

RESOLUTION NO. 11-16

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$26,500,000 UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2011, TO REFUND A PORTION OF THE OUTSTANDING CITY OF MARCO ISLAND, FLORIDA UTILITY SYSTEM REVENUE BONDS, SERIES 2003; PLEDGING THE PLEDGED REVENUES OF THE SYSTEM OF THE CITY FOR THE PAYMENT OF SUCH BOND ON PARITY WITH CERTAIN EXISTING INDEBTEDNESS; DESIGNATING AN ESCROW HOLDER AND APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; AUTHORIZING A NEGOTIATED SALE OF THE BOND BASED ON THE TERMS DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of the City of Marco Island, Florida (the "City") adopted Resolution No. 03-55 on September 29, 2003 (the "Original Resolution") to authorize the issuance of not to exceed \$105,000,000 City of Marco Island, Florida Utility System Revenue Bonds, Series 2003 (the "Series 2003 Bonds") and the issuance thereafter of "Additional Parity Obligations," as such term is defined therein; and

WHEREAS, pursuant to the Original Resolution, on November 6, 2003, the City issued \$101,115,000 in original principal amount of its Series 2003 Bonds; and

WHEREAS, the City Council of the City adopted Resolution No. 05-71 on October 17, 2005 (together with the Original Resolution, the "Resolution") to amend certain provisions of the Original Resolution; and

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

WHEREAS, Section 20(Q) of the Resolution provides that Additional Parity Obligations may be issued under the Resolution, subject to the conditions set forth therein; and

WHEREAS, pursuant to the Resolution, on December 5, 2006, the City issued \$5,500,000 in original principal amount of its Utility System Revenue Bond, Series 2006 (the "Series 2006 Bond") as an Additional Parity Obligation thereunder; and

WHEREAS, pursuant to the Resolution, on March 7, 2008, the City issued \$7,477,241.15 in original principal amount of its Utility System Revenue Bond, Series 2008 (the "Series 2008 Bond") as an Additional Parity Obligation thereunder; and

WHEREAS, pursuant to the Resolution, on November 20, 2008, the City issued \$11,000,000 in original principal amount of its Utility System Revenue Bond, Series 2008B (the "Series 2008B Bond") as an Additional Parity Obligation thereunder; and

WHEREAS, pursuant to the Resolution, on September 22, 2009, the City issued \$11,000,000 in original principal amount of its Taxable Utility System Revenue Bond, Series 2009A (the "Series 2009A Bond") as an Additional Parity Obligation thereunder; and

WHEREAS, pursuant to the Resolution, on September 22, 2009, the City issued \$6,594,600 in original principal amount of its Taxable Utility System Revenue Bond, Series 2009B (the "Series 2009B Bond," and together with the Series 2009A Bond, the "Series 2009 Bonds") as an Additional Parity Obligation thereunder; and

WHEREAS, the proceeds of the Series 2009A Bond refinanced and retired the Series 2008B Bond; and

WHEREAS, pursuant to the Resolution, on April 1, 2010, the City issued its \$50,475,000 City of Marco Island, Florida Tax-Exempt Utility System Improvement and Refunding Revenue Bonds, Series 2010A (the "Series 2010A Bonds"), and \$7,365,000 City of Marco Island, Florida Taxable Utility System Refunding Revenue Bonds, Series 2010B (the "Series 2010B Bonds," and together with the Series 2010A Bonds, the "Series 2010 Bonds"), as Additional Parity Obligations thereunder; and

WHEREAS, the proceeds of the Series 2010A Bonds refinanced and retired the Series 2009A Bond, and proceeds of the Series 2010B Bonds refinanced and retired the Series 2009B Bond; and

WHEREAS, the Series 2011 Bond shall be secured by the Pledged Revenues on parity and with and equal lien as to the Parity Bonds as such term is hereinafter defined; and

WHEREAS, pursuant to the Resolution, the City is permitted to incur "Subordinated Debt" which are obligations payable from Pledged Revenues on a junior, inferior and subordinate basis to the Parity Bonds and any Additional Parity Obligations issued in the future; and

WHEREAS, pursuant to the Resolution, on May 22, 2007, the City issued not to exceed \$20,000,000 in original principal amount of its Subordinate Wastewater Improvement Revenue Note, Series 2007 (the "Series 2007 Wastewater Note"), as Subordinated Debt in the form of a line of credit; and

WHEREAS, pursuant to the Resolution, on August 5, 2008, the City issued not to exceed \$18,500,000 in original principal amount of its Subordinate Wastewater Improvement Revenue Note, Series 2008 (the "Series 2008 Wastewater Note"), as Subordinated Debt in the form of a line of credit; and

WHEREAS, pursuant to the Resolution, on August 5, 2008, the City issued not to exceed \$4,000,000 in original principal amount of its Subordinate Water Improvement Revenue Note, Series 2008 (the "Series 2008 Water Note"), as Subordinated Debt in the form of a line of credit; and

WHEREAS, pursuant to the Resolution, on March 3, 2009, the City issued not to exceed \$14,155,000 in original principal amount of its Subordinate Wastewater Improvement Revenue Note, Series 2009 (the "Series 2009 Wastewater Note"), as Subordinated Debt in the form of a line of credit; and

WHEREAS, pursuant to the Resolution, on April 6, 2010, the City issued not to exceed \$5,955,000 in original principal amount of its Subordinate Wastewater Improvement Revenue Note, Series 2010 (the "Series 2010 Wastewater Note"), as Subordinated Debt in the form of a line of credit; and

WHEREAS, on or about July 29, 2009, the City retired the Series 2007 Wastewater Note; and

WHEREAS, on or about April 6, 2010, the City retired the Series 2008 Wastewater Note; and

