

# The City of Aventura



City Commission  
Susan Gottlieb, Mayor

Zev Auerbach  
Bob Diamond  
Teri Holzberg  
Billy Joel  
Michael Stern  
Luz Urbáez Weinberg

City Manager  
Eric M. Soroka, ICMA-CM

City Clerk  
Teresa M. Soroka, MMC

City Attorney  
Weiss Serota Helfman  
Pastoriza Cole & Boniske

## CITY COMMISSION MEETING AGENDA JANUARY 20, 2011 9 A.M.

Aventura Government Center  
19200 West Country Club Drive  
Aventura, Florida 33180

1. CALL TO ORDER\ROLL CALL
2. RESOLUTION: PUBLIC HEARING:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO EVIDENCE A LOAN FROM BANK OF AMERICA, N.A. PURSUANT TO THE BANK'S, PROPOSAL IN A NOT TO EXCEED PRINCIPAL AMOUNT OF \$6,115,000 TO REFINANCE THE COSTS OF ACQUISITION AND CONSTRUCTION OF VARIOUS CAPITAL IMPROVEMENTS AND TO PAY COSTS AND EXPENSES OF ISSUING SUCH DEBT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT INCLUDING A PROMISSORY NOTE ATTACHED THERETO; AUTHORIZING THE REPAYMENT OF THE NOTE UNDER THE LOAN AGREEMENT ONLY FROM NON-AD VALOREM FUNDS APPROPRIATED FOR SUCH PURPOSE; DELEGATING CERTAIN AUTHORITY TO THE CITY MANAGER AND CITY CLERK; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

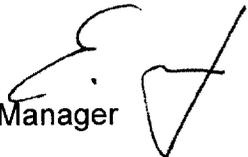
3. ADJOURNMENT.

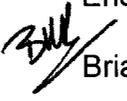
The meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Office of the City Clerk, 305-466-8901, not later than two days prior to such proceeding. Anyone wishing to appeal any decision made by the City of Aventura Commission with respect to any matter considered at such meeting or hearing will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Agenda items may be viewed at the Office of the City Clerk, City of Aventura Government Center, 19200 West Country Club Drive, Aventura, Florida, 33180. Anyone wishing to obtain a copy of any agenda item should contact the City Clerk at 305-466-8901. One or more members of the City of Aventura Advisory Boards may also be in attendance and may participate in this meeting.

**CITY OF AVENTURA**  
**FINANCE DEPARTMENT**

**MEMORANDUM**

TO: City Commission

FROM: Eric M. Soroka, ICMA-CM, City Manager 

BY:  Brian K. Raducci, Finance Director

DATE: January 13, 2011

SUBJECT: **Refinance of the Series 1999 Revenue Bonds**

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January 20, 2011 City Commission Meeting Agenda Item 2

**RECOMMENDATION**

It is recommended that the City Commission adopt the attached Resolution which authorizes the issuance and execution of a Promissory Note (Loan Agreement) with Bank of America, N.A. in a not to exceed principal amount of \$6,115,000.

**BACKGROUND UPDATE – JANUARY 13, 2011**

In September 2010, the City issued a partial advance refunding (approximately 65%) of the originally issued Series 1999 Revenue Bonds. At that time, we explained to the Commission that we had planned on coming back in either:

1. November 2010, assuming the Florida League of Cities could get the rest of the participating Cities to refinance their respective portions of the loan simultaneously; or if that did not occur then
2. The City would be able to refinance the remaining portion of the 1999 Revenue Bonds (approximately 35% or \$6,115,000), with or without the other participating cities doing so, in January 2011 through another Bank Loan.

As of the date of this memorandum, it is our understanding that option 1 is not viable as the League has been unable to get all of the participating cities to agree to refinancing the original instrument. As a result, the Administration is recommending that we refinance the remaining portion of the Series 1999 Revenue Bonds through a Promissory Note (Loan Agreement) with Bank of America, N.A., thus resulting in a projected Net Present Value Savings of approximately \$570,000 (based on an interest rate of 3.58%) over the life of the loan. If you should have any questions related to this memorandum, please feel free to contact the City Manager.

### **BACKGROUND UPDATE – SEPTEMBER 20, 2010**

At the September 7, 2010 Commission Meeting, the City Commission adopted a Resolution which set forth the ranking of firms to refinance the Series 1999 Revenue Bonds.

Due to an IRS technicality, the City will need to refinance the Series 1999 Revenue Bonds in two (2) separate issues. When the Original loan was borrowed on April 28, 1999, a portion of those proceeds were properly utilized to pay off a 3-year \$10M non-revolving bank line of credit, that was established by the City at the time to provide temporary financing for project costs incurred prior to the issuance of the Series 1999 Revenue Bonds.

Although the payoff was made in Fiscal Year 1998/99, it occurred more than 90 days after the receipt of the 1999 Revenue Bonds, thus creating an "Advance Refunding" Instrument at that time. As per the Internal Revenue Code, only one Advance Refunding is permitted per issue.

