335,000 Public Improvement Refunding Revenue Bond, Series 2013B (the "Series 2013B Bond" and together with the Series 2013A Bond the "Series 2013 Bonds") secured by one or more Loan Agreements among the Issuer and TD Bank, N.A. (the "Loan Agreement") in substantially the form attached hereto as Exhibit A, to (i) refinance the outstanding principal balance of the Refunded Bond and (ii) finance the Project; and

WHEREAS, debt service on the Series 2013 Bonds will be secured by a covenant to budget and appropriate legally available non-ad valorem revenue of the Issuer (the "Non-Ad Valorem Revenues"); and

WHEREAS, the Non-Ad Valorem Revenues shall be sufficient to pay all principal of and interest and prepayment premium, if any, on the Series 2013 Bonds, as the same becomes due, and to make all deposits or payments required by this Resolution and the Loan Agreement; and

WHEREAS, the Issuer shall never be required to levy ad valorem taxes or use the proceeds thereof to pay debt service on the Series 2013 Bonds or to make any other payments under this Resolution or the Loan Agreement. The Series 2013 Bonds shall not constitute a lien on any property owned or situated within the limits of the Issuer; and

WHEREAS, the Issuer has received proposals from a number of financial institutions in response to the Issuer's request for proposals dated August 28, 2013; and

WHEREAS, it is hereby found, determined and declared that a negotiated sale of the Series 2013 Bonds to TD Bank, N.A. (the "Lender") pursuant to a competitive bid, is in the best interest of the Issuer because a bank loan and consequent impact of duration of maturity of the Series 2013 Bonds will save the Issuer considerable time and expense as compared to selling the Series 2013 Bonds in a public sale; and

WHEREAS, it is hereby ascertained, determined and declared that it is in the best interest of the Issuer to authorize the Mayor or City Manager to accept the offer from the Lender to purchase the Series 2013A Bond at a negotiated sale upon the terms and conditions set forth in this Resolution, the Loan Agreement and in the loan commitment dated September 11, 2013 submitted by the Lender for the purchase of the Series 2013A Bond, a copy of which is attached hereto as Exhibit D (the "Proposal"); and

WHEREAS, it is hereby ascertained, determined and declared that it is in the best interest of the Issuer to authorize the Mayor or City Manager to negotiate a loan with the Lender to purchase the Series 2013B Bond with similar terms as provided in this Resolution, the Loan Agreement, and in the Proposal; and

WHEREAS, the Lender will provide to the Issuer, prior to the sale of the Series 2013 Bonds, a disclosure statement regarding the Series 2013 Bonds containing the information required by Section 218.385(6), Florida Statutes.

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

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Authority. This Resolution is adopted pursuant to the Florida Constitution; Chapter 166, Florida Statutes; the Charter of the Issuer; and other applicable provisions of law.

Section 3. Authorization of the Series 2013 Bonds. Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as "City of Marathon, Florida, Public Improvement Refunding Revenue Bond, Series 2013A and City of Marathon, Florida Public Improvement Refunding Revenue Bond, Series 2013B" are hereby authorized to be issued under and secured by this Resolution and the Loan Agreement in the aggregate principal amount of not to exceed \$10,335,000, for the purposes of (i) refunding the outstanding principal balance of the Refunded Bond; (ii) financing the cost and acquisition of the Project; and (iii) paying the transaction costs associated with the Series 2013 Bonds.

Section 4. Authorization of the Refinancing. The refinancing of the outstanding principal balance of the Refunded Bond is hereby authorized.

Section 5. Authorization of the Project. The financing of the acquisition and construction of the Project is hereby approved.

Section 6. Sale of the Series 2013A Bond. Because of the characteristics of the Series 2013A Bond, prevailing market conditions, the ability of the Issuer to access direct purchase with the Lender and for the Issuer to receive the benefits of lower interest rates and issuance costs, it is hereby determined that it is in the best interest of the Issuer to accept the offer of the Lender to purchase the Series 2013A Bond at a private negotiated sale pursuant to the terms of the Proposal. Prior to the issuance of the Series 2013A Bond, the Issuer shall receive from the Lender a 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 7. Sale of the Series 2013B Bond. The Mayor or City Manager is hereby authorized to award the sale of the Series 2013B Bond on his determination that the purchase of the Series 2013B Bond, is within the following parameters: (i) the final maturity shall not be later than October 1, 2030, and (ii) the interest rate of the Series 2013B Bond will not exceed 2.59%. The redemption provisions, if any, relating to the Series 2013B Bond shall be as provided in the Loan Agreement. Such award shall be made at least 15 days from the date hereof. Prior to the issuance of the Series 2013B Bond, the Issuer shall receive from the Lender a 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. Series 2013 Bonds Amount. The amount of the Series 2013A Bond shall not exceed \$10,000,000. The amount of the Series 2013B Bond shall not exceed \$335,000. The Series 2013 Bonds shall be made as tax-exempt borrowings, which shall include costs of issuance incurred by the Issuer and shall bear interest and shall be repayable according to the terms and conditions set forth in the Loan Agreement with such changes, insertions and omissions as may be approved by the Mayor or City Manager.

Section 9. Approval of Loan Agreement. The Mayor or City Manager, as attested by the City Clerk and approved as to form and correctness by the City Attorney, or any other appropriate officers of the Issuer, are hereby authorized and directed to execute and deliver one or more Loan Agreements to evidence the Series 2013 Bonds, to be entered into by and between the Issuer and the Bank in substantially the form attached hereto as Exhibit A with such changes, insertions and omissions as may be approved by the Mayor or City Manager, the execution thereof being conclusive evidence of such approval.

Section 10. Bank Qualification. The Issuer hereby designates the Series 2013A Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The Issuer and any subordinate entities of the Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during the calendar year 2013 to issue more than \$10,000,000 of "tax-exempt" obligations including such Series 2013A Bond, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and exclusive of bonds issued to currently refund any existing tax-exempt obligations.

The Issuer previously designated the Series 2004 Bond (which was issued on July 20, 2004) in the original principal amount of \$10,000,000 (which together with any previous tax-exempt debt of the Issuer issued in calendar year 2004 totaled less than \$10,000,000) as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer represents that neither the Issuer nor any related person, both joint and severally was the beneficiary of more than \$10,000,000 of "tax-exempt" obligations issued during calendar year 2004.

As a result of the foregoing, the amount of Series 2013B Bond equal to the amount of the Series 2004 Bond relating to the refunding of the Series 2004 Bonds of \$335,000 will be deemed designated as a “qualified tax-exempt obligation” as provided in Section 265(b)(3)(D)(ii) of the Code (the “Deemed Designated Series 2013B Bond”). The Deemed Designated Series 2013B Bond is hereby “deemed designated” as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3)(b)(i) of the Code and no new allocation of bank qualification for calendar year 2013 is hereby needed, awarded or designated in connection with the issuance and sale of the Deemed Designated Series 2013B Bond.