WHEREAS, pursuant to the Resolution, on December 7, 2005, the City entered into the Clean Water State Revolving Fund Loan Agreement WW71503P with the State of Florida Department of Environmental Protection (as amended, the "2005 FDEP Loan Agreement"); and

WHEREAS, the 2005 FDEP Loan Agreement is Subordinated Debt and is payable from net revenues of the System on a junior, inferior and subordinate basis to the Bonds, the Series 2008 Wastewater Note, the Series 2008 Water Note and the Series 2009 Wastewater Note; and

WHEREAS, pursuant to the 2005 FDEP Loan Agreement, the City borrowed \$1,657,448; and

WHEREAS, pursuant to the Resolution, on June 6, 2011, the City entered into the Clean Water State Revolving Fund Loan Agreement DW110301 with the State of Florida Department of Environmental Protection (as amended, the "2011 FDEP Loan Agreement," and together with the 2005 FDEP Loan Agreement, the "FDEP Loan Agreements"); and

WHEREAS, the 2011 FDEP Loan Agreement is Subordinated Debt and is payable from net revenues of the System on a junior, inferior and subordinate basis to the Bonds, the Series 2008 Wastewater Note, the Series 2008 Water Note and the Series 2009 Wastewater Note; and

WHEREAS, pursuant to the 2011 FDEP Loan Agreement, the City borrowed \$5,004,600; and

WHEREAS, pursuant to the Resolution, the City may incur additional Subordinated Debt in the future, subject to satisfaction of certain requirements (i) therein, (ii) in certain loan agreements executed in connection with the issuance of the Series 2008 Water Note, the Series 2009 Wastewater Note, and the Series 2010 Wastewater Note, and (iii) in the FDEP Loan Agreements; and

WHEREAS, except as described above, the Pledged Revenues are not pledged or encumbered in any manner.

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

Section 1: *Definitions.* This resolution constitutes a Supplemental Resolution within the meaning of the hereinafter defined Resolution. The terms used in this Supplemental Resolution shall have the respective meanings assigned to them in the 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 2011 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" 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.

"Escrow Deposit Agreement" shall have the meaning ascribed thereto in Section 7 hereof.

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

"Financial Advisor" shall mean Fifth Third Securities, Inc., or any other financial advisor appointed from time to time by the City.

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

"Parity Bonds" shall mean the Series 2003 Bonds which are not being refunded through the issuance of the Series 2011 Bond, the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, issued in the original aggregate principal amount of \$5,500,000, the City of Marco Island, Florida Utility System Revenue Bond, Series 2008 issued in the original principal amount of \$7,500,000, the City of Marco Island, Florida Tax-Exempt Utility System Improvement and Refunding Revenue Bonds, Series 2010A issued in the original principal amount of \$50,475,000, and the City of Marco Island, Florida Taxable Utility System Refunding Revenue Bonds, Series 2010B issued in the original principal amount of \$7,365,000.

"Principal Office" means, with respect to the Original Purchaser, the office located at 12751 New Brittany Boulevard, 2nd Floor - Commercial Banking, Fort Myers, Florida 33907, or such other office as the holder may designate in writing to the City.

"Purchaser" shall mean SunTrust Bank, the purchaser of the Series 2011 Bond.

"Refunded Bonds" shall mean the Series 2003 Bonds maturing on October 1, 2014 through and including October 1, 2021, or such other maturities as determined by the Chairman in the Escrow Deposit Agreement.

"Resolution" shall mean Resolution No. 03-55 adopted by the City Council of the City 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 City on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the City on October 17, 2005.

"Series 2003 Bonds" shall mean the City of Marco Island, Florida, Utility System Revenue Bonds, Series 2003.

"Series 2011 Bond" shall mean the City's Utility System Refunding Revenue Bond, Series 2011, authorized pursuant to Section 4 hereof.

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

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

(A) For the benefit of its inhabitants, the City 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 and commercial reuse.

(B) The City initially acquired the System in 2003 through issuance of the Series 2003 Bonds.

(C) It is in the best interests of the City and the residents thereof that the City authorize the issuance of the Series 2011 Bond for the purpose refunding the Refunded Bonds for significant net present value debt service savings.

(D) The City deems it necessary, desirable and in the best interest of the City that the Pledged Revenues be pledged to the payment of the principal of and interest on the Series 2011 Bond; provided, however, the Series 2011 Bond shall not be secured by the Reserve Fund or any subaccount created therein.

(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 Series 2011 Bond 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 Series 2011 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 City will ever be exercised nor will the holder of the Series 2011 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 2011 Bond or to make any other payments provided for in the Resolution, and the Series 2011 Bond shall not constitute a lien upon the System or upon any

other property of the City or situated within its corporate territorial limits, except the Pledged Revenues.

(G) It is necessary, appropriate and in accordance with Section 20(Q)(7) of the Resolution that the City Council adopt this Supplemental Resolution at this time in order to authorize the issuance of the Series 2011 Bond based on the terms and conditions as herein authorized and provided.

(H) The City is advised that due to the present volatility of the market for tax-exempt public obligations such as the Series 2011 Bond, it is in the best interest of the City to sell the Series 2011 Bond by a private negotiated sale, allowing the City to enter such market at the most advantageous time, rather than at a specified advertised date, thereby permitting the City to obtain the best possible price, interest rate and other terms for the Series 2011 Bond; and, accordingly, the City does hereby find and determine that it is in the best interest of the City that a private negotiated sale of the Series 2011 Bond be authorized. The Purchaser has offered to purchase the Series 2011 Bond, and the City does hereby find and determine that it is in the best financial interest of the City to accept such an offer based upon the terms provided herein.

Section 4: Authorization of Refunding and Series 2011 Bond. The refunding of the Refunded Bonds is hereby authorized.