Although we are unable to refinance the entire Series 1999 Revenue Bonds at this time, we are able to partially refinance that amount which has not already been "Advance Refunded". As a result, we are recommending that we refinance that applicable portion now (approximately 65%) and refinance the remaining approximate 35% as follows:

1. as early as November 2010, assuming the Florida League of Cities can get the rest of the participating Cities to refinance their respective portions of the loan simultaneously.
2. or, if this does not occur in November, then the City would be able to refinance the remaining portion of the 1999 Revenue Bonds, with or without the other participating cities doing so, in January 2011.

Our Bond Counsel and Financial Advisor will have representatives present at the September 22 Commission Meeting to answer any questions you may have.

### **BACKGROUND – SEPTEMBER 2, 2010 (Original)**

At the May 20, 2010 Workshop, the City Manager made a presentation and recommendation to the City Commission, and was authorized to take the necessary action to refinance the Series 1999 Revenue Bonds so long as the Net Present Value (NPV) savings as a percentage of the refunded bonds would be at a level of 4% or more and the financing instrument/method resulted in the lowest cost to the City. The original Revenue Bonds have a final maturity ("full term") of April 1, 2029.

On July 25, 2010 the City issued an Invitation to Bid (ITB #10-08-23-2) to obtain proposals for the purpose of selecting a firm to provide a not-to-exceed \$16,500,000 Bank-Qualified Loan (evidenced by a single bond) to finance the cost of refunding the City's portion of the outstanding Florida Municipal Loan Council Revenue Bonds, Series 1999. The City advertised the availability of the ITB in the Miami Herald on July 25, 2010. In addition, a solicitation package was made available from

[www.demandstar.com](http://www.demandstar.com) and emailed to various banks on July 26, 2010. This Loan will be secured by a Covenant to Budget and Appropriate from legally available Non-Ad-Valorem revenues. The Ordinance authorizing the issuance of debt will be addressed in a separate agenda item on this evening's agenda.

On August 23, 2010 five (5) firms submitted proposals to the City and one (1) firm responded with an alternative financing option which was considered a "non-conforming bid" since this option was not requested in the ITB. The results and analysis of the submitted proposals are as follows:

Bank of America/Merrill Lynch

Fixed Interest Rate of 3.37% for the duration of the loan and subject to a prepayment penalty if paid prior to maturity.

BB&T

- Option 1 Fixed Interest Rate of 3.72% for the remaining duration of the loan
- Option 2 Fixed Interest Rate of 3.08% with a Put Option at year 15
- Option 3 Fixed Interest Rate of 2.70% with a Put Option at year 10

All options are subject to a prepayment penalty if paid prior to maturity.

TD

Fixed Interest Rate of 3.38% but the bank shall have the option to call the Loan on the 10<sup>th</sup> anniversary of the loan closing date and Put the Loan back to the City and subject to a prepayment penalty if paid prior to maturity.

Chase

Fixed Interest Rate of 2.99% but the Bond will be callable at par on or after April 1, 2025. The Bond may be prepaid in whole or in part, without premium or penalty, on or after April 1, 2025; Prepayment prior to April 1, 2025 subject to "make whole" language.

SunTrust

- Option 1 Fixed Interest Rate of 3.57% but shall be based on a fully amortizing loan due 15 years from closing
- Option 2 Fixed Interest Rate of 3.36% but shall be based on a fully amortizing loan due 15 years from closing, however the bank shall have the right to Put the Loan back to the City; 10 years from closing.

Both options provide for prepayment at anytime.

Raymond James

Non-Conforming Bid

Upon receipt of the proposals they were forwarded to Craig Dunlap, our Financial Advisor of Dunlap & Associates, Inc. for his review and analysis. In his letter dated September 2, 2010 ("ATTACHMENT A") he explains that only two (2) of the five (5) bids

quoted a fixed rate for the full term with a final maturity of April 1, 2029 (Bank of America/Merrill Lynch and BB&T). This was an essential component requested in the ITB and as a result he has made the following recommendation:

“Based upon the terms and conditions included in the Invitation to Bid distributed July 26, 2010, we are recommending that the bid be awarded to Bank of America/Merrill Lynch. The indicative interest rate bid, based upon a 2011-2029 amortization period, is 3.37 percent; however, the final rate will not be set until final approval by the City Commission. Based upon this indicative rate, the present value savings is approximately \$1.865M which represents an 11.46% of refunded par. The average annual debt service savings is approximately \$130,000 per year.

It is our recommendation that the bid received from Bank of America/Merrill Lynch be awarded. Closing is scheduled for October 5, 2010.”

In a separate letter dated September 2, 2010 (“ATTACHMENT B”) as prepared by our Financial Advisor, Craig Dunlap explains the difference between the terms “advance refunding” (more than 90 days) and “current refunding” (less than 90 days). The type of refunding instrument that the City pursues will depend on the amount of time between the closing on the bank loan and Redemption of the Series 1999 Revenue Bonds in conjunction with the Florida Municipal Loan Council’s (“FMLC”) timetable to refund the remaining loans. Regardless of the type of refunding instrument utilized and whether or not the FMLC is successful in refinancing all, part or none of the remaining loans, the City stands to experience a substantial savings (currently projected at \$1.865M or 11.46% of refunded par) with an average annual savings of approximately \$130,000 per year. The final rate will not be set final approval by the City Commission.

Based on the foregoing, the Administration is recommending that the City Commission approve the attached resolution establishing a ranking of firms to refinance the Series 1999 Revenue Bonds.

