

RESOLUTION NO. 13-__

A RESOLUTION OF THE CITY OF KEY WEST, FLORIDA SUPPLEMENTING ORDINANCE NO. 03-15, AS AMENDED AND SUPPLEMENTED BY AN ORDINANCE ENACTED ON THE DATE HEREOF, WHICH AUTHORIZED THE ISSUANCE OF THE CITY'S SEWER SYSTEM REFUNDING REVENUE BOND, SERIES 2013 IN A PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000, TO REFUND ALL OR A PORTION OF CERTAIN OUTSTANDING SEWER SYSTEM DEBT OF THE CITY AND PAYING COSTS OF ISSUANCE RELATED THERETO; PLEDGING A PARITY LIEN ON THE NET REVENUES OF THE SEWER SYSTEM FOR THE PAYMENT OF SUCH BOND; PROVIDING FOR THE RIGHTS OF THE REGISTERED OWNERS OF SUCH BOND; APPOINTING A BOND REGISTRAR, PAYING AGENT AND ESCROW AGENT; APPROVING THE FORM OF AN ESCROW DEPOSIT AGREEMENT; AUTHORIZING THE PRIVATE NEGOTIATED SALE OF SUCH BOND PURSUANT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE COMMITMENT; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

SECTION 1. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION. This Supplemental Resolution is adopted pursuant to Chapter 166, Part II, Florida Statutes, the hereinafter defined Ordinance, and other applicable provisions of law.

SECTION 2. DEFINITIONS. When used in this Supplemental Resolution, the terms defined in the Ordinance shall have the meanings therein stated except as such definitions may be hereinafter amended and defined.

"2012 Bond" shall mean the City of Key West, Florida Sewer System Revenue Bond, Series 2012.

"2013 Bond" shall mean the City of Key West, Florida Sewer System Refunding Revenue Bond, Series 2013, authorized to be issued by the Ordinance.

"2003 Bonds" shall mean the outstanding City of Key West, Florida Sewer System Refunding Revenue Bonds, Series 2003.

"Bonds" shall mean (i) the 2013 Bond, (ii) the 2012 Bond, and (iii) any Additional Parity Obligations issued hereafter in accordance with the provisions of the Ordinance.

"Commitment" shall mean the offer of the Lender to purchase the 2013 Bond at a negotiated sale, a copy of which is attached hereto as Exhibit A.

"Department" shall mean the State of Florida Department of Environmental Protection.

"Escrow Agent" shall mean U.S. Bank National Association, as the bank or trust company which shall execute the Escrow Deposit Agreement with the Issuer simultaneous with the issuance of the 2013 Bond.

"Escrow Deposit Agreement" shall mean that certain Escrow Deposit Agreement by and between the Issuer and the Escrow Agent, for the purpose of providing for the payment of the 2003 Bonds, which agreement shall be in substantially the form attached hereto as Exhibit E.

"Lender" shall mean the entity identified in the Commitment.

"Original Ordinance" shall mean Ordinance No. 03-15 of the Issuer, duly enacted on June 17, 2003.

"Ordinance" shall mean the Original Ordinance, as amended by an ordinance of the Issuer duly enacted on August 20, 2013, and as supplemented by this Supplemental Resolution.

"State Revolving Fund Loan" shall mean the State Revolving Fund Loan entered into pursuant to the Clean Water State Revolving Fund Construction Loan Agreement No. CS120465170 between the Issuer and the Department on February 9, 2001, as amended.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

(A) On September 21, 1999, the Issuer duly adopted Resolution No. 99-346 which authorized the issuance of the Issuer's Sewer System Revenue Bonds in one or more series in an amount not to exceed \$23,000,000 to finance the cost of design, permitting, acquisition, construction, and reconstruction of improvements to the Sewer System.

(B) The issuance of said Bonds was subject to a bond referendum held on November 2, 1999, wherein a majority of the qualified electors of the Issuer approved the issuance of said Bonds (the "1999 Referendum").

(C) Pursuant to the 1999 Referendum, the Issuer entered into the State Revolving Fund Loan for the purpose of constructing certain wastewater treatment plant improvements in the aggregate principal amount of \$5,252,639.07, which then left authority under the 1999 Referendum at \$17,747,360.93.

