

RESOLUTION NO. 09- 32

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE ISSUANCE OF \$11,000,000 TAXABLE UTILITY SYSTEM REVENUE BOND, SERIES 2009A, TO REFINANCE CERTAIN INDEBTEDNESS DESCRIBED HEREIN AND \$6,594,600 TAXABLE UTILITY SYSTEM REVENUE BOND, SERIES 2009B FOR PURPOSES OF FUNDING CERTAIN DEBT SERVICE RESERVES AS DESCRIBED HEREIN; PLEDGING THE PLEDGED REVENUES OF THE CITY'S UTILITY SYSTEM FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A NEGOTIATED SALE OF SUCH BONDS BASED ON THE TERMS DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

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

"Bond Counsel" shall mean Bryant Miller Olive P.A., Tampa, Florida, bond counsel with respect to the issuance of the Bonds.

"Bonds" shall mean, collectively, the 2009A Bond and the 2009B Bond.

"Business Day" shall mean any day except any Saturday or Sunday or day on which the principal office of the Purchaser is closed.

"Chairman" shall mean the Chairman or Vice Chairman of the City Council.

"City Attorney" shall mean the City Attorney of the Issuer, or any assistant or deputy City Attorney of the Issuer.

"City Clerk" shall mean the City Clerk of the Issuer, or any assistant or deputy City Clerk of the Issuer.

"City Council" shall mean the City Council of the Issuer.

"City Manager" shall mean the City Manager of the Issuer, or any assistant or deputy City Manager of the Issuer.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Finance Director" shall mean the Finance Director of the Issuer, or such other person as may be duly authorized by the City Manager of the Issuer to act on his or her behalf.

"Holder" or "Bondholder" or any similar term shall mean any persons who shall be the registered owner of any outstanding Bonds.

"Issuer" shall mean the City of Marco Island, Florida.

"Parity Bonds" shall mean the Series 2003 Bonds, the Series 2006 Bond and the Series 2008 Bond.

"Principal Office" means, with respect to the Purchaser, the office located at 999 Vanderbilt Beach Road, Naples, Florida 34108, or such other office as the Holder may designate in writing to the Issuer.

"Purchaser" shall mean Fifth Third Bank, the purchaser of the Bonds.

"Resolution" shall mean Resolution No. 03-55 adopted by the City Council on September 29, 2003, as from time to time may be amended or supplemented by Supplemental Resolution, in accordance with the terms thereof, and as particularly amended by Resolution No. 04-06 adopted by the City Council on March 1, 2004 and Resolution No. 05-71 adopted by the City Council on October 17, 2005, as particularly supplemented hereby.

"Series 2003 Bonds" shall mean the Issuer's City of Marco Island, Florida Utility System Revenue Bonds, Series 2003, issued pursuant to the Resolution in the original aggregate principal amount of \$101,115,000.

"Series 2006 Bond" shall mean the Issuer's City of Marco Island, Florida Utility System Revenue Bond, Series 2006, issued pursuant to the Resolution in the original aggregate principal amount of \$5,500,000.

"Series 2008 Bond" shall mean the Issuer's City of Marco Island, Florida Utility System Revenue Bond, Series 2008, issued pursuant to the Resolution in the original aggregate principal amount of \$7,477,241.15.

"Series 2008B Bond" shall mean the Issuer's City of Marco Island, Florida Utility System Revenue Bond, Series 2008B, issued pursuant to the Resolution in the original aggregate principal amount of \$11,000,000.

"Series 2009A Bond" shall mean the Issuer's City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009A, authorized pursuant to Section 4 hereof.

"Series 2009B Bond" shall mean the Issuer's City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009B, authorized pursuant to Section 4 hereof.

"Series 2010 Bonds" shall mean, collectively, the proposed City of Marco Island, Florida Utility System Revenue Bonds, Series 2010A and City of Marco Island, Florida Taxable Utility System Revenue Bonds, Series 2010B, which the Issuer presently intends to issue to refinance the Bonds on a permanent basis and to finance additional necessary capital improvements to the System, following the completion of a rate sufficiency analysis by Issuer staff and outside consultants, review and recommendation by the Utilities Advisory Committee, and review and approval of rate adjustments, if any, by City Council.