Adoption of this resolution will authorize the City Manager or his designee to negotiate a contract with Bank of America/Merrill Lynch to refinance the Series 1999 Revenue Bonds. In the event, that a satisfactory contract with that firm is unable to be attained, the City Manager or his Designee is authorized to negotiate a contract with the alternate firms.

At the September 22, 2010 Commission meeting, the Commission will be asked to adopt a Resolution which authorizes the execution of a Bank Qualified Loan Agreement with the bank that best meets the City’s needs as outlined in the ITB.

If you should have any questions related to this memorandum, please feel free to contact the City Manager.

BKR/bkr



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**Dunlap & Associates, Inc.**  
Financial Consultants

**Memorandum**

Date: September 2, 2010  
To: Mr. Brian Raducci  
Finance Director  
From: Mr. Craig Dunlap   
Dunlap & Associates, Inc.  
Subject: City of Aventura, Florida  
\$16,500,000 Revenue Refunding Bonds, Series 2010  
Competitive Bids

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On August 23, 2010, the City of Aventura, Florida received five competitive bids for the \$16.5 million Revenue Refunding Bonds, Series 2010. Two of the five bids quoted a fixed rate for the full term. This financing is a refunding of the City's Florida Municipal Loan Council Revenue Bonds, Series 1999. A summary of the terms, conditions and interest rates are found on the attached sheet.

Based upon the terms and conditions included in the Invitation to Bid distributed July 26, 2010, we are recommending that the bid be awarded to Bank of America/Merrill Lynch. The indicative interest rate bid, based upon a 2011-2029 amortization period, is 3.37 percent; however, the final rate will not be set until final approval by the City Commission. Based upon this indicative rate, the present value savings is approximately \$1.865M which represents an 11.46% of refunded par. The average annual debt service savings is approximately \$130,000 per year.

It is our recommendation that the bid received from Bank of America/Merrill Lynch be awarded. Closing is scheduled for October 5, 2010.

We appreciate the opportunity to be of service to the City of Aventura, Florida.

JCD/sjm  
Attachments

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1146 Keyes Avenue Winter Park, Florida 32789  
Telephone: 407.678.0977 Telecopy: 407.678.6240

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# Dunlap & Associates, Inc.

## Financial Consultants

September 2, 2010

Mr. Brian Raducci  
Finance Director  
**CITY OF AVENTURA**  
19200 West Country Club Drive  
Aventura, FL 33180

Re: City of Aventura, Florida – Redemption of the FMLC, Series 1999 Loan

Dear Brian:

On August 23, 2010, the City received competitive bids for a "bank qualified loan" to refinance \$16,280,000 of outstanding Florida Municipal Loan Council (FMLC), Series 1999 Bonds of which the City of Aventura was a participant.

The redemption language for such Series 1999 Bonds allows the FMLC to redeem these bonds "in whole, at any time or in part on any interest payment date". The next available redemption date to redeem these bonds, in part, is April 1, 2011. Assuming that the City closes this "bank qualified loan" in October, 2010, this refunding would constitute an "advance refunding" since the call date is more than 90 days from the closing date of the loan.

The FMLC is also pursuing a refunding of the remaining loans in the Series 1999 bond issue and if they can accomplish this in November, 2010, as their timetable contemplates, the Bonds can be called "in whole" on January 1, 2011. In order to call the Series 1999 Bonds "in whole", all borrowers in the Series 1999 bond issue must agree to refinance their loans. If this occurs, then the City of Aventura could redeem their FMLC, Series 1999 bonds simultaneously with the FMLC. If this occurs, then this refinancing is a "current refunding" since the time between closing and redemption is less than 90 days.

The rate of interest that the City of Aventura received on its competitive "bank qualified loan" is lower than the FMLC could achieve through a public offering of bonds. This is primarily due to the high credit ratings enjoyed by the City as well as the reduced cost of issuance associated with a bank loan.

The current savings on the refinancing, assuming an April 1, 2011 redemption date is approximately \$1,865,668 or 11.46% of refunded par. These savings are based on the estimated rate of 3.37%; however, the final rate will not be "locked in" until two days prior to closing of the "bank qualified loan".

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Craig Dunlap", is written over a horizontal line.

J. Craig Dunlap  
President

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1146 Keyes Avenue Winter Park, Florida 32789  
Telephone: 407.678.0977 Telecopy: 407.678.6240

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**RESOLUTION NO. 2011-08**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO EVIDENCE A LOAN FROM BANK OF AMERICA, N.A. PURSUANT TO THE BANK'S, PROPOSAL IN A NOT TO EXCEED PRINCIPAL AMOUNT OF \$6,115,000 TO REFINANCE THE COSTS OF ACQUISITION AND CONSTRUCTION OF VARIOUS CAPITAL IMPROVEMENTS AND TO PAY COSTS AND EXPENSES OF ISSUING SUCH DEBT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT INCLUDING A PROMISSORY NOTE ATTACHED THERETO; AUTHORIZING THE REPAYMENT OF THE NOTE UNDER THE LOAN AGREEMENT ONLY FROM NON-AD VALOREM FUNDS APPROPRIATED FOR SUCH PURPOSE; DELEGATING CERTAIN AUTHORITY TO THE CITY MANAGER AND CITY CLERK; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Act (as defined herein).

