

RESOLUTION NO. 2011-2020

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA SUPPLEMENTING ORDINANCE NO. 11-1570; AUTHORIZING THE NEGOTIATED AND PRIVATE SALE OF THE NOT TO EXCEED \$16,000,000 TOWN OF SURFSIDE, FLORIDA UTILITY SYSTEM REVENUE BONDS, SERIES 2011; AWARDING SAID SERIES 2011 BONDS TO THE ORIGINAL PURCHASER THEREOF; APPROVING THE TERMS OF SAID SERIES 2011 BONDS; PROVIDING FOR THE DELIVERY OF SAID SERIES 2011 BONDS TO THE ORIGINAL PURCHASER; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND SETTING FORTH THE EFFECTIVE DATE OF THIS RESOLUTION.

WHEREAS, the Town of Surfside, Florida (the “Issuer”), by Ordinance No. 11-1570 enacted on April 12, 2011, authorized the issuance of not to exceed \$16,000,000 Utility System Revenue Bonds (the “Bond Ordinance”), to provide funds for the purpose of financing the cost of the construction of improvements to the water, sewer and stormwater facilities (the “Project”), as defined in the Bond Ordinance; and

WHEREAS, all capitalized undefined terms used herein shall have the meanings set forth in the Bond Ordinance; and

WHEREAS, it is the determination of the Town Commission of the Issuer that the purposes of the Issuer will be best facilitated and accomplished by selling the Series 2011 Bonds (as hereinafter defined in Section 1 hereof) through the means of a negotiated and private sale because Regions Bank (the “Original Purchaser”), has offered to purchase said Series 2011 Bonds at an interest rate less than the rates that could be obtained from private investors. The size of the issue and the rate of interest demanded by the current market for municipal bonds is such that if the Issuer must sell the Series 2011 Bonds at a rate of interest in excess of the rate obtainable from said sale to the Original Purchaser, the Project would not be financially feasible; and

WHEREAS, the Issuer must also establish a maturity schedule for payment of such Series 2011 Bonds and redemption provisions for such Series 2011 Bonds; and

WHEREAS, the Issuer has been or will be provided all applicable disclosure information required by Section 218.385, Florida Statutes, a copy of which is attached hereto as Exhibit “B”.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Approval of Sale. The negotiated and private sale of the Series 2011 Bonds in the aggregate principal amount of not to exceed \$16,000,000 is hereby authorized and approved.

Section 2. Terms and Details of Series 2011 Bonds.

(i) Interest Rate. The Series 2011 Bonds shall bear an interest rate of 4.72% calculated on a 30/360-day basis.

(ii) Principal and Interest Payment Dates. Interest on the Series 2011 Bond shall be paid semiannually, commencing November 1, 2011, and on each subsequent May 1 and November 1 thereafter until maturity. Principal on the Series 2011 Bond shall be paid annually on each May 1, beginning on May 1, 2012. A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date of the Series 2011 Bond.

(iii) Final Maturity. The final maturity date of the Series 2011 Bond shall be May 1, 2026 (the "Maturity Date").

(iv) Prepayment Provisions. The Series 2011 Bond shall be subject to prepayment at the option of the Issuer in whole or in part on any date at a price equal to the principal amount thereof to be prepaid, plus accrued interest to the date fixed for prepayment, without penalty, up to an amount of \$4,000,000 which is received from expected grants.

All amounts over \$4,000,000 may be prepaid at the option of the Issuer in whole or in part on any date at a price equal to the principal amount thereof to be prepaid, plus accrued interest to the date of prepayment, at a premium determined with the following:

An amount equal to the result of the formula $A \times ((B-C) \times (D/360))$, where:

- (1) "A" equals the prepaid principal amount of the Series 2011 Bonds on the date of prepayment.
- (2) "B" equals the 10-year Interest Rate Swap Index (rate) as published in Federal Reserve Statistical Release H.15 on the date of issuance of the Senior Credit Facility and concurred by the Original Purchaser.
- (3) "C" equals the 10-year Interest Rate Swap Index (rate) as published in Federal Reserve Statistical Release H.15 on the date of issuance on the proposed prepayment date and concurred by the Original Purchaser.
- (4) "D" equals the number of days from and including the prepayment date to but not including maturity date of the Series 2011 Bonds.

