

RESOLUTION NO. 08-52

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$11,000,000 UTILITY SYSTEM REVENUE BOND, SERIES 2008B, TO FINANCE THE COST OF CONSTRUCTING AND ACQUIRING CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM; PLEDGING THE PLEDGED REVENUES OF THE CITY'S UTILITY SYSTEM FOR THE PAYMENT OF SUCH BOND; AUTHORIZING A NEGOTIATED SALE OF THE BOND 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 Series 2008B 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 of the City.

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

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

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

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

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

"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 Series 2008B Bond.

"Parity Bonds" shall mean the City of Marco Island, Florida Utility System Revenue Bonds, Series 2003, issued in the original aggregate principal amount of \$101,115,000, the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, issued in the original aggregate principal amount of \$5,500,000 and the City of Marco Island, Florida Utility System Revenue Bond, Series 2008, issued in the aggregate principal amount of \$7,500,000.

"2008B Project" shall mean the Project authorized to be financed with the proceeds of the Series 2008B Bond, consisting of additions, extensions, supplements and replacements of the System as more particularly described in the plans and specifications on file with the Issuer.

"Principal Office" means, with respect to the Original 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 City.

"Purchaser" shall mean Fifth Third Bank, the purchaser of the Series 2008B Bond.

"Resolution" shall mean 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 by Supplemental Resolution, in accordance with the terms thereof, 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.

"Series 2008B Bond" shall mean the Issuer's Utility System Revenue Bond, Series 2008B, authorized pursuant to Section 5 hereof.

**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 Series 2008B Bond for the purpose of designing, permitting, acquiring and constructing the 2008B Project.

(C) The Issuer deems it necessary, desirable and in the best interest of the Issuer that the Pledged Revenues be pledged to the payment of the principal of and interest on the Series 2008B Bond; provided, however, the Series 2008B Bond shall not be secured by the Reserve Fund.

(D) 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 Series 2008B Bond and the Parity Bonds, as the same become due, and all other payments provided for in the Resolution.

(E) The principal of and interest on the Series 2008B Bond, 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 Series 2008B Bond 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 Series 2008B Bond or to make any other payments provided for in the Resolution, and the Series 2008B Bond 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.

(F) 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 Series 2008B Bond heretofore stated based on the terms and conditions as herein authorized and provided.

(G) The Issuer is advised that due to the present volatility of the market for tax-exempt public obligations such as the Series 2008B Bond, it is in the best interest of the Issuer to sell the Series 2008B Bond 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 Series 2008B Bond; 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 Series 2008B Bond be authorized. The Purchaser has offered to purchase the Series 2008B Bond, 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 Design, Permitting, Acquisition and Construction of the 2008B Project. There is hereby authorized the design, permitting, acquisition and construction of the 2008B Project.

**Section 5:** Authorization of Series 2008B Bond. Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as City of Marco Island, Florida Utility System Revenue Bond, Series 2008B is hereby authorized to be issued under and secured by the Resolution, in the principal amount of not to exceed \$11,000,000 for the purpose of providing funds to reimburse and pay the costs of the 2008B Project and paying the costs of issuing the Series 2008B Bond.

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 Series 2008B Bond shall not be secured by the Reserve Fund. Because of the characteristics of the Series 2008B Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2008B Bond, it is in the best interest of the Issuer to accept the offer of the Purchaser to purchase the Series 2008B Bond at a private negotiated sale. Prior to the issuance of the Series 2008B Bond, the Issuer shall receive from the Purchaser 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 6:** Description of Series 2008B Bond. The Series 2008B Bond shall be dated the date of its delivery, which shall be a date agreed upon by the Issuer and the Purchaser, subject to the following terms:

(A) Interest Rate. The Series 2008B Bond shall have a variable interest rate equal to the 30-Day LIBOR Rate plus 65 basis points (0.65%) (subject to adjustment as described below, 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 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 Interest Rate shall initially be determined two Business Days prior to this issuance of the Series 2008B Bond, and shall adjust on the first Business Day of every month thereafter.

(B) Adjustments of Interest Rate. If any interest on the Series 2008B Bond becomes includable in the gross income of the Holder for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Holder's after-tax yield with respect to the Series 2008B Bond, then

the Holder shall have the right to adjust the Interest Rate in order to maintain the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of the Series 2008B Bond until such time as the federal statute of limitations under which the interest on the Series 2008B Bond could be declared taxable under the Code shall have expired. 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 Series 2008B Bond is owned by the Holder, or its successors and assigns, the Holder shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

(C) Principal and Interest Payment Dates. Interest on the Series 2008B Bond shall be paid semi-annually, commencing April 1, 2009, and on each subsequent October 1 and April 1 thereafter until maturity.

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

(D) The Series 2008B Bond 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 Series 2008B Bond.