**SECTION 2. DEFINITIONS.** When used in this Resolution, capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement (as defined herein), unless the context clearly indicates a different meaning.

**"Act"** shall mean the Florida Constitution, Chapter 166, Florida Statutes, the City's Charter, the Ordinance and other applicable provisions of law.

**"Bank"** shall mean Bank of America, N.A., and its successors and assigns.

**"Bank Proposal"** shall mean the Bank's proposal dated August 18, 2010, attached hereto as Exhibit A and accepted by the City pursuant to Resolution No. 2010-50, adopted on September 22, 2010.

**"City"** shall mean the City of Aventura, Florida.

**"City Clerk"** shall mean the City Clerk of the City or such person's designee.

**"City Manager"** shall mean the City Manager of the City or such person's designee.

**"Commission"** shall mean the City Commission of the City.

**"Financial Advisor"** shall mean Dunlap & Associates, Inc.

**"Loan Agreement"** shall mean the Loan Agreement to be executed between the City and the Bank, the form of which is attached hereto as Exhibit B.

**"Mayor"** shall mean the Mayor of the City or, in his or her unavailability or absence, the Vice Mayor of the City or such person's designee.

**"Non-Ad Valorem Funds"** means all revenues of the City derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to pay principal of and interest on the Series 2011 Note.

**"Ordinance"** means the Ordinance enacted by the Commission on September 22, 2010, authorizing the borrowing of money as required by Section 4.03(b) of the City Charter.

**"Refunded Debt"** shall mean the obligations of the City pursuant to the Loan Agreement dated as of April 1, 1999 between the Florida Municipal Loan Council and the City.

**"Series 2011 Note"** shall mean the Promissory Note to be executed by the City in favor of the Bank, the form of which is attached to the Loan Agreement as Attachment A.

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

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

(A) The Florida Municipal Loan Council (the "Council") issued its Florida Municipal Loan Council Revenue Bonds, Series 1999 and loaned a portion of the proceeds thereof to the City pursuant to a Loan Agreement, dated as of April 1, 1999, between the Council and the City (the "Refunded Debt Loan Agreement").

(B) The Refunded Debt was borrowed for the purpose of (i) purchasing real property within the City to be used for municipal purposes such as parks and recreation and the location of other City facilities, including, without limitation, a City administrative complex and police station, (ii) the acquisition, construction, equipping and installation of other municipal facilities and (iii) the repayment of a line of credit established in 1996 in order to provide temporary funding for the purposes described in (i) and (ii) herein as evidenced by a revenue bond dated December 20, 1996.

(C) The City has determined that it is in its best interest to refinance the Refunded Debt in order to achieve debt service savings.

(D) On July 25, 2010, the City issued its Invitation to Bid to provide the City with the necessary funds to refinance the Refunded Debt and pay costs of issuance.

(E) In response to the City's Invitation to Bid, the Bank submitted its proposal to provide the City with a loan in the principal amount of not to exceed \$16,500,000 for the principal purpose of refinancing the Refunded Debt.

(F) Pursuant to Resolution No. 2010-47, adopted on September 7, 2010, the City ranked the Bank's Proposal as the top ranked proposal and authorized the City Manager to negotiate favorable terms and fees with the Bank.

(G) As required by the City's Charter, the City enacted the Ordinance authorizing the issuance of Obligations (as defined in the Ordinance) to be issued at one or more times in an aggregate principal amount of not exceeding \$16,500,000.

(H) The Ordinance provides that the City shall establish the details of such Obligation pursuant to a Resolution.

(I) On September 22, 2010 the City adopted Resolution No. 2010-50 (the "2010 Resolution") accepting the Bank's Proposal, authorizing the refunding of the Refunded Debt, authorizing a loan agreement, establishing the herein defined Escrow

Account, authorizing the issuance of a promissory note evidencing a loan with the Bank and providing the details of such promissory note.

(J) On September 23, 2010, pursuant to the 2010 Resolution, the City issued its \$10,385,000 City of Aventura, Florida Promissory Note (2010) (the "Series 2010 Note") for the principal purpose of refinancing a portion of the Refunded Debt and deposited a portion of the funds from the Series 2010 Note into the Escrow Account.

(K) The City has determined that is necessary, desirable and in the best interests of the City to borrow the remaining amount under the Bank's Proposal and issue its Promissory Note (the "Series 2011 Note") to evidence the Loan, in the principal amount of not to exceed \$6,115,000 for the principal purpose of refinancing the remaining portion of the Refunded Debt, and to establish the details of said Series 2011 Note as provided herein.

(L) The City has determined that it is in the best interest of the health, safety and welfare of the City and the inhabitants thereof that the City covenant to budget and appropriate from its Non-Ad Valorem Funds in amounts sufficient to repay the principal of and interest on the Series 2011 Note when due as provided herein and in the Loan Agreement. The amounts borrowed under the Loan Agreement shall be repaid solely from Non-Ad Valorem Funds in the manner permitted under the Ordinance and to the extent set forth in the Series 2011 Note and the Loan Agreement and the ad valorem taxing power of the City will never be necessary or authorized to pay said amounts.