"Utilities Advisory Committee" shall mean the committee of that name recently established by the City Council.

Section 2: Authority for This Resolution. This Resolution is adopted pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer, and other applicable provisions of law (collectively, the "Act").

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

(A) For the benefit of its inhabitants, the Issuer presently owns, operates and maintains the System for the supply and distribution of water and for the collection, treatment and disposal of sewage, including residential reuse.

(B) It is in the best interests of the Issuer and the residents thereof that the Issuer authorize the issuance of the Bonds for the purposes described herein.

(C) Following the completion of a rate sufficiency analysis by Issuer staff and outside consultants, review and recommendation by the Utilities Advisory Committee, and review and approval of rate adjustments, if any, by City Council, the Issuer presently intends to issue the Series 2010 Bonds to refinance and redeem the Bonds and to finance additional necessary capital improvements to the System.

(D) 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 Bonds; provided however, the Bonds shall not be secured by the Reserve Fund. Further, the Issuer

desires to pledge proceeds of the Series 2010 Bonds, if and when issued, to the payment of the Bonds, as additional security.

(E) The estimated Pledged Revenues to be derived in each year hereafter from the operation of the System will be sufficient to pay the principal of and interest on the Bonds and the Parity Bonds, as the same become due, and all other payments provided for in the Resolution.

(F) The principal of and interest on the Bonds, the Parity Bonds and all other payments provided for in the Resolution will be paid solely from the sources therein provided in accordance with the terms thereof; and no ad valorem taxing power of the Issuer will ever be exercised nor will the holder of the Bonds have the right to compel the exercise of such ad valorem taxing power or the use of ad valorem tax revenues to pay the principal of or interest on the Bonds or to make any other payments provided for in the Resolution, and the Bonds shall not constitute a lien upon the System or upon any other property of the Issuer or situated within its corporate territorial limits, except the Pledged Revenues and proceeds of the Series 2010 Bonds, if and when issued.

(G) It is necessary, appropriate and in accordance with Section 20(Q) of the Resolution that the City Council adopt this Resolution at this time in order to authorize the issuance of the Bonds heretofore stated based on the terms and conditions as herein authorized and provided.

(H) The Issuer is advised that due to the present volatility of the market for public obligations such as the Bonds, it is in the best interest of the Issuer to sell the Bonds by a private negotiated sale, allowing the Issuer to enter such market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Issuer to obtain the best possible price, interest rate and other terms for the Bonds; and, accordingly, the Issuer does hereby find and determine that it is in the best interest of the Issuer that a private negotiated sale of the Bonds be authorized. The Purchaser has offered to purchase the Bonds, and the Issuer does hereby find and determine that it is in the best financial interest of the Issuer to accept such an offer based upon the terms provided herein.

Section 4: Authorization of Bonds; Further Covenants. Subject and pursuant to the provisions of this Resolution, (i) an obligation of the Issuer to be known as City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009A is hereby authorized to be issued under and secured by the Resolution, in the principal amount of \$11,000,000 for the purpose of refinancing and redeeming the Series 2008B Bond, and (ii) an obligation of the Issuer to be known as the City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009B, in the principal amount of \$6,594,600 for the purpose of funding a deposit into the Reserve Fund related to the Series 2003 Bonds, as further described in Section 8 hereof. The Series 2009A Bond and the Series 2009B Bond shall constitute "Additional Parity Obligations" as such term is defined in the Resolution.

All of the covenants contained in the Resolution shall be applicable to such Additional Parity Obligations in the same manner and to the same extent as they apply to the Parity Bonds; provided, however, the Bonds shall not be secured by the Reserve Fund. In addition, the Issuer hereby pledges proceeds of the Series 2010 Bonds, if and when issued, to the payment of the Bonds, as additional security.

The Issuer hereby covenants and agrees that it will use its best efforts to pursue and accomplish the issuance, sale and delivery of the Series 2010 Bonds on or before October 1, 2010; provided, however, that the Purchaser recognizes, by acceptance of the Bonds, that the issuance of the Series 2010 Bonds to refinance and retire the Bonds is dependent upon receipt of more favorable financing terms relating to the issuance of long-term debt, over which the Issuer has no control. Notwithstanding anything herein to the contrary, the Purchaser has the tender rights described in Section 5(E) hereof and in the Bonds.