Section 11. Other Instruments. The Mayor, Vice Mayor, the City Clerk, the City Manager, the City Attorney and other officers, attorneys and other agents and employees of the Issuer are hereby authorized to perform all acts and things required of them by this Resolution and the Loan Agreement 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 Series 2013 Bonds, this Resolution and the Loan Agreement and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel or the Lender to effectuate the sale of the Series 2013 Bonds. All action taken to date by the officers, attorneys and any other agents and employees of the Issuer in furtherance of the issuance of the Series 2013 Bonds is hereby approved, confirmed and ratified.

Section 12. Additional Information. The Series 2013 Bonds and Loan Agreement shall not be executed and delivered unless and until the Issuer has received all information required by Section 218.385, Florida Statutes.

Section 13. Payment of Principal and Interest; Limited Obligation. The Issuer promises that it will promptly pay the principal of and interest on the Series 2013 Bonds at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Series 2013 Bonds shall not be or constitute a general obligation or indebtedness of the Issuer as a “bond” within the meaning of Article VII, Section 12 of the Florida Constitution, but shall be payable solely from the Non-Ad Valorem Revenues in accordance with the terms of this Resolution and the Loan Agreement. No holder of the Series 2013 Bonds issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay the Series 2013 Bonds, or be entitled to payment of the Series 2013 Bonds from any funds of the Issuer except from the Non-Ad Valorem Revenues as described in this Resolution and Loan Agreement.

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Section 14. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THIS 22nd DAY OF OCTOBER, 2013.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Sned, Bull, Ramsay, Keating, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

EXHIBIT A
FORM OF LOAN AGREEMENT

LOAN AGREEMENT

between

CITY OF MARATHON, FLORIDA

and

TD BANK, N.A.

Dated November 1, 2013

Relating to

\$ _____
PUBLIC IMPROVEMENT REFUNDING REVENUE BOND
SERIES 2013[A][B]

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LOAN AGREEMENT

This LOAN AGREEMENT is made and entered into on the 1st day of November, 2013, by and between the CITY OF MARATHON, FLORIDA (the "Issuer"), and TD BANK, N.A. (the "Bank").

WITNESSETH:

WHEREAS, the Issuer has determined that it is necessary of the health, safety and welfare of the Issuer and in the best interest of its inhabitants to refinance the outstanding principal balance of its City of Marathon, Florida Improvement Revenue Bond, Series 2004 (Capital Projects) dated as of July 20, 2004 (the "Refunded Bond") in order to achieve debt service savings and to finance the construction and acquisition of certain capital projects, including a Issuer hall (the "Project");

WHEREAS, the Issuer requested proposals from various lending institutions to provide the Issuer with a term loan;

WHEREAS the Bank has agreed to lend the Issuer an principal amount of [\$10,000,000][\$335,000];

WHEREAS, the City Council of the Issuer on October ____, 2013, selected the proposal of the Bank; and

WHEREAS, pursuant to the Resolution, the Issuer has determined that it is in the best interest of the health, safety and welfare of the Issuer and the inhabitants thereof that the Issuer pledge the Pledged Revenues, to secure the obligations of the Issuer to repay the principal of and interest on the Series 2013[A][B] Bond when due;

WHEREAS, the obligation of the Issuer to repay principal of and interest on the Series 2013[A][B] Bond will not constitute a general obligation or indebtedness of the Issuer within the meaning of any provision of the Constitution or laws of the State, but shall be and is hereby declared to be a special, limited obligation of the Issuer, secured solely by the Pledged Revenues;

WHEREAS, the Issuer is not required to levy taxes on any property of or in the Issuer to pay the principal of or interest on the Series 2013[A][B] Bond or to make any other payments provided for herein; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Resolution. As used herein, the following terms shall have the following meanings, unless the text otherwise expressly requires:

"Act" means the Florida Constitution, Chapter 166, Florida Statutes, the Issuer's Charter, the Resolution and other applicable provisions of law.

“Bank” means TD Bank, N.A., a national bank, with offices located at 5900 North Andrews Avenue, Ft. Lauderdale, Florida 33309.

“Bond Counsel” means Bryant Miller Olive P. A., or any other attorney at law or a firm of attorneys, designated by the City Council, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America selected by the Issuer.

“Business Day” means any day of the year other than Saturday, Sunday or a day on which the Bank is lawfully closed for business.

“City Clerk” means the City Clerk or, in the City Clerk’s absence, any Deputy City Clerk duly authorized to execute documents or take other action, as the case may be, on the City Clerk’s behalf.

“City Council” means the City Council of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended.

“Date of Delivery” means _____, 2013.

“Debt Service” means all principal of, interest on and other amounts coming due on the Series 2013[A][B] Bond.

“Default Rate” means the Interest Rate plus four percent (4.00%); provided, however, that the Default Rate shall not exceed the Maximum Rate.

“Default” means an Event of Default as defined and described in Section 15 hereof.

“Disbursement Date” means November 1, 2013 or such other date on which proceeds of the Loan are disbursed to the Issuer.

“Essential Services Expenditures” means the general government and public safety expenditures of the Issuer.

“Fiscal Year” means the period from each October 1 to the succeeding September 30.

“Interest Rate” means the rate per annum born by the Series 2013[A][B] Bond, which shall be a fixed rate of interest equal to [2.59%][____%], calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months, and subject to adjustment as provided in the Series 2013[A][B] Bond.

“Loan Agreement” means this agreement between the Bank and the Issuer setting forth the terms and details of the Loan.

“Loan” means the advance of moneys from the Bank to the Issuer pursuant to the Loan Agreement.

“Maturity Date” means October 1, 2028.

“Maximum Rate” means the maximum rate of interest permitted for non-rated, governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

“Non-Ad Valorem Revenues” means all revenues and taxes of the Issuer derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available to make the payments required herein.

“Paying Agent” means the Clerk.

“Payment Date” means each January 1, April 1, July 1 and October 1, commencing January 1, 2014 and continuing until and including the Maturity Date.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Pledged Revenues” means those Non-Ad Valorem Revenues budgeted, appropriated and deposited by the City in each Fiscal Year in accordance with the provisions hereof, and all revenues, together with interest earnings thereon, held in the funds and accounts created hereto.

“Principal Amount” means [Ten Million Dollars (\$10,000,000)][Three Hundred Thirty-Five Thousand Dollars (\$335,000)].

“Proposal” means the Terms and Conditions of Credit Accommodation submitted to the Issuer by the Bank, dated September 11, 2013, and accepted and approved by the Resolution.

“Register” means the books maintained by the Registrar in which are recorded the name and address of the Registered Owner of the Series 2013[A][B] Bond.

“Registered Owner” means the person in whose name the ownership of the Series 2013[A][B] Bond is registered on the books maintained by the Registrar. The initial Registered Owner for the Series 2013[A][B] Bond shall be the Bank.