(M) The Series 2011 Note shall not constitute a general obligation or indebtedness of the City as a "bond" within the meaning of any provision of the Constitution of the State, but shall be and is hereby declared to be a special, limited obligation of the City, the principal of and interest on which is payable solely from the Non-Ad Valorem Funds in the manner provided herein, and the principal of and interest on the Series 2011 Note and all other payments provided for herein will be paid solely from the Non-Ad Valorem Funds, and it will never be necessary or authorized to levy taxes on any real property of or in the City to pay the principal of or interest on the Series 2011 Note or other payments provided for herein. Furthermore, neither the Series 2011 Note nor the interest thereon shall be or constitute a lien upon any other property of or in the City.

(N) The Series 2011 Note is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as

amended (the "Code"). It is not reasonably anticipated that more than \$10,000,000 of tax-exempt obligations (as defined in Section 265(b)(3) of the Code) will be issued by the City, or an entity issuing on behalf of the City whose obligations would be taken into consideration for the purposes of said Section 265(b)(3) of the Code, during calendar year 2011.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Series 2011 Note authorized to be issued pursuant to this Resolution and the Loan Agreement by those who shall be the Bank from time to time, this Resolution shall constitute a contract between the City and the Bank.

**SECTION 5. AUTHORIZING AND AWARD OF SERIES 2011 NOTE.** The issuance by the City of the Series 2011 Note to secure the repayment of the Loan being provided by the Bank in accordance with the terms of the Loan Agreement, to bear interest at a rate determined in accordance with the provisions of the Bank's Proposal and 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 are provided in the Loan Agreement; and secured by a covenant of the City to budget and appropriate from legally available Non-Ad Valorem Funds each year monies sufficient to pay the principal and interest on such Series 2011 Note as set forth in the Loan Agreement, is hereby authorized and approved. Because of the characteristics of the Series 2011 Note and prevailing market conditions, it is in the best interest of the City to negotiate with the Bank to purchase the Series 2011 Note at a private negotiated sale. Prior to the issuance of the Series 2011 Note the City shall receive from the Bank the disclosure required by Section 218.385, Florida Statutes.

**SECTION 6. APPROVAL OF FORM OF LOAN AGREEMENT AND SERIES 2011 NOTE.** The Loan Agreement, in substantially the form attached hereto as Exhibit B, is hereby approved. The City hereby authorizes the City Manager and the City Clerk to execute and deliver on behalf of the City the Loan Agreement, with such changes, insertions and additions as the City Manager may approve, their execution thereof being evidence of such approval. In order to evidence the Loan under the Loan Agreement it is necessary to provide for the execution of the Series 2011 Note. The City hereby authorizes the City Manager and the City Clerk to execute and deliver on behalf of the City the Series 2011 Note in substantially the form attached to the Loan Agreement as Attachment A, with such changes, insertions and additions as the City Manager may approve, their execution thereof being evidence of such approval.

**SECTION 7. LIMITED OBLIGATION.** The obligation of the City to repay the Series 2011 Note under the Loan Agreement is a limited and special obligation payable from Non-Ad Valorem Funds solely in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the City and such obligation shall not create a lien on any property whatsoever of or in the City.

**SECTION 8. AUTHORIZING OF REFINANCING.** Pursuant to the 2010 Resolution, the Commission authorized the refinancing of the Refunded Debt and authorized the Mayor, City Manager, City Attorney, City Clerk, City staff, the Financial Advisor and the City's bond counsel to take all action necessary in connection with the refinancing of the Refunded Debt.

**SECTION 9. ESCROW ACCOUNT; APPLICATION OF FUNDS.** Pursuant to the 2010 Resolution, the City created and established within the funds and accounts of the City a special, segregated and irrevocable escrow account designated the "City of Aventura, Florida, Florida Municipal Loan Council, Series 1999 Escrow Deposit Account" (the "Escrow Account"). Upon the issuance of the Series 2011 Note, the City shall deposit to the Escrow Account those proceeds of the Series 2011 Note which shall be used to refinance the Refunded Debt. The balance of the proceeds of the Series 2011 Note shall be used to pay costs associated with the refinancing of the Refunded Debt and costs of issuance related to the Series 2011 Note.

The Escrow Account shall be held in the custody of the City separate and apart from other funds and accounts of the City. Moneys in the Escrow Account shall be used solely to pay the amounts of principal of, redemption premium, if any, and interest due and to become due on the Refunded Debt. If amounts on deposit therein shall for any reason be insufficient to make such payments the City shall timely deposit to the Escrow Account, solely from legally available funds of the City, such additional amounts as may be required to pay the Refunded Debt. On each date which shall be an interest payment date, a principal payment date or a redemption date for any of the Refunded Debt, the City shall pay the amounts due under the Refunded Debt Loan Agreement, from the moneys on deposit in the Escrow Account.

Moneys deposited in the Escrow Account shall be invested pursuant to the City's investment policy. Any excess funds available upon payment of the Refunded Debt shall be applied for the payment of principal and interest on the Series 2010 Note as the same shall become due under the loan agreement between the City and the Bank dated

September 23, 2010 and the Series 2011 Note as the same shall become due under the Loan Agreement.