The Issuer further covenants that it will not amend the Resolution without the written consent of the Holder.

Because of the characteristics of the Bonds, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Bonds, it is in the best interest of the Issuer to accept the offer of the Purchaser to purchase the Bonds at a private negotiated sale. Prior to the issuance of the Bonds, the Issuer shall receive from the Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit C and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit D.

Section 5: *Description of Bonds.* The Bonds shall be dated the date of their execution and delivery, which shall be a date agreed upon by the Issuer and the Purchaser, subject to the following terms:

(A) The Series 2009A Bond shall have a variable interest rate equal to the 30-Day LIBOR Rate plus 180 basis points (1.80%) (subject to adjustment as described below, the "2009A Interest Rate"), calculated on a 30/360 basis; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by the Act. The Series 2009B Bond shall have a variable interest rate equal to the 30-Day LIBOR Rate plus 180 basis points (1.80%) (subject to adjustment as described below, the "2009B Interest Rate"), calculated on a 30/360 basis; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by the Act. The "30-Day LIBOR Rate" means a fluctuating rate of interest equal to the one month London Interbank Offered Rate which appears on the Bloomberg Reporting Service (or if such source is not available, such alternative source determined by the Holder on the preceding Business Day). The 2009A Interest Rate and the 2009B Interest Rate (collectively, the "Interest Rates") shall initially be determined two Business Days prior to issuance of the Bonds and shall adjust on the first Business Day of every month thereafter.

(B) The Interest Rates set forth above assume a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as the Bonds are owned by the Holder, or its successors and assigns, the Holder shall have the right to adjust such Interest Rates in order to maintain the same after-tax yield.

(C) Interest on the Bonds shall be paid semi-annually, commencing April 1, 2010, and on each subsequent October 1 and April 1 thereafter until maturity.

Principal on the Bonds shall amortize on October 1 of the years and in the amounts to be set forth in the Bonds, commencing on October 1, 2010; provided, however, the final maturity of the Series 2008A Bond shall be October 1, 2028 and the final maturity of the Series 2009B Bonds shall be October 1, 2029.

(D) The Bonds shall be subject to prepayment without penalty at any time prior to maturity at the option of the Issuer in the manner provided in the Bonds.

(E) Either or both of the Bonds is subject to tender at the option of the Holder on September 21, 2010 or at any time thereafter by providing the Issuer with at least 90 days advance written notice of its election to tender either or both of the Bonds on such date. On such date, if the Holder of either or both of the Bonds shall have timely provided the requisite notice as described above, then the Holder shall tender either or both of the Bonds, as applicable, to the Issuer in exchange for the Issuer's payment of the outstanding principal amount of either or both of the Bonds, as applicable, plus accrued interest.

(F) The Series 2009A Bond is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman. The Series 2009B Bond is to be in substantially the form set forth in Exhibit B attached hereto, together with such non-material changes as shall be approved by the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the Chairman and the official seal of the Issuer, and be attested and countersigned with the manual or facsimile signature of the City Clerk, to be approved as to form by the City Attorney. In case any one or more of the officers who shall have signed or sealed the Bonds or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed has been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Bonds may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bonds shall hold the proper office of the Issuer, although, at the date of such Bonds, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have

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

Section 6: *Registration and Exchange of the Bonds; Persons Treated as Holder.* The Bonds are initially registered to the Purchaser. So long as the Bonds shall remain unpaid, the Issuer will keep books for the registration and transfer of the Bonds. The Bonds shall be transferable only upon such registration books. Notwithstanding anything herein to the contrary, the Bonds may not be transferred in a denomination less than \$100,000 under any circumstances.

The person in whose name the Bonds shall be registered shall be deemed and regarded as the absolute Holder thereof for all purposes, and payment of principal and interest on such Bonds shall be made only to or upon the written order of the Holder. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid.

Section 7: *Application of Proceeds of the Bonds and Other Legally Available Funds.* At the time of delivery of the Series 2009A Bond herein authorized, proceeds from the sale of the Series 2009A Bond shall be used to refinance and redeem the Series 2008B Bond. At the time of delivery of the Series 2009B Bond herein authorized, proceeds from the sale of the Series 2009B Bond shall be used to fund a deposit into the Reserve Fund related to the Series 2003 Bonds, as further described in Section 8 hereof.