Subject and pursuant to the provisions of this Supplemental Resolution, an obligation of the City to be known as City of Marco Island, Florida Utility System Refunding Revenue Bond, Series 2011 is hereby authorized to be issued under and secured by the Resolution, in the principal amount of not to exceed \$26,500,000 for the purpose of refunding the Refunded Bonds and paying the costs of issuing the Series 2011 Bond. The Series 2011 Bond constitutes an Additional Parity Obligation under the Resolution. The Series 2011 Bond hereby authorized shall be executed and delivered by the appropriate officials of the City only upon satisfaction of the requirements of Section 20(Q)(7) of the Resolution relating to the issuance of Additional Parity Obligations and the requirements of this Supplemental Resolution.

All of the covenants contained in the Resolution shall be applicable to the Series 2011 Bond in the same manner and to the same extent as they apply to the Parity Bonds; provided, however, the Series 2011 Bond shall not be secured by the Reserve Fund or any subaccount created therein. Because of the characteristics of the Series 2011 Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2011 Bond, it is in the best interest of the City to accept the offer of the Purchaser to purchase the Series 2011 Bond at a private negotiated sale. Prior to the issuance of the Series 2011 Bond, the City 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 5: Description of Series 2011 Bond. The Series 2011 Bond shall be dated the date of its delivery, which shall be a date agreed upon by the City and the Purchaser, subject to the following terms:

(A) **Interest Rate.** The Series 2011 Bond shall have a fixed interest rate equal to 2.769% (subject to adjustment as described in the Series 2011 Bond, the "Interest Rate"), calculated on the basis of a 360-day year, consisting of twelve 30-day months; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by law.

(B) **Principal and Interest Payment Dates.** Interest on the Series 2011 Bond shall be paid semi-annually, commencing October 1, 2011, and on each subsequent April 1 and October 1 thereafter until maturity.

Principal on the Series 2011 Bond shall be payable on October 1 of the years and in the amounts to be set forth in Series 2011 Bond; provided, however, the final maturity of the Series 2011 Bond shall be October 1, 2021.

The City shall establish and maintain an account from which the Purchaser shall be authorized to debit principal and interest payments on each payment date.

(C) The Series 2011 Bond shall be subject to prepayment prior to maturity at the option of the City in the manner, at the price and to the extent as provided in the Series 2011 Bond.

(D) The Series 2011 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 2011 Bond shall be executed on behalf of the City with the manual or facsimile signature of the Chairman and the official seal of the City, 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 2011 Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the City before the Series 2011 Bond so signed and sealed has been actually sold and delivered, such Series 2011 Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2011 Bond had not ceased to hold such office. The Series 2011 Bond may be signed and sealed on behalf of the City by such person who at the actual time of the execution of such Series 2011 Bond shall hold the proper office of the City, although, at the date of such Series 2011 Bond, such person may not have held such office or may not have been so authorized. The City 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 Supplemental Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Series 2011 Bond shall be actually sold and delivered.

Section 6: Registration and Exchange of Series 2011 Bond; Persons Treated as Holder. The Series 2011 Bond is initially registered to the Purchaser. So long as the Series 2011 Bond shall remain unpaid, the City will keep books for the registration and transfer of the Series 2011 Bond. The Series 2011 Bond shall be transferable only upon such registration books. Notwithstanding anything herein to the contrary, the Series 2011 Bond may not be transferred in a denomination less than \$100,000 under any circumstances.

The person in whose name the Series 2011 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 2011 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 2011 Bond to the extent of the sum or sums so paid.

Section 7: Application of Proceeds of Series 2011 Bond and Approval of Escrow Deposit Agreement. At the time of delivery of the Series 2011 Bond herein authorized, proceeds from the sale of the Series 2011 Bond shall be applied by the City simultaneously with the delivery of the Series 2011 Bond to the Purchaser, as follows:

(A) The City shall pay all costs and expenses in connection with the preparation, issuance and sale of the Series 2011 Bond.

(B) A sum specified in the hereinafter defined Escrow Deposit Agreement that, together with other legally available funds of the City and taking into account investments, if any, shall be sufficient to pay the principal of and interest on the Refunded Bonds, shall be deposited with the Escrow Holder pursuant to the hereinafter defined Escrow Deposit Agreement and used in the manner described therein.

Simultaneously with the delivery of the Series 2011 Bond to the Purchaser, the City shall enter into an escrow deposit agreement (the "Escrow Deposit Agreement") with Wells Fargo Bank, National Association (the "Escrow Holder") which shall provide for the deposit of sums and for the investment of moneys in appropriate Acquired Obligations so as to produce sufficient funds to make all the payments described in the Escrow Deposit Agreement. The Escrow Deposit Agreement is to be in substantially the form set forth in Exhibit D attached hereto, together with such changes as shall be approved by the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman. The execution of the Escrow Deposit Agreement is hereby approved, and the execution of the Escrow Deposit Agreement by the Chairman is hereby authorized, to be attested by the City Clerk, the form and correctness of which to be approved by the City Attorney. At the time of execution of the Escrow Deposit Agreement, the City shall furnish to the Escrow Holder named therein appropriate documentation to demonstrate that the sums being deposited and the investments to be made will be sufficient for such purposes.

Subject to the execution and delivery of the Series 2011 Bond for the purpose of refunding the Refunded Bonds, the City hereby irrevocably calls the Refunded Bonds for early redemption on October 1, 2013, or such other date as determined by the Chairman in the Escrow Deposit Agreement. Not less than thirty (30) days prior to such redemption date, the City hereby directs Wells Fargo Bank, National Association, in its capacity as Registrar for the Series 2003 Bonds, to mail a notice of the redemption of the Refunded Bonds to each holder thereof in accordance with the requirements of Section 14 of the Resolution. Furthermore, upon issuance of the Series 2011 Bond for the purposes of refunding the Refunded Bonds, the City hereby directs Wells Fargo Bank, National Association to mail a notice of defeasance to each holder of the Refunded Bonds.