(E) The Series 2008B Bond shall be subject to tender at the option of the Holder on October 1, 2009. The Purchaser may exercise this option by providing the Issuer with at least 90 days advance written notice of its election to tender the Series 2008B Bond on such date. To the extent that such option is not exercised within the parameters described herein and in the Series 2008B Bond, such option shall expire.

(F) The Series 2008B 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 2008B Bond 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 Series 2008B Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Series 2008B Bond so signed and sealed has been actually sold and delivered, such Series 2008B Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2008B Bond had not ceased to hold such office. The Series 2008B Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Series 2008B Bond shall hold the proper office of the Issuer, although, at the date of such Series 2008B Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such

offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Series 2008B Bond shall be actually sold and delivered.

**Section 7:** Registration and Exchange of Series 2008B Bond; Persons Treated as Holder. The Series 2008B Bond is initially registered to the Purchaser. So long as the Series 2008B Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2008B Bond. The Series 2008B Bond shall be transferable only upon such registration books. Notwithstanding anything herein to the contrary, the Series 2008B Bond may not be transferred in a denomination less than \$100,000 under any circumstances.

The person in whose name the Series 2008B Bond shall be registered shall be deemed and regarded as the absolute Holder thereof for all purposes, and payment of principal and interest on such Series 2008B Bond 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 Series 2008B Bond to the extent of the sum or sums so paid.

**Section 8:** Application of Proceeds of Series 2008B Bond. At the time of delivery of the Series 2008B Bond herein authorized, proceeds from the sale of the Series 2008B Bond shall be used to reimburse and fund the 2008B Project and associated costs of issuance (including but not limited to legal and financial advisory fees and expenses) in accordance with the provisions in the next paragraph.

The Issuer hereby covenants that it will establish the Series 2008B Account in the Project Fund to be known as the "Series 2008B Account".

Proceeds from the sale of the Series 2008B Bond herein authorized shall be deposited into the Series 2008B Account and shall be used as described above. When the construction of the 2008B Project has been completed and all construction costs have been paid in full, all funds remaining in the Series 2008B Account shall first be used to redeem the outstanding balance of the Series 2008B Bond corresponding to the 2008B Project.

**Section 9:** Series 2008B Bond Not Secured by Reserve Fund. The Series 2008B Bond is not secured by the Reserve Fund.

**Section 10:** This Instrument to Constitute Contract. Upon and in consideration of the acceptance of the Series 2008B Bond by the Purchaser, this Resolution, together with the Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the 2008B 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 holder of the Series 2008B Bond, 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 11:** Tax Covenant. The Issuer covenants to the purchasers of the Series 2008B Bond provided for in this Resolution that the Issuer will not make any use of the proceeds of the Series 2008B Bond at any time during the term of the Series 2008B Bond which, if such use had been reasonably expected on the date the Series 2008B Bond was issued, would have caused such Series 2008B Bond to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Series 2008B Bond from the gross income of the Holders thereof for purposes of federal income taxation.

**Section 12:** Business Days. In any case where the due date of interest on or principal of a Series 2008B Bond 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 13:** 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 Series 2008B Bond.

**Section 14:** Financial Information. The Issuer shall provide the Series 2008B Bondholder with such financial information regarding the Issuer as the Series 2008B Bondholder may reasonably request. Not later than 270 days after the close of each Fiscal Year, the Issuer shall provide the Series 2008B 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 Series 2008B 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 15:** Registration of Series 2008B Bond. The person in whose name the Series 2008B Bond 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 Series 2008B Bond, and the interest on such Series 2008B Bond, 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 Series 2008B Bond, and interest thereon to the extent of the sum or sums so paid.

**Section 16:** 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 Series 2008B Bond 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 Series 2008B Bond, on the part of the Issuer.

**Section 17:** 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 Series 2008B Bond, 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 18:** 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 Series 2008B Bond issued under the Resolution.

**Section 19:** No Third Party Beneficiaries. Except as may be expressly described in the Resolution, nothing in the Resolution or in the Series 2008B Bond, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Series 2008B Bondholder any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Series 2008B Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Series 2008B Bondholder from time to time.

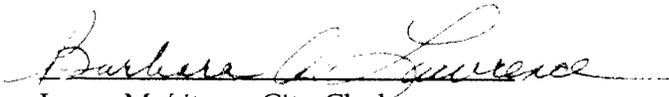
**Section 20:** Repealing Clause. All resolutions or parts or resolutions in conflict herewith are hereby repealed to the extent of such conflict.

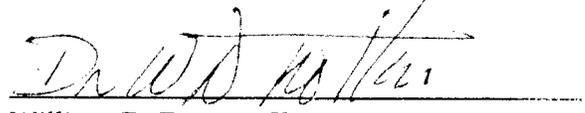
**Section 21:** Effective Date. This Resolution shall take effect immediately upon its passage.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 3rd day of November, 2008.