At the time of delivery of the Bonds herein authorized, the Issuer shall use other legally available funds to pay transaction costs in connection with the issuance of the Bonds and any accrued interest on the Series 2008B Bond through the redemption date.

Section 8: *Matters Relating to Reserve Fund; The Bonds Not Secured by Reserve Fund.* In Section 16(C) of the Resolution, the Issuer created and established the Reserve Fund. It is hereby determined that the Reserve Fund (exclusive of any subaccounts hereafter created therein) shall secure only the Series 2003 Bonds and any Additional Parity Obligations issued in the future to refund any or all of the Series 2003 Bonds (the "Refunding Bonds"), and shall not secure the Series 2006 Bond, the Series 2008 Bond, the Series 2009A Bond, the Series 2009B Bond, the Series 2010 Bonds, if and when issued, or any other Series of Bonds other than Refunding Bonds.

As of the date hereof, the Reserve Fund (exclusive of any subaccounts hereafter created therein) is currently funded with cash and/or Permitted Investments valued as of the date hereof to equal \$6,691,832, which amount was derived from interfund loans on July 31, 2008 (in an amount equal to \$677,457), November 19, 2008 (in an amount equal to \$2,000,000), February 26, 2009 (in an amount equal to \$1,000,000), April 15, 2009 (in an amount equal to \$1,014,375) and April 28, 2008 (in an amount equal to \$2,000,000) (collectively, the "Interfund Loan") and which amount is in excess of the Reserve Requirement calculated based on the

Series 2003 Bonds only. In addition to the cash and/or Permitted Investments described above, there is currently on deposit in the Reserve Fund a Reserve Fund Insurance Policy issued by MBIA Insurance Corporation ("MBIA") in an amount equal to \$6,594,600 with an expiration date of October 1, 2033 (the "MBIA Reserve Account Insurance Policy"). Because the rating of the claims-paying ability of MBIA fell below "A," the MBIA Reserve Account Insurance Policy has been disregarded for purposes of meeting the applicable Reserve Requirement, and as such, the Issuer has deposited into the Reserve Fund, within prescribed time limitations, an amount sufficient to cause the cash and/or Permitted Investments on deposit therein to equal the Reserve Requirement for the Series 2003 Bonds without regard to the amount of the MBIA Insurance Policy. The Issuer satisfied its deposit requirements within the prescribed time limitations pursuant to Section 20(B)(2) of the Resolution.

Upon the issuance of the Series 2009B Bond, proceeds thereof in an amount equal to the Reserve Requirement for the Series 2003 Bonds, will be deposited in the Reserve Fund, and the Interfund Loan will simultaneously be repaid from the non-bond proceeds currently on deposit therein. The Reserve Requirement applicable to the Reserve Fund (exclusive of any subaccounts hereafter created therein) shall be equal to the lesser of (i) the Maximum Bond Service Requirement calculated based on the Series 2003 Bonds and Refunding Bonds, if any, (ii) 125% of the Average Annual Bond Service Requirement calculated based on the Series 2003 Bonds and Refunding Bonds, if any, or (iii) 10% of the aggregate stated original principal amount of the Series 2003 Bonds and Refunding Bonds, if any (except that, in determining the aggregate stated original principal amount of such Bonds for purposes of (iii), the issue price of such Bonds (net of pre-issuance accrued interest) shall be substituted for the original stated principal amount if such Bonds are sold at either an original issue discount or premium exceeding two percent (2%) of its stated redemption price at maturity).

Section 9: *This Instrument to Constitute Contract.* Upon and in consideration of the acceptance of the Bonds by the Purchaser, this Resolution, together with the Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the Bondholder. The covenants and agreements set forth in the Resolution to be performed by the Issuer shall be for the equal and proportionate benefit, protection and security of the Bondholder, the Parity Bonds and any Additional Parity Obligations issued pursuant to the 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 Resolution.

Section 10: *Business Days.* In any case where the due date of interest on or principal of the Bonds is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Holder.

