

RESOLUTION NO. 5-09

A RESOLUTION AUTHORIZING ISSUANCE OF THE UTILITIES SYSTEM REVENUE CERTIFICATES, SERIES 2009 AND THE EXECUTION AND DELIVERY OF THE ATTACHED LOAN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$20,250,000 TO FINANCE THE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS AND THE ACQUISITION AND CONSTRUCTION OF CAPITAL IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM; ACCEPTING THE PROPOSAL OF BANK OF AMERICA, N.A.; APPROVING THE FORM OF LOAN AGREEMENT AND CERTIFICATES EVIDENCING SUCH FINANCING; PROVIDING FOR THE PAYMENT OF SUCH CERTIFICATES FROM NET REVENUES FROM THE UTILITY SYSTEM; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (the "Utilities Commission"), that:

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is enacted pursuant to the provisions of Chapter 85-503, Laws of Florida; Section 16.Q of Resolution 28-78, adopted by the Utilities Commission on June 30, 1978, as amended (the "Original Resolution") and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** Unless the context otherwise requires, the terms defined in this resolution shall have the meanings specified in this Section. Terms not otherwise defined in this Section shall have the meanings specified in the Original Resolution. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

"FMPA Pooled Loan Program Loans" shall mean the loans made in 2000 by Florida Municipal Power Agency to the Utilities Commission under its Initial Pooled Loan Project Commercial Paper Notes, Series A, currently outstanding in the aggregate principal amount of \$15,625,000.

"Original Resolution" shall mean Resolution 28-78, duly adopted by the Utilities Commission on June 30, 1978, as amended and supplemented from time to time.

"Outstanding Parity Certificates" shall mean the Utilities Commission's outstanding Utility System Refunding Revenue Certificates, Series 2002, Utility System Refunding Revenue Certificates, Series 2004A and Utility System Revenue Certificates, Series 2007 currently outstanding in the aggregate principal amount of \$35,355,000.

"Refunded Obligations" means, collectively, the FMPA Pooled Loan Program Loans and the Utilities Commission's outstanding certificates under the Original Resolution as evidenced by the Utility System Refunding Revenue Certificates, Series 1993, currently outstanding in the aggregate principal amount of \$2,530,000.

“Refunding” shall mean the program for refinancing a portion of the outstanding obligations of the Utility Commission through the issuance of the Series 2009 Certificates and the application of a portion of the proceeds thereof to pay the principal of, premium, if any, and interest on the Refunded Obligations.

“Resolution” means, collectively, the Original Resolution, this resolution and all resolutions amendatory hereof or supplemental hereto.

“Series 2009 Certificates” mean the Utilities Commission’s Utilities System Revenue Certificates, Series 2009, issued pursuant to this resolution and the Original Resolution.

“2009 Project” shall mean the acquisition and construction of capital improvements to the City’s utility system, consisting of the improvement to the water and sewer system as set forth in the Capital Improvement Plan of the Utilities Commission.

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

A. The Utilities Commission requested Proposals pursuant to a Request for Loan Commitment, dated May 22, 2009, a copy of which is attached hereto as Exhibit A, from various lending institutions to provide the Utilities Commission with the necessary financing (the “Loan”) for the Refunding and the acquisition and construction of the 2009 Project.

B. The proposals received are on file with the Finance Director and are tabulated as Exhibit B. The proposal from Bank of America, N.A., a copy of which is attached hereto as Exhibit C (the “Proposal”), is determined to be the best Proposal received and it is hereby determined to be in the best financial interest of the Utilities Commission to accept such Proposal.

C. The Utilities Commission has previously issued the Outstanding Parity Certificates.

D. The Utilities Commission currently receives the Net Revenues, and such Net Revenues are not pledged or encumbered to pay any other debts or obligations of the Utilities Commission other than the (i) Outstanding Parity Certificates and (ii) other subordinated obligations. The pledge of and lien upon the Net Revenues to pay the Refunded Obligations will be released and extinguished by the Refunding herein authorized.

E. After the Refunding and upon the release of the pledge of and lien upon the Net Revenues to pay the debt service on the Refunded Obligations, the Net Revenues pledged to the payment of the principal of and interest on the Series 2009 Certificates will be sufficient to pay the principal of and interest on all of the Series 2009 Certificates and the Outstanding Parity Certificates and to make all reserve fund and other payments provided for in this resolution and the Original Resolution.

F. The Original Resolution provides for the issuance of Additional Parity Certificates under the terms, limitations and conditions provided therein.

G. The Utilities Commission will comply with the terms, limitations and conditions contained in the Original Resolution, on or prior to the date of delivery of the Series 2009 Certificates, and is, therefore, legally entitled to issue the Series 2009 Certificates herein authorized as an Additional Parity Certificate under the Original Resolution.

H. The Series 2009 Certificates herein authorized shall be payable on a parity and rank equally, as to lien on and source and security for payment from the Net Revenues under the Original Resolution with the Outstanding Parity Certificates.

I. The principal of and interest on the Series 2009 Certificates and all required sinking fund, reserve and other payments shall be payable solely from the Net Revenues as provided herein and in the Original Resolution. Neither the Utilities Commission nor the City shall be required to levy ad valorem taxes on any property within its corporate territory to pay the principal of and interest on the Series 2009 Certificates or to make any of the required sinking fund, reserve or other payments, and such Series 2009 Certificates shall not constitute a lien upon any property owned by or situated within the corporate territory of the Utilities Commission or the City.

J. The Utilities Commission does not expect to issue, together with any obligations issued by the City of New Smyrna Beach, Florida, more than thirty million dollars in tax-exempt obligations during the calendar year ending December 31, 2009.

K. It is necessary and desirable to provide for the execution and delivery of a Loan Agreement and the issuance of the Series 2009 Certificates to implement the Loan.

**SECTION 4. AUTHORIZATION OF 2009 PROJECT AND REFUNDING.** The 2009 Project and the Refunding are hereby specifically authorized.

**SECTION 5. AUTHORIZING OF SERIES 2009 CERTIFICATES.** Subject and pursuant to the provisions of this resolution and the Original Resolution, the issuance by the Utilities Commission of not exceeding \$20,250,000 Utilities System Revenue Certificates, Series 2009, for the purpose above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided in the form of the Loan Agreement referred to below and in the Proposal, is hereby authorized. The Series 2009 Certificates are hereby designated as a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code.

**SECTION 6. SECURITY FOR THE SERIES 2009 CERTIFICATES.** The Series 2009 Certificates shall for all purposes be considered to be Additional Parity Certificates issued under the authority of the Original Resolution and shall be entitled to all the protection and security provided therein for the Outstanding Parity Bonds, shall be in all respects entitled to the same security, rights and privileges enjoyed by the Outstanding Parity Certificates, and the covenants and pledges contained in the Original Resolution shall be applicable to the Series 2009 Certificates in like manner as applicable to the Outstanding Parity Certificates provided, however, that the Series 2009 Certificates shall not be secured by the Reserve Fund established under the Original Resolution and the holder of the Series 2009 Certificates shall have no claim on the amounts therein.

A. The Series 2009 Certificates shall not be or constitute general obligations or an indebtedness of the Utilities Commission or the City as "bonds" within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of the Net Revenues as provided in the Resolution and the Loan Agreement, on a parity with the lien upon and a pledge thereof in favor of the Registered Owners of the Outstanding Parity Certificates. No Holder of the Series 2009 Certificates shall ever have the right to compel the exercise of the ad valorem taxing power of the City or the Utilities Commission or taxation in any form of any property of or in the City or the Utilities Commission, other than the Net Revenues in the manner provided in the Original Resolution, or any property of or located within the boundaries of the City or the Utilities Commission, for payment of the Series 2009 Certificates or for the making of any payments under the Original Resolution, this resolution or the Series 2009 Certificates.

B. The Series 2009 Certificates shall not be secured by amounts in the Reserve Fund and no amount shall be required to be deposited therein with respect to the Series 2009 Certificates.

**SECTION 7. ACCEPTANCE OF PROPOSAL.** The Chairman and Managing Director are hereby authorized to accept the attached loan commitment from Bank of America, N.A.

**SECTION 8. APPROVAL OF FORM OF LOAN AGREEMENT AND CERTIFICATES.** The form of the Loan Agreement and the Series 2009 Certificates attached thereto as an exhibit are hereby approved and the Chairman and Secretary Treasurer are hereby authorized to execute and deliver such instruments in substantially the form attached, with such changes as shall be necessary or desirable to conform to the Proposal, and to take such other actions as shall be necessary to implement the Loan. The provisions of the Loan Agreement and the Series 2009 Certificates, as so executed and delivered, are hereby incorporated into and made a part of this resolution.

**SECTION 9. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the acceptance of the Series 2009 Certificates authorized to be issued hereunder by those who shall be the holders thereof from time to time, the Resolution and the Loan Agreement shall be deemed to be and shall constitute a contract between the Utilities Commission and such holder. The covenants and agreements in the Original Resolution set forth to be performed by the Utilities Commission shall be for the equal benefit, protection and security of the holder of the Series 2009 Certificates, which shall be of equal rank and without preference, priority or distinction of any of the Series 2009 Certificates or any of the Outstanding Parity Bonds over any other thereof, except as expressly provided in the Original Resolution and the Loan Agreement.

**SECTION 10. APPROVAL OF PAYMENT OF COSTS OF ISSUANCE.** The costs of issuance of the Series 2009 Certificates as shown on Exhibit E hereto are hereby approved for payment.

**SECTION 11. REPEAL OF INCONSISTENT PROVISIONS.** All resolutions or parts thereof in conflict with this resolution are hereby repealed to the extent of such conflict.

**SECTION 12. SEVERABILITY.** In the event that any portion or section of this resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this resolution shall remain in full force and effect.

**SECTION 13. EFFECTIVE DATE.** This resolution shall take effect immediately upon its final passage and adoption.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a special meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held June 15, 2008~~9~~ by Commissioner Diesen, who moved for its adoption, which motion was seconded by Commissioner Hall, and upon roll call vote of the Commission was as follows:

CHAIRMAN	Walter Allen, III	<u>yes</u>
VICE CHAIRMAN	Bill Hall (William)	<u>yes</u>
SECY.-TREAS.	William Reynolds	<u>ABSENT</u>
COMMISSIONER	Jeanne K. Diesen	<u>yes</u>
<i>CONV. M.</i> Asst. Secy-Treas.	<i>Oscar Zeller</i> Oscar Zeller	<u>yes</u>

APPROVED:

ATTEST:

*Walter Allen III*  
\_\_\_\_\_  
CHAIRMAN

*Oscar Zeller*  
\_\_\_\_\_  
SECRETARY-TREASURER  
AST -

S E A L

Approved as to Form and Correctness:

*W. L. V. L.*  
\_\_\_\_\_  
UTILITIES COMMISSION ATTORNEY

- EXHIBITS: A - Request For Proposals  
 B - Bid Tabulation  
 C - Proposal  
 D - Form of Loan Agreement  
 E - Costs of Issuance

**EXHIBIT A**

REQUEST FOR PROPOSALS

# Utilities Commission, City of New Smyrna Beach

## Request for Proposal

### Loan Commitment

RFP # 09-09

Date Issued: May 22,, 2009

RFP Document on the UCNSB Web Site Link: <http://www.ucnsb.net/purchasing/bid-information.aspx>

Utilities Commission, City of New Smyrna Beach (UCNSB) is seeking bids from qualified vendors to provide a commitment for a Loan in the amount not exceed \$20,250,000 which will be structured as a loan amortized over eleven (11) years.

