

RESOLUTION NO. 2010-09

A RESOLUTION OF THE CITY OF ST. PETE BEACH, FLORIDA; AUTHORIZING THE ISSUANCE OF A STORMWATER SYSTEM REVENUE NOTE, SERIES 2010, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$20,000 TO FUND THE ACQUISITION OF CERTAIN CAPITAL EQUIPMENT OF THE CITY; PROVIDING THAT THE SERIES 2010 NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM CERTAIN STORMWATER SERVICE ASSESSMENTS AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS AND REMEDIES FOR THE OWNER OF THE SERIES 2010 NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA, AS FOLLOWS:

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the City of St. Pete Beach, Florida, and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** The following words and phrases shall have the following meanings when used herein:

"Act" means Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Issuer, and other applicable provisions of law.

"Additional Notes" means additional obligations issued in compliance with the terms, conditions and limitations contained in Section 12 hereof which will have an equal

lien on the Net Revenues, to the extent herein provided and rank equally in all other respects with the Series 2010 Note and other Additional Notes issued hereunder.

"**Business Day**" means any day except any Saturday or Sunday or day on which the Principal Office of the Original Purchaser is closed.

"**City Attorney**" shall mean the City Attorney or any assistant City Attorney of the Issuer.

"**City Manager**" shall mean the City Manager or assistant, deputy, interim or acting City Manager of the Issuer.

"**Clerk**" shall mean the City Clerk or assistant or deputy City Clerk of the Issuer, or such other person as may be duly authorized by the City Commission of the Issuer to act on his or her behalf.

"**Code**" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"**Issuer**" means the City of St. Pete Beach, Florida, a municipal corporation of the State of Florida.

"**Mayor**" means the Mayor of the Issuer or in his or her absence or inability to act, the Vice Mayor of the Issuer or such other person as may be duly authorized by the City Commission to act on his or her behalf.

"**Net Revenues**" shall mean all Stormwater Service Assessments (i.e., non-ad valorem assessments) collected by the Issuer pursuant to Ordinance No. 2009-30, less the then current expenses, paid or accrued, in the operation, maintenance and repair of the Stormwater System or System, as calculated in accordance with generally accepted accounting principles.

"**Series 2010 Note**" means the Stormwater System Revenue Note, Series 2010 of the Issuer authorized by Section 4 hereof.

"**Owner**" means the Person in whose name a Series 2010 Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

"**Person**" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"**Project**" shall mean any actual, proposed or potential acquisition, addition, extension, supplement, or replacement of the System, including specifically capital improvements or equipment of any nature, or joint ownership of similar property or any interest therein or any right to use the capacity from any facilities or services thereof, or any other lawful purpose related to the System, all as determined by the Issuer and in accordance with plans and specifications on file or to be filed with the Issuer.

"**Project Fund**" shall mean the Project Fund established with respect to the Series 2010 Note herein.

"**Resolution**" means this Resolution, pursuant to which the Series 2010 Note is authorized to be issued, including any supplemental resolution(s).

"**Series 2010 Note**" shall mean the Issuer's Stormwater System Revenue Note, Series 2010, the net proceeds of which will be used to finance the Series 2010 Project.

"**Series 2010 Project**" shall mean the acquisition of certain capital equipment for geographic information uses and purposes to be employed in planning and developing the Issuer's stormwater management program and the analysis of the array of relationships among all property and tax parcels within the City relative to stormwater runoff characteristics, improvements located thereon, or other measures connected to stormwater requirements, and to evaluate both fixed and variable program costs in the future.

"**State**" means the State of Florida.

### **SECTION 3. FINDINGS.**

(A) For the benefit of its inhabitants, the Issuer finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to acquire the Series 2010 Project. Issuance of the Series 2010 Note to finance the Series 2010 Project satisfies a paramount public purpose.

(B) Debt service on the Series 2010 Note will be payable from a pledge of the Net Revenues as provided herein. The Net Revenues will be sufficient to pay the principal and interest on the Series 2010 Note herein authorized, as the same become due, and to make all deposits required by this Resolution.

(C) In consideration of the purchase and acceptance of the Series 2010 Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Owner.

(D) The Issuer does hereby authorize the acquisition of the Series 2010 Project.