“Registrar” means the Person maintaining the Register. The Registrar shall initially be the City Clerk.

“Regulations” means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Code.

“Resolution” means Resolution No. 2013 - ____ adopted by the Issuer on October ____, 2013, accepting the Bank’s proposal to provide the Loan to the Issuer to refinance the Refunded Bonds and finance the Project, and all resolutions amendatory thereof and supplemental thereto.

["Series 2013[A][B] Bond" means the City of Marathon, Florida Public Improvement Refunding Revenue Bond, Series 2013[A][B], which shall be in substantially the form attached as Exhibit A hereto.]

["Series 2013B Bond" means the City of Marathon, Florida Public Improvement Refunding Revenue Bond, Series 2013B, which shall be in substantially the form attached as Exhibit A hereto.]

"State" means the State of Florida.

SECTION 2. INTERPRETATION. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof (a) have been negotiated between the Issuer and the Bank; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

SECTION 3. THE LOAN.

A. Loan. The Bank hereby makes and the Issuer hereby accepts the Loan, upon the terms and conditions set forth herein.

B. Disbursement of Proceeds. Proceeds of the Loan shall be made available by the Bank to the Issuer by deposit of the principal amount thereof to or for the order of the Issuer by 12:00 p.m., Eastern Time, on the Disbursement Date in immediately available funds.

SECTION 4. DESCRIPTION OF SERIES 2013[A][B] BOND; PAYMENT OF THE SERIES 2013[A][B] BOND. The obligation of the Issuer to repay the Loan shall be evidenced by the Series 2013[A][B] Bond. The Series 2013[A][B] Bond shall be dated as of the date of delivery thereof; shall mature on the Maturity Date; and shall be in registered form.

Interest and Principal Payments. The Series 2013[A][B] Bond shall bear interest from the Date of Delivery until payment of the entire outstanding principal amount due thereon. The Interest Rate on the Series 2013[A][B] Bond shall be a fixed rate of interest equal to [2.59%][____%] per annum as may be adjusted in accordance with Schedule 1 to the Series 2013[A][B] Bond. Interest on the Series 2013[A][B] Bond shall be calculated using a 360-day year consisting of twelve 30-day months.

Interest and Principal on the Series 2013[A][B] Bond shall be paid quarterly on each Payment Date. Payments due hereunder shall be made no later than 2:00 p.m., EST, on the date due, free and clear of any defenses, set-offs, counterclaims, or withholdings or deductions for taxes. The amount of principal and interest, without taking into account any adjustment required by the provisions of Schedule 1 to the Series 2013[A][B] Bond, shall be the amount indicated on Schedule 2 to the Series 2013[A][B] Bond.

The Series 2013[A][B] Bond shall bear interest at the Interest Rate; provided, however, that if any principal of or interest on the Series 2013[A][B] Bond is not paid when due, from the date three (3) days after such default, the Series 2013[A][B] Bond and any amount so in default shall bear interest at the Default Rate until such default is cured. Further, if any principal of or

interest on the Series 2013[A][B] Bond is not paid within fifteen (15) days of the Payment Date, a late charge of six percent (6%) of the overdue payment shall be assessed. Anything provided herein or in the Series 2013[A][B] Bond to the contrary notwithstanding, in no event shall the Series 2013[A][B] Bond bear interest in excess of the Maximum Rate.

Prepayment. The Series 2013[A][B] Bond may be prepaid at the option of the Issuer in whole or in part, at any time, together with a prepayment penalty equal to the greater of (i) one percent (1%) of the principal balance being prepaid multiplied by the "Remaining Term" as defined below, in years, or (ii) a "Yield Maintenance Fee" in an amount computed as follows: the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the Interest Rate, or the Default Rate if applicable. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the "Remaining Term." Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above referenced current costs of funds divided by 12. The resulting sum of present values shall be the Yield Maintenance Fee due to the Bank upon prepayment of the principal of the Series 2013[A][B] Bond plus any accrued interest due as of the prepayment date. "Remaining Term" as used herein shall mean the remaining term of the Series 2013[A][B] Bond. The Issuer shall provide the Registered Owner with at least 10 days written notice of its intent to prepay.

SECTION 5. APPLICATION OF PROCEEDS. The proceeds derived from the sale of the Series 2013[A][B] Bond shall be applied by the Issuer or by the Bank on the Issuer's behalf, simultaneously with the delivery of the Series 2013[A][B] Bond to the Bank as follows:

(a) \$_____ of the proceeds of the Series 2013A Bond shall be used to refund the Refunded Bonds;

(b) \$_____ of the proceeds of the Series 2013A Bond shall be retained by the Issuer for the Project; and

(c) \$_____ of the proceeds of the Series 2013A Bond shall be retained by the Issuer and used to pay the costs and expenses incurred in connection with the issuance of the Series 2013A Bond;

(d) \$_____ of the proceeds of the Series 2013B Bond shall be used to refund the Refunded Bonds;

(e) \$_____ of the proceeds of the Series 2013B Bond shall be retained by the Issuer and used to pay the costs and expenses incurred in connection with the issuance of the Series 2013B Bond.

SECTION 6. EXECUTION OF SERIES 2013[A][B] BOND. The Series 2013[A][B] Bond shall be executed in the name of the Issuer by the Mayor or Issuer Manager and attested by the City Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2013[A][B] Bond may be signed and sealed on behalf of the Issuer by any person who at the actual time of the execution of such Series 2013[A][B] Bond shall hold the

appropriate office in the Issuer, although at the date thereof the person may not have been so authorized. The Series 2013[A][B] Bond may be executed by the facsimile signatures of the Mayor or City Manager and/or City Clerk, provided that at least one of the foregoing signatures must be a manual signature.

SECTION 7. REGISTRATION AND TRANSFER OF SERIES 2013[A][B] BOND. The Series 2013[A][B] Bond shall be and shall have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2013[A][B] Bond, shall be conclusively deemed to have agreed that such Series 2013[A][B] Bond shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar, initially the City Clerk, who shall be responsible for maintaining the Register. The person in whose name ownership of the Series 2013[A][B] Bond is shown on the Register shall be deemed the Registered Owner thereof by the Issuer and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2013[A][B] Bond for all purposes, whether or not the Series 2013[A][B] Bond shall be overdue, and any notice to the contrary shall not be binding upon the Issuer or the Registrar.

Ownership of the Series 2013[A][B] Bond may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2013[A][B] Bond accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, new fully registered Series 2013[A][B] Bond of the same amount, maturity and interest rate as the Series 2013[A][B] Bond surrendered.

The Series 2013[A][B] Bond presented for transfer, exchange, redemption or payment (if so required by the Issuer or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Issuer or the Registrar, duly executed by the Registered Owner or by its duly authorized attorney.

The Issuer and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2013[A][B] Bond . The Registrar or the Issuer may also require payment from the Registered Owner or its transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2013[A][B] Bond shall be delivered.