Section 11: *Registrar and Paying Agent.* The City Clerk is hereby appointed as Registrar and Paying Agent under the Resolution, to serve as Registrar and Paying Agent for the Bonds.

Section 12: Information Requests. The Issuer shall provide the Bondholder with such financial information regarding the Issuer as the Bondholder may reasonably request. Not later than March 31 after the close of each Fiscal Year, the Issuer shall provide the Bondholder with its Comprehensive Annual Financial Report including annual financial statements for each Fiscal Year of the Issuer, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. Not later than 30 days following its approval, the Issuer shall provide the Bondholder with its annual budget. All accounting terms not specifically defined or specified herein shall have the meanings attributed to such terms under generally accepted accounting principals as in effect from time to time consistently applied.

Section 13: Registration of the Bonds. The person in whose name the Bonds shall be registered shall be deemed and regarded as the absolute Holder thereof for all purposes, and payment of or on account of the principal on any such Bonds, and the interest on such Bonds, shall be made only to or upon the order of the registered Holder thereto or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds, and interest thereon to the extent of the sum or sums so paid.

Section 14: City Council Members of the Issuer Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Bonds or for any claim based thereon or otherwise in respect thereof, shall be had against any City Council member of the Issuer, as such, of the Issuer, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council members of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such City Council member of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Bonds, on the part of the Issuer.

Section 15: Authorization of Execution of Other Certificates and Other Instruments. The Chairman, the City Clerk, the City Manager, the Finance Director 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 Bonds, and to execute and deliver such other instruments as shall be necessary or desirable to perform the Issuer's obligations under the Resolution and to consummate the transactions contemplated hereby and thereby.

Section 16: 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 Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued under the Resolution.

Section 17: No Third Party Beneficiaries. Except as may be expressly described in the Resolution, nothing in the Resolution or in the Bonds, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Bondholder any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Bonds, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Bondholder from time to time.

Section 18: Repealing Clause. All resolutions or parts or resolutions in conflict herewith are hereby repealed to the extent of such conflict.

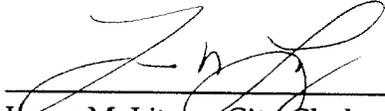
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Section 19: Effective Date. This Resolution shall take effect immediately upon its passage.

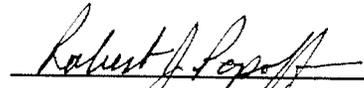
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 21st day of September, 2009.

ATTEST

CITY OF MARCO ISLAND, FLORIDA

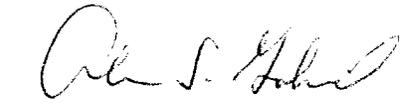


Laura M. Litzan, City Clerk



Robert J. Popoff, Chairman

Approved as to Form:



Alan L. Gabriel, City Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

EXHIBIT A

FORM OF SERIES 2009A BOND

ANY HOLDER 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 HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

September 22, 2009

\$11,000,000

CITY OF MARCO ISLAND, FLORIDA
TAXABLE UTILITY SYSTEM REVENUE BOND, SERIES 2009A

Maturity Date: October 1, 2028

Variable Interest Rate
(subject to adjustment as described herein)

KNOW ALL MEN BY THESE PRESENTS that the City of Marco Island, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of FIFTH THIRD BANK, or registered assigns (hereinafter, the "Owner"), the principal sum of \$11,000,000 on the dates as hereinafter described, together with interest on the principal balance at a variable interest rate equal to the 30-Day LIBOR Rate plus 180 basis points (1.80%) (the "Interest Rate") calculated on a 30/360 basis; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The "30-Day LIBOR Rate" means a fluctuating rate of interest equal to the one month London Interbank Offered Rate which appears on the Bloomberg Reporting Service (or if such source is not available, such alternative source determined by the Owner on the preceding Business Day). The Interest Rate shall initially be determined two Business Days prior to this issuance of this Bond, and shall adjust on the first Business Day of every month thereafter. The Interest Rate on this Bond also may be adjusted as hereinafter provided. This Bond shall have a final maturity date of October 1, 2028 (the "Maturity Date").

Principal of and interest on this Bond is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing.

The Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Bond is owned by the Owner, or its successors and assigns, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

Interest shall be payable to the Owner on each April 1 and October 1, commencing on April 1, 2010.