(D) On June 17, 2003, the Issuer enacted the Original Ordinance.

(E) Pursuant to the Original Ordinance, on July 23, 2003, the Issuer issued Series 2003 Bonds to refinance prior indebtedness, which did not require any use of authority under the 1999 Referendum since it was a refunding for savings.

(F) Pursuant to the Original Ordinance and the 1999 Referendum, on February 14, 2012, the Issuer issued the 2012 Bond in the aggregate principal amount of \$4,065,000 for the purpose of repaying a grant made by the Florida Department of Emergency Management which had previously paid for Sewer System capital improvements, which then left authority under the 1999 Referendum at \$13,682,360.93.

(G) The State Revolving Fund Loan is junior, inferior and subordinate in all respects to the 2003 Bonds and the 2012 Bond as to source of security.

(H) The Issuer deems it necessary and in the best interests of the Issuer and its Sewer System customers to authorize the issuance of not exceeding \$20,000,000 of 2013 Bonds for the purpose of refunding all of the 2003 Bonds for net present value savings, which will not require any use of authority under the 1999 Referendum since it would be a refunding for savings.

(I) The Original Ordinance provides for the issuance of Additional Parity Obligations upon compliance with certain requirements therein.

(J) The principal of and interest on the 2013 Bonds shall be payable solely from, and secured by a pledge of, the Net Revenues on parity and equal status with the 2012 Bond. The State Revolving Fund Loan would be junior, inferior and subordinate in all respects to the 2013 Bonds and the 2012 Bond as to source of security.

(K) On the date hereof, the City Commission, as the governing body of the Issuer, duly enacted an ordinance authorizing the issuance of the 2013 Bond.

(L) The Net Revenues are not pledged or encumbered in any manner except for the pledge thereof for the benefit of the 2012 Bond which pledge and encumbrance shall be on an equal and parity basis with the 2013 Bond, and as to the principal of and interest on the State Revolving Fund Loan, which shall be junior, inferior and subordinate in all respects to the pledge and encumbrance on the Net Revenues in favor of the holders of the 2013 Bond.

(M) The principal of and interest on the Bonds and all required Debt Service Fund and other payments shall be payable solely from the Net Revenues. The Issuer shall never be required to levy ad valorem taxes on any real property therein to pay the principal of and interest on the Bonds or to make any other payments specified herein. The Bonds shall not constitute a lien upon any other property owned by or located within the boundaries of the Issuer other than Net Revenues.

(N) The estimated Net Revenues will be sufficient to pay all principal of and interest on the Bonds to be issued hereunder, as the same become due, and to make all required Debt Service Fund, reserve or other payments required by the Ordinance and to pay principal and interest on the State Revolving Fund Loan.

(O) The Lender has issued its Commitment to the Issuer pursuant to the terms of which the Lender has agreed to purchase the 2013 Bond.

(P) Due to the present volatility of the market for tax-exempt public obligations such as the 2013 Bond, the need to access such market very quickly, the willingness of the Lender to purchase the 2013 Bond at interest rates favorable to the Issuer, and the critical importance of timing of the sale of the 2013 Bond, the Issuer has determined to sell the 2013 Bond through a negotiated sale to the Lender, and it is hereby determined that it is in the best interest of the public and the Issuer to delegate to the Mayor and/or the City Manager the authority to fix the final details of the 2013 Bond, based upon the advice of the Financial Advisor, and accept the offer of the Lender to purchase the 2013 Bond at a negotiated sale pursuant to the terms of the Commitment.

(Q) Prior to the delivery of the 2013 Bond by the Issuer to the Lender, the Lender will provide the Issuer a Lender's Certificate, the form which is attached hereto as Exhibit C, and a Disclosure Letter containing the information required by section 218.385, Florida Statutes, the form of which is attached hereto as Exhibit D.

SECTION 4. ORDINANCE TO CONSTITUTE CONTRACT. In consideration of the acceptance of the 2013 Bond authorized to be issued hereunder to the Lender, the Ordinance shall be deemed to be and shall constitute a contract between the Issuer and the Lender. The covenants and agreements set forth in the Ordinance to be performed by the Issuer are for the benefit, protection and security of the Lender, which may enforce the same as provided in the Ordinance.