**ATTEST**

**CITY OF MARCO ISLAND, FLORIDA**

  
~~Laura M. Litzan, City Clerk~~  
Barbara A. Lawrence, Deputy City Clerk

  
William D. Trotter, Chairman

**Approved as to Form:**

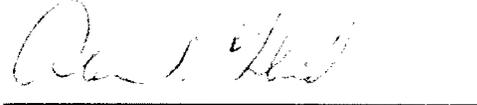
  
Alan L. Gabriel, City Attorney  
Weiss Serota Helfman Pastoriza  
Cole & Boniske, P.L.

EXHIBIT A

**FORM OF 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.

November 4, 2008

\$11,000,000

CITY OF MARCO ISLAND, FLORIDA  
UTILITY SYSTEM REVENUE BOND, SERIES 2008B

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 rate equal to the 30-Day LIBOR Rate plus 65 basis points (0.65%) (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 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.

If any interest on this Bond becomes includable in the gross income of the Owner for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Owner's after-tax yield with respect to this Bond, then the Owner shall have the right to adjust the Interest Rate with the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of this Bond until such time as the federal statute of limitations under which the interest on this Bond could be declared taxable under the Internal Revenue Code of 1986, as amended, shall have expired. 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, 2009.

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

<u>Year</u>	<u>Principal Amortization</u>
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	

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.

The Bond is subject to tender at the option of the Owner on October 1, 2009. The Owner may exercise this option by providing the Issuer with at least 90 days advance written notice of its election to tender this Bond on such date. To the extent that such option is not exercised within the preceding parameters, such option shall expire. 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 any and all amounts due and owing under this Bond and the Resolution.

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 November 3, 2008 (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 a pledge of the Pledged Revenues 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 and the City of Marco Island, Florida Utility System Revenue Bond, Series 2008; provided, however, this Bond is not secured by the Reserve Fund. 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.

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 4th day of November, 2008.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

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

By: \_\_\_\_\_  
William D. Trotter, Chairman

APPROVED AS TO FORM:

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

## EXHIBIT B

### 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 \$11,000,000 City of Marco Island, Florida Utility System Revenue Bond, Series 2008B (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 November 3, 2008 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 4<sup>th</sup> day of November, 2008.

FIFTH THIRD BANK

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

Name: James C. Ray, Jr.

Title: Vice President

EXHIBIT C

**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 Utility System Revenue Bond, Series 2008B (the "Bond") in the principal amount of \$11,000,000. 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 [TO COME]

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 \$800 (a loan documentation fee).

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

5. Truth-in-Bonding Statement:

The Bond is being issued primarily to reimburse and finance the cost of constructing and acquiring certain additions, extensions and improvements to the water and wastewater utility system owned and operated by the Issuer.

Unless earlier redeemed, the Bond is expected to be repaid by October 1, 2028; at an assumed interest rate of 4.83% 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 City adopted on November 3, 2008 (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 City 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 4<sup>th</sup> day of November, 2008.

FIFTH THIRD BANK

By: \_\_\_\_\_  
Name: James C. Ray, Jr.  
Title: Vice President

**CERTIFICATE AS TO PUBLIC MEETINGS  
AND NO CONFLICT OF INTEREST**

STATE OF FLORIDA:

CITY OF MARCO ISLAND:

Each of the undersigned members of the City Council (the "City Council") of the City of Marco Island, Florida (the "Issuer"), recognizing that the purchaser of the not to exceed \$11,000,000 City of Marco Island, Florida Utility System Revenue Bond, Series 2008B (the "Bond"), will have purchased said Bond in reliance upon this Certificate, DO HEREBY CERTIFY:

(1) that he or she has no personal knowledge that any two or more members of the City Council, meeting together, reached any prior conclusion as to whether the actions taken by the City Council, with respect to said Bond, the security therefor and the application of the proceeds thereof, should or should not be taken by the City Council or should or should not be recommended as an action to be taken or not to be taken by the City Council, except at public meetings of the City Council held after due notice to the public was given in the ordinary manner required by law and custom of the City Council;

(2) that he or she does not have or hold any employment or contractual relationship with any business entity which is purchasing the Bond from the Issuer.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures as of the 3<sup>rd</sup> day of November, 2008.

