

1. Requested Motion:

Meeting Date:

Motion to approve Resolution No. 10-20 relating to the refinancing of a prior utility system loan

August 2, 2010

Why the action is necessary:

The prior utility system loan has matured and needs to be refinanced.

What the action accomplishes:

Authorizes the execution of all documents necessary to accomplish the refinancing of the prior utility system loan.

2. Agenda:

3. Requirement/Purpose:

4. Submitter of Information:

Consent
 Administrative

Resolution
 Ordinance
 Other

Council
 Town Staff
 Town Attorney

5. Background:

In 2007, debt was incurred to acquire the water system of the Town of Fort Myers Beach and to finance capital additions and/or improvements to the water system. The loan has matured and needs to be refinanced. SunTrust has provided the Town with a proposal to refinance the existing loan.

6. Alternative Action:

Not approve the Resolution.

7. Management Recommendations:

Approve the Resolution.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION NUMBER 10-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE ISSUANCE BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. (THE "CORPORATION") OF THE CORPORATION'S REVENUE REFUNDING NOTE, SERIES 2010 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,520,000 TO REFINANCE THE CORPORATION'S REVENUE REFUNDING NOTE, SERIES 2007, ISSUED PURSUANT TO A LOAN AGREEMENT BETWEEN THE CORPORATION AND SUNTRUST BANK; PROVIDING FOR A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE TOWN TO THE EXTENT CERTAIN REVENUES OF THE CORPORATION ARE INSUFFICIENT TO PAY DEBT SERVICE ON THE SERIES 2010 NOTE; AUTHORIZING THE CORPORATION TO PLEDGE CERTAIN REVENUES TO THE DEBT SERVICE OF THE SERIES 2010 NOTE; DESIGNATING THE SERIES 2010 NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION; DELEGATING CERTAIN AUTHORITY TO THE MAYOR; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach Public Works Services, Inc. (the "Corporation") desires at this time to issue its Revenue Refunding Note, Series 2010 (the "Series 2010 Note") in the aggregate principal amount of not to exceed \$2,520,000 in order to refinance its Revenue Refunding Note, Series 2007 (the "Prior Debt") which was originally issued to refinance debt incurred to acquire the water system of the Town of Fort Myers Beach, Florida (the "Town") and to finance capital additions and/or improvements to the water system of the Town; and

WHEREAS, the Corporation is authorized to pledge the net revenues of the water system to secure the repayment of its Series 2010 Note; and

WHEREAS, the Town has agreed to covenant to budget and appropriate legally available Non-Ad Valorem Revenues of the Town (as defined herein), to the extent the Corporation's pledge of the net revenues of the water system are insufficient to pay debt service on the Series 2010 Note; and

WHEREAS, the Series 2010 Note is to be considered a qualified tax-exempt obligation which serves to reduce the interest rate being applied; and

WHEREAS, the Town Council of the Town deems it to be in the best interest of its residents and citizens to authorize the Corporation to issue its Series 2010 Note to refinance the Prior Debt and to pay costs associated with the issuance of the Series 2010 Note, and to make findings in support of the facilitation of this transaction.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. INCORPORATION BY REFERENCE. The foregoing "Whereas" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

SECTION 2. FINDINGS: It is hereby ascertained, determined and declared that:

A. There is currently a need for the Corporation to refinance the Prior Debt and the refinancing of the Prior Debt will be in the best interest of the Corporation and the citizens of the Town and serves a valid public purpose.

B. SunTrust Bank (the "Bank") has submitted its commitment letter to provide the Corporation with a term loan in the amount of not to exceed \$2,520,000 to refinance the Prior Debt, which commitment letter is attached to the herein defined Corporation Resolution.

C. The Series 2010 Note, to be designated as the Town of Fort Myers Beach Public Works Services, Inc. Revenue Refunding Note, Series 2010, shall be repaid solely from certain water system revenues, as described in the herein defined Loan Agreement, and, to the extent such revenues are insufficient, a covenant of the Town to budget and appropriate legally available non-ad valorem revenues, in the manner and to the extent set forth herein and in the Loan Agreement, and the ad valorem taxing power of the Town will never be necessary or authorized to pay said amounts.

D. Including the proposed issuance of the Series 2010 Note, it is not reasonably anticipated that more than \$30,000,000 of tax-exempt obligations as defined under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), will be issued by the Town or any of its entities which issue obligations on behalf of the Town, including the Corporation, during calendar year 2010.