SECTION 5. AUTHORIZATION OF THE REFUNDING. At the time of delivery of the 2013 Bond herein authorized, proceeds from the sale of the 2013 Bond, together with other legally available funds of the Issuer, shall be used to refund all of the 2003 Bonds and pay the associated costs of issuance (including but not limited to legal and financial advisory fees and expenses).

SECTION 6. AUTHORIZATION OF THE 2013 BOND. Subject and pursuant to the provisions hereof and the terms and provisions of the Commitment, an obligation of the Issuer to be known as "Sewer System Refunding Revenue Bond, Series 2013" is authorized to be issued in the aggregate principal amount of not to exceed \$20,000,000. All covenants, terms and conditions contained in the Ordinance with respect to the Bonds are hereby made applicable to the 2013 Bond.

SECTION 7. AWARD OF SALE OF THE 2013 BOND; ACCEPTANCE AND EXECUTION OF COMMITMENT. Due to the willingness of the Lender to purchase the 2013 Bond at interest rates favorable to the Issuer, the present volatility of the market for tax-exempt public obligations such as the 2013 Bond and the critical importance of timing of the sale of the 2013 Bond, the Issuer hereby approves the negotiated sale of the 2013 Bond to the Lender pursuant to the Commitment. Bond Counsel and the City Attorney are authorized and directed to proceed (a) to prepare the necessary documents to consummate, and (b) to consummate the delivery of the 2013 Bond.

SECTION 8. DESCRIPTION OF THE 2013 BOND. The 2013 Bond shall be dated its date of delivery; shall originally be issued in a single denomination in an amount equal to the original principal amount authorized hereunder; shall bear interest at the interest rate determined in accordance with the Commitment and not to exceed the maximum rate permitted by law, payable semiannually on April 1 and October 1 of each year, commencing October 1, 2013; principal shall be payable annually on October 1, in the years 2013 through and including maturity, in amounts; shall be subject to redemption prior to maturity; and shall have such other characteristics, all to be specified in the 2013 Bond. The 2013 Bond may be exchanged or transferred by the Lender, but only upon the registration books maintained by the Issuer, as the Registrar of the 2013 Bond; provided, however, the 2013 Bond may not be transferred in a denomination less than \$100,000 under any circumstances.

SECTION 9. APPROVAL OF FORM OF THE 2013 BOND; EXECUTION OF THE 2013 BOND; APPROVAL OF NECESSARY ACTION. The text of the 2013 Bond shall be in substantially the form attached hereto as Exhibit B, with such omissions, insertions, and variations as may be necessary and desirable, and as may be authorized or permitted by the Ordinance or required by the terms of the Commitment, and approved by Bond Counsel and the City Attorney. The 2013 Bond shall be executed in the name of the Issuer by its Mayor and attested by its City Clerk, and the corporate seal of the Issuer or a facsimile thereof shall be affixed thereto or reproduced thereon. The facsimile signatures of the Mayor and the City Clerk may be imprinted or reproduced on the 2013 Bond. The certificate of authentication of the Issuer as Registrar for the 2013 Bond shall appear on the 2013 Bond, and no 2013 Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under the Ordinance unless such certificate shall have been duly executed on such 2013 Bond. The authorized signature for the Issuer as Registrar for the 2013 Bond shall be either manual or in facsimile; provided, however, that at least one of the signatures, including that of the authorized signature for the Issuer as Registrar for the 2013 Bond, appearing on the 2013 Bond, shall at all times be a manual signature. In case any one or more of the officers of the Issuer who shall have signed or sealed the 2013 Bond shall cease to be such officer or officers of the Issuer before the 2013 Bond so signed and sealed shall have been actually sold and delivered, such 2013 Bond may nevertheless be sold and delivered as if the persons who signed or sealed such 2013 Bond had not ceased to hold such offices. The 2013 Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such 2013 Bond shall hold the proper office, although at the date of such 2013 Bond such person may not have held such office or may not have been so authorized. The Mayor, the City Clerk, the City Manager, and the City Attorney are each designated agents of the Issuer in connection with the execution and delivery of the 2013 Bond and are authorized and empowered, collectively or individually, to take all action and steps to execute and deliver any and all instruments, documents or contracts on behalf of the Issuer which are necessary or desirable in connection with the execution and delivery of the 2013 Bond to the Lender, including, but not limited to, modifications to the 2013 Bond to conform to or supplement the Commitment.