Notice is herby given that sealed bids will be received at 200 Canal Street, New Smyrna Beach, FL 32168, until **2:00 p.m., June 5, 2009** at which time will be opened in the Finance Department.

#### DIRECT INQUIRIES TO:

Email:  
Telephone Number:  
Fax Number:

Maureen Lynch  
Materials Manager  
mlynch@ucnsb.org  
(386) 424-3046  
(386) 424-2748

#### Mail To:

Utilities Commission City of NSB  
Attn: Materials Manager  
PO Box 100  
New Smyrna Beach, Florida 32170-0100

#### Delivery to:

200 Canal Street  
New Smyrna Beach, FL 32168

**Upon receipt of this proposal document, any and all communications regarding this proposal must be made only to the Materials Manager as noted above. Any violation of this condition could result in bid disqualification.**

*This is a Sealed Proposal-Fax or electronic replies will not be accepted.*

Utilities Commission, City of New Smyrna Beach operates in accordance with the State of Florida Sunshine Laws.

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## 1.00 GENERAL CONDITIONS

1. **INSTRUCTIONS TO PROPOSERS:** To insure consideration of your proposal, please follow these instructions. Proposals not in compliance with conditions specified herein are subject to rejection.
2. **SEALED PROPOSALS:** AN ORIGINAL AND 7 COPIES must be in the Finance Department by the date and time specified. The Proposal Reply, Evaluation Factors, Questionnaire, Attachment "A", Attachment "B", and any addenda issued must be included. Proposals must be sealed and clearly labeled with the following information:
  - a. Name and address of Proposer
  - b. Proposal number
  - c. Date and time of Proposal Opening
3. **PREPARATION OF Proposal:** All information shall be entered in ink, typewritten, or produced by computer. It is your responsibility to make certain that unit prices and extended prices are correct. The UCNSB will not be responsible for errors or omissions made by the Proposer in determining proposal price(s). The proposal must contain a manual signature of an authorized representative of the agency proposing. In order to insure uniformity, proposals must be submitted on this Proposal Form and the attached pages.
4. **NO PROPOSAL:** If unable to submit a proposal, please sign and return Proposal Reply Sheet by return mail or fax advising the reason for not submitting a proposal. To ensure inclusion in future bids, a Proposer **should** submit a "NO PROPOSAL" to be received by the Finance Department no later than the stated proposal opening date and time.
5. **OBLIGATION OF PROPOSER:** By submitting a proposal, the Proposer covenants and agrees that they have satisfied themselves from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
6. **QUESTIONS REGARDING RFP:** UCNSB has made every effort to provide prospective vendors with the information needed to appropriately respond to this RFP. UCNSB realizes that some clarification, interpretation, or additional information may be required.

Any additional information pertaining to this RFP or to the services being sought hereunder obtained in a manner other than as described in the preceding paragraph should be regarded as unofficial. UCNSB will not be bound in any way by information so obtained, or by a Bidder's reliance thereon.

**7. COST DISCUSSIONS:** The Proposer must not discuss cost information, except for clarification requested by the UCNSB Materials Manager, prior to the posting of proposal results, with any employee, board member or authorized representative of the UCNSB.

**8. ADDENDA:** All addenda issued during the time of proposing shall become part of the Proposing Documents, and receipt thereof must be acknowledged in writing with the bid (see Factor #6). The UCNSB accepts no responsibility for inaccurate proposals due to missed information contained in any addendum. Each Proposer should ensure that they have received all addenda and amendments to the RFP before submitting their proposals. Please access the UCNSB web site at <http://www.ucnsb.net/purchasing/bid-information.aspx> for any addenda.

**9. LATE PROPOSALS:** Proposals will be publicly opened, read aloud and recorded, on the date and time indicated, at the location specified in the proposal request. It is the Proposers' responsibility to make certain that his/her proposal is in the hands of the the Materials Manager prior to the opening time at the specified location. UCNSB accepts no responsibility for late or misdirected mail deliveries. Late proposals will not be considered.

**10. CONSIDERATION OF BIDS:** The UCNSB reserves the right to award the contract to the Proposer(s) that the UCNSB deems to offer the best overall proposal. The UCNSB is therefore not bound to accept a proposal on the basis of lowest price. In addition, the UCNSB at its sole discretion, reserves the right to cancel this RFP, to reject any and all proposals, to waive any and all informalities and/or irregularities, to re-advertise with either the identical or revised specifications, or not award a contract at all if it is deemed to be in the best interest of the UCNSB to do so. The UCNSB also reserves the right to make multiple or split awards if it is deemed to be in the Commission's best interest. The UCNSB shall not be responsible for any cost or expense incurred by the Proposer in preparing or submitting a bid or any cost prior to the execution of a contract agreement.

**11. OTHER CONSIDERATIONS:** Quantities involved, time of delivery, purpose for which required, competency in determining responsibility.

**12. QUALIFYING PROPOSALS:** UCNSB reserves the right to require Proposers to submit such evidence of qualifications as it may deem necessary and may consider any evidence available concerning the financial and other qualifications of the Proposer.

**13. DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a proposal on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contract supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

**14. ADA:** The vendor awarded this proposal shall agree to comply with the Americans with Disabilities Act (ADA) of 1990.

**15. PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 60 days following opening of proposal, to allow for formal action by the Board. The Proposer agrees that during such time his bid will remain firm and irrevocable. At the end of the 60 days, the bid may be withdrawn at the written request of the Proposer. If the proposal is not withdrawn at that time, it remains in effect until a contract is awarded or the solicitation is canceled.

**16. EVALUATION PROCESS:** The Evaluation Committee will evaluate all proposals received. The committee will examine each proposal and determine how effectively it satisfies the RFP.

**17. PROPOSAL AWARD:** Award is expected to be made to the Proposer who best meets the requirements of UCNSB considering responsibility, responsiveness and price. A written contract and/or purchase order detailing agreed terms will be rendered between the UCNSB and the agency achieving a successful proposal. Terms of the contract will include any and all items as specified in the proposal, plus mutually agreed terms and conditions.

The content of this RFP and all provisions of the successful response deemed pertinent by UCNSB may be incorporated into a contract and become legally binding.

**18. CLARIFICATION:** The UCNSB reserves the right to request clarification of information submitted and to request additional information of one more Proposers, if needed.

**19. CONFLICT OF INTEREST:** The award hereunder is subject to the laws of the State of Florida. All Proposers must disclose, with their proposal, the name of any officer, director, or agent who is also an employee of the UCNSB. Further, all Proposers must disclose the name of any UCNSB employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches.

**20. LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all bids received in response hereto and shall govern all claims and disputes which may arise between person(s) submitting a proposal response hereto and the UCNSB. Lack of knowledge by any Proposer shall not constitute a cognizable defense against the legal effect thereof. Proposers have certain rights under Chapter 120, Florida Statutes. Failure to follow proper procedures for a timely protest shall constitute a waiver of all further proceedings under Florida Statute 120.53(5).

**21. TAXES:** Sales to UCNSB are exempt from state sales tax. State sales tax certificate of exemption will be issued upon request.

**FLORIDA SALES TAX EXEMPTION NO: 74-16-058509-54C**

**22. OTHER AGENCIES:** All respondents awarded contracts from this solicitation may, upon mutual agreement, permit any municipality or other government agency to participate in the contract under the same prices, terms and conditions. If the period of time is not defined within this solicitation, the prices, terms and conditions shall be firm for 120 days from date of award. It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any city municipality or agency, nor will any city municipality or agency be obligated for any bills incurred by any other city or municipality or agency. Further it is understood that each agency shall issue their own purchase order to the awarded respondent(s).

**23. SUBSTITUTIONS:** Proposers are cautioned not to deviate from the proposal specifications unless they also submit a detailed alternative.

**24. NON-WARRANTY OF SPECIFICATIONS:** Due care and diligence have been exercised in the preparation of this RFP and all information contained herein is believed to be to be substantially correct. However, the responsibility for determining the full extent of the exposures shall rest solely with the provider. Neither the Commission nor its representatives shall be responsible for any errors or omission in this RFP nor for the failure on the part of the proposer(s) to determine the full extent of exposures.

**SWORN STATEMENT UNDER SECTION 287.133(3) (1)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted Bid, Bid or Contract for \_\_\_\_\_.
2. This sworn statement is submitted by \_\_\_\_\_  
[name of entity submitting sworn statement] whose business address is: \_\_\_\_\_  
\_\_\_\_\_ and (if applicable) its Federal Employer  
Identification Number (FEIN) is \_\_\_\_\_.  
  
(If entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:  
\_\_\_\_\_.
3. My name is \_\_\_\_\_ and my relationship to the entity named above is \_\_\_\_\_.
4. I understand that a "public entity crime" as defined in Paragraph 287.133 (1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state, or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (91) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charges brought by indictment or information after July 1, 1989, as a result of just verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand the "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means: (1) A Predecessor or Successor of a person convicted of public crime; or (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholder, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of public crime in Florida during the preceding 36 months shall be considered an affiliate.
7. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provisions of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.
8. Based on information and belief, that statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies]

**Public Entity Crimes Statement**

\_\_\_\_ Neither the entity submitting this sworn statement, or one more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate or the entity, has been charged with and convicted of public entity subsequent to July 1, 1989, AND [Please indicate which additional statement applies.]

\_\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. [Please attach a copy of the final order.]

\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. [Please attach a copy of the final order.]

\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list. [Please describe any action taken by or pending with the Department of General Services.]

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

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority, \_\_\_\_\_  
[name of individual signing] who after first sworn by me affixed his/her signature in the space provided above on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print, Type, or Stamp of Notary Public

Personally known to me, or  
Produced Identification:

\_\_\_\_\_  
Type of I.D.

**NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

He/she is \_\_\_\_\_ of \_\_\_\_\_, Bidder that has submitted the attached Bid;

He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

Neither the said Bidder nor any of its officers, partners, owners, agent representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person, to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the UCNSB.

The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Title

My Commission Expires: \_\_\_\_\_

**2.02 CERTIFICATION OF DRUG-FREE WORKPLACE**

**IDENTICAL PROPOSALS** - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

---

VENDOR SIGNATURE

**UTILITIES COMMISSION**  
**City of New Smyrna Beach, Florida**

**VENDOR INFORMATION**

386 424 3045 Voice  
386 424 2732 Fax

Vendor is:

- (        ) Corporation
- (        ) Partnership
- (        ) Sole Proprietorship
- (        ) Other \_\_\_\_\_ (Explain)

Federal Employer Identification  
Number or Social Security Number: \_\_\_\_\_

Do you collect Florida State Sales Tax? (        ) Yes (        ) No

Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Email Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Service or Commodity Supplied: \_\_\_\_\_

If vendor is quoting, as a manufacturer's representative and the purchase order should be addressed to the manufacturer in care of the vendor, so indicate.

If remittance address is different from the mailing address so indicate below.

Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submitted by: \_\_\_\_\_

Name & Title Printed: \_\_\_\_\_



**SOUTHEASTERN INVESTMENT SECURITIES, INC.**

**RICHARD T. WAGNER**  
President

**Utilities Commission, City of New Smyrna Beach, Florida  
Request for a Bank Qualified Loan Commitment**

**Bid Package Enclosures**

1. Memorandum to Prospective Bidders.
2. Notice of Request for Commitments.
3. Summary of Proposed Terms.

1075 W. Morse BLVD. WINTER PARK, FL 32789-3146  
TELEPHONE 407.647.1000 • FAX 407.647.5526 • E-mail: [rtwagner1@earthlink.net](mailto:rtwagner1@earthlink.net)



**RICHARD T. WAGNER**  
President

**MEMORANDUM**

**TO:** Prospective Bidders  
**FROM:** Richard T. Wagner  
**RE:** Utilities Commission, City of New Smyrna Beach, Florida ("UCNSB") Request for a Loan Commitment  
**DATE:** May 22, 2009

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In our capacity as Financial Advisor to the UCNSB, we have been asked to solicit your interest in extending a firm commitment for a Loan to refund several outstanding Utility System obligations and provide funds for capital improvements more specifically outlined herein.