\_\_\_\_\_  
William D. Trotter, Chairman

\_\_\_\_\_  
Frank R. Recker, Vice Chairman

\_\_\_\_\_  
Ted Forcht

\_\_\_\_\_  
Jerry Gibson

\_\_\_\_\_  
Charles Kiester

\_\_\_\_\_  
Robert J. Popoff

\_\_\_\_\_  
Wayne Waldack

# Bryant ▪ Miller ▪ Olive

ATTORNEYS AT LAW

October 27, 2008

City of Marco Island, Florida  
William P. Harrison, Director of Finance  
50 Bald Eagle Drive  
Marco Island, FL 34145

**Re: Not to Exceed \$11,000,000 Marco Island, Florida Utility System Revenue  
Bond, Series 2008B**

**Bill:**

With respect to the above-referenced Series 2008B Bond, the City would ordinarily look to its financial advisor to run the numbers and to provide all of the financial information that reflected the business deal, including without limitation the sources and uses of funds, the costs of issuance budget, the amortization schedule, estimated construction fund draws and earnings and other required tax calculations, all of which are necessary in order to document the business deal and to complete the transaction. Because there is no financial advisor on this transaction, we propose to use Integrity Public Finance Consulting ("IPFC") to run the above referenced numbers. IPFC is a wholly owned subsidiary of Bryant Miller Olive, the City's Bond Counsel ("BMO"). Additional information about IPFC is available at [www.integritypfc.com](http://www.integritypfc.com).

Please note that IPFC will not be providing legal services to the City and no attorney-client relationship will arise or exist between IPFC and City, nor between BMO and the City regarding IPFC's services. BMO will protect all confidential information concerning the City and such information will not be comprised in any way by the City's use of IPFC. Further, BMO will preserve all attorney-client privileged communications between it and the City with respect to IPFC.

The proposed IPFC fee is a flat \$2,500 for those services which BMO proposes to treat as a reimbursable out of pocket expense under the provisions of its existing Bond Counsel contract. The \$2,500 fee would appear on the BMO invoice to be presented at the closing of the transaction. It is important to emphasize that IPFC's services are limited to those described in this letter. IPFC is not performing other financial advisory type services such as negotiating business terms with the original purchaser of the Series 2008B Bond, Fifth Third Bank, or negotiating fees with transaction participants, or opining as to the reasonableness of the financial terms in the transaction, including the

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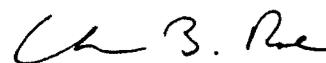
City of Marco Island, Florida  
William P. Harrison, Director of Finance  
October 27, 2008  
Page 2

variable interest rate formula. We encourage the City to consult with its City Attorney concerning the use of IPFC and the related disclosures herein.

Please include a copy of this letter in the agenda package to be distributed to Council members in advance of the November 3<sup>rd</sup> meeting. If met with approval by the Council, please execute the acknowledgment below and return a signed copy of this letter at your earliest convenience.

Let us know if you have any questions.

Best Regards,



Christopher B. Roe

Acknowledgement: The undersigned has given its informed consent to the use of Integrity Public Finance Consulting as discussed herein.

**City of Marco Island, Florida**

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

Title: Finance Director

Date: \_\_\_\_\_

Term Sheet

*Borrower:* City of Marco Island, Florida (the "City")

*Guarantor:* N/A

*Request:* Not to exceed \$11,000,000 (Non-Bank Qualified)

*Purpose:* Proceeds will be used to fund certain Neighborhood Construction Improvements associated with the City's Septic Tank Replacement Program ("STRP") in advance of issuing Florida Utility System Revenue Bonds, Series 2009.

*Facility:* Term Loan (Utility System Revenue Bond Series 2008 B)

*Term:* 364 Days (Put Option)

*Amortization:* Twenty (20 Years)

*Rate:* LIBOR 30-Day (floating) Index Rate plus 65 basis points. For illustrative purposes, the rate as of October 27, 2008 would be 3.87%.

*Repayment:* Interest payments on the outstanding balance of the Loan will be paid semi-annually.

The principal amount of the Loan will be due at maturity or upon exercising the Put Option.

In the event the Bank does not exercise its Put Option in any given annual period, the City of Marco Island, Florida will be required to make an annual principal payment.

*Prepayment Penalty:* There are no prepayment penalties due on the loan upon early payment of principal.

*Fees:* \$800 Loan Documentation Fee  
\$10,000 (not to exceed) Bank Counsel Review  
\$10,800 Total Fees



*Collateral:* Pledge of net revenues of the water and sewer system, on parity with existing water and sewer bonds.

*Financing Covenants:*

- 1) Audited annual financial statements submitted within 180 days of fiscal year-end;
- 2) Annual budget to be submitted within 30-days; and
- 3) Debt Service Coverage on parity with existing bonds.

*Financial Reporting Covenants:*

- (1) Audited annual financial statements submitted within 180 days of year-end; and
- (2) Receipt of annual budget thirty (30) days after approval.

*Representations and Warranties:* Usual and customary for transactions of this type.

*Events of Default:* Usual and customary for transactions of this type.

*Indemnification:* Usual and customary for transactions of this type.

*Governing Laws:* State of Florida

*Documents:* Any potential transaction is subject to Obligor agreeing to execute documents and provide any other documentation that the Bank deems necessary to close the Loan facility and maintain its security interests in the future.