Principal on this Bond shall amortize on October 1 of the following years:

<u>Year</u>	<u>Principal Amortization</u>
2010	\$476,019.92
2011	486,129.39
2012	496,453.56
2013	506,997.00
2014	517,764.35
2015	528,760.37
2016	539,989.91
2017	551,457.95
2018	563,169.54
2019	575,129.85
2020	587,344.17
2021	599,817.89
2022	612,556.53
2023	625,565.69
2024	638,851.15
2025	652,418.75
2026	666,274.75
2027	680,424.49
2028	694,875.00

A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date.

This Bond is subject to tender at the option of the Owner on September 21, 2010 or at any time thereafter by providing the Issuer with at least 90 days advance written notice of its election to tender this Bond on such date. On such date, if the Owner of this Bond shall have timely provided the requisite notice as described above, then the Owner shall tender this Bond to the Issuer in exchange for the Issuer's payment of the outstanding principal amount of this Bond plus accrued interest.

The principal of and interest on this Bond may be prepaid at the option of the Issuer in whole or in part, upon prior written notice of three (3) days, at any time, without penalty.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day (as defined in the Resolution hereinafter defined) the payment due on such

date shall be due on the next succeeding day which is a Business Day, but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Bond shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

THIS BOND DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE OWNER OF THIS BOND THAT SUCH BONDHOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OR THE USE OF AD VALOREM TAX REVENUES OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Bond is issued pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as from time to time may be amended or supplemented, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the Issuer on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and as particularly supplemented by a resolution adopted by the City Council of the Issuer on September 21, 2009 (herein referred to as the "Resolution"), and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution including, without limitation, remedies in the Event of Default are by this reference thereto incorporated herein as a part of this Bond. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

This Bond is payable solely from and secured by (i) a pledge of the Pledged Revenues, and (ii) proceeds of the Series 2010 Bonds, if and when issued, in the manner and to the extent provided in the Resolution, on parity with the City of Marco Island, Florida Utility System Revenue Bonds, Series 2003, the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, the City of Marco Island, Florida Utility System Revenue Bond, Series 2008 and the City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009B; provided, however, this Bond is not secured by the Reserve Fund or any subaccount hereafter created therein. Reference is made to the Resolution for more complete definition and description of the Pledged Revenues.

The Issuer has covenanted, in the Resolution, to fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals, and other charges for the use of the products, services, and facilities of the System which will always provide,

(i) Net Revenues in each Fiscal Year sufficient to pay one hundred ten percent (110%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, or

(ii) Net Revenues in each Fiscal Year sufficient to pay one hundred five percent (105%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year; and Net Revenues, Water System Capital Facilities Fees and Sewer System Capital Facilities Fees in each Fiscal Year sufficient to pay at least one hundred twenty percent (120%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year.

In addition to compliance with either subparagraph (i) or (ii) above, such Net Revenues in each Fiscal Year shall also be sufficient to provide one hundred percent (100%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, any amounts required by the terms hereof to be deposited into the Reserve Fund or with any Credit Facility Issuer as a result of a withdrawal from the Reserve Fund, the Renewal, Replacement and Improvement Fund and debt service on other obligations payable from the Revenues of the System, and other payments, and all allocations and applications of revenues herein required in such Fiscal Year.

Net Revenues will not be reduced so as to render them insufficient to provide revenues for the purposes provided therefor by the Resolution. Nothing in the Resolution will obligate the Issuer to impose Sewer System Capital Facilities Fees or Water System Capital Facilities Fees.

The Issuer has entered into certain further covenants with the Owner of this Bond for the terms of which reference is made to the Resolution.

