

**CITY OF MARATHON, FLORIDA
RESOLUTION NO. 2019-75**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE EXECUTION AND DELIVERY OF AMENDMENT TO FINANCING AGREEMENT; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD THE NOTE “BANK QUALIFIED” STATUS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the “Issuer”) is a municipal corporation duly created and existing pursuant to the Constitution and laws of the State of Florida; and

WHEREAS, the Issuer previously issued its not to exceed \$9,750,000 Grant Proceeds Note, Series 2017 (the “Note”) secured by a Financing Agreement among the Issuer and First State Bank of the Florida Keys (the “Financing Agreement”) to finance for the Issuer the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma, including but not limited to debris removal (the “Project”); and

WHEREAS, the Issuer has received a proposal from First State Bank of the Florida Keys (the “Bank”) to extend the maturity of the Note and change the interest rate; and

WHEREAS, it is hereby ascertained, determined and declared that it is in the best interest of the Issuer to authorize the Mayor or City Manager to accept the revised offer from the Bank upon the terms and conditions set forth in the Amendment to Financing Agreement (the “Amendment”) and in the commitment dated July 1, 2019 submitted by the Bank, a copy of which is attached hereto as Exhibit B (the “Proposal”).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. AUTHORITY. This Resolution is adopted pursuant to the Florida Constitution; Chapter 166, Florida Statutes; the Charter of the Issuer; and other applicable provisions of law.

SECTION 3. APPROVAL OF AMENDMENTS TO FINANCING AGREEMENT.

The Mayor or City Manager, as attested by the City Clerk and approved as to form and correctness by the City Attorney, or any other appropriate officers of the Issuer, are hereby authorized and directed to execute and deliver the Amendments to Financing Agreement, to be entered into by and between the Issuer and the Bank in substantially the form attached hereto as Exhibit A with such changes, insertions and omissions as may be approved by the Mayor or City Manager, the execution thereof being conclusive evidence of such approval.

SECTION 4. BANK QUALIFICATION. The Issuer hereby designates the Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. The Issuer and any subordinate entities of the Issuer and any issuer of “tax-exempt” debt that issues “on behalf of” the Issuer do not reasonably expect during the calendar year 2019 to issue more than \$10,000,000 of “tax-exempt” obligations including such Note, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and exclusive of bonds issued to currently refund any existing tax-exempt obligations.

SECTION 5. OTHER INSTRUMENTS. The Mayor, Vice Mayor, the City Clerk, the City Manager, the City Attorney and other officers, attorneys and other agents and employees of the Issuer are hereby authorized to perform all acts and things required of them by this Resolution and the Amendments or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Note, this Resolution and the Amendments and they are hereby authorized to execute and deliver all documents which shall be required by Note Counsel or the Bank to amend the documents. All action taken to date by the officers, attorneys and any other agents and employees of the Issuer in furtherance of the issuance of the Note is hereby approved, confirmed and ratified.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THIS 13th DAY OF AUGUST, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

David Migut, City Attorney

EXHIBIT A

FORM OF AMENDMENTS TO FINANCING AGREEMENT

EXHIBIT B
PROPOSAL

BMO Draft #2
7/25/2019

AMENDMENT TO FINANCING AGREEMENT

By and Between

CITY OF MARATHON, FLORIDA

and

FIRST STATE BANK OF THE FLORIDA KEYS

Dated August _____, 2019

AMENDMENT TO FINANCING AGREEMENT

THIS AMENDMENT TO FINANCING AGREEMENT (the "Amendment"), made and entered as of the ____ day of August, 2019 by and between THE CITY OF MARATHON, FLORIDA (the "Issuer"), a municipal corporation in the State of Florida and its successors and assigns, and FIRST STATE BANK OF THE FLORIDA KEYS, a Florida banking corporation authorized to do business in Florida, and its successors and assigns (the "Bank").

WITNESETH:

WHEREAS, the Issuer previously issued its not to exceed \$9,750,000 Grant Proceeds Note, Series 2017 (the "Note") secured by a Financing Agreement between the Issuer and First State Bank of the Florida Keys (the "Financing Agreement") to finance for the Issuer the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma, including but not limited to debris removal (the "Project"); and

WHEREAS, the Issuer has received a proposal from First State Bank of the Florida Keys (the "Bank") to extend the maturity of the Note and change the interest rate; and

WHEREAS, it is hereby ascertained, determined and declared that it is in the best interest of the Issuer to authorize the Mayor or City Manager to accept the revised offer from the Bank upon the terms and conditions set forth in the Amendment and in the commitment dated July 1, 2019 submitted by the Bank.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Amendments. The following sections of the Financing Agreement are hereby amended as follows:

Section 1.01. Definitions.

“Maturity Date” shall mean the date on which all principal and all unpaid interest accrued on the Note shall be due and payable in full, which date shall be, if not sooner due to prepayment, the date which is eighteen months from the date hereof (____, ____), unless the Stated Expiration Date is extended pursuant to Section 3.08 hereof, in which case the “Maturity Date” shall become the newly established Stated Expiration Date.

"Note Rate" shall mean a tax-exempt fixed per annum interest rate equal to 2.800%.

"Note Resolution" shall mean collectively, Resolution No. 2017-110 related to the Note which was adopted by the City Council of the City on December 19, 2017, which, among other things, authorized and confirmed the borrowing of the line of credit and execution and delivery of this Agreement and the issuance of the Note and Resolution No. _____ adopted on August 13, 2019.

“Stated Expiration Date” means _____, 2021, unless extended pursuant to Section 3.08 hereof.

Section 2. Covenants of Issuer, Etc.; Successors. All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 3. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Amendment.

Section 4. Continuance of Financing Agreement. The Financing Agreement shall continue in full force and effect, except with respect to the amendments above.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first set forth herein.

THE CITY OF MARATHON, FLORIDA

By: _____

Name: John Bartus

Title: Mayor

(SEAL)

ATTEST:

By: _____

Name: Diane Clavier

Title: City Clerk

[Signature Page to Amendment to Financing Agreement]

FIRST STATE BANK OF THE
FLORIDA KEYS

By: _____

Name: Jeffrey Smith

Title: Senior Vice President