On the date of issuance of the Series 2011 Bond, the City may transfer moneys on deposit in the funds and accounts created for the benefit of the Refunded Bonds to the Escrow Holder to be held on behalf of the City and to be used pursuant to the terms of the Escrow Deposit Agreement.

(C) Any remaining moneys from the proceeds of the sale of the Series 2011 Bond shall be deposited as provided in a Supplemental Resolution of the City, but shall only be used for the purposes permitted by law.

Section 8: Series 2011 Bond Not Secured by Reserve Fund. The Series 2011 Bond is not secured by the Reserve Fund or any subaccount created therein.

Section 9: This Instrument to Constitute Contract. Upon and in consideration of the acceptance of the Series 2011 Bond by the Purchaser, this Supplemental Resolution, together with the Resolution, shall be deemed to be and shall constitute a contract between the City and the 2011 Bondholder. The covenants and agreements set forth in the Resolution to be performed by the City shall be for the equal and proportionate benefit, protection and security of the holder of the Series 2011 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 10: Tax Covenant. The City covenants to the purchasers of the Series 2011 Bond provided for in this Supplemental Resolution that the City will not make any use of the proceeds of the Series 2011 Bond at any time during the term of the Series 2011 Bond which, if such use had been reasonably expected on the date the Series 2011 Bond was issued, would have caused such Series 2011 Bond to be an "arbitrage bond" within the meaning of the Code. The City 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 2011 Bond from the gross income of the Holders thereof for purposes of federal income taxation.

Section 11: *Business Days.* In any case where the due date of interest on or principal of a Series 2011 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 12: *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 2011 Bond.

Section 13: *Financial Information and Continuing Disclosure.* The City shall provide the Series 2011 Bondholder with such financial information regarding the City as the Series 2011 Bondholder may reasonably request. Not later than 270 days after the close of each Fiscal Year, the City shall provide the Series 2011 Bondholder with its Comprehensive Annual Financial Report including annual financial statements for such Fiscal Year of the City, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. Not later than 30 days after adoption, the City shall provide the Series 2011 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.

To the extent that the City has any continuing disclosure undertakings in effect relating to Parity Bonds or Additional Parity Obligations hereafter issued, the Purchaser shall be treated as a party to be notified thereunder.

Section 14: *Amendments to Rate Covenant or Additional Parity Obligations Test.* Notwithstanding anything in the Resolution to the contrary, no amendments to Section 20(E) or Section 20(Q) of the Resolution will become effective without the consent of the Holder of the Series 2011 Bond.

Section 15: *Registration of Series 2011 Bond.* The person in whose name the Series 2011 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 2011 Bond, and the interest on such Series 2011 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 2011 Bond, and interest thereon to the extent of the sum or sums so paid.

Section 16: *City Council Members of the City Exempt from Personal Liability.* No recourse under or upon any obligation, covenant or agreement of this Supplemental Resolution or the Series 2011 Bond or for any claim based thereon or otherwise in respect thereof, shall be had against any City Council member of the City, as such, of the City, past, present or future, either directly or through the City 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 City,

as such, under or by reason of the obligations, covenants or agreements contained in this Supplemental 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 City, as such, are waived and released as a condition of, and as a consideration for, the execution of this Supplemental Resolution and the issuance of the Series 2011 Bond, on the part of the City.

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 City, to execute and deliver certificates of the City 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 2011 Bond, and to execute and deliver such other instruments as shall be necessary or desirable to perform the City'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 Supplemental 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 2011 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 2011 Bond, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the City and the Series 2011 Bondholder any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Series 2011 Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the City and the Series 2011 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 Supplemental 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 15th day of August, 2011.

ATTEST

CITY OF MARCO ISLAND, FLORIDA



Laura M. Litzan, City Clerk



Gerard M. Gibson, Chairman

Approved as to Form:



Burt L. Saunders, City Attorney

EXHIBIT A

FORM OF BOND

August____, 2011

\$_____

CITY OF MARCO ISLAND, FLORIDA
UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2011

Maturity Date: October 1, 2021

Interest Rate: 2.769%
(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 SUNTRUST BANK, or registered assigns (hereinafter, the "Owner"), the principal sum of \$_____ on the dates as hereinafter described, together with interest on the principal balance at the Interest Rate which is described above calculated on the basis of a 360-day year, consisting of twelve 30-day months; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The Interest Rate on this City of Marco Island, Florida Utility System Refunding Revenue Bond, Series 2011 (the "Bond ") also may be adjusted as hereinafter provided. This Bond shall have a final maturity date of October 1, 2021 (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.

Interest shall be payable to the Owner on each April 1 and October 1, commencing on October 1, 2011.

Principal on this Bond shall be payable on October 1 of the following years and in the following amounts:

Year

Principal Amortization

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.

As used herein, the following terms shall have the following meanings:

"Change in Law" shall mean the occurrence, after the date of issuance of this Bond, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directive thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Owner for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or, pursuant to the accord commonly referred to as "Basel III," or the United States or foreign regulatory authorities, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Determination of Taxability" shall mean a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on this Bond is or was includable in the gross income of an Owner of this Bond for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Owner of this Bond, and until the conclusion of any appellate review, if sought.

"Governmental Authority" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Margin Rate Factor" shall mean the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section

11(b)(1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Owner, the maximum statutory rate of federal income taxation which could apply to the Owner). The Maximum Federal Corporate Tax Rate on the date of issuance of this Bond is 35%.

"Taxable Rate" shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Owner with the same after tax yield that the Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Owner as a result of such Determination of Taxability. The Owner shall provide sufficient evidence supporting such rate calculation to the Issuer.