**SECTION 10. FEASIBILITY STUDY.** Pursuant to Section 4.10 of the City's Charter, on May 20, 2010, September 7, 2010 and September 22, 2010, the City Manager and Finance Director presented information to the City Commission regarding the issuance of debt in an amount not to exceed \$16,500,000 which satisfied the feasibility study requirements. Further, on each date mentioned above at least five City Commissioners approved the issuance of debt in an amount not to exceed \$16,500,000. The aggregate principal amount of the Series 2010 Note and the Series 2011 Note shall not exceed \$16,500,000.

**SECTION 11. GENERAL AUTHORIZATION.** The Mayor, the City Manager, the City Clerk, the Finance Director and other employees or agents of the City are authorized to execute and deliver such documents, instruments and contracts, and are authorized and directed to do all acts and things required by this Resolution as may be necessary to effectuate the purpose and intent of this Resolution.

**SECTION 12. REPEAL OF INCONSISTENT DOCUMENTS.** All ordinances, resolutions or parts of each in conflict with this Resolution are superseded and repealed to the extent of such conflict.

**SECTION 13. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Commissioner Zev Auerbach	_____
Commissioner Teri Holzberg	_____
Commissioner Billy Joel	_____
Commissioner Michael Stern	_____
Commissioner Luz Urbáez Weinberg	_____
Vice Mayor Bob Diamond	_____
Mayor Susan Gottlieb	_____

PASSED AND ADOPTED this 20th day of January, 2011.

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SUSAN GOTTLIEB, MAYOR

ATTEST:

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TERESA M. SOROKA, MMC  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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CITY ATTORNEY

**EXHIBIT A**  
**BANK PROPOSAL**

**EXHIBIT B**  
**FORM OF LOAN AGREEMENT**



August 18, 2010

Office of the City Manager  
City of Aventura  
19200 West Country Club Drive  
Aventura, Florida 33180-2403

RE: \$16,500,000 Refunding Revenue Bonds, Series 2010 (Bank Qualified) for the City of Aventura  
ITB #10-08-23-2

Bank of America is pleased to provide this response to your Invitation to Bid (ITB) #10-08-23-2 which sets forth the general terms and conditions under which Bank of America, N.A. (the "Bank") would provide financing to the City of Aventura (the "Borrower"). Bank of America has a Government Banking Team that specializes in providing banking services to municipalities nationwide. Our local client team currently has over \$1 billion in credit commitments to municipal entities in South Florida including over \$4 million dollars in credit outstanding to the City of Aventura. The Bank has approved the attached credit proposal and such approval is good for a period of 45 days from the date herein.

**Contact Information:**

Bank of America, N.A.  
Federal Tax Id #94-1687665

Holly Kuhlman  
Senior Vice President/Senior Credit Products Officer  
4501 Tamiami Trail North, Suite 400  
Naples, Florida 34103  
Phone: (239) 659-2275  
Fax: (239) 659-2284  
Email: [Holly.Kuhlman@baml.com](mailto:Holly.Kuhlman@baml.com)

John Winn  
Senior Vice President/Senior Client Manager  
625 North Flagler Drive  
West Palm Beach, Florida 33401  
Phone: (561) 838-2357  
Email: [john.winn@baml.com](mailto:john.winn@baml.com)

**PROPOSED TERMS AND CONDITIONS**

- Borrower:** City of Aventura, Florida
- Loan:** Not to exceed \$16,500,000 Bank Qualified Tax-exempt
- Purpose:** The purpose of the loan is to finance the cost of refunding the City's portion of the outstanding Florida Municipal Loan Council Revenue Bonds, Series 1999.
- Interest Rate:** An indicative bank qualified tax exempt rate for the proposed transaction as of August 18, 2010 was 3.37%. The actual rate for the loan shall be locked in two business days prior to the closing based on the sum of 64.1% of the 10 year Interest Rate Swap rate as published in the Federal Reserve Statistical Release H.15 (<http://www.federalreserve.gov/Releases/H15/Current>) plus 1.70%. This pricing formula is valid only if the loan is closed on or before October 31, 2010. After that date, the formula is subject to change at Bank's sole discretion.
- The interest rate quoted above assumes that the loan will be a bank qualified tax exempt obligation and will be subject to a legal opinion as to the tax exempt status of the loan which is acceptable to the Bank and its counsel. In the event it is determined that the loan is taxable, standard gross up provisions shall apply.
- Repayment:** Interest shall be paid semi annually on each April 1 and October 1 beginning April 1, 2011. Principal shall be due annually on each April 1 beginning April 1, 2011. Principal shall amortize in the amounts as detailed in the debt service schedule attached to the Invitation to Bid. The loan shall mature on April 1, 2029 at which time all unpaid principal and accrued interest shall be due and payable. All interest shall be calculated based on a 30/360 day count.
- Security:** The loan shall be secured by a covenant to budget and appropriate by the City. The City shall appropriate in its annual budget, from Non-Ad Valorem Revenues lawfully available to the City in each fiscal year, amounts sufficient for the payment of principal and interest on the note when due. All security language shall be acceptable to the Bank and its counsel. The Bank will accept a provision allowing for the payment of essential government services but only to the extent required to avoid a violation of Article VII, Section 12 of the Florida Constitution.
- Pre-payments:** The loan shall be subject to a prepayment penalty if paid prior to the maturity. The prepayment language is provided in Exhibit E attached to this term sheet.