No prepayment penalty shall be due or owing hereunder if, on the date of such prepayment, the difference obtained by subtracting "C" from "B" is zero or less.

(v) Authorized Denomination. The minimum authorized denomination of the Series 2011 Bond is its principal amount.

(vi) Form of the Series 2011 Bond. The Series 2011 Bond is to be in substantially the form set forth on Exhibit A attached hereto, together with any changes as may be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor.

Section 3. Award of Series 2011 Bonds. Because of the characteristics of the Series 2011 Bonds, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2011 Bonds, it is in the best interest of the Issuer to accept the offer of the Original Purchaser to purchase the Series 2011 Bonds at a private negotiated sale. Prior to the issuance of the Series 2011 Bonds, the Issuer shall receive from the Original Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit C and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit B.

The Series 2011 Bonds are hereby sold and awarded to the Original Purchaser, at the price of par. The Series 2011 Bonds shall be delivered to the Original Purchaser on or about April 29, 2011, in Surfside, Florida, or such other date and place as may be mutually agreed. The Mayor and the Town Clerk of the Issuer are authorized and directed to deliver the Series 2011 Bonds to the Original Purchaser upon receipt of payment thereof on the date as provided herein and to execute, sign and seal said Series 2011 Bonds as provided in the Bond Ordinance.

Section 4. Application of Proceeds of Series 2011 Bond. The proceeds, together with other legally available moneys of the Issuer, shall be applied by the Issuer simultaneously with the delivery of such Series 2011 Bond to the Original Purchaser, as follows:

(A) An amount to be deposited to the Construction Account hereby established to pay for the costs of the Project.

(B) An amount shall be used to pay when due the costs of issuance of the Series 2011 Bond, including, without limitation, legal, financial advisory, and other related costs of issuance.

(C) An amount, if any, set forth in a certificate of the Mayor delivered at closing of the Series 2011 Bond.

Section 5. Covenants of Issuer. The Issuer hereby covenants that:

(i) It will do all things necessary to maintain the tax-exempt status of interest of the Series 2011 Bonds under the Internal Revenue Code in effect from time to time, including but not limited to compliance with the provisions of the Internal Revenue Code of 1986, as amended.

(ii) The Issuer will, within two hundred and seventy (270) days after the end of each Fiscal Year, provide the Original Purchaser with the financial statements of the Issuer for such Fiscal Year, together with an audit report from a certified public accountant and promptly following a request therefore by the Original Purchaser, such other financial information, regarding the Issuer as may be requested.

Section 6. Authorizations. The appropriate officials of the Issuer are authorized and directed to receive on behalf of the Issuer the proceeds of the sale of the Series 2011 Bonds and to deposit, apply and disburse the proceeds of said Series 2011 Bonds, in the manner and for the purposes provided in the Bond Ordinance authorizing the issuance of the Series 2011 Bonds and in this Resolution. The Mayor and the Town Clerk of the Issuer and other appropriate officers of the Issuer are authorized to execute such delivery papers, receipts and documents as may be necessary in connection with the delivery of the Series 2011 Bonds and receipt for the proceeds and to take all actions and do all things necessary to deliver said Series 2011 Bonds to the Original Purchaser and to receive the proceeds of the sale of the Series 2011 Bonds.

Section 7. Repealer. All ordinances and resolutions of the Issuer, which are in conflict or inconsistent with this Resolution are to the extent of such conflict or inconsistency hereby repealed.

Section 8. Captions. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

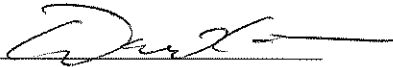
Section 9. Effective Date. This Resolution shall take effect immediately upon passage.