Upon the occurrence of a Determination of Taxability and for as long as this Bond remains Outstanding, the Interest Rate on this Bond shall be converted to the Taxable Rate from the date that interest on this Bond has been determined to be includable in the gross income of the Owner as a result of the Determination of Taxability. In addition, upon a Determination of Taxability, the Issuer shall pay an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owner as a result of the occurrence of the Determination of Taxability.

The Interest Rate on this Bond shall also be adjusted automatically as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate, the amount of such adjustment to be calculated by multiplying the Interest Rate by the Margin Rate Factor.

If, after the date of the delivery of this Bond, the Owner shall have reasonably determined that a Change in Law has or would have the effect of reducing the rate of return on the Owner's capital, on this Bond or otherwise, as a consequence of its ownership of this Bond to a level below that which the Owner could have achieved but for such Change in Law (taking into consideration the Owner's policies with respect to capital adequacy) by an amount deemed by the Owner to be material, then from time to time, promptly upon demand by the Owner, the Issuer hereby agrees to pay the Owner such additional amount or amounts as will compensate the Owner for such reduction. A certificate of the Owner claiming compensation under this paragraph and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error. In determining any such amount, the Owner may use any reasonable averaging and attribution methods.

Notwithstanding any of the foregoing, it is the intention of the Owner (and any subsequent Owner of this Bond) and the Issuer that the Interest Rate on this Bond never exceed the maximum rate permitted by applicable law (the "Maximum Rate"). In the event any of the adjustments provided for herein would produce an interest rate on this Bond in excess of the Maximum Rate, the Owner shall not be entitled to receive interest in excess of the Maximum Rate (herein, such amount is referred to as "Excess Interest"). At any time thereafter, if this Bond shall bear interest at an interest rate which is less than the Maximum Rate, the Issuer shall also pay to the Owner the unpaid Excess Interest until the earlier of (i) the Maturity Date, (ii) the

date all of the Excess Interest has been paid, or (iii) any date the combination of the interest rate on this Bond, plus the Excess Interest, would exceed the Maximum Rate.

In the event the Issuer prepays all or a portion of this Bond, which may occur at any time upon at least thirty (30) days written notice to the Owner, the Issuer shall, at the time of such payment, pay an additional fee to the Owner, referred to as the "make whole payment." The make whole payment shall be equal to the present value of the difference between (1) the amount that would have been realized by the Owner on the prepaid amount for the remaining term of this Bond at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps for a term corresponding to the term of this Bond, interpolated to the nearest month, if necessary, that was in effect three Business Days prior to the issue date of this Bond and (2) the amount that would be realized by the Owner by reinvesting such prepaid funds for the remaining term of this Bond at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps, interpolated to the nearest month, if necessary, that was in effect three Business Days prior to the date of partial pre-payment, both amounts discounted at the same interest rate utilized in determining the applicable amount in clause (2). Should the present value have no value or a negative value, the Issuer may prepay this Bond or portion thereof as intended with no additional make whole payment. Should the Federal Reserve no longer release rates for fixed-rate payers in interest rate swaps, the Owner may substitute another similar index for the Federal Reserve H.15 Statistical Release with another similar index. The Owner shall provide the Issuer with a written statement explaining the calculation of the make whole payment, which statement shall, in absence of manifest error, be conclusive and binding upon the Issuer. The application of the make whole payment shall not be deemed an increase in the Interest Rate.

Payments of principal or interest hereunder not paid within ten (10) days of the due date shall be subject to a late payment charge of three percent (3%) of the amount of the late payment, and any amount not paid within thirty (30) days of when due shall bear interest at a rate equal to the Interest Rate otherwise due hereunder plus four percent (4%) per annum until paid. Notwithstanding any provision of this paragraph or any other provision hereof to the contrary, in no event shall the Interest Rate on this Bond exceed the Maximum Rate.

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 OWNER 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 Resolution No. 11-__ adopted by the City Council of the Issuer on August 15, 2011 (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, the City of Marco Island, Florida Utility System Revenue Bond, Series 2008, the City of Marco Island, Florida Tax-Exempt Utility System Improvement and Refunding Revenue Bonds, Series 2010A and the City of Marco Island, Florida Taxable Utility System Refunding Revenue Bonds, Series 2010B; provided, however, this Bond is not secured by the Reserve Fund or any subaccount 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 of the Resolution 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 15th day of August, 2011.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

By: _____
Laura M. Litzan, City Clerk

By: _____
Gerard M. Gibson
Chairman, City Council

APPROVED AS TO FORM:

By: _____
Burt L. Saunders, City Attorney

EXHIBIT B

FORM OF PURCHASER'S CERTIFICATE

This is to certify that SunTrust Bank ("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 Utility System Refunding Revenue Bond, Series 2011 (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, GrayRobinson, P.A., City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as amended and supplemented and particularly as supplemented by a resolution adopted by the City Council of the Issuer on August 15, 2011 authorizing the issuance of the Bond (collectively, 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 the Bond 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, but we reserve the right to transfer the Bond in the future. We understand that the Bond may not be transferred in a denomination less than \$100,000 in any circumstances.

We are a bank 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.

DATED this ____ day of August, 2011.

SUNTRUST BANK

By: _____

Name: Darren R. Gersch

Title: First 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 Refunding Revenue Bond, Series 2011 (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):

Holland & Knight LLP
Bank Counsel Fees \$5,000.00

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 refunding the Refunded Bonds for net present value debt service savings.

Unless earlier redeemed, the Bond is expected to be repaid by October 1, 2021; at an interest rate of 2.769%, 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 August 15, 2011 (the "Resolution"), in the manner as to the extent required in the Resolution. See the Resolution for a definition of Pledged Revenues and any other capitalized term not otherwise defined herein. 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:

SunTrust Bank
12751 New Brittany Boulevard
2nd Floor - Commercial Banking
Fort Myers, Florida 33907

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this ____ day of August, 2011.