The new Series 2013[A][B] Bond delivered upon any transfer or exchange shall be a valid obligation of the Issuer, evidencing the same debt as the Series 2013[A][B] Bond surrendered, shall be secured under this Loan Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2013[A][B] Bond surrendered.

Whenever the Series 2013[A][B] Bond shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2013[A][B] Bond shall be cancelled and destroyed by the Registrar, and

counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Issuer.

SECTION 8. SERIES 2013[A][B] BOND MUTILATED, DESTROYED, STOLEN OR LOST. In case the Series 2013[A][B] Bond shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur, the Registrar shall issue and deliver a new Series 2013[A][B] Bond of like tenor as the Series 2013[A][B] Bond so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2013[A][B] Bond, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2013[A][B] Bond, upon surrender of such mutilated Series 2013[A][B] Bond, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2013[A][B] Bond shall have matured or be about to mature, instead of issuing a substitute Series 2013[A][B] Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Series 2013[A][B] Bond be lost, stolen or destroyed, without surrender thereof. Any Series 2013[A][B] Bond surrendered under the terms of this Section 8 shall be cancelled by the Registrar.

Any such new Series 2013[A][B] Bond issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the Issuer whether or not, as to the new Series 2013[A][B] Bond, the lost, stolen or destroyed Series 2013[A][B] Bond be at any time found by anyone, and such new Series 2013[A][B] Bond shall be entitled to equal and proportionate benefits and rights as to security for payment to the same extent as the Series 2013[A][B] Bond originally issued hereunder.

SECTION 9. FORM OF SERIES 2013[A][B] BOND. The Series 2013[A][B] Bond shall be in substantially the form of Exhibit A hereto, with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Loan Agreement.

SECTION 10. SECURITY FOR SERIES 2013[A][B] BOND. The Series 2013[A][B] Bond is an obligation of the Issuer secured by Pledged Revenues, in the manner and to the extent described herein. The Series 2013[A][B] Bond will not constitute a general debt, liability or obligation of the Issuer or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the Issuer or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Series 2013[A][B] Bond and neither the Registered Owner nor any other party shall ever have the right to compel any exercise of any ad valorem taxing power of the Issuer or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Series 2013[A][B] Bond shall not constitute a lien upon any property of the Issuer.

Subject to the provisions of the paragraph below, the Issuer covenants and agrees to appropriate in its annual budget, by amendment, if required, and to pay when due under this Loan Agreement as promptly as money becomes available for deposit directly into the Debt Service Fund, amounts of Non-Ad Valorem Revenues of the Issuer sufficient to satisfy the payment as required under this Loan Agreement. Such covenant is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts

sufficient to make all required payments, including delinquent payments, shall have been budgeted, appropriated and actually deposited into the Debt Service Fund. The Issuer further acknowledges and agrees that the Resolution and Loan Agreement shall be deemed to be entered into for the benefit of the Bank and that the obligations of the Issuer to include the amount of any deficiency in the payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein. Notwithstanding the foregoing or any provision of this Loan Agreement to the contrary, the Issuer does not covenant to maintain any services or programs now maintained by the Issuer which generate Non-Ad Valorem Revenues or to maintain the charges it presently collects for any such services or programs.

Anything in this Loan Agreement to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable only from Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage or lien upon any assets or property owned by the Issuer and neither the Bank nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer. The obligations hereunder do not constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision or limitation, and neither the Bank nor any other person shall have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation of any real or personal property therein for the payment by the Issuer of its obligations hereunder. Except to the extent expressly set forth in this Loan Agreement, this Loan Agreement and the obligations of the Issuer hereunder shall not be construed as a limitation on the ability of the Issuer to pledge or covenant to pledge said Non-Ad Valorem Revenues or any revenues or taxes of the Issuer for other legally permissible purposes. Notwithstanding any provisions of this Loan Agreement or the Series 2013[A][B] Bond to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues or the rates for such services or regulatory fees. Neither this Loan Agreement nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, except to the extent such Non-Ad Valorem Revenues become Pledged Revenues in accordance with this Section 10, but shall be payable solely as provided in this Section hereof and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer.

The Bank and the Issuer understand that the amounts available to be budgeted and appropriated to make payments hereunder is subject to the obligation of the Issuer to provide essential services; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year.

SECTION 11. COVENANTS OF THE ISSUER. Until the principal of and interest on the Series 2013[A][B] Bond shall have been paid in full or until provision for payment of the Series 2013[A][B] Bond shall have been made in accordance with the provisions of this Loan Agreement, the Issuer covenants with the Registered Owner of the Series 2013[A][B] Bond as follows:

A. Payments. The Issuer hereby establishes a fund to be known as the Series 2013[A][B] Debt Service Fund (the "Debt Service Fund") for the payment of Debt Service on the Series 2013[A][B] Bond. The Debt Service Fund shall be maintained through the Maturity Date, and the Registered Owner may deduct on each Payment Date via ACH Direct Debit the amount of principal and interest then due on the Series 2013[A][B] Bond and all other amounts due and owing on the Series 2013[A][B] Bond when such amounts are due, or payment may be made in such other place or manner as the Registered Owner may designate to the Issuer in writing.

B. Financial Statements. Issuer shall provide the following financial information: (i) not later than 210 days following the end of each Fiscal Year, the Issuer will provide the Bank a copy of the Issuer's Comprehensive Annual Financial Report; (ii) not later than 60 days after completion and approval, the Issuer will provide the Bank a copy of the Issuer's approved budget; (iii) the certification and calculations referenced in "SCHEDULE I ADJUSTMENTS TO INTEREST RATE IN CERTAIN EVENTS- Anti-Dilution" to the Series 2013[A][B] Bond; and (iv) such financial or public information as the Bank may reasonably request and which is easily assembled.

C. Tax Compliance. Neither the Issuer, nor any third party over whom the Issuer has control, will make any use of, or permit an omission of use, of the proceeds of the Series 2013[A][B] Bond at any time during the term of the Series 2013[A][B] Bond which would cause the Series 2013[A][B] Bond to be (a) a "private activity bond" within the meaning of Section 103(b)(1) of the Code or (b) an "arbitrage bond" within the meaning of Section 103(b)(2) of the Code. The Issuer covenants throughout the term of the Series 2013[A][B] Bond to comply with the requirements of the Code and the Regulations, as amended from time to time, and to take all actions, and to not permit the omission of any actions, necessary to maintain the exclusion from gross income for purposes of the Code of interest on the Series 2013[A][B] Bond.

The Issuer makes each of the representations, warranties and covenants contained in the Tax Certificate delivered with respect to the Series 2013[A][B] Bond. By this reference, all terms, conditions, and covenants in said Tax Certificate are incorporated in and made a part of this Loan Agreement.

D. Agreement to Pay Certain Expenses. The Issuer shall pay fees of the Bank's counsel for legal review of the documentation pertaining to the Loan. Such fees shall not exceed \$5,000.