The UCNSB is requesting a commitment for a Loan in an amount not to exceed \$20, 250,000 which will be structured as an amortizing Loan.

Commitments will be due by 2:00 P.M. on June 5, 2009.

The Loan will be a "qualified tax-exempt obligation" for purposes of Section 265(b) (3) of the Internal Revenue Service Code as amended. Enclosed is Notice of Request for Commitment, Summary of Proposed Terms and other information regarding the proposed Loan.

Upon your review of the enclosed, please do not hesitate to get in touch with Maureen Lynch, Materials Manager, Utilities Commission, City of New Smyrna Beach, Florida 200 Canal Street, New Smyrna Beach, Florida, 32168, phone: 386.424.3046, Facsimile: 386.424.2748 E-mail: [mlynch@ucnsb.org](mailto:mlynch@ucnsb.org); Laurie Klinkenberg, Director of Finance/CFO phone: 386.424.3040 email [lklinkenberg@ucnsb.org](mailto:lklinkenberg@ucnsb.org) or the City's Financial Advisor, Richard T. Wagner, Southeastern Investment Securities, LLC. Telephone: 407.647.1000, Facsimile: 407.647.5526, E-mail: [rtwagner1@earthlink.net](mailto:rtwagner1@earthlink.net) with any questions or requests for additional information. We appreciate your consideration of this matter and hope to hear from you.

RTW/pas  
Enclosures

1075 W. Morse BLVD. WINTER PARK, FL 32789-3146  
TELEPHONE 407.647.1000 • FAX 407.647.5526 • E-mail: [rtwagner1@earthlink.net](mailto:rtwagner1@earthlink.net)

**NOTICE OF REQUEST FOR A LOAN COMMITMENT**  
**UTILITIES COMMISSION, NEW SMYRNA BEACH, FLORIDA**

**I. INTRODUCTION:**

The Utilities Commission, City of New Smyrna Beach, Florida (“UCNSB”) hereby solicits a sealed, firm Commitment for a Loan in accordance with the terms, conditions, and specifications outlined in this notice of Request for a Loan Commitment (“Commitment”) and the attached Summary of Proposed Terms for the Loan. The loan will be characterized as a “qualified tax-exempt obligation” for purposes of Section 265(b) (3) of the IRS Code.

**II. COMMITMENT DUE DATE:**

Sealed Commitments for the Loan will be received at the Office of the Director of Finance (an original with seven (7) copies) no later than 2:00 P.M. EST on June 5, 2009. Commitments will not be accepted after this time. **Fax and or emails will not be accepted.** Commitments for the Loans shall be marked **“RFP 09-09 Loan Commitment – Utilities Commission, City of New Smyrna Beach Utilities System Refunding and Revenue Certificates, Series 2009”** and addressed as follows:

Maureen Lynch, Materials Manager  
**Utilities Commission, City of New Smyrna Beach**  
200 Canal Street  
New Smyrna Beach, FL 32168  
Ph: 386.424.3046

**III. SUBMISSION OF COMMITMENTS:**

**A. ACCEPTANCE/REJECTION/MODIFICATION TO COMMITMENTS:**

The UCNSB reserves the right to negotiate modifications to Commitments that it deems acceptable, to reject any and all Commitments, and to waive minor irregularities in the procedures or to award to other than the low bidders if it is in the best interests of the UCNSB.

**B. COMMITMENTS BINDING:**

All Commitments submitted should be binding for sixty (60) calendar days following receipt deadline date.

**IV. ADDITIONAL INFORMATION:**

Annual Financial Reports and Budgets of the UCNSB may be obtained on the UCNSB's website [www.ucnsb.org](http://www.ucnsb.org), (studies and presentations) from the UCNSB's Director of Finance, Laurie Klinkenberg at 386.424.3040 or the UCNSB's Financial Advisor, Southeastern Investment Securities, LLC, Richard T. Wagner, at 407.647.1000.

# REQUEST FOR A LOAN COMMITMENT

**Utilities Commission, City of New Smyrna Beach, Florida**  
**\$20,250,000\***  
**Utilities System Refunding Revenue Certificates, Series 2009**

## Summary of Proposed Terms

- Issuer/  
Borrower:** Utilities Commission, City of New Smyrna Beach, Florida (“UCNSB”)
- Issue:** Utilities Commission, City of New Smyrna Beach, Florida  
Utilities System Refunding Revenue Certificates Series 2009 (“Series 2009  
Certificates” or “Loan”)
- Amount:** Not to exceed \$20,250,000
- Tax Exemption:** The Series 2009 Certificates will be a “bank qualified tax-exempt  
obligation” for purposes of Section 265(b) (3) of the IRS Code.
- Authority:** The Series 2009 Certificates are being issued pursuant to Chapter 85-503,  
Law of Florida (“Chapter 85-503”), Resolution No. 28-78, adopted by the  
UCNSB on June 30, 1978, as amended and supplemented and in particular  
as supplemented by a Resolution to be adopted by the UCNSB  
(collectively, the “Resolution”).
- Commitment Due  
Date:** Commitments will be received no later than 2:00 P.M. EST on June 5, 2009  
by: Maureen Lynch, Materials Manager, Utilities Commission, City of  
New Smyrna Beach, 200 Canal Street, New Smyrna Beach, FL 32168,  
Telephone: 386.424.3046.
- Award Date:** An award by the UCNSB is expected on June 15, 2009 with approval by  
the City Commission thereafter.
- Funding Date:** Expected on or before August 30, 2009, pending City Commission  
approval.
- Purpose of  
The Loan:** The Loan proceeds would be used to fund a portion of the design and  
construction costs of various capital improvements in an amount not to  
exceed \$2.0 million; refund on a current basis the UCNSB outstanding  
Series 1993 Bonds in the amount of \$2,530,000; refund on a current basis  
three outstanding loans with Florida Municipal Power Agency aggregating  
\$ 15,625,000 and pay expenses associated with the issuance of the Series  
2009 Certificates.

**Documentation:** The UCNSB's obligation to repay the Series 2009 Certificates will be evidenced by a UCNSB Resolution and a Certificate a, together with the customary closing papers and the approving opinion of Akerman Senterfitt, Bond Counsel.

**Financing Structure:** The UCNSB is requesting fixed rate financing in the amount of not to exceed \$20,250,000\* to be amortized according to the repayment terms herein. The Loan will be a draw down loan in that approximately \$18,250,000 will be drawn at the time of funding to refund the outstanding obligations and to pay the Series 2009 Certificates expenses. The \$2.0 million balance (capital improvement new money portion) will be drawn down in whole or in part within six months of Loan closing. Such drawdown is dependent on current capital improvement bids being received. All or a portion of such new money may not be necessary.

**Repayment Terms:** Interest will accrue initially from the Closing Date to October 1, 2009 (the first interest payment date) and will be payable semi-annually thereafter on each April 1 and October 1.

The principal payments will be amortized over an eleven (11) year level period (principal and interest combined) paid on an annual basis each October 1, commencing on October 1, 2010. (See proposed Amortization Schedule, Appendix A, herein)

**Security:** The payment of the principal and interest on the Series 2009 Certificates will be secured equally and ratably by a first lien on and pledge of the Net Revenues from the operation of the UCNSB Utilities System on a parity with the Series 2002 Certificates, Series 2004A Certificates, Series 2007 Certificates and all other certificates issues on a parity therewith under the Resolution without preferences, priority or distinction of any certificates over any other thereof. The Series 2009 Certificates shall not constitute general obligations of the UCNSB or the City of New Smyrna Beach, but shall be payable solely from and secured by a lien upon the Net Revenues of the Utilities System. The Series 2009 Certificates Holder will waive any interest to amounts on deposit in the Debt Service Reserve Fund established pursuant to the Resolution.

**Additional Parity Debt:** Resolution No. 28-78 contains a 1.40x coverage requirement for the issuance of additional parity debt. The UCNSB Commission intends in the future to amend the coverage requirement to 1.25x. **The successful proposer will be required to consent to such amendment as a condition of its bid.** The effective date of such amendment depends on obtaining the required level of bondholder consents under the Bond Resolution which cannot be determined at this time.

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\*Estimated, subject to change.

**Loan Rate Quotes  
And Prepayment  
Terms:**

**Quotes:** Fixed rate based upon the proposed Amortization Schedule Appendix A, herein.

**Prepayment:** The Bidder shall specify pre-payment restrictions and penalties, if any.

**Legal Opinion:** The Resolution and Certificate will be prepared by and subject to the approving opinion of Akerman Senterfitt, Jacksonville, Florida, Bond Counsel, together with the customary closing certificates at the UCNSB's expense.

**Fees and  
Expenses:**

State what fees and expenses of the Lender (if any) will be applicable. All fees and expenses of the Lender and their Counsel or other representatives of the Lender shall be the obligation of the Lender; however, such amount may be deducted from the principal amount of the borrowing at closing. Such costs will be considered in determining the most favorable proposal.

The fees and expenses of the UCNSB Counsel, Bond Counsel, Financial Advisor, City Counsel, and their representatives will be the obligation of the UCNSB and will not be factored into the bid calculations.

**Additional  
Restrictions/  
Covenants:**

Bidder shall specify any additional covenants and restrictions.

**Commitment  
Award:**

The award will be made on the most favorable Commitment in the sole judgment of the UCNSB.

**APPENDIX A**

**Utilities Commission, City of New Smyrna Beach, Florida  
Utilities System Refunding Revenue Certificates Series 2009**

**Proposed Amortization Schedule**

<b><u>Maturity</u></b> <b>(Oct. 1)</b>	<b><u>Principal</u></b>
2010	\$600,000
2011	\$650,000
2012	\$710,000
2013	\$790,000
2014	\$2,355,000
2015	\$2,140,000
2016	\$2,300,000
2017	\$2,400,000
2018	\$3,180,000
2019	\$3,325,000
2020	\$1,800,000
<b>Total</b>	<b>\$20,250,000</b>

**UTILITIES COMMISSION**  
**City of New Smyrna Beach, Florida**  
**200 Canal Street**  
**P.O. Box 100**  
**New Smyrna Beach, Fl. 32170-010**

May 29, 2009

RE: RFP 09-09 LOAN COMMITMENT ADDENDUM No. 1

To prospective vendors:

The Utilities Commission is issuing the following addendum. **As such it becomes an integral part of the proposal and must be acknowledged by the return of this signed form, with your proposal form, acknowledging receipt of the addendum.**

**THE FOLLOWING QUESTIONS WERE ASKED AND ANSWERED BELOW**

- According to the UC's website, it appears from the rate study presentation, the last rate study was done in 2006 with rate increases effective in FY 2008 – 2010? Is this correct? Yes According to the schedules to the CAFR, rates remained the same in FY 2008. Please provide details (or actual rate study). Are rate increases contemplated beyond 2010? We held the rates steady and have not planned on any rate increases with the exception of reuse water and internet.
- How do current rates for each system compare with competitors? Link on our website shows comparison (electric only) [http://www.ucnsb.org/ftp/2009\\_april\\_rates.pdf](http://www.ucnsb.org/ftp/2009_april_rates.pdf) – we are in-line with IOU's
- The 2009 approved budget has five year budget forecast for FY 2009-13. This is slightly different format/presentation from the projections provided in the triennial report (FY 2008-10). I am interested in the rate covenant calculation based on the forecast – appears net revenues would just be total revenues less O&M expenses? A portion of the other revenue sources would be included (interest and connection fees), but can not determine. Do you have rate covenant calculation based upon the forecast? Or do you have updated projections with assumptions and rate covenant calculation? Do not have available data broken out.
- When was the last Engineer's Report completed? If recent, please provide copy. The last triennial Report was completed July 31, 2008 as of September 30, 2007. It is on our website under the following link <http://www.ucnsb.org/ftp/triennialreport.pdf>

