

RESOLUTION NO. 13-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING AND SUPPLEMENTING RESOLUTION NO. 10-16 TO EXTEND THE MATURITY DATE OF THE CITY'S SUBORDINATE WASTEWATER IMPROVEMENT REVENUE NOTE, SERIES 2010 FROM APRIL 6, 2013 TO OCTOBER 6, 2013; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ALLONGE TO SUCH NOTE TO EFFECT SUCH PURPOSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City Council of the City of Marco Island, Florida, (the "City") pursuant to the provisions of the Florida Constitution, Chapter 166, Part II, Florida Statutes, Chapter 159, Florida Statutes, the Charter of the City and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 03-55 adopted by the City Council of the City on September 29, 2003, as amended and supplemented, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the City on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the City on October 17, 2005 (collectively, the "Senior Lien Bond Resolution"), and Resolution No. 10-16 adopted by the City Council of the City on April 5, 2010 (the "Note Resolution," and together with the Senior Lien Bond Resolution, the "Original Resolution"); and

WHEREAS, all capitalized undefined terms used herein shall have the meaning ascribed thereto in the Original Resolution; and

WHEREAS, the Note Resolution authorized the execution of a loan agreement with Bank of America, N.A. (the "Noteholder") and issuance of and delivery of the City's Subordinate Wastewater Improvement Revenue Note, Series 2010 (the "Note") to provide funds to construct and acquire certain capital improvements related to the City's water and wastewater utility system (the "Project"); and

WHEREAS, on April 6, 2010, the Note was issued and thereafter construction and acquisition of the Project was completed; and

WHEREAS, no Event of Default, or event that with the giving of notice or the passage of time would constitute an Event of Default, exists pursuant to the Original Resolution; and

**WHEREAS**, the original maturity date of the Note is April 6, 2013; and

**WHEREAS**, the City has obtained certain State Revolving Fund loans from the Florida Department of Environmental Protection (the "SRF Loans"), the proceeds of which will be used upon receipt to refinance a portion of the indebtedness evidenced by the Note on a long term basis; and

**WHEREAS**, the City intends to procure bank loans, the proceeds of which will be used to refinance the balance of indebtedness evidenced by the Note on a long term basis (the "Bank Loans"); and

**WHEREAS**, the City expects to receive proceeds from the SRF Loans within the next thirty (30) days, and to procure the Bank Loans prior to October 6, 2013; and

**WHEREAS**, the Noteholder has agreed to an extension of the maturity date of the Note to October 6, 2013 to provide the City with additional time to receive the SRF Loan proceeds and procure the Bank Loans; and

**WHEREAS**, the City and the Noteholder have agreed to enter into Allonge No. 1 (the "Allonge"), in the form attached hereto as Appendix A, which will modify, amend and become part of the Note to effect such extension of the maturity; and

**WHEREAS**, this Resolution shall amend and supplement the Note Resolution to provide for extension of the maturity date of the Note and authorize execution and delivery of the Allonge to the Noteholder.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1: Authority for this Resolution.** This Resolution is adopted pursuant to the Act and the Original Resolution.

**Section 2: Extension of Maturity Date.** The Note Resolution is hereby amended and supplemented to extend the maturity date of the Note from April 6, 2013 to October 6, 2013.

**Section 3: Allonge No. 1.** The Chairman is hereby authorized to execute, and the City Clerk is authorized to attest, the Allonge in substantially the form attached hereto as Appendix A. Upon such execution and attestation, the Allonge shall be delivered to the Noteholder. The Finance Director is hereby authorized and directed to pay legal fees of the Noteholder in connection with the Allonge in the amount of \$500.00.

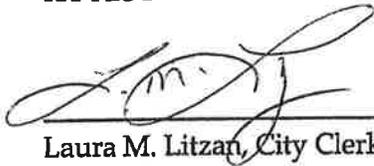
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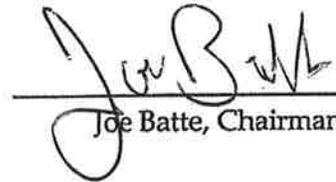
**Section 4: Effective Date.** This Resolution shall take effect immediately upon its adoption.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 18 day of March, 2013.

ATTEST

CITY OF MARCO ISLAND, FLORIDA

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

  
\_\_\_\_\_  
Joe Batte, Chairman

Approved as to Form:

  
\_\_\_\_\_  
Burt L. Saunders, City Attorney

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**APPENDIX A**  
**FORM OF ALLONGE NO. 1**

**ALLONGE NO. 1 TO CITY OF MARCO ISLAND, FLORIDA  
SUBORDINATE WASTEWATER IMPROVEMENT REVENUE NOTE,  
SERIES 2010**

This Allonge No. 1, dated as of March 18, 2013, is to be attached to and made a part of the City of Marco Island, Florida Subordinate Wastewater Improvement Revenue Note, Series 2010 dated April 6, 2010 consisting of one note in the original aggregate principal amount of \$5,955,000, bearing interest at a variable interest rate based on a formula described therein, subject to adjustment as further described therein, and with an original maturity date of April 6, 2013 (the "Note"). The Note is held by Bank of America, N.A. (the "Original Purchaser").

Effective as of the date hereof, the maturity date of the Note shall be extended, the maturity date on the Note shall no longer be April 6, 2013, and the maturity date of the Note shall hereafter be October 6, 2013. Notwithstanding anything in the Note to the Contrary, the City agrees and acknowledges that as of even date herewith and through the maturity date of October 6, 2013, no further advances of principal will be made to the City by the Original Purchaser pursuant to the Note.

CITY OF MARCO ISLAND, FLORIDA

(SEAL)

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

Name: Joe Batte

Title: Chairman

ATTEST:

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

Name: Laura M. Litzan

Title: City Clerk

The Original Purchaser, as the registered owner of the Note, hereby understands, acknowledges and consents to the foregoing, including without limitation an amendment to the resolution which authorized the issuance of the Note which implements the foregoing.

Date: \_\_\_\_\_, 2013

BANK OF AMERICA, N.A.

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

Name: Holly L. Kuhlman

Title: Senior Vice President

This Allonge No. 1 shall be appended to and shall modify and amend and become a part of the Note.