**SECTION 4. AUTHORIZATION OF SERIES 2010 NOTE.** Subject and pursuant to the provisions of this Resolution, obligations of the Issuer to be known as City of St. Pete Beach, Florida, Stormwater System Revenue Note, Series 2010 (the "Series 2010 Note") is hereby authorized to be issued under and secured by the Net Revenues pursuant to this Resolution, in the principal amount of not to exceed \$20,000 for the purpose of providing funds to pay the costs of the Series 2010 Project and paying the costs of issuing the Series 2010 Note.

**SECTION 5. DESCRIPTION OF SERIES 2010 NOTE.** The Series 2010 Note shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the original purchaser. Notes may, if and when authorized by the Issuer pursuant to this Resolution and any Supplemental Resolution, be issued in one or more Series, with such further appropriate particular designations added to or incorporated in such title for the Note of any particular Series as the Issuer may determine. The Series 2010 Notes and any Additional Notes shall bear interest at such rate or rates not exceeding the maximum rate permitted by law; and shall be payable and/or prepayable in lawful money of the United States of America on such dates all as determined herein or by Supplemental

Resolution of the Issuer. The Notes shall be in the form set forth by Supplemental Resolution.

**SECTION 6. REGISTRATION AND EXCHANGE OF SERIES 2010 NOTE;**

**PERSONS TREATED AS OWNER.** The Person in whose name the Series 2010 Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on such Series 2010 Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2010 Note to the extent of the sum or sums so paid.

**SECTION 7. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED**

**OBLIGATION.** The Issuer promises that it will promptly pay the principal of and interest on the Series 2010 Note at the place, on the dates and in the manner provided herein and by Supplemental Resolution according to the true intent and meaning hereof and thereof. The Series 2010 Note shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Net Revenues in accordance with the terms hereof. No holder of any Series 2010 Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Series 2010 Note, or be entitled to payment of such Series 2010 Note from any funds of the Issuer except from the Net Revenues as described herein.

**SECTION 8. PLEDGE OF NET REVENUES.** The payment of the principal of and interest on the Notes shall be secured by a pledge of and lien upon the Net Revenues. The Issuer does hereby irrevocably pledge the Net Revenues to the payment of principal of and interest on the Series 2010 Note in accordance with the provisions hereof. The Net Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

**SECTION 9. COLLECTION OF NET REVENUES.** The Issuer covenants to do all things necessary on its part to collect the Net Revenues. The Issuer will not amend or modify the ordinances pursuant to which the Net Revenues are assessed so as to impair or adversely affect the power and obligation of the Issuer to assess such Net Revenues or impair or adversely affect in any manner the pledge of such fees made herein or the rights of the Owner.

**SECTION 10. APPLICATION OF PROCEEDS OF SERIES 2010 NOTE; PROJECT FUND.**

(A) At the time of delivery of the Series 2010 Note herein authorized, proceeds from the sale of the Series 2010 Note shall be used to reimburse and fund the Project and associated costs of issuance (including but not limited to legal fees and expenses) in accordance with the provisions in this Section.

(B) The Issuer hereby covenants that it will establish with a depository in the State of Florida, which is a member of the Federal Deposit Insurance Corporation and which is eligible under the laws of the State of Florida to receive municipal funds, one fund to be known as the "City of St. Pete Beach, Florida, Stormwater System Revenue Note, Series 2010, Project Fund" (the "Project Fund").

(C) Proceeds from the sale of the Series 2010 Note herein authorized shall be deposited into the Project Fund and shall be used as described above. When the acquisition of the Project has been completed and all acquisition-related costs and other costs of issuance have been paid in full, all funds remaining in the Project Fund shall be used to redeem the outstanding balance of the Series 2010 Note corresponding to the Project and the Project Fund shall be closed. All moneys deposited in said Project Fund shall be and constitute a trust fund created for the purposes herein stated, and there is hereby created a lien upon such fund in favor of the holders of the Series 2010 Note until the moneys thereof shall have been applied in accordance with this Resolution.

(D) The funds and accounts created and established by this Resolution shall constitute trust funds for the purpose provided herein for such funds. All of such funds, except as hereinafter provided, shall be continuously secured in the same manner as municipal deposits of funds are required to be secured by the laws of the State of Florida. Moneys on deposit to the credit of all funds and accounts created hereunder may be invested pursuant to applicable law and the Issuer's investment policy and shall mature not

later than the dates on which such moneys shall be needed to make payments in the manner herein provided. The securities so purchased as an investment of funds shall be deemed at all times to be a part of the account from which the said investment was withdrawn, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, except as expressly provided in this Resolution, and any loss resulting from such investment shall likewise be charged to said fund or account.