SUNTRUST BANK

By: _____
Name: Darren R. Gersch
Title: First Vice President

EXHIBIT D

ESCROW DEPOSIT AGREEMENT

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT, dated as of August ____, 2011 by and between the CITY OF MARCO ISLAND, FLORIDA (the "Issuer"), and Wells Fargo Bank, National Association, as Escrow Holder, and its successors and assigns (the "Escrow Holder");

WITNESSETH:

WHEREAS, the Issuer previously issued its Utility System Revenue Bonds, Series 2003, certain of which remain Outstanding immediately prior to the execution and delivery of this Escrow Deposit Agreement (the "2003 Bonds"); and

WHEREAS, the Issuer now desires to currently refund the 2003 Bonds maturing on October 1, 2014 through and including October 1, 2021 (the "Refunded Bonds"); and

WHEREAS, the execution of this Escrow Deposit Agreement and full performance of the provisions hereof shall defease and discharge the Issuer's obligations relating to the Refunded Bonds; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Issuer and the Escrow Holder agree as follows:

SECTION 1. Definitions. As used herein, the following terms mean:

(a) "Acquired Obligations" shall have the meaning ascribed thereto in the Bond Resolution.

(b) "Agreement" shall mean this Escrow Deposit Agreement.

(c) "Bond" shall mean the \$_____ City of Marco Island, Florida Utility System Refunding Revenue Bond, Series 2011.

(d) "Bond Counsel" shall mean Bryant Miller Olive P.A., or any other law firm nationally-recognized in the area of public finance.

(e) "Bond Resolution" shall mean Resolution No. 03-55 adopted by the Issuer on September 29, 2003, as amended and supplemented from time to time, and as particularly amended by Resolution no. 04-06 adopted by the Issuer on March 1, 2004, Resolution No. 05-71 adopted by the Issuer on October 17, 2005, and as particularly supplemented by a resolution adopted by the Issuer on August 15, 2011.

(f) "Escrow Account" shall mean the account hereby created and entitled Escrow Account established and held by the Escrow Holder pursuant to this Agreement in which cash

and investments will be held for payment of the principal, interest, and redemption premium, if any, on the Refunded Bonds.

(g) "Issuer" shall mean the City of Marco Island, Florida, and its successors and assigns.

(h) "Refunded Bonds" shall have the meaning ascribed above.

(i) "Total Debt Service for the Refunded Bonds" shall mean the sum of the principal of, redemption premium, if any, and interest remaining unpaid with respect to the Refunded Bonds in accordance with Schedule A attached hereto taking into account that the Refunded Bonds have been called for early redemption on October 1, 2013 pursuant to Section 14 of the Bond Resolution.

SECTION 2. Deposit of Funds. The Issuer hereby deposits \$_____ with the Escrow Holder for deposit into the Escrow Account, in immediately available funds, which funds the Escrow Holder acknowledges receipt of, to be held in irrevocable escrow by the Escrow Holder separate and apart from other funds of the Escrow Holder and applied solely as provided in this Agreement. An amount equal to \$_____ of such funds are being derived from proceeds of the Bond. An amount equal to \$_____ of such funds are being derived from the Bond Service Fund (as such term is defined in the Bond Resolution) and \$_____ of such funds are being derived from the Reserve Fund (as such term is defined in the Bond Resolution). The Issuer represents that the Acquired Obligations, the interest to be earned thereon, and the cash deposited to the Escrow Account (i) are at least equal to the Total Debt Service for the Refunded Bonds as of the date of such deposit, and (ii) are sufficient to pay principal, interest and redemption premium, if any, on the Refunded Bonds as they become due and payable in accordance with Schedule A attached hereto.

SECTION 3. Use and Investment of Funds. The Escrow Holder acknowledges receipt of the sum described in Section 2 and agrees:

(a) to hold the funds and investments purchased pursuant to this Agreement in irrevocable escrow during the term of this Agreement for the sole benefit of the holders of the Refunded Bonds;

(b) to immediately invest \$_____ of funds described in Section 2 in the Acquired Obligations set forth on Schedule C attached hereto and to hold such securities and \$_____ of such funds in cash in accordance with the terms of this Agreement;

(c) in the event the securities described on Schedule C cannot be purchased, substitute securities may be purchased upon the written direction of the Issuer but only upon receipt of verification from an independent certified public accountant that the Acquired Obligations, the interest to be earned thereon, and the cash deposited in the Escrow Account

will not be less than the Total Debt Service for the Refunded Bonds, and only upon receipt of an opinion of Bond Counsel that such securities constitute Acquired Obligations for purposes of this Agreement; and

(d) there will be no investment or reinvestment of funds except as set forth in this Section 3 and except as set forth in Section 5.

SECTION 4. Payment of Refunded Bonds and Expenses.

(a) Refunded Bonds. On the dates and in the amounts set forth on Schedule A, the Escrow Holder shall transfer to Wells Fargo Bank, National Association, as Paying Agent for the Refunded Bonds (the "Paying Agent"), in immediately available funds solely from amounts available in the Escrow Account, a sum sufficient to pay the principal of, interest on and redemption premium, if applicable, on the Refunded Bonds, as shown on Schedule A.

(b) Expenses. The Issuer shall pay the fees and expenses of the Escrow Holder as set forth on Schedule B attached hereto.

(c) Surplus. After making the payments from the Escrow Account described in Subsections 4(a) and (b) above, the Escrow Holder shall retain in the Escrow Account any remaining cash in the Escrow Account in excess of the Total Debt Service for the Refunded Bonds until the termination of this Agreement pursuant to the terms of Section 13 hereof, and shall then pay any remaining funds to the Issuer to be used for any lawful purpose.