Motion by Commissioner Karukin, Second by Commissioner Kopelman.

PASSED AND ADOPTED this 12 day of April, 2011

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	<u>yes</u>
Commissioner Edward Kopelman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Joseph Graubart	<u>NO</u>
Mayor Daniel Dietch	<u>yes</u>

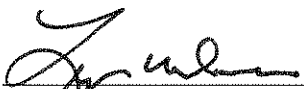

Daniel Dietch, Mayor

ATTEST:



Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser
Town Attorney

EXHIBIT A

[FORM OF SERIES 2011 BONDS]

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATED THEREUNDER.

R-1

\$ _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE
TOWN OF SURFSIDE
UTILITY SYSTEM REVENUE BONDS, SERIES 2011

<u>DATED DATE</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>
April __, 2011	4.72%	May 1, 2026

Registered Owner: Regions Bank

Principal Amount:

KNOW ALL MEN BY THESE PRESENTS that the Town of Surfside, Florida (hereinafter called the "Issuer") for value received, hereby promises to pay to the order of the Registered Owner identified above or registered assigns, as herein provided, on the Maturity Date identified above, upon the presentation and surrender hereof at the principal corporate trust office of Regions Bank in the City of Coral Gables, Florida, from the revenues hereinafter mentioned, the Principal Amount identified above in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and to pay, solely from said sources, to the Registered Owner hereof by wire transfer or check transmitted to the Registered Owner at his address as it appears on the Bond registration books of the Issuer as it appears on the 15th day of the calendar month preceding the applicable interest payment date, interest on said Principal Amount at the Interest Rate per annum identified above on each May 1 and November 1 commencing November 1, 2011 from the interest payment date next preceding the date of registration and authentication of this Bond, unless this Bond is registered and authenticated as of an interest payment date, in which case it shall bear interest from said interest payment date, or unless this Bond is registered and authenticated prior to November 1, 2011, in which event this Bond shall bear interest from April __, 2011.

This Bond may be prepaid at the option of the Issuer in whole or in part on any date at a price equal to the principal amount thereof to be prepaid, plus accrued interest to the date fixed for prepayment, with penalty as described in the Ordinance.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day the payment due on such date shall be due on the next succeeding day which is a Business Day, but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Bond shall apply first to accrued interest, then to other charges due the Owner under the Ordinance or this Bond, and the balance thereof shall apply to principal.

Notice of such prepayment shall be given in the manner required by the Ordinance described below.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of \$16,000,000 of like date, tenor and effect, except as to number, principal amount, maturity redemption provisions and interest rate, issued to finance the cost of refunding certain outstanding obligations of the Issuer, all in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Part II, Florida Statutes, and Ordinance No. ____ duly enacted by the Issuer on April 12, 2011, as supplemented by Resolution No. ____ duly adopted by the Issuer on April 12, 2011, hereinafter, collectively called the "Ordinance") and is subject to all the terms and conditions of such Ordinance. All capitalized undefined terms used herein shall have the meaning set forth in the Ordinance.

This Bond is payable solely from and secured by a pledge of the Pledged Revenues as defined in the Ordinance.

This Bond does not constitute a general indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision or limitation, and it is expressly agreed by the Holder of this Bond that such Bondholder shall never have the right to require or compel the exercise of the ad valorem taxing power of the Issuer or taxation of any real or personal property therein for the payment of the principal of and interest on this Bond or the making of any debt service fund, reserve or other payments provided for in the Ordinance.

It is further agreed between the Issuer and the Holder of this Bond that this Bond and the indebtedness evidenced thereby shall not constitute a lien upon the System, or any part thereof, or on any other property of or in the Issuer, but shall constitute a lien only on the Pledged Revenues, all in the manner provided in the Ordinance.

This Bond may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Ordinance.

It is certified that this Bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of Florida.

This Bond is and has all the qualities and incidents of a negotiable instrument under Article 8 of the Uniform Commercial Code, the State of Florida, Chapter 678, Florida Statutes.