- The YTD financials are compared to the same period last year (April 2009 on website). Can you provide comparison to budget for FY 2009? Our full financial statements provide comparison to budget. Attached is a pdf of April 2009 for the combined system. Also – please provide breakout of rate covenant calculation and supporting details behind lower coverage ratio. For FYTD April 2009 the calculation is below:

	FYTD Apr 2009	FYTD Apr 2008
Debt Service Ratio Calculation		
Total Operating Revenue from Combined P&L	30,248,827	30,596,695
Total Non-Op Income (Int & Other) from Combined P&L	381,114	847,263
Cap Fees & Extensions Only (run FERC 470)	135,875	1,614,196
Total	30,765,816	33,058,154
Total O&M Expenses	29,280,456	29,108,516
Less Depreciation & Decommissioning	(3,752,283)	(3,479,374)
Less Required Payment to City	(1,907,057)	(1,973,434)
Total	23,621,116	23,655,708
Net Revenues	7,144,700	9,402,446
Annual Debt Service Requirement (from Combined Forecast Actual FYTD Total Debt Service)	4,722,716	4,928,589
Debt Service Coverage	1.51	1.91

- Please confirm that the DSCR in the CAFR includes ALL debt (senior and subordinated). Yes. The rate covenant is just for the senior. Do you do a calculation with just the senior debt? Not on a monthly basis.
- Please provide rate covenant definitions for the SRF and related calculation. The SRF rate covenant is 1.15 times.
- Please provide an update on the customer information system that was noted in the supplemental audit reports in the financials. Any resolutions? We are abandoning the software and in the process of updating the former software solution.
- Please provide an update on unrestricted cash (bank overdraft). What is the current balance? What are the UC's plans to bring this back into the positive? As of April, 2009 the balance is \$6,972,263 – \$4.5 million of this was due to under recovery of fuel costs during the period of volatile and exorbitant energy costs. We are now in an over recovery stage anticipating the balance of under recovery to be fully recovered within one year. We are also continuing to manage expenses as you can see from the April 2009 Forecast Report YTD actual expenses are \$3.5 million under budget.

- Please provide an update on the unbilled A/R. What is the current balance? What are the UC's plans to reduce this amount? Mostly addressed above – As of April, 2009 unbilled A/R is comprised of approx \$4 million monthly customer accounts receivable and \$3.1 million of under recovered fuel and purchased power. Customer unbilled a/r is an on-going monthly estimate of the dollar value of services consumed from their last billing cycle to the end of the month.
- Has a decision been made to continue the internet service? This is going before our Commission for determination in June.
- Please confirm that no additional debt has been issued since the publication of the 2008 CAFR. None has been issued.
- What is the timeframe for amending the ABT from 1.40x to 1.25x? when the 2002 debt is satisfied – 2017 or if refunded earlier on or after 10/1/2012.
- The 2010 CIP indicates a line item “alternate financing/grants”. In addition to the \$2MM as part of this request, what additional bank/bond borrowings do you anticipate in the next year and through the five year CIP? We have been managing our CIP by only doing work that is a priority and necessary. If a project is not necessary we have been postponing it.
- What is the estimated annual maintenance capex? 8% of 2 years prior revenues (less fuel and purchased power costs) Is it reflected in the CIP? Yes, on the following link <http://www.ucnsb.org/ftp/CIP2010.pdf> the line entitled “Mandatory transfer to R&R”
- How flexible is the CIP (mandatory vs. deferred/delayed due to market conditions)? Very flexible even mandatory transfers are also available for operations.
- What specifically in the CIP is being financed with the \$2MM earmarked in the RFP? Either completing the water projects partially funded with the 2007A debt which was originally estimated to be \$13 million. As bids appear to be coming in lower than the \$13 million the \$2 million if necessary would go to other wastewater projects noted in the CIP as WW-38, 51, 61, 62, 73, 74 and R-36, We also may be required by DEP to replace a force main, if this becomes a reality, it would take priority and the funds would be used for this new project.
- Did the \$10MM loan finance the reconstruction of the Smith Street Pump Station? This line item is no longer on the updated 2010 CIP. Yes it financed 3 projects – Smith Street Pump Station 20” pipeline, Water treatment plant generator switchgear and 3<sup>rd</sup> avenue storage tank and pump station. They are no longer on the CIP as they are in process and funded.
- There is a paragraph in the 2008 CAFR that states that based on coverage ratio of 1.20x MADS, the UC has capacity to obtain additional financing of \$30MM. I was unable to back into this – please provide details. An auditor calculation.
- Did actual number of water and wastewater customers increase in FY 2008, or was this due to the counting of meters in 2008? What is estimate of actual increase in customers for each in FY 2008? Most likely due to software reporting issues.
- Water supply appears ensured through 2020 – is this correct? Our consumptive use permit is valid through 2020.
- Please confirm that there are no regulatory issues with any of the systems. We are in full compliance and top rated facilities.
- Please confirm no capacity issues w/ any system. Based on the growth rate of recent, there are no capacity issues.

- Please confirm that the only variable rate debt is the three issues of FMPA that are being refunded. Confirmed. What have interest rates the past year or so been like vs. historical? See below.

**FMPA Pooled Loan  
Interest Rates  
FY 2008 to Present**

Date	Interest Rate	Fee Rate
Oct-07	3.66%	0.60%
Nov-07	3.54%	0.60%
Dec-07	3.52%	0.60%
Jan-08	3.77%	0.60%
Feb-08	2.79%	0.60%
Mar-08	1.75%	0.60%
Apr-08	1.85%	0.60%
May-08	1.70%	0.60%
Jun-08	1.70%	0.60%
Jul-08	1.61%	0.60%
Aug-08	1.52%	0.60%
Sep-08	1.52%	0.60%
Oct-08	1.56%	0.60%
Nov-08	5.83%	0.60%
Dec-08	3.50%	0.60%
Jan-09	3.15%	0.60%
Feb-09	0.54%	0.60%
Mar-09	0.58%	0.60%
Apr-09	0.52%	0.60%
May-09	0.30%	0.60%

Assume this is underlying reason for refunding? Incorrect, we are seeking financing due to FMPA's line of credit is not being renewed.

- Please provide ABT calculation with the proposed debt (ABT looks solely at senior debt and the FMPA debt will move from sub debt to senior debt). ABT calculations with the outstanding and proposed senior debt based upon 2008 net revenues available for debt service of \$16,043,786 and proposed senior lien debt service for 2009 of \$5,079,815 coverage would be 3.15X. Based upon anticipated senior lien maximum annual debt service of \$6,918,742 coverage would be 2.32%. Both coverage calculations are based upon an assumed interest rate of 3.75% for the 2009 refunding and new money certificates.
- Does the UC have any funds in frozen, illiquid or impaired assets? No. If so, what is the impact on liquidity?
- Have there been any material changes in cash and investments since the 2008 CAFR? None other than explained with the fuel and purchased power under recovery.

Please let us know if you have any questions or require assistance. Maureen Lynch (386) 424-3046  
[mlynch@ucnsb.org](mailto:mlynch@ucnsb.org)

**Acknowledgment of Receipt of Addenda No. 1**

Company \_\_\_\_\_  
Name & Title \_\_\_\_\_  
Signature \_\_\_\_\_

**EXHIBIT B**

BID TABULATION

1. Regions Bank: 5, 7 and 10 year maturity options, at rates to be set three days prior to closing. Indicative rates: 3.56% for 5 year term; 3.93% for 7 year term; 4.45% or 10 year term.

2 Bank of America: 11 year term; rate to be set in week prior to closing (or at option of borrower could be fixed prior subject to penalty if fail to close). Indicative rate: 3.95%.



**RICHARD T. WAGNER**  
President

**MEMORANDUM**

**TO:** Robert Rodi, General Manager  
**FROM:** Richard T. Wagner  
**RE:** \$20,250,000 Utilities Commission City of New Smyrna Beach, Florida Utilities System Revenue Certificates, Series 2009 ("Series 2009 Certificates")

**DATE:** June 8, 2009

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As Financial Advisor to the Utilities Commission (UC) we're pleased to report that two (2) competitive bids were received as a result of a bid request process from financial institutions to finance the \$20,250,000 Utilities System Revenue Certificate, Series 2009. The proceeds of the Certificates will be used to refinance the outstanding Series 1993 bonds; refund three variable rate loans of the Florida Municipal Power Agency; provide up to \$2.0 million for System capital improvements and pay costs associated with the Series 2009 Certificates.

The purpose of this letter, together with the attached Comparison of Bids, is to determine the best bid and offer a recommendation for Board approval.

Bids were received from Bank of America and Regions Bank. Based upon the attached Comparison of Bids and current market conditions, we recommend an award to **Bank of America**.

We would recommend that the Board approve the preceding recommendation at their meeting on June 15th by adopting a Resolution of Award prepared by Peter Dame (Akerman Senterfitt, Jacksonville), bond counsel to the UC. We will be in attendance at the meeting to discuss these results and our recommendation. In closing, we would like to extend our appreciation to Maureen Lynch and Laurie Klinkenberg for their valuable assistance in the bid process.

Thank you.

RTW/pas  
Attachment

cc: Laurie Klinkenberg  
Maureen Lynch  
Peter Dame

1075 West Morse Boulevard, Winter Park, FL 32789  
TELEPHONE 407.647.1000 FAX 407.647.5526 EMAIL: [rtwagner1@earthlink.net](mailto:rtwagner1@earthlink.net)

**Utilities Commission City of New Smyrna Beach, Florida  
Utilities System Revenue Certificates, Series 2009**

**Comparison of Bids**

	<b><u>Bank of America</u></b>	<b><u>Regions Bank</u></b>
<b>Amount of Loan (not to exceed)</b>	\$20,250,000	\$20,250,000
<b>Lender's Counsel Fees</b>	4,500	3,000
<b>Fixed Rate Quotes</b>		
<b>Variable:</b>	63.7% 7 year swap Rate + 1.80%,  Rate as of 6/4/09: <b>4.03%</b>	10 year term: 63.70% of 1 month Libor + 3.14% via a swap. Rate as of 6/4/09: <b>4.45%</b>
<b>Alternatives:</b>	None	5 year with a rate reset; as of 6/4/09: <b>3.56%</b>  7 years with a rate reset; Rate as of 6/4/09: <b>3.93 %</b>
<b>Prepayment</b>	Make whole	Make whole
<b>Depository Conditions</b>	None	Deposit relationship of \$4.5 million.

**EXHIBIT C**

**BANK OF AMERICA PROPOSAL**



*W. Bradley Ramirez  
Vice President  
Bank of America, N.A.  
Government Banking Group  
50 North Laura Street  
Jacksonville, FL 32202  
904-791-7412 phone  
904-312-5592 fax*

June 4, 2009 (with revisions as of June 5, 2009)

Ms Maureen Lynch  
Materials Manager  
Utilities Commission, City of New Smyrna Beach  
200 Canal Street  
New Smyrna Beach, Florida 32168

Re: RFP 09-09 Loan Commitment – Utilities Commission, City of New Smyrna Beach Utilities System Refunding and Revenue Certificates, Series 2009.