E. Additional Bonds Test. During such time as the Series 2013[A][B] Bond are outstanding hereunder, the Issuer agrees that it shall not issue debt which is secured by its Non-Ad Valorem Revenues, unless it shall deliver to the Bank a certificate stating:

Legally Available Non-Ad Valorem Revenues must cover projected maximum annual debt service on the proposed debt and debt secured by and/or payable solely from such Legally Available Non-Ad Valorem Revenues by at least 135%.

For purposes of this section, Legally Available Non-Ad Valorem Revenues shall be calculated as the Total Non-Ad Valorem Revenues less Essential Services Expenditures (Public Safety and General Government) not paid from Ad Valorem Revenues.

Maximum annual debt service shall exclude self-supporting Enterprise Fund debt, for which a back-up covenant to budget and appropriate is provided, to the extent that the primary pledged revenue for such debt is sufficient to cover the debt service in compliance with minimum bond covenant requirements, without reliance on the covenant to budget and appropriate.

For purposes of the foregoing, "maximum annual debt service" means the actual maximum annual debt service on all debt secured by the Issuer's Non-Ad Valorem Revenues.

For purposes of this covenant the interest rate on variable rate debt shall be assumed to be the greater of (a) 4% per annum, (b) the average interest on such debt for the immediately preceding Fiscal Year or (c) in the case of proposed debt, the initial interest rate.

SECTION 12. REPRESENTATIONS AND WARRANTIES. The Issuer represents and warrants to the Bank that:

A. Organization. The Issuer is a municipal corporation, duly organized and existing under the laws of the State of Florida.

B. Authorization of Loan Agreement and Related Documents. The Issuer has the power and has taken all necessary action to authorize the execution and delivery of and the performance by the Issuer of its obligations under, the Series 2013[A][B] Bond, this Loan Agreement and all documents executed in connection with the transaction contemplated by this Loan Agreement, in accordance with their respective terms. This Loan Agreement and the Series 2013[A][B] Bond have been duly executed and delivered by the Issuer and are valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding bankruptcy, insolvency, reorganization or moratorium applicable to the Issuer or by general principles of equity regarding the availability of specific performance.

C. Compliance with Section 215.84, Florida Statutes. The Issuer represents, warrants and covenants that the Interest Rate on the Series 2013[A][B] Bond, as currently calculated in accordance with Section 215.84, Florida Statutes, in compliance with the provisions of such statute.

D. No Litigation. There is no action, suit, proceeding, or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer, or, to the best of the knowledge of the Issuer, any basis therefore, wherein an unfavorable decision, ruling, or finding would restrain or enjoin the issuance of the Series 2013[A][B] Bond or which in any way would adversely affect the validity of the Series 2013[A][B] Bond, the Resolution, this Loan Agreement or any other agreement or instrument to which the Issuer is a party and which is used or contemplated for use in connection with the issuance of the Series 2013[A][B] Bond, or which challenges the authority of the Issuer to impose or collect any of the Non-Ad Valorem Revenues.

E. Compliance with Laws and Approvals. The Issuer has complied with all open meeting laws, all public bidding laws, and all other state and federal laws applicable to the Issuer's performance of the transactions contemplated by the Series 2013[A][B] Bond, the Resolution, and this Loan Agreement and has obtained all approvals necessary for the execution, delivery, and performance of such transactions.

SECTION 13. CONDITIONS PRECEDENT. The obligation of the Bank to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Disbursement Date:

A. Action. The Bank shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Loan Agreement, the executed Series 2013[A][B] Bond, and the customary closing certificates.

B. Incumbency of Officers. The Bank shall have received an incumbency certificate of the Issuer in respect of each of the officers who is authorized to sign this Loan Agreement and the related financing documents on behalf of the Issuer.

C. Opinion of Counsel to the Issuer. The Bank shall have received a written opinion of the Issuer Attorney addressing matters relating to (1) the corporate existence of the Issuer; (2) the due adoption of the Resolution; (3) the due authorization and execution of this Loan Agreement and the Series 2013[A][B] Bond and the related financing documents; and (4) the absence of litigation against the Issuer relating to (a) its existence or powers, and (b) the proceedings for the authorization and issuance of the Series 2013[A][B] Bond, in form and substance satisfactory to the Bank.

D. Opinion of Bond Counsel. The Bank shall have received from Bond Counsel a letter authorizing the Bank to rely on the approving opinion of Bond Counsel delivered to the Issuer in respect to the Series 2013[A][B] Bond to the same extent as if such opinion were addressed to the Bank. The opinion, in form and substance satisfactory to the Bank, shall, at a minimum, address (i) the enforceability of the Resolution, the Series 2013[A][B] Bond and the Loan Agreement, and (ii) the status of interest on the Series 2013[A][B] Bond being excluded from gross income for federal income tax purposes under the provisions of Section 103 of the Code and the Series 2013[A][B] Bond being qualified tax exempt obligations under Section 265 (b)(3) of the Code.

E. Representations and Warranties; No Default. The representations and warranties made by the Issuer herein shall be true and correct in all material respects on and as of the Disbursement Date, as if made on and as of such date; no Default shall have occurred and be continuing as of the Disbursement Date or will result from the consummation of the Loan; and the Bank shall have received a certificate from the Issuer to the foregoing effect.

F. Other Documents. The Bank shall have received such other documents, certificates and opinions as the Bank or its counsel shall have reasonably requested.

SECTION 14. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

Issuer: City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

Bank: TD Bank, N.A.
5900 North Andrews Avenue, 2nd Floor
Ft. Lauderdale, Florida 33309
Attention: Marcel A. Summermatter, Vice-President

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

SECTION 15. EVENTS OF DEFAULT DEFINED. The following shall be "Events of Default" under this Loan Agreement, and the terms "Default" and "Events of Default" shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. failure by the Issuer to make any payment of principal of or interest on the Series 2013[A][B] Bond, within three (3) days of the Payment Date.

B. failure by the Issuer to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Loan Agreement for a period of thirty (30) days after written notice of such failure shall have been delivered to the Issuer by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

C. the making of any warranty, representation or other statement by the Issuer or by an officer or agent of the Issuer in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement which is false or misleading in any material adverse respect;

D. the Issuer shall default in the payment of any obligation for borrowed money from the State of Florida Department of Environmental Protection, State Revolving Loan Fund;

E. the filing of a petition against the Issuer under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, if an order for relief is entered under such petition or such petition is not dismissed within sixty (60) days of such filing;

F. the filing by the Issuer of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the Issuer to the filing of any petition against it under such law; or

G. the admission by the Issuer of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become due, or the Issuer's becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the Issuer or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

SECTION 16. REMEDIES. If an Event of Default specified in Section 15.A. occurs, the Registered Owner may declare the principal of the Series 2013 [A][B] Bond and the Loan, and the accrued interest thereon, to be immediately due and payable, and upon such declaration such principal and interest thereon to the date of declaration shall become immediately due and payable.