**Financial  
Information:**

During the term of the loan, the Borrower shall provide to Bank annually, within 270 days following end of the Borrower's fiscal year, the Borrower's annual financial statements, prepared in accordance with GAAP and audited by an independent CPA.

**Anti Dilution Test:** The Bank shall require an anti dilution test

**Documentation/  
Closing:**

All legal documentation must be acceptable to the Bank and its counsel. All tax opinions, resolutions and other loan documents will be prepared by the County's bond counsel, Nabors, Giblin & Nickerson.

**Other:**

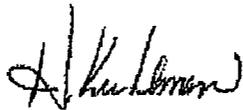
This is a term sheet and not intended to be all inclusive. The actual loan documents shall include other terms and conditions customary for the proposed transaction. These shall include but will not be limited to provisions that upon the occurrence of an event of default the Bank may accelerate the maturity of the loan, may charge a default interest rate equal to the 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 and mandatory arbitration 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 the rate 154% of the otherwise applicable rate.

**Expiration of Terms  
And Conditions:**

Consideration of financing based on the terms and conditions presented in this term sheet shall automatically expire 45 days from the date herein. The Bank reserves the right to terminate, reduce or otherwise amend the terms if the subject transaction is not closed within 90 days of the date herein.

On behalf of Bank of America, thank you for the opportunity to present this proposal to you and we look forward to your response.

Sincerely,



Holly Kuhlman  
Senior Vice President  
Senior Credit Products Officer

**Exhibit E:**  
**Muni Prepayment Language – Tax Exempt**

The [Bonds, Notes, Certificates, Borrower Note - \*conform to defined terms] may be [prepaid, redeemed - \*Use Applicable Language] in whole, or in part, on [any date - \*Use for Fixed Rate Transactions][at the end of any Interest Rate Period - \*Use For Variable Rate Transactions], with three (3) days prior written notice to the [Bondholder, Noteholder, Certificate Holder, Bank, Lender - \*conform to defined terms] by payment in an amount equal to the principal amount to be [prepaid/ redeemed - \*Use Applicable Language] plus accrued interest thereon to the date of [prepayment/redemption - \*Use Applicable Language] 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 Bond, Note, Certificate, Borrower Note - \*Use Applicable Term] 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 redemption/prepayment - \*Use Applicable Language] 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 [Bondholder, Noteholder, Certificate Holder, Bank, Lender, \*conform to defined terms] shall select a comparable publication to determine the Treasury Rate.

**V. PROPOSAL FORMS**

**CITY OF AVENTURA  
INVITATION TO BID**

**\$16,500,000\* (Not-to-Exceed)  
REFUNDING REVENUE BONDS, SERIES 2010 (BANK-QUALIFIED) FOR  
THE CITY OF AVENTURA**

**ITB# 10-08-23-2**

**PROPOSAL FORM**

I hereby propose to furnish the goods and services specified in the Request for Proposal. I agree that my proposal will remain firm for a period of forty-five (45) days after being opened by the City in order to allow the City adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the Company named as Proposing Company and that said Company is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal; no officer, employee or agent of the City of Aventura or any other proposer has an interest in said proposal. Furthermore, I certify that the undersigned executed this Proposal Form with full knowledge and understanding of matters therein contained and was duly authorized to do so.

Addendum # 1 Dated 8/10/10  
Addendum # 2 Dated 8/11/10  
Addendum #     Dated           

Attached hereto are the following forms/documents which form a part of this proposal:

Attachments

Proposal Form  
Agency Reference List  
Indemnification Clause  
Sworn Statement Pursuant to Section 287.133 (3) (a), Florida Statutes,  
On Public Entity Crimes  
Anti-Kickback Affidavit  
Non-Collusive Affidavit

Request for Tax Identification Number and Certification

Bank of America, NA

NAME OF BUSINESS

*Holly Kuhlman*

SIGNATURE

Holly Kuhlman

NAME & TITLE, TYPED OR PRINTED

MAILING ADDRESS

4501 Tamiami Trail North, Ste. 400

Naples, FL 34103

CITY, STATE, ZIP CODE

(239) 659-2275

TELEPHONE NUMBER

STATE OF Florida )

) SS

COUNTY OF Collier )

The foregoing instrument was sworn to and subscribed before me this 19<sup>TH</sup> day of AUGUST, 2010 by HOLLY KUHLMAN who is personally known to me or produced \_\_\_\_\_ as identification.

NOTARY PUBLIC, State of FLORIDA

Print Name:

*Nancy A. Limb*

Commission No.:

Commission Expires:



SEAL

(if Corporation)

Corporation)  
CITY OF AVENTURA  
\$16,500,000\* (Not-to-Exceed) Refunding Revenue Bonds, Series 2010 (Bank-Qualified)  
ITB #10-08-23-2  
Page 21 of 35  
\*Preliminary Estimate

**CITY OF AVENTURA  
INVITATION TO BID  
\$16,500,000\* (Not-to-Exceed)  
REFUNDING REVENUE BONDS, SERIES 2010 (BANK-QUALIFIED) FOR  
THE CITY OF AVENTURA  
ITB# 10-08-23-2  
PROPOSAL FORM (continued)**

The information below is provided as a summary of the interest rate provisions. Please refer to the attached terms and conditions for complete details on the interest rate, rate formula and fees.