**SECTION 11. TAX COVENANT.** The Issuer covenants to the Owner of the Notes provided for in this Resolution that the Issuer will not make any use of the proceeds of the Notes, which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

**SECTION 12. ADDITIONAL NOTES.**

(A) The Issuer will not issue any obligations payable from the Net Revenues or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of any obligation issued pursuant to this Resolution upon the Net Revenues except under the terms and conditions and in the manner provided herein. Any obligations issued by the Issuer other than in

accordance with this Section and payable from the Net Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the obligations issued hereunder as to lien on, and source of and security for payment from, the Net Revenues.

(B) No Additional Notes may be issued under this ordinance unless the Issuer's Chief Financial Officer shall sign and issue a certificate that shall state and certify that the Net Revenues for the most recently audited fiscal year of the Issuer preceding the issuance of Additional Notes equaled at least one and twenty-five hundredths (1.25) times the maximum annual requirements for principal and interest on obligations then outstanding and payable from such Net Revenues hereunder and on the Additional Notes proposed to be issued.

(C) Each ordinance, resolution or enabling instrument authorizing the issuance of such Additional Notes will recite that all of the covenants herein contained will be fully applicable to such Additional Notes as if originally issued hereunder.

**SECTION 13.           LIMITATION OF RIGHTS.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Notes is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this

Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**SECTION 14. AMENDMENT; IMPAIRMENT OF CONTRACT.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Notes except with the written consent of the Owner of the Notes. The Issuer covenants with the Owners of the Notes that it will not, without the written consent of the Owners of the Notes, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owners the rights granted to the Owners of the Notes hereunder.

**SECTION 15. EVENTS OF DEFAULT; REMEDIES OF NOTEHOLDER.**

(A) The following shall constitute "Events of Default": (i) if the Issuer fails to pay any payment of principal of or interest on any Note as the same becomes due and payable; (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Note (other than set forth in (i) above) and fails to cure the same within thirty (30) days; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undismitted or undischarged.

(B) Any owner of the Notes may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, 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, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable State or Federal statutes to be performed by the Issuer or by any officer thereof. Nothing herein, however, shall be construed to grant to any holder of the Notes any lien on any real property of the Issuer.

**SECTION 16. SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**SECTION 17. APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**SECTION 18. MEMBERS OF THE CITY COMMISSION OF THE ISSUER EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Notes or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Commission of the Issuer, as such, of the Issuer, past, present or future, either directly or through the Issuer it

being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the City Commission of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the City Commission of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Notes, on the part of the Issuer.

**SECTION 19. AUTHORIZATIONS.** The Mayor and any member of the City Commission, the City Manager, the City Attorney, the City Clerk and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Series 2010 Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Series 2010 Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 20. SALE OF NOTES.** The Notes may be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as

shall be consistent with the provisions of the requirements of this Resolution, any Resolution supplemental hereto and other applicable provisions of law.

**SECTION 21. VALIDATION.** The City Attorney is hereby authorized to institute appropriate proceedings for the validation of the Series 2010 Note and any and all other proceedings necessary for the Issuer to determine its authority to issue the Series 2010 Note and construct the 2010 Project and the proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer any pleadings in such proceedings.

**SECTION 22. DECLARATION OF INTENT.** The Issuer hereby expresses its intention to be reimbursed from proceeds of a future tax-exempt financing for expenditures to be paid by the Issuer in connection with the Series 2010 Project. Pending reimbursement, the Issuer has used and will use funds on deposit in its general fund to pay costs of the Series 2010 Project. It is reasonably expected that the total amount of debt to be incurred by the Issuer with respect to the Project will not exceed \$20,000. This Resolution is intended to constitute a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations with respect to the Series 2010 Project.

**SECTION 23. REPEALER.** All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed.

**SECTION 24. NO THIRD PARTY BENEFICIARIES.** Except such other persons as may be expressly described in this Resolution or in the Series 2010 Note, nothing in this Resolution or in the Series 2010 Note, expressed or implied, is intended or shall be

construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Series 2010 Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the holders.

**SECTION 25. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED 23<sup>rd</sup> day of February 2010.

**CITY COMMISSION OF CITY OF ST.  
PETE BEACH, FLORIDA**

By: Mike Finnerty  
Michael Finnerty, Mayor

(SEAL)

Attest:

By: Theresa B. McMaster  
Theresa B. McMaster, City Clerk