The Registered Owner may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida or of the United States of America, or granted and contained in this Loan Agreement, and to enforce and compel the performance of all duties required by this Loan Agreement or by any applicable laws to be performed by the Issuer or by any officer thereof, and may take all steps to enforce this Loan Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America.

SECTION 17. WAIVER OF JURY TRIAL. To the extent permitted by applicable law, each of the Issuer and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Resolution, this Loan Agreement, the Series 2013[A][B] Bond or any agreement contemplated to be executed in connection with the Resolution, this Loan Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Loan Agreement.

SECTION 18. NO RECOURSE. No recourse shall be had for the payment of the principal of and interest on the Series 2013[A][B] Bond or for any claim based on the Series 2013[A][B] Bond or on this Loan Agreement, against any present or former member or officer of the City Council or any person executing the Series 2013[A][B] Bond.

SECTION 19. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS. In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Loan Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

SECTION 20. AMENDMENTS, CHANGES AND MODIFICATIONS. This Loan Agreement may be amended only in writing signed by both parties hereto.

SECTION 21. BINDING EFFECT. To the extent provided herein, this Loan Agreement shall be binding upon the Issuer and the Bank and shall inure to the benefit of the Issuer and the Bank and their respective successors and assigns.

SECTION 22. SEVERABILITY. In the event any court of competent jurisdiction shall hold any provision of this Loan Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 23. EXECUTION IN COUNTERPARTS. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 24. APPLICABLE LAW. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 25. VENUE The parties agree that jurisdiction and venue for the enforcement of this Loan Agreement shall be in the state court of Monroe County, Florida and the federal court of the Southern District of Florida.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Loan Agreement as of the date first above written.

CITY OF MARATHON, FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM AND
CORRECTNESS:

By: _____
City Attorney

[Signature page to Loan Agreement]

TD BANK, N.A.

By: _____

Name: Marcel A. Summermatter

Title: Vice-President

EXHIBIT A

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

FORM OF BOND

No. R-1

\$ _____

STATE OF FLORIDA
COUNTY OF MONROE
CITY OF MARATHON
PUBLIC IMPROVEMENT [REFUNDING] REVENUE BOND,
SERIES 2013[A][B]

RATE OF INTEREST

MATURITY DATE

DATE OF ISSUE

_____%

October 1, 2028

_____, 2013

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Marathon, Florida (the "Issuer"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on the Maturity Date specified above, the Principal Amount shown above, and to pay from such funds, interest thereon from the date of this Bond or from the most recent Payment Date to which interest has been paid, whichever is applicable, until payment of such Principal Amount, at the Rate of Interest per annum set forth above, subject to adjustment as provided in Schedule 1 attached hereto and in the Loan Agreement, such interest being payable on January 1, 2014, and thereafter on April 1, July 1, October 1 and January 1, of each year by check or draft mailed on or before the Payment Date, to the Registered Owner at his address as it appears, at 5:00 P.M. Eastern Time on the fifteenth day of the month preceding the applicable Payment Date, on the registration books of the Issuer kept by the Registrar; provided, that such payment shall, at the written request of such Registered Owner be by wire transfer, direct debit or other medium acceptable to the Issuer and to such Registered Owner. The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America.

This Bond is issued to refinance the outstanding principal balance of the City of Marathon, Florida Improvement Revenue Bond, Series 2004 (Capital Projects) (the "Refunded Bonds") and to finance the construction and acquisition of certain projects (the "Project") and to pay for the costs of issuance thereof under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Laws of Florida, and other applicable provisions of law, Resolution No. ____ adopted on _____, 2013

(the "Resolution") and the Loan Agreement dated November 1, 2013 between the Issuer and TD Bank, N.A. (the "Loan Agreement"), and is subject to all the terms and conditions of said Resolution and Loan Agreement. Capitalized terms not otherwise defined herein shall have the meaning specified in the Resolution and the Loan Agreement.

This Bond is payable from and secured by the Pledged Revenues, as described in the Loan Agreement.

This Bond does not constitute a general obligation or indebtedness of the Issuer within the meaning of the State constitution, and it is expressly agreed by the Registered Owner of this Bond that such Registered Owner shall never have the right to require or compel the exercise of the ad valorem taxing power of the Issuer or the taxation of any property of or in the Issuer for the payment of the principal of and interest on this Bond or for the making of any sinking fund reserve or other payments provided for in the Resolution and Loan Agreement.

It is further agreed between the Issuer and the Registered Owner of this Bond, that this Bond and the obligation evidenced hereby shall not constitute a lien upon the Project or any part thereof, or on any other property of or in the Issuer, but shall constitute a lien only on the Pledged Revenues, in the manner provided in the Resolution and Loan Agreement.

The Bond is issued as a single fully registered bond. This Bond is transferable at the office of the Registrar, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Registrar, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Registrar, all subject to the terms, limitations and conditions provided in the Resolution and the Loan Agreement. No charge will be made for transfer or exchange, but the Issuer or the Registrar may require payment of an amount sufficient to cover any tax or other governmental charge payable in connection therewith. The Issuer and the Registrar may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the Issuer nor the Registrar shall be affected by any notice to the contrary.

The Issuer has entered into certain covenants with the Registered Owner of the Bond for the terms of which reference is made to the Resolution and the Loan Agreement.

Reference is made to the Resolution and the Loan Agreement for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Bond, the rights, duties and obligations of the Issuer, the Registrar and the Registered Owner, and the terms and conditions upon which the Bonds are issued and secured. The Registered Owner of this Bond, by acceptance hereof, assents to all of the provisions of the Resolution and Loan Agreement.

This Bond may be prepaid in whole or in part, at any time, together with a prepayment penalty equal to the greater of (i) one percent (1%) of the principal balance being prepaid multiplied by the "Remaining Term" as defined below, in years, or (ii) a "Yield Maintenance Fee" in an amount computed as follows: the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the Interest Rate, or the Default Rate if applicable. If the result is zero

or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the "Remaining Term." Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above referenced current costs of funds divided by 12. The resulting sum of present values shall be the Yield Maintenance Fee due to the Bank upon prepayment of the principal of the Series 2013[A][B] Bond plus any accrued interest due as of the prepayment date. "Remaining Term" as used herein shall mean the remaining term of the Bond. The Issuer shall provide the Registered Owner with at least 10 day's written notice of its intent to prepay.

This Bond is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and the Registered Owner and each successive Registered Owner of this Bond, shall be conclusively deemed by his acceptance hereof to have agreed that this Bond shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida.

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 the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond, and of the issue of Bonds of which this Bond is one, does not violate any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar.

IN WITNESS WHEREOF, the City of Marathon, Florida has issued this Bond and has caused the same to be executed by its Mayor, either manually or with her/his facsimile signature, and the corporate seal of said Issuer or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon and attested by the manual or facsimile signature of the City Clerk, all as of the Date of Issue above.