Dear Ms Lynch:

Bank of America, N.A. (the "Bank") is pleased to submit the attached Term Sheet describing the Bank's proposal to provide a term loan in an amount up to \$20,250,000 (the "Proposed Facility" or "Loan").

This information is for discussion purposes, only, and does not represent a commitment to lend by the Bank. The actual terms and conditions upon which the Bank may extend credit to Borrower is subject to further due diligence, necessary credit approval, etc and will have additional mutually agreed to details.

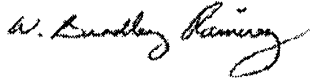
Should you find this proposal generally acceptable, please indicate your interest in proceeding by signing the Term Sheet where indicated and returning it to me by June 24, 2009. Upon receipt of the signed Term Sheet, the Bank will finalize all material terms for the Proposed Facility and discuss what additional information or due diligence, if any, the Bank would need prior to finalizing a commitment.

This letter and attached terms and conditions contain confidential and proprietary loan structuring and pricing information. Except for disclosure on a confidential basis to your financial advisor, accountants, attorneys and other professional advisors retained by you in connection with the Proposed Facility or as may be required by law, the contents may not be disclosed in whole or in part to any other person or entity without our prior written consent, provided that nothing herein shall restrict disclosure of information relating to the tax structure or tax treatment of the Proposed Facility.

The Bank appreciates the opportunity to present this proposal and hopes that the attached terms and conditions meet with your satisfaction. If you have any questions or comments, please feel free to call me at (904) 791-7412 or Kathy Sikes at (407) 420-2772.

Sincerely yours,

BANK OF AMERICA, N.A.



W. Bradley Ramirez  
Vice President  
Product Delivery Officer

cc:

Mr. Richard T. Wagner  
Southeastern Investment Securities, LLC  
1075 W. Morse Boulevard  
Winter Park, Florida 32789  
[rtwagner@earthlink.net](mailto:rtwagner@earthlink.net)

**UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH**  
**Utilities System Refunding and Revenue Certificates, Series 2009**  
**Summary of Terms and Conditions**

**June 4, 2009**

*(For Discussion Purposes Only)*

**Borrower:** Utilities Commission, City of New Smyrna Beach ("UCNSB")

**Lender:** Bank of America (the "Bank").

**Facility:** Fixed rate amortizing term loan (the "Loan")

**Amount:** Not to exceed \$20,250,000.

**Purpose of the Loan:** The Loan will be used to finance a portion of the design and construction cost of various capital improvements in an amount not to exceed \$2.0 million; refund on a current basis the UCNSB outstanding Series 1993 Bonds in the amount of \$2,530,000; refund on a current basis three outstanding loans with Florida Municipal Power Agency aggregating \$15,625,000 and pay expenses associated with the issuance of the Series 2009 Certificates.

**Funding Date:** Expected on or before August 30, 2009. Up to \$2 million may be drawn down in not more than two draws over a period of six months from the initial funding at closing.

**Repayment Terms:** Interest payable semi-annually on April 1 and October 1 of each year commencing October 1, 2009. Principal payments due annually on October 1, commencing October 1, 2010. Principal payments will be on the following amortization schedule:

<b>Year</b>	<b>Payment Date</b>	<b>Principal Payment</b>
1	Oct. 1, 2010	\$ 600,000.00
2	Oct. 1, 2011	\$ 650,000.00
3	Oct. 1, 2012	\$ 710,000.00
4	Oct. 1, 2013	\$ 790,000.00
5	Oct. 1, 2014	\$ 2,355,000.00
6	Oct. 1, 2015	\$ 2,140,000.00
7	Oct. 1, 2016	\$ 2,300,000.00
8	Oct. 1, 2017	\$ 2,400,000.00
9	Oct. 1, 2018	\$ 3,180,000.00
10	Oct. 1, 2019	\$ 3,325,000.00
11	Oct. 1, 2020	\$ 1,800,000.00
<b>Total</b>		<b>\$ 20,250,000.00</b>

**Maturity:** On or before October 1, 2020.

**Interest Rate:** Based on the interest rate environment as of June 1, 2009, the indicative fixed rate on the Loan would be 3.9467%. This quoted rate is merely indicative and may vary with time. It is equal to the sum of 63.7% of the most recent 7-year swap rate as published in Federal Reserve Statistical Release H.15 ([http://www.federalreserve.gov/Releases/H 15/Current](http://www.federalreserve.gov/Releases/H%2015/Current)) plus 1.80 percentage points. According to the most recently available Statistical Release dated June 1 and showing yields as of May 29, the 7-year swap rate is 3.37%. Therefore, the rate for the Loan would be calculated as follows:  $(3.37\% \times .637) + 1.80\% = 3.9467\%$ . This pricing formula is

valid only if the Loan is closed on or before August 31, 2009. After that date, the formula is subject to change at Bank's sole discretion.

Amounts not funded at the initial closing would bear interest at the rate determined pursuant to the above index, based on the draw date.

The actual interest rate may be set at any time of the UCNSB's choosing up to 24 hours prior to closing and would be based on the interest rate environment at that time. Once the rate is locked in, however, the UCNSB would be subject to a make-whole provision to compensate the Bank for break-funding expenses incurred in the event that the loan does not close as expected.

This pricing assumes the interest income to the Bank will be tax-exempt, bank-qualified and is based on a 30/360 date count.

**Prepayment:** Amounts outstanding may be prepaid at anytime. Depending on the prevailing interest rates at the time of prepayment the UCNSB may owe the Bank a prepayment fee. The determination of any prepayment fee shall be governed by the Bank's standard make whole language (attached as Exhibit "A").

**Security:** The Loan and the interest thereon will be payable from and secured solely by a senior lien upon and pledge of the Net Revenues. The senior lien will be on parity with all other senior lien revenue debt currently outstanding or issued in the future. No debt service reserve fund will be required and the Loan will not be secured by the debt service reserve established for the UCNSB's bonds.

**Reporting Requirements:** UCNSB to provide financial information and statements in form and content acceptable to the Bank:

- As soon as available, and in any event within 270 days of the UCNSB's fiscal year end, the UCNSB's consolidated and consolidating CPA audited annual financial statements including a balance sheet of the UCNSB as of the end of such Fiscal Year and the related statement of revenues, expenses and changes in net assets, and statement of cash flow for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP on a consistent basis, together with an unqualified audit report from an independent certified public accountant reasonably acceptable to the Bank. These financial statements shall be in sufficient detail to determine compliance with all applicable financial covenants. If at any time any change in GAAP would affect any requirement set forth in this Agreement, and either the UCNSB or the Bank shall so request, the UCNSB and the Bank shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP.
- Concurrent with delivery of the annual audited financial statements, a calculation for the fiscal year just ended of the financial covenants and proof of compliance.

**Financial Covenants:** Usual and customary for transactions of this type including, but not limited to, a Rate Covenant and Additional Bonds Test.

**Rate Covenant:** The UCNSB will fix, establish and maintain such rates and collect such fees, rentals, or other charges for the services and facilities of the utility system, and will revise the same from time to time whenever necessary, so as to provide revenues in each fiscal year sufficient to pay 100% of the cost of operations and maintenance net of depreciation, amortization and interest expense plus 25% of all parity debt service requirement coming due for such fiscal year, plus 100% of all required deposits pursuant to Resolution No. 28-78 as amended from time to time (the "Resolution"). The UCNSB further covenants and agrees that it will annually, within thirty (30) days after adoption of the annual budget, revise its rates, fees and charges, to the extent necessary, to comply with this Rate Covenant.

**Additional Bonds Test:** Additional parity debt payable from the pledged revenues may be issued by the UCNSB for the purposes of financing the construction and acquisition of additions, extensions and improvements to the utility system if Net Revenues are equal to the greater of 125% or the amount required by the Resolution. The Bank will consent to an amendment to the bond resolution to conform to the foregoing sentence; prior to the effectiveness of such amendment, the UCNSB shall comply with the additional bonds test as currently set forth in the Resolution.

**Other Covenants:** The documents will contain usual and customary affirmative and negative covenants, provisions and representations, including but not limited to default provisions and remedies.

**Bank Contacts:**

<b>Name:</b>	W. Bradley Ramirez	Kathryn Sikes
<b>Title:</b>	Vice President	Senior Vice President
	Product Delivery Officer	Client Manager
<b>Address:</b>	Bank of America	Bank of America
	50 North Laura Street, 24 <sup>th</sup> Floor Jacksonville, FL 32202	390 N Orange Ave. Orlando, FL 32801-1640
<b>Telephone:</b>	904-791-7412	407-420-2772
<b>Facsimile:</b>	904-791-5093	407-420-2819
<b>email:</b>	<a href="mailto:william_bradley.ramirez@bankofamerica.com">william_bradley.ramirez@bankofamerica.com</a>	<a href="mailto:kathryn.sikes@bankofamerica.com">kathryn.sikes@bankofamerica.com</a>

**Credit Approval Process:** Because the Bank has already done a substantial amount of due diligence, the remainder of the credit process should take no more than 15 business days from the point at which the Bank is officially awarded the transaction and has in its possession all materials necessary to complete a full credit analysis.

**Bank Qualification:** The Loan will be a qualified tax exempt obligation for purposes of Section 265(B)(3) of the IRS Code.

**Representations & Warranties:** Usual and customary including but not limited to: (i) due organization, valid existence and good standing (ii) due authorization/enforceability; (iii) correctness of specified financial statements and no material adverse change; (iv) binding effect and enforceability of loan documents; (v) no liens or encumbrances other than as disclosed to the Bank; (vi) compliance with environmental laws (other than non-material matters); (vii) no material litigation; (viii) tax-exempt status and (ix) incorporation of representations and warranties from existing bond documents by reference.

**Conditions Precedent to Closing:** Usual and customary for transactions of this type including, but not limited to:

- Documentation in form and substance satisfactory to the Bank including receipt of opinions of UCNSB's attorney and such other legal opinions as are deemed necessary by the Bank or are customary for a transaction of this type.
- No material adverse change in the financial condition, operations or prospects of the UCNSB or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the consummation of the transaction, as determined in the sole discretion of the Bank.
- Receipt of satisfactory financial information, budgets, projections, etc. as requested by the Bank.
- Receipt of statement as to compliance with covenants and of no Event of Default and any other event that, with the passage of time, the giving of notice, or both, would result in an Event of Default.
- Certified copies of relevant ordinances, resolutions, agreements, contracts, certificates, etc.

- Receipt of certificate of compliance with conditions precedent

**Events of Default:** Usual and customary in transactions of this type, to include without limitation: (i) nonpayment of principal, interest, fees or other amounts; (ii) violation of covenants; (iii) inaccuracy of representations and warranties; (iv) cross-default to other indebtedness; (v) bankruptcy and other insolvency events; (vi) creditor or forfeiture proceedings; (vii) actual or asserted invalidity of any loan documentation or security interests and (viii) change in ownership.

**Other Conditions / Recourse:** The documents will provide that upon the occurrence of an event of default the Bank may charge a default interest rate equal to the lesser of 12% per annum or maximum rate permitted by law, and may impose a late payment fee of 4% of any amount not paid within 15 days of the due date. In addition, the loan documents will include a waiver of jury trial provision. If the interest on the loan becomes subject to federal income taxation, the Bank's standard "gross-up" provision will apply, and among other things, the interest rate will increase to a rate equal to 154% of the otherwise applicable rate.