This Bond may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Marco Island, Florida has caused this Bond to be executed in its name by the manual signature of its Chairman, attested and countersigned by the manual signature of its City Clerk and approved as to form by the manual signature of the City Attorney, and its seal to be impressed hereon, all as of this 22nd day of September, 2009.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

By: _____
Laura M. Litzan, City Clerk

By: _____
Robert J. Popoff, Chairman

APPROVED AS TO FORM:

By: _____
Alan L. Gabriel, City Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

EXHIBIT B

FORM OF SERIES 2009B BOND

ANY HOLDER 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 HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

September 22, 2009

\$6,594,600

CITY OF MARCO ISLAND, FLORIDA
TAXABLE UTILITY SYSTEM REVENUE BOND, SERIES 2009B

Maturity Date: October 1, 2029

Variable Interest Rate
(subject to adjustment as described herein)

KNOW ALL MEN BY THESE PRESENTS that the City of Marco Island, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of FIFTH THIRD BANK, or registered assigns (hereinafter, the "Owner"), the principal sum of \$6,594,600 on the dates as hereinafter described, together with interest on the principal balance at a variable interest rate equal to the 30-Day LIBOR Rate plus 180 basis points (1.80%) (the "Interest Rate") calculated on a 30/360 basis; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The "30-Day LIBOR Rate" means a fluctuating rate of interest equal to the one month London Interbank Offered Rate which appears on the Bloomberg Reporting Service (or if such source is not available, such alternative source determined by the Owner on the preceding Business Day). The Interest Rate shall initially be determined two Business Days prior to this issuance of this Bond, and shall adjust on the first Business Day of every month thereafter. The Interest Rate on this Bond also may be adjusted as hereinafter provided. This Bond shall have a final maturity date of October 1, 2029 (the "Maturity Date").

Principal of and interest on this Bond is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing.

The Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Bond is owned by the Owner, or its successors and assigns, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

Interest shall be payable to the Owner on each April 1 and October 1, commencing on April 1, 2010.

Principal on this Bond shall amortize on October 1 of the following years:

<u>Year</u>	<u>Principal Amortization</u>
2010	\$266,318.55
2011	275,244.06
2012	280,941.61
2013	286,757.10
2014	292,692.97
2015	298,751.72
2016	304,935.88
2017	311,248.05
2018	317,690.88
2019	324,267.08
2020	330,979.41
2021	337,830.69
2022	344,823.78
2023	351,961.64
2024	359,247.24
2025	366,683.66
2026	374,274.01
2027	382,021.48
2028	389,929.33
2029	398,000.86

A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date.

This Bond is subject to tender at the option of the Owner on September 21, 2010 or at any time thereafter by providing the Issuer with at least 90 days advance written notice of its election to tender this Bond on such date. On such date, if the Owner of this Bond shall have timely provided the requisite notice as described above, then the Owner shall tender this Bond to the Issuer in exchange for the Issuer's payment of the outstanding principal amount of this Bond plus accrued interest.

The principal of and interest on this Bond may be prepaid at the option of the Issuer in whole or in part, upon prior written notice of three (3) days, at any time, without penalty.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day (as defined in the Resolution hereinafter defined) the payment due on such

date shall be due on the next succeeding day which is a Business Day, but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Bond shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

THIS BOND DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE OWNER OF THIS BOND THAT SUCH BONDHOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OR THE USE OF AD VALOREM TAX REVENUES OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Bond is issued pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as from time to time may be amended or supplemented, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the Issuer on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and as particularly supplemented by a resolution adopted by the City Council of the Issuer on September 21, 2009 (herein referred to as the "Resolution"), and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution including, without limitation, remedies in the Event of Default are by this reference thereto incorporated herein as a part of this Bond. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

This Bond is payable solely from and secured by (i) a pledge of the Pledged Revenues, and (ii) proceeds of the Series 2010 Bonds, if and when issued, in the manner and to the extent provided in the Resolution, on parity with the City of Marco Island, Florida Utility System Revenue Bonds, Series 2003, the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, the City of Marco Island, Florida Utility System Revenue Bond, Series 2008 and the City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009A; provided, however, this Bond is not secured by the Reserve Fund or any subaccount hereafter created therein. Reference is made to the Resolution for more complete definition and description of the Pledged Revenues.

The Issuer has covenanted, in the Resolution, to fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals, and other charges for the use of the products, services, and facilities of the System which will always provide,

(i) Net Revenues in each Fiscal Year sufficient to pay one hundred ten percent (110%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, or

(ii) Net Revenues in each Fiscal Year sufficient to pay one hundred five percent (105%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year; and Net Revenues, Water System Capital Facilities Fees and Sewer System Capital Facilities Fees in each Fiscal Year sufficient to pay at least one hundred twenty percent (120%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year.