(d) Priority of Payments. The holders of the Refunded Bonds shall have an express first priority security interest in the funds and Acquired Obligations in the Escrow Account until such funds and Acquired Obligations are used and applied as provided in this Agreement.

SECTION 5. Reinvestment.

(a) Except as provided in Section 3 and in this Section 5, the Escrow Holder shall have no power or duty to invest any funds held under this Agreement or to sell, transfer or otherwise dispose of or make substitutions of the Acquired Obligations held hereunder.

(b) At the written direction of the Issuer and upon compliance with the conditions hereinafter stated, the Escrow Holder shall sell, transfer or otherwise dispose of any of the Acquired Obligations acquired hereunder and shall substitute other Acquired Obligations and reinvest any excess receipts in Acquired Obligations. The Issuer will not request the Escrow Holder to exercise any of the powers described in the preceding sentence in any manner which will cause interest on the Bond to be included in the gross income of the holders thereof for purposes of federal income taxation. The transactions may be effected only if (i) an independent certified public accountant selected by the Issuer shall certify or opine in writing to the Issuer and the Escrow Holder that Acquired Obligations, interest to be earned thereon, and

cash remaining on hand after the transactions are completed will, assuming no reinvestment or any earnings, be not less than the Total Debt Service for the Refunded Bonds, and that reinvestment in such Acquired Obligations will not postpone the anticipated transfer of moneys from the Escrow Account to the Paying Agent pursuant to Section 4(a) hereof, and (ii) the Escrow Holder shall receive an opinion from nationally recognized bond counsel acceptable to the Issuer to the effect that the transactions, in and by themselves, will not cause interest on such Bond or the Refunded Bonds to be included in the gross income of the holders thereof for purposes of federal income taxation and such substitution is in compliance with this Agreement. Subsection 4(c) above notwithstanding, cash in excess of the Total Debt Service for the Refunded Bonds caused by substitution of Acquired Obligations shall, as soon as practical, be paid to the Issuer. Notwithstanding any provision of this Agreement to the contrary, no forward purchase agreement relating to the future reinvestment of cash held hereunder shall be executed unless the following condition is met: to the extent either Moody's Investors Service, Inc., Fitch Ratings, and/or Standard & Poor's Ratings Services have an outstanding rating on the Refunded Bonds, at least one of such rating agencies must give written confirmation that it will not lower or withdraw the rating as a result of the Issuer's execution of such forward purchase agreement. In the event of any inconsistency between the terms and conditions of such forward purchase agreement and this Agreement, the terms and conditions of this Agreement shall control.

SECTION 6. Redemption or Acceleration of Maturity. The Issuer will not accelerate the maturity of, or exercise any option to redeem before maturity, any Refunded Bonds, except as set forth on Schedule A attached hereto.

SECTION 7. Responsibilities of Escrow Holder. The Escrow Holder and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Account, the acceptance of the funds deposited therein, the purchase of the Acquired Obligations, the retention of the Acquired Obligations or the proceeds thereof or for any payment, transfer or other application of moneys or securities by the Escrow Holder in accordance with the provisions of this Agreement or by reason of any non-negligent or non-willful act, omission or error of the Escrow Holder made in good faith in the conduct of its duties. The Escrow Holder shall, however, be responsible for its negligent or willful failure to comply with its duties required hereunder, and its negligent or willful acts, omissions or errors hereunder. The duties and obligations of the Escrow Holder shall be determined solely by the express provisions of this Agreement and no implied duties or covenants shall be read into this Agreement against the Escrow Holder. The Escrow Holder may consult with counsel, who may or may not be counsel to the Issuer, at the Issuer's expense, and in reliance upon the opinion of such counsel, shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Holder shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Issuer.

The Escrow Holder may act through its agents and attorneys appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any such person so appointed. Any payment obligation of the Escrow Holder hereunder shall be paid from, and is limited to funds available under this Agreement; the Escrow Holder shall not be required to expend its own funds for the performance of its duties hereunder. Notwithstanding any provision herein to the contrary, in no event shall the Escrow Holder be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Holder has been advised of the likelihood of such loss or damage and regardless of the form of action. The Escrow Holder shall not be responsible or liable for any failure or delay in the performance of its obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Holder shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

SECTION 8. Indemnification of Escrow Holder. From and at all times after the date of this Agreement, Issuer shall, to the fullest extent permitted by law, without waiving its sovereign immunity nor the limits of its liability beyond the amount set forth in Section 768.28, Florida Statutes, regardless of whether such obligations arise in tort, contract, statutes, strict liability, negligence, product liability or otherwise, defend, indemnify and hold harmless Escrow Holder and each director, officer, employee, attorney, agent and affiliate of Escrow Holder (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance of this Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; *provided, however*, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or

asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the Issuer. The obligations of Issuer under this Section 8 shall survive any termination of this Agreement and the resignation or removal of Escrow Holder.

SECTION 9. Resignation of Escrow Holder. The Escrow Holder may resign and thereby become discharged from the duties and obligations hereby created, by notice in writing given to the Issuer, any rating agency then providing a rating on either the Refunded Bonds or the Bond, and the Paying Agent for the Refunded Bonds not less than sixty (60) days before such resignation shall take effect. Such resignation shall not take effect until the appointment of a new Escrow Holder hereunder.

SECTION 10. Removal of Escrow Holder.

(a) The Escrow Holder may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of not less than fifty-one percentum (51%) in aggregate principal amount of the Refunded Bonds then Outstanding, such instruments to be filed with the Issuer, and notice in writing given by such holders to all holders of the Bond and published by the Issuer once in a newspaper of general circulation in the territorial limits of the Issuer, and in a daily newspaper or financial journal of general circulation in the City of New York, New York, not less than sixty (60) days before such removal is to take effect as stated in said instrument or instruments. A photographic copy of any instrument filed with the Issuer under the provisions of this paragraph shall be delivered by the Issuer to the Escrow Holder.