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within mentioned Ordinance.

Date of Authentication: _____ Registrar, as Authenticating Agent
By: (manual signature) _____
Authorized Officer

ATTEST:

By: manual signature
Authorized Officer

ASSIGNMENT AND TRANSFER

For value received the undersigned hereby sells, assigns and transfers unto (Please insert Social Security or other identifying number of transferee) the attached bond of the Town of Surfside, Florida, and does hereby constitute and appoint _____, attorney, to transfer the said Bond on the books kept for Registration thereof, with full power of substitution in the premises.

Date _____

Signature Guaranteed by

[member firm of the New York Stock Exchange or a commercial bank or a trust company.]

By: (manual signature) _____
Title: _____

NOTICE: No transfer will be registered and no new Bonds will be issued in the name of the Transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

SCHEDULE I
SCHEDULE OF PRINCIPAL PAYMENTS

[To come]

[END OF FORM OF BOND]

EXHIBIT B

FORM OF PURCHASER'S CERTIFICATE

This is to certify that Regions Bank (the "Purchaser") has not required the Town of Surfside, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of \$_____ Town of Surfside, Florida Utility System Revenue Bonds, Series 2011 (the "Series 2011 Bonds"), and no inference should be drawn that the Purchaser, in the acceptance of said Series 2011 Bonds, is relying on Bond Counsel or Issuer's Counsel as to any such matters other than the legal opinions rendered by Bond Counsel, Bryant Miller Olive P.A. and by Issuer's Counsel. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the Ordinance No. _____ enacted on April 12, 2011, as supplemented by a resolution adopted on April 12, 2011 (collectively, the "Ordinance").

We are aware that investment in the Series 2011 Bonds involves various risks, that the Series 2011 Bonds are not a general obligation of the Issuer or payable from ad valorem tax revenues, and that the payment of the Series 2011 Bonds is secured solely from the sources described in the Ordinance (the "Pledged Revenues").

We have made such independent investigation of the Pledged Revenues as we, in the exercise of sound business judgment, consider appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the Issuer.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Series 2011 Bonds and can bear the economic risk of our investment in the Series 2011 Bonds.

We acknowledge and understand that the Ordinance is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor Issuer's Counsel shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Series 2011 Bonds as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Series 2011 Bonds may not be transferred in a denomination less than \$100,000 in any circumstances.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Series 2011 Bonds for the direct

or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this ____ of April, 2011.

REGIONS BANK

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the Town of Surfside, Florida (the "Issuer") for the private purchase of its Utility System Revenue Bonds, Series 2011 (the "Series 2011 Bonds") in the principal amount of \$_____. Prior to the award of the Series 2011 Bonds, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Series 2011 Bonds (such fees and expenses to be paid by the Issuer):

Bank's Counsel

\$5,500

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Series 2011 Bonds to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Bank, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2011 Bonds.

3. The amount of the underwriting spread expected to be realized by the Bank is \$0.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Series 2011 Bond is being issued primarily to refinance the Refunded Bonds and pay the costs of issuance.

Unless earlier redeemed, the Series 2011 Bonds are expected to be repaid by May 1, 2026; at an interest rate of 4.72% and total interest paid over the life of the Series 2011 Bonds is estimated to be \$_____.

The Series 2011 Bonds will be payable solely from the Pledged Revenues in the manner and to the extent described in Ordinance No. ____ enacted on _____, 2011, as supplemented by Resolution No. ____ adopted on _____, 2011 (collectively, the "Ordinance"). Issuance of the Series 2011 Bonds is estimated to result in approximately \$_____ of revenues of the Issuer not being available to finance the services of the Issuer during the life of the Series 2011 Bonds. This paragraph is provided pursuant to Section 218.385, Florida Statutes.

6. The name and address of the Bank is as follows:

Regions Bank
2800 Ponce De Leon Blvd, 9th Floor
Coral Gables, Florida 33134

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this _____ day of April, 2011.

REGIONS BANK

By: _____
Name: _____
Title: _____