In addition to compliance with either subparagraph (i) or (ii) above, such Net Revenues in each Fiscal Year shall also be sufficient to provide one hundred percent (100%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, any amounts required by the terms hereof to be deposited into the Reserve Fund or with any Credit Facility Issuer as a result of a withdrawal from the Reserve Fund, the Renewal, Replacement and Improvement Fund and debt service on other obligations payable from the Revenues of the System, and other payments, and all allocations and applications of revenues herein required in such Fiscal Year.

Net Revenues will not be reduced so as to render them insufficient to provide revenues for the purposes provided therefor by the Resolution. Nothing in the Resolution will obligate the Issuer to impose Sewer System Capital Facilities Fees or Water System Capital Facilities Fees.

The Issuer has entered into certain further covenants with the Owner of this Bond for the terms of which reference is made to the Resolution.

This Bond may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Marco Island, Florida has caused this Bond to be executed in its name by the manual signature of its Chairman, attested and countersigned by the manual signature of its City Clerk and approved as to form by the manual signature of the City Attorney, and its seal to be impressed hereon, all as of this 22nd day of September, 2009.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

By: _____
Laura M. Litzan, City Clerk

By: _____
Robert J. Popoff, Chairman

APPROVED AS TO FORM:

By: _____
Alan L. Gabriel, City Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

EXHIBIT C

FORM OF PURCHASER'S CERTIFICATE

This is to certify that Fifth Third Bank (the "Purchaser") has not required the City of Marco Island, 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 Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009__ (the "Bond"), and no inference should be drawn that the Purchaser, in the acceptance of said Bond, is relying on Bond Counsel or Issuer's Counsel as to any such matters other than the legal opinion rendered by Bond Counsel, Bryant Miller Olive P.A., and by Issuer's Counsel, Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the resolution adopted by the City Council of the Issuer on September 21, 2009 authorizing the issuance of the Bond (the "Resolution").

We are aware that investment in the Bond involves various risks, that the Bond is not a general obligation of the Issuer or payable from ad valorem tax revenues, and that the payment of the Bond is secured solely from the sources described in the Resolution (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 Bond and can bear the economic risk of our investment in the Bond.

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 Issuer's Counsel 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 Bond 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 Bond may not be transferred in a denomination less than \$100,000 in any circumstances.

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 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.

We are a "state bank" under the laws of the State of Michigan.

DATED this 22nd day of September, 2009.

FIFTH THIRD BANK

By: _____

Name: Lori T. Buhs

Title: Vice President

EXHIBIT D

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of Marco Island, Florida (the "Issuer") for the private purchase of its City of Marco Island, Florida Taxable Utility System Revenue Bond, Series 2009__ (the "Bond") in the principal amount of \$_____. Prior to the award of the Bond, 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 Bond (such fees and expenses to be paid by the Issuer):

Williams Parker Harrison Dietz & Getzen
Bank Counsel Fees \$5,000

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Bond 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 Bond.

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 Bond is being issued primarily for the purpose of refinancing and redeeming the Issuer's \$11,000,000 City Of Marco Island, Florida Utility System Revenue Bond, Series 2008B] [The Bond is being issue primarily for the purpose of funding a deposit into the Reserve Fund related to the Issuer's \$101,115,000 City of Marco Island, Florida Utility System Revenue Bonds, Series 2003.]

Unless earlier redeemed, the Bond is expected to be repaid by October 1, ____; at an assumed interest rate of ____% and further assuming that the Bond is not tendered or prepaid early, total interest paid over the life of the Bond is estimated to be \$_____.

The Bond will be payable solely from Pledged Revenues sufficient to make such payments, appropriated and deposited as described in a resolution of the Issuer adopted on September 21, 2009 (the "Resolution"), in the manner as to the extent required in the Resolution. See the Resolution for a definition of Pledged Revenues. Based on the same assumptions described above, issuance of the Bond is estimated to result in an annual average of approximately \$_____ of revenues of the Issuer not being available to finance the services of the Issuer during the life of the Bond.

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

Fifth Third Bank
999 Vanderbilt Beach Road
Naples, Florida, 34108

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 22nd day of September, 2009.

FIFTH THIRD BANK

By: _____

Name: Lori T. Buhs

Title: Vice President