**Documentation:** The UCNSB's obligation to repay the Loan will be evidenced by a UCNSB resolution, promissory notes and other customary documentation prepared by Akerman Senterfitt as Bond Counsel. All closing documents will be subject to review by Bank Counsel to the Bank's satisfaction.

**Legal Opinion:** The Loan will be issued subject to the receipt of the approving opinion of Bond Counsel together with the customary closing certificates, provided at the UCNSB's expense, all in form and substance satisfactory to the Bank.

**Future Modification:** The terms and conditions of this Term Sheet are subject to revision in the event that (i) the Loan amount changes, (ii) the transaction deviates materially from what was initially described in conjunction therewith, (iii) the proposed financing does not close on or before August 30, 2009 (other than as a result of action/inaction by the Bank).

**Clear Market Provisions:** From the date of acceptance of this Summary of Preliminary Terms and Conditions and continuing until closing or termination, there shall be no competing offering of any debt securities or bank financing by or on behalf of the UCNSB.

**Governing Law:** The Loan shall be governed by and construed in accordance with the laws of the State of Florida (without regard to choice of law principles).

**Fees and Expenses:** The UCNSB will pay all reasonable costs and expenses incurred by the Bank associated with the preparation, due diligence, administration and enforcement of all documentation executed in connection with the Loan, including, without limitation, the legal fees of Bank counsel whether or not the Loan is closed. We estimate these costs will not exceed \$4,500.

**Non-Assignable / Reliance:** This Term Sheet may not be relied upon by or transferred to any third party for any purpose.

**Miscellaneous:** In the event The Bank is awarded the bid, we will work with you and Bond Counsel to document the Bank's non-collusion with other bidders, provision of a drug-free workplace and compliance with Florida statutes concerning Public Entities Crime.

**For Discussion Purposes Only: This Summary of Terms and Conditions does not constitute a commitment to lend by the Bank or any of its affiliates and is presented for discussion purposes only. In addition, it is intended as an outline of certain material terms and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation. The actual terms and conditions upon which the Bank might extend credit to the UCNSB is subject to satisfactory completion of due**

**diligence, necessary credit approval and such other terms and conditions as determined by the Bank.**

The UCNSB hereby agrees to engage Bank of America to provide the Loan, which is the subject hereof, pursuant to the terms and conditions stated herein.

**UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT A**  
**Prepayment Language – Tax Exempt**

The notes may be prepaid in whole, or in part, on any date, with three (3) days prior written notice to the Bank by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus the Prepayment Fee. For purposes hereof, the Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, as follows:

(i) The Bank will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under this Agreement.

(ii) The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment or redemption through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) for the Prepaid Installment is greater than zero, the Bank will discount the monthly differences to the date of prepayment or redemption by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to the calculation of the Prepayment Fee:

(i) "Original Payment Dates" mean the dates on which the prepaid or redeemed principal would have been paid if there had been no prepayment or redemption. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment or redemption, then the Original Payment Date for that amount will be the last day of the interest period.

(ii) "Prepaid Installment" means the amount of the prepaid or redeemed principal which would have been paid on a single Original Payment Date.

(iii) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: interest rate on the Note divided by the difference of (1 minus the Maximum Corporate Income Tax Rate). The "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to U.S. corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

(iv) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment which are principal payments calculated as of the date of prepayment in accordance with accepted financial practice and rounded to the nearest quarter-year, as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate.

**EXHIBIT D**

FORM OF LOAN AGREEMENT

**FORM OF LOAN AGREEMENT**

LOAN AGREEMENT

between

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA

and

\_\_\_\_\_

Dated July \_\_\_, 2009

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This LOAN AGREEMENT made and entered as of July \_\_\_\_, 2009, by and between the UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (the "Utilities Commission") and \_\_\_\_\_ (the "Lender").

WITNESSETH

WHEREAS, the Utilities Commission now owns, operates and maintains a water, wastewater and electric utility (the "System") of the City of New Smyrna Beach, Florida (the "City") and derives and will continue to derive revenues from rates, fees, rentals and other charges made and collected for the services of the System.

WHEREAS, the Utilities Commission has determined that it is necessary, desirable and in the best interests of the Utilities Commission and its inhabitants that the Utilities Commission refund the Refunded Obligations (as defined herein) and undertake the additions and improvements to the System (the "2009 Project") as hereinafter described), which 2009 Project serves essential public purposes of the Utilities Commission.

WHEREAS, the Utilities Commission has determined that it is without adequate currently available funds to refund the Refunded Obligations and to pay the costs of the 2009 Project and it is necessary that funds be made immediately available to the Utilities Commission in order to refund the Refunded Obligations and undertake the 2009 Project.

WHEREAS, the Utilities Commission requested proposals from various lending institutions to provide the Utilities Commission with the necessary financing for the 2009 Project and for the refunding of the Refunded Obligations.

WHEREAS, the proposal of the Lender was determined to be the lowest and best of the proposals submitted.

WHEREAS, pursuant to the Lender's proposal, the Lender has agreed to lend the Utilities Commission the aggregate principal amount not to exceed \$ \_\_\_,000,000 in return for the Series 2009 Certificates.

WHEREAS, pursuant to Resolution 28-78 (the "Original Resolution") adopted by the Utilities Commission on June 30, 1978, the Utilities Commission has previously issued its Utility System Refunding Revenue Certificates, Series 2002, Utility System Refunding Revenue Certificates, Series 2004A and Utility System Revenue Certificates, Series 2007 (collectively, the "Outstanding Parity Bonds"), of which approximately \$ \_\_\_\_\_ aggregate principal amount is currently outstanding.

WHEREAS, after the Refunding and upon the release of the pledge of and lien upon the Net Revenues to pay the debt service on the Refunded Obligations, the Net Revenues pledged to the payment of the principal of and interest on the Series 2009 Certificates will be sufficient to pay the principal of and interest on all of the Series 2009 Certificates and the Outstanding Parity Certificates and to make all reserve fund and other payments provided for in this resolution and the Original Resolution.

WHEREAS, the Original Resolution provides for the issuance of Additional Parity Obligations under the terms, limitations and conditions provided therein and the Utilities Commission will comply with the terms, limitations and conditions contained in the Original Resolution on or prior to the date of delivery of the Series 2009 Certificates, and is, therefore, legally entitled to issue the Series 2009 Certificates as an Additional Parity Obligation under the Original Resolution.

WHEREAS, the Series 2009 Certificates shall not constitute a general obligation or indebtedness of the Utilities Commission as a "bond" within the meaning of any provision of the Constitution of the State, but shall be the special, limited obligations of the Utilities Commission and the City, the principal of and interest on which are payable solely from the Pledged Funds in the manner provided herein, and the principal of and interest on the Series 2009 Certificates and all other payments provided for herein will be paid solely from the Pledged Funds, and it will never be necessary or authorized to levy taxes on any real property of the Utilities Commission or the City or in the City to pay the principal of or interest on the Series 2009 Certificates or other payments provided for herein. Furthermore, neither the Series 2009 Certificates nor the interest thereon, shall be or constitute a lien upon the 2009 Project or upon any other property of the Utilities Commission or the City or in the City other than the Pledged Funds in the manner provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties do hereby agree as follows:

SECTION 1. DEFINITIONS. Terms not otherwise defined in this Section shall have the meanings specified in the Original Resolution. The following terms shall have the following meanings herein, unless the context otherwise expressly requires:

"Advance" means disbursement to the Utilities Commission of all or a portion of the Authorized Amount pursuant to a Requisition.

"Authorized Amount" means an aggregate amount not to exceed \_\_\_ Million Dollars and No Cents (\$\_\_\_,000,000).

"Business Day" means any day of the year on which banks in any of the cities in which the principal office of the Lender or of the designated office of any Paying Agent are located are not required or authorized by law to remain closed and on which the Lender and any Paying Agent and the New York Stock Exchange, Inc. are open for business.

"Commission" means the governing body of the Utilities Commission.

"FMPA Pooled Loan Program Loans" shall mean the loans made in 2000 by Florida Municipal Power Agency to the Utilities Commission under its Initial Pooled Loan Project Commercial Paper Notes, Series A, currently outstanding in the aggregate principal amount of \$15,625,000.

"Lender" means \_\_\_\_\_, which is making the loan to the Utilities Commission pursuant to the terms of this Agreement.

“Loan” shall mean the loan made to the Utilities Commission pursuant to Section 3(A) below.

“Maturity Date” means the date which the principal and interest on Series 2009 Certificates, or any portion thereof, shall be payable.

“Original Resolution” shall mean Resolution 28-78, duly adopted by the Utilities Commission on June 30, 1978, as amended and supplemented from time to time.

“Outstanding Parity Certificates” shall mean the Utilities Commission’s outstanding Series 1993, Utility System Refunding Revenue Certificates, Series 2002, Utility System Refunding Revenue Certificates, Series 2004A and Utility System Revenue Certificates, Series 2007 currently outstanding in the aggregate principal amount of \$\_\_\_.

“Paying Agent” means the Secretary Treasurer of the Utilities Commission.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Pledged Funds” shall means (a) the Net Revenues as defined in the Original Resolution plus (b) the moneys and investment income therefrom held in the Project Account created hereby.

“Principal Amount” means an aggregate amount of \$\_\_\_,000,000.

“Refunded Obligations” means, collectively, the FMPA Pooled Loan Program Loans and the Utilities Commission’s outstanding certificates under the Original Resolution as evidenced by the Utilities Commission’s Utility System Refunding Revenue Certificates, currently outstanding in the aggregate principal amount of \$2,530,000.

“Refunding” shall mean the program for refinancing a portion of the outstanding certificates of the Utility Commission through the issuance of the Series 2009 Certificates and the application of a portion of the proceeds thereof to pay the principal of, premium, if any, and interest on the Refunded Obligations.

“Register” means the books maintained by the Registrar in which are recorded the names, and addresses of the holder of the Series 2009 Certificates.

“Registrar” means the Person maintaining the Register. The Registrar shall be the Secretary Treasurer.

“Regulations” means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 in effect from time to time.

“Requisition” means an order to the Lender to fund an Advance, in substantially the form of Exhibit B attached hereto.

“Resolution” means, collectively, the Original Resolution, the Series Resolution and all resolutions amendatory hereof or supplemental hereto.

“Series Resolution” means Resolution \_\_-09, duly adopted by the Utilities Commission on June \_\_, 2009, as amended and supplemented from time to time.

“Series 2009 Certificates” means one or more promissory notes of the Utilities Commission to the Lender in substantially the form attached hereto as Exhibit A with such modifications thereto as may be approved by the Chairman, upon the advice of the Utilities Commission Attorney and Bond Counsel, such approval to be presumed by the Chairman’s execution thereof.

“State” means the State of Florida.

“2009 Project” means the acquisition and construction of acquisition and construction of capital improvements to the City's utility system.

Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

## SECTION 2. APPLICATION OF PROVISIONS OF THE ORIGINAL RESOLUTION.

The Series 2009 Certificates shall for all purposes be considered to be Additional Parity Obligations issued under the authority of the Original Resolution and shall be entitled to all the protection and security provided therein for Certificates issued thereunder, and shall be in all respects entitled to the same security, rights and privileges enjoyed by the Outstanding Parity Certificates.

The Series 2009 Certificates shall not be or constitute general obligations or an indebtedness of the Utilities Commission or the City as “bonds” within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of (i) the Net Revenues, on a parity with the lien upon and a pledge thereof in favor of the Registered Owners of the Outstanding Parity Certificates and (ii) the moneys and investment income therefrom held in the Project Account created hereby, all as provided in the Resolution and this Agreement. No Registered Owner of any of the Series 2009 Certificates shall ever have the right to compel the exercise of the ad valorem taxing power of the Utilities Commission or taxation in any form of any property of or in the Utilities Commission, other than the Pledged Funds in the manner provided in this Resolution, or any property of or located within the boundaries of the City for payment of the Series 2009 Certificates or for the making of any payments under this Resolution.