(b) The Escrow Holder may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Agreement with respect to the duties and obligations of the Escrow Holder by any court of competent jurisdiction upon the application of the Issuer or the holders of not less than five percentum (5%) in aggregate principal amount of the Bond then Outstanding, or the holders of not less than five percentum (5%) in aggregate principal amount of the Refunded Bonds then Outstanding.

(c) The Escrow Holder may not be removed until a successor Escrow Holder has been appointed in the manner set forth herein.

SECTION 11. Successor Escrow Holder.

(a) If, at any time hereafter, the Escrow Holder shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Escrow Holder shall thereupon become vacant. If the position of Escrow Holder shall become vacant for any of the foregoing reasons or for any other reason, the Issuer shall immediately appoint an Escrow Holder to fill such vacancy and, upon such appointment, all assets held hereunder shall be transferred to such successor. The Issuer shall either (i) publish notice of any such appointment made by it once in

each week for four (4) successive weeks in a newspaper of general circulation published in the territorial limits of the Issuer and in a daily newspaper or financial journal of general circulation in the City of New York, New York, or (ii) mail a notice of any such appointment made by it to the holders of the Refunded Bonds within thirty (30) days after such appointment.

(b) At any time within one year after such vacancy shall have occurred, the holders of a majority in principal amount of the Bond then Outstanding or a majority in principal amount of the Refunded Bonds then Outstanding, by an instrument or concurrent instruments in writing, executed by either group of such Bondholders and filed with the governing body of the Issuer, may appoint a successor Escrow Holder, which shall supersede any Escrow Holder theretofore appointed by the Issuer. Photographic copies of each such instrument shall be delivered promptly by the Issuer, to the predecessor Escrow Holder and to the Escrow Holder so appointed by such Bondholders. In the case of conflicting appointments made by such Bondholders under this paragraph, the first effective appointment made during the one year period shall govern.

(c) If no appointment of a successor Escrow Holder shall be made pursuant to the foregoing provisions of this Section, the holder of any Refunded Bonds then Outstanding, or any retiring Escrow Holder, may apply to any court of competent jurisdiction to appoint a successor Escrow Holder. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Holder.

(d) Any corporation or association into which the Escrow Holder may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Escrow Holder hereunder and vested with all the trust, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any parties hereto, anything herein to the contrary notwithstanding, provided such successor shall have reported total capital and surplus in excess of \$15,000,000, provided that such successor Escrow Holder assumes in writing all the trust, duties and responsibilities of the Escrow Holder hereunder.

SECTION 12. Payment to Escrow Holder. The Escrow Holder hereby acknowledges that it has agreed to accept compensation under the Agreement pursuant to the terms of Schedule B attached hereto for services to be performed by the Escrow Holder pursuant to this Agreement. The Escrow Holder shall not be compensated from amounts on deposit in the Escrow Account, and the Escrow Holder shall have no lien or claim against funds in the Escrow Account for payment of obligations due it under this Section.

SECTION 13. Term. This Agreement shall commence upon its execution and delivery and shall terminate when the Refunded Bonds have been paid and discharged in accordance with the proceedings authorizing the Refunded Bonds, except as provided in Section 7.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the Issuer or the Escrow Holder to be performed should be determined by a court of competent jurisdiction to be contrary to law, notice of such event shall be sent to the municipal bond insurer(s) for the Refunded Bonds, if any, as well as Moody's Investors Service, Inc., Fitch Ratings and Standard & Poor's Ratings Services (but only to the extent such agencies have a rating outstanding on any of the Refunded Bonds), and while such covenant or agreements herein contained shall be null and void, they shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 15. Amendments to this Agreement. This Agreement is made for the benefit of the Issuer and the holders from time to time of the Refunded Bonds and the Bond and it shall not be repealed, revoked, altered or amended in whole or in part without the written consent of all holders of Refunded Bonds, the Escrow Holder and the Issuer; provided, however, that the Issuer and the Escrow Holder may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Escrow Holder, for the benefit of the holders of the Bond and the Refunded Bonds any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Holder; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Holder shall, at its option, be entitled to request, at the Issuer's expense, and rely exclusively upon an opinion of nationally recognized attorneys on the subject of municipal bonds acceptable to the Issuer with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section. Prior written notice of such amendments, together with proposed copies of such amendments, shall be provided to Moody's Investors Service, Inc., Fitch Ratings, and Standard & Poor's Ratings Services (but only to the extent such agencies have a rating outstanding on any of the Refunded Bonds).

SECTION 16. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 17. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested as of the date first above written.

ATTEST

CITY OF MARCO ISLAND, FLORIDA

Laura M. Litzan, City Clerk

Gerard M. Gibson, Chairman

Approved as to Form:

Burt L. Saunders, City Attorney

[Signature page to Escrow Deposit Agreement between
City of Marco Island, Florida and Wells Fargo Bank, National Association]

Wells Fargo Bank, National Association, as
Escrow Holder

By: _____
Name: Michael C. Jenkins
Title: Assistant Vice President

[Signature page to Escrow Deposit Agreement between
City of Marco Island, Florida and Wells Fargo Bank, National Association]

SCHEDULE A

TOTAL DEBT SERVICE
FOR THE REFUNDED BONDS

<u>Date</u>	Redeemed <u>Principal</u>	<u>Interest</u>	Total Debt <u>Service</u>
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SCHEDULE B

EXPENSES TO BE PAID TO ESCROW HOLDER

Upfront fee of \$1,500 for services through October 1, 2013.

SCHEDULE C

SCHEDULE OF ACQUIRED OBLIGATIONS
TO BE PURCHASED ON _____, 2011

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Type</u>
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