(SEAL)

CITY OF MARATHON,
FLORIDA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

By _____
City Clerk, as Registrar

Date of Authentication: _____

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 of
tenants in common

UNIF GIF MIN ACT - _____
(Cust.)

Custodian for _____
(Minor)

Additional abbreviations may also be used although not listed above.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to _____

(Please insert Social Security or other Identifying Number of Assignee)

the within Bond and does hereby irrevocably constitute and appoint the Registrar as his agent to transfer the Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature guaranteed:

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or change whatever.

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

(Authorized Officer)

SCHEDULE 1

ADJUSTMENTS TO INTEREST RATE IN CERTAIN EVENTS

Determination of Taxability

In the event of a Determination of Taxability, the interest rate payable hereunder shall be subject to a full gross-up modification, as determined by the Registered Owner and its counsel (the "Taxable Rate"), effective retroactively to the date on which such Determination of Taxability was made. In addition, upon a Determination of Taxability, the Issuer agrees to pay to the Registered Owner subject to such Determination of Taxability the Additional Amount upon demand. "Additional Amount" means (i) the difference between (a) interest on this Bond for the period commencing on the date on which the interest on this Bond ceased to be excludable from gross income for federal income tax purposes and ending on the earlier of the date this Bond ceased to be outstanding or such adjustment is no longer applicable to this Bond (the "Taxable Period") at a rate per annum equal to the Taxable Rate, and (b) the aggregate amount of interest paid on this Bond for the Taxable Period under the provisions of this Bond without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by such Registered Owner to the Internal Revenue Service by reason of such Determination of Taxability. As used herein, "Determination of Taxability" means a final decree or judgment of any federal court or a final action of the Internal Revenue Service or of the United States Treasury Department determining that any interest payable on this Bond is includable in the gross income of the Registered Owner. No such decree or action shall be considered final for the purposes of this paragraph unless the Issuer has been given written notice thereof and, if it is so desired by the Issuer and is legally permissible, the Issuer has been afforded the opportunity to contest the same, at its own expense, either directly or in the name of the Registered Owner and until the conclusion of any appellate review, if sought.

Change in Bank Qualified Status

If this Bond ceases to be a "qualified tax exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code ("Loss of Bank Qualified Status") the interest on this Bond will increase, from the effective date of such Loss of Bank Qualified Status, to the tax exempt equivalent rate per annum.

Change in Corporate Tax Rate

In the event of a change in the Corporate Tax Rate (as hereinafter defined) during any period where interest is accruing on a tax-exempt basis causes a reduction in the tax equivalent yield on this Bond, the interest payable on this Bond shall be increased to compensate for such change in the effective yield to a rate calculated by multiplying the Rate of Interest by the ratio equal to $(1 \text{ minus } A) \text{ divided by } (1 \text{ minus } B)$, where A equals the Corporate Tax Rate in effect as of the date of the corporate tax adjustment as announced by the Internal Revenue Service and B equals the Corporate Tax Rate in effect on the date immediately preceding the date of such adjustment. "Corporate Tax Rate" shall mean the highest marginal statutory rate of federal income tax imposed on corporations and applicable to the Registered Owner (expressed as a decimal).

Anti Dilution

During such time as the Series 2013[A][B] Bond are outstanding hereunder, the Issuer agrees that it shall provide the following to the Bank in conjunction with the Issuer's delivery of its Comprehensive Annual Financial Report as required by Section 11.B.(i) of the Loan Agreement:

Legally Available Non-Ad Valorem Revenues must cover projected maximum annual debt service on debt secured by and/or payable solely from such Legally Available Non-Ad Valorem Revenues by at least 135%.

For purposes of this section, Legally Available Non-Ad Valorem Revenues shall be calculated as the Total Non-Ad Valorem Revenues less Essential Services Expenditures (Public Safety and General Government) not paid from Ad Valorem Revenues.

Maximum annual debt service shall exclude self-supporting Enterprise Fund debt, for which a back-up covenant to budget and appropriate is provided, to the extent that the primary pledged revenue for such debt is sufficient to cover the debt service in compliance with minimum bond covenant requirements, without reliance on the covenant to budget and appropriate.

For purposes of the foregoing, "maximum annual debt service" means the actual maximum annual debt service on all debt secured by the Issuer's Non-Ad Valorem Revenues.

For purposes of this covenant the interest rate on variable rate debt shall be assumed to be the greater of (a) 4% per annum, (b) the average interest on such debt for the immediately preceding Fiscal Year or (c) in the case of proposed debt, the initial interest rate.

If the ratio in the calculation is less than 1.35 times, then the interest rate on the Series [A][B] Bond shall thereafter increase to equal the Financial Distress Rate (as defined below), until and if a subsequent calculation demonstrates that the ratio equals 1.35 times or higher, at which time the interest rate on the Series [A][B] Bond will no longer equal the Financial Distress Rate and will return to the original Rate of Interest.

"Financial Distress Rate" means the Rate of Interest plus four percent (4.00%); provided, however, that the Financial Distress Rate shall not exceed the Maximum Rate.

SCHEDULE 2

CITY OF MARATHON, FLORIDA
PUBLIC IMPROVEMENT REFUNDING REVENUE BOND,
SERIES 2013[A][B]

AMORTIZATION SCHEDULE

<u>Date</u>	<u>Payment</u>	<u>Interest</u>	<u>Principal</u>
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Totals:

EXHIBIT B

FORM OF PURCHASER'S CERTIFICATE

This is to certify that TD Bank, N.A. (the "Purchaser") has not required the City of Marathon, Florida (the "Issuer") to deliver any offering document and 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 Issuer in connection with the issuance of the \$_____ City of Marathon, Florida Public Improvement Refunding Revenue Bond, Series 2013A and the \$_____ City of Marathon, Florida Public Improvement Refunding Revenue Bond, Series 2013B (collectively, the "Series 2013 Bonds"), and no inference should be drawn that the Purchaser, in the acceptance of said Series 2013 Bonds, is relying on Bryant Miller Olive P.A. ("Bond Counsel") or GrayRobinson, P.A. ("Issuer's Counsel") as to any such matters other than the legal opinions rendered by Bond Counsel or Issuer's Counsel. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the Loan Agreement, dated as of _____, 2013, by and among the Issuer and the Purchaser (the "Loan Agreement").

We are aware that investment in the Series 2013 Bonds involves various risks, that the Series 2013 Bonds are not general obligations of the Issuer and that the payment of the Series 2013 Bonds are secured solely from the sources described in the Loan Agreement (the "Bond Security").

We have made such independent investigation of the Bond 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 2013 Bonds and can bear the economic risk of our investment in the Series 2013 Bonds.

We acknowledge and understand that the Loan Agreement 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 Bond Counsel nor the Issuer's Counsel shall have any obligation to effect any such registration or qualification.