The covenants and pledges contained in the Original Resolution shall be applicable to the Series 2009 Certificates herein authorized in like manner as applicable to the Outstanding Parity Certificates, and the Series 2009 Certificates herein authorized shall be in all respects entitled to the same security, rights and privileges enjoyed by such Outstanding Parity Certificates under the

Original Resolution. The Utilities Commission shall comply with the covenants contained in the Original Resolution at all times while the Series 2009 Certificates shall be outstanding.

Notwithstanding the foregoing, the Series 2009 Certificates shall not be secured by amounts in the Reserve Account established under the Original Resolution and shall have no right or claim to payments from amounts therein. No deposits to such Reserve Account shall be made with respect to the debt service on the Series 2009 Certificates.

### SECTION 3. THE LOAN.

A. Loan. The Lender hereby makes and the Utilities Commission hereby accepts the Loan in the principal amount of \$\_\_\_\_,000,000 upon the terms and conditions herein. The Loan shall be evidenced by the Series 2009 Certificates[, which shall consist of a Series 2009A Certificate in the principal amount of \$\_\_\_\_\_ and a Series 2009B Certificate in the principal amount of \$\_\_\_\_\_.]

B. Disbursement of Proceeds. On the terms and subject to the conditions of this Agreement, the Lender shall make Advances to the Utilities Commission, in an aggregate principal amount not to exceed the Authorized Amount. The proceeds of the 2009A Certificate shall be advanced to the Utilities Commission of the date hereof. The proceeds of the 2009B Certificate shall be advanced to the Utilities Commission from time to time upon requisition as described below. Amounts repaid hereunder may not be re-borrowed hereunder. No Advance shall be made after \_\_\_\_\_. Advances shall be limited to three per month, unless a greater number is approved by the Lender.

C. Manner of Borrowing. The Utilities Commission shall notify the Lender of the need for the Advance not later than 11:00 a.m. on the date prior to the Advance by delivering to the Lender a Requisition executed on behalf of the Utilities Commission by the Director of Finance of the Utilities Commission or his/her designee in the form attached hereto as Exhibit B. Such Requisition shall specify the amount and date of the Advance.

D. Disbursement of Advance. Subject to the conditions of this Agreement, the Advance shall be made available to the Utilities Commission by transferring the amount thereof on the date of borrowing to the account of the Utilities Commission designated in the Requisition in immediately available funds by the close of business on such date, provided the Lender shall advise the Utilities Commission of the initiation of such transfer by 11:00 a.m. on such date.

E. Bank Records. The date and amount of the Advance, and all payments made on account thereof, shall be recorded by the Lender on its books, which books shall be conclusive as to amounts payable by the Utilities Commission hereunder, absent error on the part of the Lender.

SECTION 4. TERMS OF LOAN. The Loan shall be evidenced by the Series 2009 Certificates. The Series 2009 Certificates shall be dated as of the date of initial delivery thereof; shall mature on \_\_\_\_ 1, 20\_\_; and shall be in registered form. Principal of the Series 2009 Certificates shall be payable as set forth in the form of the Series 2009 Certificates attached hereto as Exhibit A. The Series 2009 Certificates shall bear interest on the amount of each Advance from the date of such Advance until payment of the principal amount thereof, at the

interest rate as shown on Exhibit A hereto. Interest shall be payable as set forth on Exhibit A, calculated on a 30-day month, 360-day year basis.

The Series 2009 Certificates may be prepaid prior to maturity as set forth in the form of the Series 2009 Certificates.

SECTION 5. REGISTRATION AND TRANSFER. The Series 2009 Certificates shall not be subject to a book-entry system of registration and transfer and such transfer and registration of the Series 2009 Certificates shall be governed by the provision of this Section. The Series 2009 Certificates shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and the registered owner, in accepting the Series 2009 Certificates, shall be conclusively deemed to have agreed that such Series 2009 Certificates shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar who shall be responsible for maintaining the Register. The person in whose name ownership of any Series 2009 Certificates is shown on the Register shall be deemed the owner thereof by the Utilities Commission and the Registrar, and any notice to the contrary shall not be binding upon the Utilities Commission or the Registrar. The Utilities Commission and the Registrar may treat the registered owner as the absolute owner of the Series 2009 Certificates for all purposes, whether or not such Series 2009 Certificates shall be overdue, and shall not be bound by any notice to the contrary.

Ownership of Series 2009 Certificates may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of any Series 2009 Certificates accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the registered owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the registered owner or the transferee or transferees, as the case may be, a new fully registered Series 2009 Certificates of authorized denominations and of the same maturity and interest rate and for the aggregate principal amount as the Series 2009 Certificates surrendered.

The Series 2009 Certificates presented for transfer, exchange, redemption or payment (if so required by the Utilities Commission or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Utilities Commission or the Registrar, duly executed by the registered owner or by his duly authorized attorney.

The Utilities Commission and the Registrar may charge the registered owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2009 Certificates. The Registrar or the Utilities Commission may also require payment from the registered owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2009 Certificates shall be delivered.

The new Series 2009 Certificates delivered upon any transfer or exchange shall be a valid obligation of the Utilities Commission, evidencing the same debt as the Series 2009 Certificates

surrendered, shall be secured under this Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2009 Certificates surrendered.

Whenever any Series 2009 Certificates shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2009 Certificates shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Utilities Commission.

SECTION 6. FORM OF OBLIGATIONS. The Series 2009 Certificates shall be in substantially the form of Exhibit A hereto with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by the Resolution and this Agreement.

SECTION 7. SECURITY; NOT CONSTITUTIONAL DEBT. The payment of the principal of and interest on the Series 2009 Certificates shall be secured forthwith by a lien upon and a pledge of the Pledged Funds in the manner provided in the Original Resolution and herein. The Utilities Commission does hereby irrevocably pledge the Pledged Funds to the payment of the principal of and interest on the Series 2009 Certificates.

SECTION 8. ADDITIONAL COVENANTS. So long as any of the principal of or interest on the Series 2009 Certificates shall be outstanding and unpaid or until provision for payment of the Series 2009 Certificates shall have been made pursuant to Section 21 hereof, the Utilities Commission covenants with the Lender as follows:

(A) Tax Compliance. The Utilities Commission will take all actions necessary to maintain the exclusion from gross income of interest on the Series 2009 Certificates to the same extent as such existed on the date of issuance of the Series 2009 Certificates.

(B) Financial Statements. Not later than 210 days following the end of each fiscal year, the Utilities Commission shall provide the Lender the annual audited financial statement of the Utilities Commission audited by the Utilities Commission's certified public accountant's together with the report of such accountant containing only such qualifications as are reasonably acceptable to the Lender.

(C) Annual Budget and Other Information. The Utilities Commission shall prepare its annual budget in accordance with Florida law, and shall provide the Lender a copy of its final annual budget for each fiscal year within 30 days of adoption thereof by the Commission and approved by the City and shall provide the Lender such other public information the Lender may reasonably request.

(D) Deposits for Debt Service on the Series 2009 Certificates. The Utilities Commission shall deposit into the Sinking Fund substantially equal monthly deposits sufficient to provide for payment of the principal and interest on the Series 2009 Certificates when due.

(E) Other Covenants. The covenants and pledges contained in the Original Resolution shall be applicable to the Series 2009 Certificates in like manner as applicable to the Outstanding Parity Certificates, and the Series 2009 Certificates shall be in all respects entitled to the same security, rights and privileges enjoyed by such Outstanding Parity Certificates under the

Original Resolution. The Utilities Commission shall comply with the covenants contained in the Original Resolution at all times while the Series 2009 Certificates shall be outstanding.

SECTION 9. APPLICATION OF PROCEEDS. The proceeds of the Series 2009 Certificates shall be applied as provided below:

(A) The proceeds of the Series 2009 Certificates shall first be applied by the Utilities Commission to pay the costs of preparation and issuance of the Series 2009 Certificates.

(B) \$\_\_\_\_ of the proceeds shall be paid to the paying agent for the Refunded Obligations. Such amount shall be applied, together with any amounts previously held in the bond fund established under the Original Resolution relating to the Refunded Obligations, to pay the principal, premium if any and interest on the Refunded Obligations on the date of delivery of the Series 2009 Certificates.

(C) There is hereby created a fund of the Utilities Commission designated the "Series 2009 Certificates Project Account". \$\_\_\_\_ of the proceeds shall be deposited in the Series 2009 Project Account and used by the Utilities Commission to pay the cost of the 2009 Project. Pending their use, the proceeds in the Project Account may be invested in Authorized Investments, maturing not later than the date or dates on which such proceeds will be needed for the payment of the cost of the 2009 Project. Any income received upon such investment shall be deposited in the Project Account and applied to costs of the 2009 Project or, at the option of the Utilities Commission, deposited in the Sinking Fund and used to pay interest on the Series 2009 Certificates until completion of the 2009 Project. After the completion of the 2009 Project, any remaining balance of proceeds of the Series 2009 Certificates shall, at the option of the Utilities Commission be deposited into the Sinking Fund and used solely to pay interest on the Series 2009 Certificates or be used for other capital costs of the System.

The Project Account shall be kept separate and apart from all other funds of the Utilities Commission and the moneys on deposit therein shall be withdrawn, used and applied by the Utilities Commission solely for the purposes set forth herein. Pending such application, the Project Account shall be subject to the lien of the Owners of the Series 2009 Certificates for the payment of the principal of and interest on the Series 2009 Certificates.

The Lender shall have no responsibility for the use of the proceeds of the Series 2009 Certificates, and the use of Series 2009 Certificates proceeds by the Utilities Commission shall in no way affect the rights of the Lender.

SECTION 10. CONDITIONS PRECEDENT. The obligation of the Lender to make the Loan and each Advance thereof is subject to the satisfaction of the following condition precedent on or before date of closing or the Advance, as applicable:

(i) No Default, Etc. No Default shall have occurred and be continuing as of the closing date or will result from the execution and delivery of the Agreement or the issuance of the Note; the representations and warranties made by the Utilities Commission shall be true and correct in all material respects on and as of the closing date, as if made on and as of such date; and the Lender shall have received a certificate from the Utilities Commission to the foregoing effect.

(ii) Other Documents. The Lender shall have received a completed Requisition.

SECTION 11. REPRESENTATIONS AND WARRANTIES. The Utilities Commission represents and warrants to the Lender that:

A. Organization. The City is a municipal corporation of the State of Florida and the Utility Commission is an independent agency of the City.

B. Authorization of Agreement and Related Documents. The Utilities Commission has the power and has taken all necessary action to authorize the execution, delivery and performance of the Utilities Commission's obligations under this Agreement and each of the financing documents to which it is a party in accordance with their respective terms. This Agreement has been duly executed and delivered by the Utilities Commission and is, and each of the financing documents to which it is a party when executed and delivered will be, legal, valid and binding obligations of the Utilities Commission enforceable against the Utilities Commission in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization or moratorium applicable to the Utilities Commission and general equitable principles regarding the availability of specific performance.

C. Net Revenues. The Utilities Commission currently receives the Net Revenues and is legally entitled to pledge sufficient amounts to pay the principal of and interest on the Series 2009 Certificates, when due. The Net Revenues are estimated to be sufficient to pay the principal of and interest on the Series 2009 Certificates as the same becomes due and to make all other payments required to be made under the Resolution and this Agreement. The Net Revenues are not now pledged or encumbered in any manner except to the payment of the Outstanding Parity Certificates in the manner provided in the Original Resolution.