SECTION 10. APPLICATION OF THE 2013 BOND PROCEEDS. The proceeds received from the sale of the 2013 Bond shall be applied by the Issuer as follows:

(A) The Issuer shall pay all costs and expenses in connection with the preparation, issuance and sale of the 2013 Bond.

(B) A sum specified in the Escrow Deposit Agreement that shall be sufficient, taking into account other legally available moneys of the Issuer, to pay the principal of, interest on and redemption premiums, if any, on all of the 2003 Bonds, shall be deposited with the Escrow Agent, to be used in accordance with the Escrow Deposit Agreement.

(C) The balance of the 2013 Bond proceeds shall be used as determined by the City Commission for any lawful purpose.

SECTION 11. PROVISIONS FOR REDEMPTION. The 2013 Bond shall be redeemable as provided in the 2013 Bond.

SECTION 12. BOOK-ENTRY SYSTEM. The Issuer has determined that the 2013 Bond shall not be held in book-entry form.

SECTION 13. APPLICATION OF PROVISIONS OF THE ORIGINAL ORDINANCE; COVENANTS OF THE ISSUER.

(A) Original Ordinance Provisions. The 2013 Bond shall, for all purposes, be considered to be a Bond issued under the authority of the Ordinance and shall constitute Additional Parity Obligations issued thereunder, and is entitled to all the protection and security provided therein for the Bonds. The covenants and pledges contained in the Ordinance are hereby made applicable to the 2013 Bond herein authorized in like manner as applicable to the Bonds.

(B) Limited Obligation. In particular, and without limiting the generality of the foregoing, the payment of the principal of and interest on the 2013 Bond, and any other expenses or amounts due on the 2013 Bond, are secured solely by a lien upon and pledge of the Net Revenues and, as of the date hereof, the Net Revenues are not pledged or encumbered in any manner, except for the payment from the Net Revenues of the principal of and interest on the 2012 Bond, which pledge and encumbrance shall be on an equal and parity basis with the 2013 Bond, and as to the principal of and interest on the State Revolving Fund Loan which is junior, inferior and subordinate in all respects to the pledge and encumbrance on the Net Revenues in favor of the holders of the 2013 Bond. The Net Revenues, in an amount sufficient to pay in full the principal of and interest on the 2013 Bond, and any other expenses or amounts due, on the 2013 Bond, are hereby irrevocably pledged to the making of such payments of principal and interest, and any other expenses or amounts due on the 2013 Bond, as the same matures and becomes due in the manner and to the extent provided in the Ordinance.

(C) Not General Obligation. The 2013 Bond shall not be or constitute a general obligation or indebtedness of the Issuer and the 2013 Bond shall not be or

constitute a "bond" of the Issuer within the meaning of the Florida Constitution. Neither the Lender nor any successor owner of the 2013 Bond shall be entitled to compel the payment of the principal of or interest on the 2013 Bond or the making of any payments required hereunder or under the 2013 Bond from any moneys of the Issuer other than the Net Revenues. In particular, neither the Lender nor any successor owner of the 2013 Bond shall be entitled to compel the levy of ad valorem taxes by the Issuer to pay the principal of and interest on the 2013 Bond or to make any payments required under the terms of the Ordinance. Furthermore, the obligation of the Issuer to repay the 2013 Bond in accordance with its terms and to make the payments, if any, required under the Ordinance shall not constitute a lien upon or pledge of any property of the Issuer, other than the Net Revenues in the manner and to the extent provided in the Ordinance.

(D) Financial Reporting. The Issuer shall furnish the Lender audited financial statements (by electronic transmission or through the City's website) within 210 days after the end of the Issuer's fiscal year. The Issuer shall furnish the Lender with a copy of its annual budget (by electronic transmission or through the City's website) within 30 days of the adoption thereof.