The Series 2013 Bonds have been purchased for the account of the Purchaser for investment purposes only and not with a present view to the distribution, transfer or resale thereof. The Purchaser currently intends to hold and book the Series 2013 Bonds as a loan in its loan portfolio; the Purchaser acknowledges that the use of the word "Bond" in the name of the debt instrument is not intended to indicate that the instrument is or is not a security within the meaning of the Securities Act of 1933. The Purchaser currently intends to hold such Series 2013 Bonds for its own account and for an indefinite period of time and does not intend to dispose of all or any portion of such Series 2013 Bond. The Purchaser hereby covenants that if the Purchaser subsequently decides to distribute or resell the Series 2103 Bonds, it shall comply in all respects with all securities laws then applicable with respect to any such distribution or resale. We understand that the Series 2013 Bonds may not be transferred in a denomination less than the par amount outstanding at the time of transfer and without the filing of an investor letter from the new purchaser.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Series 2013 Bonds 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 _____, 2013.

TD BANK, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, has negotiated with the City of Marathon, Florida (the "Issuer") for the private purchase of its Public Improvement Refunding Revenue Bond, Series 2013A and the Public Improvement Refunding Revenue Bond, Series 2013B (collectively, the "Series 2013 Bonds") in the principal amount of \$_____. Prior to the award of the Series 2013 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 "Purchaser") in connection with the issuance of the Series 2013 Bonds (such fees and expenses to be paid by the Issuer):

Purchaser Counsel Fees – \$_____

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Purchaser in connection with the issuance of the Series 2013 Bonds to any person not regularly employed or retained by the Purchaser (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Purchaser, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Purchaser, or to the knowledge of the Purchaser, 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 Purchaser or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2013 Bonds.

3. The amount of the underwriting spread expected to be realized by the Purchaser is \$0.00.

4. The management fee to be charged by the Purchaser is \$0.00.

5. Truth-in-Bonding Statement:

The Series 2013 Bonds are being issued primarily to (i) refinance the outstanding principal balance of the City's outstanding \$_____ Improvement Revenue Bond, Series 2004 (Capital Projects) dated as of July 20, 2004 and (ii) finance the acquisition and construction of certain capital projects, including a city hall.

Unless earlier redeemed, the Series 2013A Bond is expected to be repaid by October 1, 20__; at a fixed interest rate of _____%, total interest paid over the life of the Series 2013A Bond is estimated to be \$_____.

Unless earlier redeemed, the Series 2013B Bond is expected to be repaid by October 1, 20__; at a fixed interest rate of _____%, total interest paid over the life of the Series 2013B Bond is estimated to be \$_____.

The Series 2013 Bonds will be payable solely from the Non-Ad Valorem Revenues, as such term is defined in the Loan Agreement, dated as of November 1, 2013, between the Issuer and the undersigned (the "Loan Agreement"). Issuance of the Series 2013 Bonds is estimated to result in an annual average of

approximately \$_____ of Non-Ad Valorem Revenues of the Issuer not being available to finance other projects of the Issuer during the life of the Series 2013 Bonds.

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

TD Bank, N.A.
5900 North Andrews Avenue, 2nd Floor
Fort Lauderdale, Florida 33309

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Purchaser this _____ day of _____, 2013.

TD BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT D
PROPOSAL



100 2nd Avenue South, Suite 800
 St. Petersburg, Florida 33701
 (727) 895-8880
 (727) 895-8895 Fax

CLOSING MEMORANDUM

TO: Working Group
FROM: Helen Ewin
RE: City of Marathon, Florida
 Public Improvement Revenue Refunding Bond, Series 2013A & B
DATE: November 7, 2013

Closing

Date: Friday, November 8, 2013
 Place: via phone/email

I. SOURCES AND USES OF FUNDS

	<u>Series 2013A</u>	<u>Series 2013B</u>	<u>Total</u>
SOURCES:			
Par Amount of Bonds	\$10,000,000.00	\$335,000.00	\$10,335,000.00
Issuer Contribution	<u>0.00</u>	<u>1,480.51</u>	<u>1,480.51</u>
Total Sources of Funds	\$10,000,000.00	\$336,480.51	\$10,336,480.51
USES:			
Deposit to Project Fund	\$6,000,000.00		\$6,000,000.00
Payoff Series 2004 Bonds	3,941,292.78	336,480.51	4,277,773.29
Cost of Issuance	52,000.00	0.00	52,000.00
Additional Proceeds	<u>6,707.22</u>	<u>0.00</u>	<u>6,707.22</u>
Total Uses of Funds	\$10,000,000.00	\$336,480.51	\$10,336,480.51

II. NET PROCEEDS OF THE BONDS

Par Amount of Bonds	<u>\$10,335,000.00</u>
TOTAL NET PROCEEDS	\$10,335,000.00

III. WIRES SENT BY CITY OF MARATHON

To SunTrust Bank for Payoff of 2004 Bond **\$1,480.51**

To: SunTrust Bank
ABA#: 061000104
Beneficiary Name: Commercial Credit Services
Beneficiary A/C#: 9088000112
For further credit to: City of Marathon
Obligor: 0040427857 – Obligation #26 - payoff

Total Wires from City of Marathon **\$1,480.51**


IV. COSTS OF ISSUANCE

The City will pay the costs of issuance listed below when invoiced:

Bond Counsel Fee	\$25,000.00
Transcript Preparation	1,000.00
Financial Advisor Fee and Expenses	16,000.00
Issuer's Counsel Fee	5,000.00
Bank Counsel Fee	5,000.00
Contingency	<u>6,707.22</u>

TOTAL COSTS OF ISSUANCE **\$58,707.22**

The City of Marathon, Florida authorizes and directs the foregoing transfers.

By: 
Title: Roger T. Hernstadt, City manager

III. WIRES SENT BY TD BANK

From the 2013A Bond Proceeds:

To SunTrust Bank for Payoff of 2004 Bond \$3,941,292.78

To: SunTrust Bank
ABA#: 061000104
Beneficiary Name: Commercial Credit Services
Beneficiary A/C#: 9088000112
For further credit to: City of Marathon
Obligor: 0040427857 -- Obligation #26 - payoff

To the City of Marathon \$6,058,707.22

To: Centennial Bank
620 Chestnut Street
Conway, AR 72032
ABA#: 082902757
Credit: City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Account No. 1009001
Bank Contact: jwagner@my100bank.com

To be applied as follows:

Project Fund	\$6,000,000.00
Costs of Issuance	<u>58,707.22</u>
Total	\$6,058,707.22

From the 2013B Bond Proceeds:

To SunTrust Bank for Payoff of 2004 Bond \$335,000.00

To: SunTrust Bank
ABA#: 061000104
Beneficiary Name: Commercial Credit Services
Beneficiary A/C#: 9088000112
For further credit to: City of Marathon
Obligor: 0040427857 -- Obligation #26 - payoff

Total Wires from TD Bank \$10,335,000.00