D. Financial Statements. The financial statements of the Utilities Commission for the year ended September 30, 2008, copies of which have been furnished to the Lender, have been prepared in accordance with generally accepted accounting principles and present fairly the financial condition of the Utilities Commission as of such date and the results of its operations for the period then ended. Since such date, there has been no material adverse change in the financial condition, revenues (including, without limitation, the Net Revenues), properties or operations of the Utilities Commission.

SECTION 12. TAX COMPLIANCE. Neither the Utilities Commission, the City, nor any third party over whom the Utilities Commission or the City have control, will make any use of the proceeds of the Series 2009 Certificates or the Net Revenues at any time during the term thereof which would cause the Series 2009 Certificates to be "private activity bonds" within the meaning of Section 103(b)(1) of the Code or "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code. The Utilities Commission covenants throughout the term of the Series 2009 Certificates to comply with the requirements of the Code and the Regulations, as amended from time to time. The Utilities Commission has caused the Series 2009 Certificates to be deemed a "qualified tax exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

In the event that the interest on the Series 2009 Certificates is ever determined to be taxable for purposes of federal or state income taxation, or in the event that any or all of the

interest on the Series 2009 Certificates is deemed to be included in the gross income of the Lender for federal or state income taxation, or in the event the Lender is unable to deduct any other amounts as a result of purchasing or carrying the Series 2009 Certificates, or in the event of a change in the alternative minimum tax or in the method of calculating the alternative maximum tax to which the Lender may be subject, or in the event of any action which would otherwise decrease the after tax yield to the Lender, the interest on the Series 2009 Certificates shall be subject to a full gross up modification. In no event, however, shall the interest rate on the Series 2009 Certificates exceed the maximum rate permitted by law.

SECTION 13. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Utilities Commission:           Utilities Commission, City of New Smyrna Beach, Florida  
  200 Canal Street  
  New Smyrna, Florida 32170  
  ATTENTION: Director of Finance

Lender:                           \_\_\_\_\_

  \_\_\_\_\_

  \_\_\_\_\_, \_\_\_\_\_

  ATTENTION: \_\_\_\_\_

Bond Counsel:                 Akerman Senterfitt  
  50 North Laura Street, Suite 2500  
  Jacksonville, Florida 32202

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication to the Lender via telecopier shall be confirmed by delivery of a hard copy thereof to the Lender not later than two (2) Business Days after such communication by telecopier. Notices to the Paying Agent shall be effective only upon the receipt thereof by the Paying Agent.

SECTION 14. REMEDIES. The Lender may sue to protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, of the United States of America, or granted and contained in this Agreement, and to enforce and compel the performance of all duties required by the Resolution or this Agreement or by any applicable laws to be performed by the Utilities Commission or by any officer thereof, and may take all steps to enforce this Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America. However, in no event shall the principal or interest on the Series 2009 Certificates be subject to acceleration.

SECTION 15. NO RECOURSE. No recourse shall be had for the payment of the principal of and interest on the Series 2009 Certificates or for any claim based on the Series 2009 Certificates or on this Agreement, against any present or former member, officer or employee of the Utilities Commission or any person executing the Series 2009 Certificates.

SECTION 16. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS. In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement and no interest on any monetary obligation hereunder shall accrue after the stated due date.

SECTION 17. DEFEASANCE. If, at any time, the Utilities Commission shall have paid, or shall have made provision for payment of, the principal and interest with respect to the Series 2009 Certificates and all costs and expenses of the Lender payable under this Agreement, then, and in that event, the pledge of and lien on the Pledged Funds in favor of the Lender shall be no longer in effect and the Utilities Commission shall have no further obligation to comply with the covenants contained in Section 8 hereof, other than the covenant contained in paragraph (A) of Section 8. For purposes of the preceding sentence, deposit of Federal Securities in irrevocable trust with a banking institution or trust company, for the sole benefit of the Series 2009 Certificates, with respect to which Federal Securities the principal of and interest will be sufficient to make timely payment of the principal and interest on the Series 2009 Certificates, shall be considered "provision for payment."

SECTION 18. AMENDMENTS, CHANGES AND MODIFICATIONS. This Agreement may be amended by the Utilities Commission, with the prior written consent of the Lender.

SECTION 19. BINDING EFFECT. To the extent provided herein, this Agreement shall be binding upon the Utilities Commission and the Lender and shall inure to the benefit of the Utilities Commission and the Lender and their respective successors and assigns.

SECTION 20. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 21. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 22. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

UTILITIES COMMISSION, CITY OF  
NEW SMYRNA BEACH, FLORIDA

(SEAL)

ATTEST:

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

By: \_\_\_\_\_  
Secretary Treasurer

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Utilities Commission Attorney

\_\_\_\_\_  
as Lender

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

EXHIBIT A

FORM OF SERIES 2009 CERTIFICATES

NO. R-1

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA  
UTILITIES SYSTEM REVENUE CERTIFICATE, SERIES 2009

<u>RATE OF INTEREST</u>	<u>MATURITY DATE</u>	<u>DATE OF ISSUE</u>
	_____ 1, 20__	July ___, 2009

REGISTERED OWNER: \_\_\_\_\_,

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION DOLLARS AND NO CENTS

KNOW ALL MEN BY THESE PRESENTS, that the Utilities Commission, City of New Smyrna Beach, Florida (the "Utilities Commission"), for value received, hereby promises to pay to the Registered Owner so much of the Principal Amount hereof as shall have been advanced hereunder, plus interest on the amount of each Advance hereunder from the date of the Advance to the date of payment thereof, at the annual Rate of Interest set forth herein, such interest to be calculated on a 360-day year consisting of twelve 30-day months and payable on the first day of October and April of each year, commencing October 1, 20\_\_.

This Certificate shall initially bear interest at a fluctuating rate of interest equal \_\_\_\_\_. The Rate of Interest on this Certificate is subject to adjustment as set forth on Schedule A hereto and may be converted to a fixed rate as provided herein.

At the option of the Utilities Commission, the rate of interest on this Certificate, or such portion thereof as shall be designated by the Utilities Commission, may be converted on the first day of any month to bear interest at the Fixed Rate (as defined below). The Utilities Commission shall notify the Lender in writing of its exercise of the option to convert to the Fixed Rate not less than seven days prior to the effective date of such conversion. "Fixed Rate" shall mean a fixed rate of interest equal to the rate calculated by subtracting \_\_\_ basis points (\_\_\_\_%) from \_\_\_\_\_ as quoted in \_\_\_\_\_ two Business Days prior to the date of conversion to the Fixed Rate.

The aggregate amount of principal outstanding and unpaid as of December 31, 20\_\_, shall be due and payable in \_\_\_ annual principal payments, together with interest thereon, due January 1, 20\_\_ and on the first day of January thereafter to and including January 1, 20\_\_, such principal installments to be determined so as to produce substantially level annual debt service based upon an interest rate of \_\_\_% (or, if the rate of interest has been converted to a Fixed Rate,

based upon the Fixed Rate in effect). The Registered Owner hereof shall provide to the Utilities Commission an amortization schedule which, absent manifest error, shall be conclusive to establish payments of principal and interest hereon.

This Certificate may be prepaid in whole or in part prior to maturity on any date without penalty. Notice of such prepayment shall be delivered to the Registered Owner at least 2 days prior to the date for prepayment date. If this Certificate is pre-paid in part, then prior to the transfer of this Certificate the Registered Owner shall record the appropriate information in a Partial Redemption Record to be attached to this Certificate, and indicate receipt of such partial redemption by its signature on such Record.

The principal of and interest on this Certificate are payable in lawful money of the United States of America.

This Series 2009 Certificates is issued under the authority of Chapter 85-503, Laws of Florida, the Charter of the Utilities Commission, and other applicable provisions of law, and pursuant and subject to the terms and conditions of Resolution 28-78 duly adopted by the Utilities Commission on June 30, 1978 (the "Resolution"), as supplemented by Resolution \_\_-09 adopted by the Utilities Commission on June \_\_, 2009 and a Loan Agreement, dated July \_\_, 2009, between the Utilities Commission and the initial purchaser of the Series 2009 Certificates (the "Agreement"), to which reference should be made to ascertain those terms and conditions.

The Series 2009 Certificates and the interest thereon are payable solely from and secured by a lien upon and pledge of the Net Revenues of the Utilities Commission's water, wastewater and electric utility system and certain amounts in the funds and accounts maintained under the Resolution (hereinafter called the "Pledged Funds"), all in the manner provided in the Resolution.

This Series 2009 Certificates shall not constitute a general obligation or indebtedness of the Utilities Commission, and the Lender shall never have the right to require or compel the levy of taxes on any property of or in the City or the Utilities Commission for the payment of the principal of and interest on this Series 2009 Certificates. This Series 2009 Certificates shall not constitute a lien upon the 2009 Project, or upon any property of or in the City or the Utilities Commission, but shall be payable solely from the Pledged Funds in the manner provided in the Resolution and the Agreement. Reference is made to the Resolution and the Agreement for the provisions relating to the security for payment of this Series 2009 Certificates and the duties and obligations of the Utilities Commission hereunder.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to happen, exist and be performed precedent to and in the issuance of this Series 2009 Certificates, have happened, exist and have been performed in regular and due form and time as so required.

IN WITNESS WHEREOF, the Utilities Commission, City of New Smyrna Beach, Florida, has caused this Series 2009 Certificates to be executed by the Chairman, and attested by the Secretary Treasurer, either manually or with their facsimile signatures, and its seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon, and this Series 2009 Certificates to be dated as of July \_\_, 2009.

UTILITIES COMMISSION, CITY OF  
NEW SMYRNA BEACH, FLORIDA

(SEAL)

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

ATTEST:

By: \_\_\_\_\_  
Secretary Treasurer

SCHEDULE A

ADJUSTMENT TO INTEREST RATE

The interest rate on this Series 2009 Certificates shall be subject to adjustment in the event of a change in certain tax laws and regulations as set forth below:

[Insert bank language if required].

EXHIBIT B

FORM OF REQUISITION

REQUISITION NO.: \_\_\_\_\_

DATE OF ADVANCE: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

TO: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

You are hereby authorized and directed, pursuant to the provisions of the Loan Agreement, dated as of July \_\_, 2009 between the Utilities Commission, City of New Smyrna Beach, Florida (the "Utilities Commission") and \_\_\_\_\_ and the Utilities System Revenue Certificates, Series 2009, dated \_\_\_\_\_, issued by the Utilities Commission (the "Series 2009 Certificates"), to advance the above-referenced Principal Amount, which advance shall be recorded on books and records of the Lender, and thereby become a portion of the principal due and owing under said Series 2009 Certificates. By this requisition, you are hereby authorized and empowered to deposit into the account of the Utilities Commission specified below the amount hereof without any further action on the part of the Utilities Commission.

No Event of Default described in such Loan Agreement has occurred and is continuing.

Utilities Commission, City of New Smyrna Beach,  
Florida

By: \_\_\_\_\_  
Director of Finance

Utilities Commission Account or Payee Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT E**

**COSTS**

<b>Role</b>	<b>Entity</b>	<b>Amount</b>
Bond Counsel	Akerman Senterfitt	\$14,000.00
Bond Counsel expenses	Akerman Senterfitt	500.00
Financial Advisor	SIS, LLC.	38,500.00
Financial Advisor expenses	SIS, LLC.	250.00
Utilities Commission Counsel		Per contract
Lender's costs and Counsel		4,500.00
Total		