E. Due to the potential volatility of the market for tax-exempt obligations such as the Series 2010 Note and the complexity of the transactions relating to such Series 2010 Note, it is in the best interest of the Corporation to issue the Series 2010 Note by a negotiated sale to the Bank, allowing the Corporation to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Corporation to obtain the best possible price, terms and interest rate for the Series 2010 Note.

SECTION 3. DEFINITIONS. When used in this Resolution, terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement, unless the context clearly indicates a different meaning.

"Act" shall mean the Florida Constitution, Chapter 166, Florida Statutes and other applicable provisions of law.

"Bank" shall mean SunTrust Bank, and its successors and assigns.

"Board" shall mean the Board of Directors of the Corporation.

"Corporation" shall mean the Town of Fort Myers Beach Public Works Services, Inc., a Florida not-for-profit corporation duly organized and validly existing under the laws of the State of Florida.

"Corporation Resolution" shall mean the Town of Fort Myers Beach Public Works Services, Inc., a Florida not-for-profit corporation, and its successors and assigns, duly organized and validly existing under the laws of the State of Florida and designated a title holding corporation under Section 501(c)(2) of the Code, organized by the Town for the purpose of acquiring, owning, operating, maintaining and expanding the water system of the Town.

"Loan Agreement" shall mean the Loan Agreement to be executed between the Bank and the Corporation, which shall be substantially in the form attached to the Corporation Resolution.

"Mayor" shall mean the Mayor of the Town, or in his or her absence or unavailability, the Vice Mayor of the Town, or any duly authorized designees.

"Non-Ad Valorem Revenues" shall mean all revenues of the Town derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments, if necessary, as required herein and in the Town Resolution and which are deposited to the General Fund as identified in the Town's audited financial statements.

"Prior Debt" shall mean the Corporation's Revenue Refunding Note, Series 2007, issued in the principal amount of \$3,060,000 on August 6, 2007 and currently outstanding in the principal amount of \$2,520,000.

"Series 2010 Note" shall mean the Town of Fort Myers Beach Public Works Services, Inc. Revenue Refunding Note (SunTrust Bank), Series 2010 as such Series 2010 Note is more particularly described in the Loan Agreement.

"Town" shall mean the Town of Fort Myers Beach, Florida.

"Town Clerk" shall mean the Clerk of the Town, or in his or her absence or unavailability, any Deputy Clerk, or any duly authorized designees.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Resolution. Words importing the singular number include the plural number, and vice versa.

SECTION 4. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the Act.

SECTION 5. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the purchase and acceptance of the Corporation's Series 2010 Note by the Bank, the provisions of this Resolution shall be a part of the contract of the Corporation with the Bank, and shall be deemed to be and shall constitute a contract between the Town and the Bank. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the benefit, protection and security of the Bank.

SECTION 6. AUTHORIZATION OF REFINANCING. The refinancing of the Prior Debt by the Corporation is hereby authorized and approved.

SECTION 7. COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES. To the extent the Net Water System Revenues (as defined in the Loan Agreement) are insufficient to pay scheduled debt service on the Series 2010 Note, the Town covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts which shall be sufficient to pay debt service on the Series 2010 Note. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of debt service on the Series 2010 Note in the manner described herein, Non-Ad Valorem

Revenues and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241(2), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each Fiscal Year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

SECTION 8. DESIGNATION OF THE SERIES 2010 NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION. The Town hereby designates the Series 2010 Note as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. This designation is based upon the findings of the Town set forth in Section 2(D) hereof, and the Mayor is authorized to certify such finding upon the issuance of the Series 2010 Note.

SECTION 9. GENERAL AUTHORITY. The Mayor and the Town Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the Town Attorney and other employees or agents of the Town are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 10. REPEAL OF INCONSISTENT DOCUMENTS. All ordinances or resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Tom Babcock, Councilmember
Alan Mandel, Councilmember

Bob Raymond, Vice Mayor
Jo List, Councilmember

DULY PASSED AND ADOPTED ON THIS 2nd DAY OF AUGUST, 2010.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Larry Kiker, Mayor

Approved as to Legal Sufficiency:

By: _____
Fowler White Boggs & Banker, P.A.
Town Attorney