SECTION 14. APPOINTMENT OF REGISTRAR AND PAYING AGENT. The City Clerk of the Issuer is hereby designated to serve as Paying Agent and Registrar for the 2013 Bond.

SECTION 15. REDEMPTION AND NOTICE; ESCROW DEPOSIT AGREEMENT. Subject to the execution and delivery of the 2013 Bond for the purpose of refunding the 2003 Bonds, the Issuer hereby irrevocably calls the 2003 Bonds for early redemption on October 1, 2013, or such other date as determined by the Mayor in the Escrow Deposit Agreement, at a redemption price of 100% of the principal amount of such 2003 Bonds to be redeemed, plus accrued interest thereon to the redemption date. At least thirty (30) days prior to the date fixed for redemption, the Issuer hereby directs U.S. Bank National Association, as successor in interest to SunTrust Bank, in its capacity as Paying Agent and Registrar for the 2003 Bonds (the "2003 Paying Agent"), to mail by registered or certified mail a notice of the redemption of the applicable 2003 Bonds to each holder of such 2003 Bonds to be redeemed at the address of such holder as they appear 15 days prior to the date such notice is mailed on the registration books maintained by the 2003 Paying Agent.

The Issuer hereby appoints U.S. Bank National Association to serve as Escrow Agent. The form of the Escrow Deposit Agreement by and between the Issuer and the Escrow Agent, substantially in the form of Exhibit E attached hereto, is hereby approved, and the Mayor is hereby authorized to execute and deliver the Escrow Deposit Agreement on behalf of the Issuer, to be attested and countersigned with the signature of the City Clerk, with such changes, insertions, omissions and filling of blanks as may be approved by the Mayor, such approval to be conclusively presumed by the delivery of such Escrow Deposit Agreement by the Issuer.

SECTION 16. PRIOR RESOLUTIONS. All prior resolutions of the Issuer inconsistent with the provisions hereof are hereby amended and supplemented to conform with the provisions herein contained.

SECTION 17. NO PERSONAL LIABILITY. Neither the members of the City Commission nor any person executing the 2013 Bond shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 18. GENERAL AUTHORITY. The Mayor, the City Manager, the Finance Director, the City Attorney, the City Clerk and any other proper officials of the Issuer are hereby authorized to do all acts and things required of them by the Ordinance, the Commitment, the 2013 Bond, or any other agreement or contract relating to the 2013 Bond, or that may otherwise be desirable or consistent with accomplishing the full, punctual and complete performance of all the terms, covenants and agreements contained in any of the foregoing and each member, employee, attorney and officer of the Issuer is hereby authorized and directed to execute and deliver any and all papers and instruments, including without limitation tax returns, non-arbitrage certificates, and various other certificates, and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated thereby.

SECTION 19. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, but 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 or provisions and shall in no way affect the validity of the other provisions hereof or of the 2013 Bond.

SECTION 20. ORDINANCE TO CONTINUE IN FORCE. The Ordinance and all the terms and provisions thereof, are hereby ratified and confirmed and shall remain in full force and effect.

SECTION 21. NO THIRD PARTY BENEFICIARIES. Except as herein otherwise expressly provided, nothing in this Supplemental Resolution, express or implied, is intended or shall be construed to confer upon any person, firm or corporation or other entity, other than the Issuer, the Lender or any subsequent owner of the 2013 Bond, any benefit of this Supplemental Resolution or any provisions hereof, this Supplemental Resolution and its provisions being intended to be and being for the sole and exclusive benefit of the Issuer, the Lender and any subsequent owner of the 2013 Bond.

SECTION 22. GOVERNING LAW. This Supplemental Resolution shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any dispute hereunder shall lie in Monroe County, Florida.

SECTION 23. EFFECTIVE DATE. This Supplemental Resolution shall be effective immediately upon its adoption.

Adopted at a regular session of the City Commission held on the 20th day of August, 2013.

Authenticated by the presiding officer and Clerk of the Commission on the 20th day of August, 2013.

Filed with the Clerk _____, 2013.

Mayor

ATTEST:

Clerk