Interest Rate: Fixed:

1. Callable at Par After April 1, 2016  Not Bid  % Simple Interest
2. Callable at any time without penalty  Not Bid  % Simple Interest
3. Non-Callable Indicative Rate of 3.37%, actual rate set two days prior to closing

Specify Formula Used: 64.1% of the 10 year interest rate swap plus 1.70%

Estimated Total Principal: \$16,415,000

Estimated Total Interest Payments: \$5,935,328

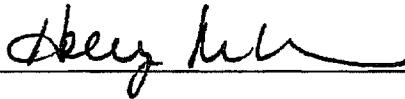
**Requirements: Will Comply:**

All expenses included in proposed rate. Yes  No

Bid good for forty-five (45) days. Yes  No

**THIS BID MUST BE SIGNED BY A PERSON AUTHORIZED TO ACT FOR THE COMPANY IN HIS/HER OWN NAME**

\_\_\_\_\_  
Holly Kuhlman, Senior Vice President  
Typed Name and Title Date



\_\_\_\_\_  
Signature

Bank of America \_\_\_\_\_

Firm Name

Naples, Florida 34109 \_\_\_\_\_

City State Zip Code

**CITY OF AVENTURA  
INVITATION TO BID**

**\$16,500,000\* (Not-to-Exceed)  
REFUNDING REVENUE BONDS, SERIES 2010 (BANK-QUALIFIED) FOR  
THE CITY OF AVENTURA**

**ITB# 10-08-23-2**

**AGENCY REFERENCE LIST**

Please list five (5) **Governmental Agency** contract references for which you have done business within the past three (3) years, if available:

Agency Name: City of Sunny Isles Beach  
Address: 18070 Collins Avenue

City, State, & Zip Code: Sunny Isles Beach, FL 33160

Contact's Name & Phone #: Minal Shah 305.792.1775

Agency Name: City of North Miami  
Address: 776 NE 125th Street

City, State, & Zip Code: North Miami, FL 33261

Contact's Name & Phone #: Carlos Perez 305.895.9881

**REFERENCES (continued)**

Agency Name: School Board of Broward County

Address: 7720 W. Oakland Park Blvd.

City, State, & Zip Code: Sunrise, FL 33351

Contact's Name & Phone #: Henry Robinson 754.321.0588

Agency Name: City of Hollywood

Address: 2600 Hollywood Blvd.

City, State, & Zip Code: Hollywood, FL 33020

Contact's Name & Phone #: Bryan Cahen 954.924.2980

Agency Name: School Board of Monroe County

Address: 241 Trumbo Road

City, State, & Zip Code: Key West, FL 33040

Contact's Name & Phone #: Michael Kinneer 305.293.1400 x53345

Attach additional sheets if necessary.

**CITY OF AVENTURA  
INVITATION TO BID**

**\$16,500,000\* (Not-to-Exceed)  
REFUNDING REVENUE BONDS, SERIES 2010 (BANK-QUALIFIED) FOR  
THE CITY OF AVENTURA**

**ITB# 10-08-23-2**

**ANTI-KICKBACK AFFIDAVIT**

STATE OF FLORIDA                    }  
  }        SS:  
COUNTY OF COLLIER                }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the City of Aventura, its elected officials, and \_\_\_\_\_ or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

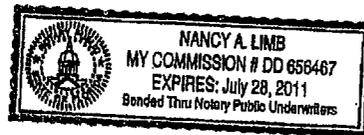
By: *Nancy A. Limb*  
Title: Senior Vice President

Sworn and subscribed before this

19TH day of AUGUST, 2010

*Nancy A. Limb*  
Notary Public, State of Florida

NANCY A LIMB  
(Printed Name)



My commission expires: \_\_\_\_\_

CITY OF AVENTURA  
INVITATION TO BID

\$16,500,000\* (Not-to-Exceed)  
REFUNDING REVENUE BONDS, SERIES 2010 (BANK-QUALIFIED) FOR  
THE CITY OF AVENTURA

ITB# 10-08-23-2

NON-COLLUSIVE AFFIDAVIT

STATE OF FLORIDA                    }  
  }  
COUNTY OF COLLIER                }        SS:

Holly Kuhlman being first duly sworn, deposes and says that:

a) He/she is the Officer  
(Owner, Partner, Officer, Representative or Agent) of  
Bank of America the Proposer that has submitted the attached  
Proposal;

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

c) Such Proposal is genuine and is not collusive or a sham Proposal;

d) Neither the said Proposer nor any of its officers, partners, owners,  
agents, representatives, employees or parties in interest, including this affiant, have  
in any way colluded, conspired, connived or agreed, directly or indirectly, with any  
other Proposer, firm, or person to submit a collusive or sham Proposal in connection  
with the Work for which the attached Proposal has been submitted; or to refrain  
from proposing in connection with such work; or have in any manner, directly or  
indirectly, sought by person to fix the price or prices in the attached Proposal or of  
any other Proposer, or to fix any overhead, profit, or cost elements of the Proposal  
price or the Proposal price of any other Proposer, or to secure through any  
collusion, conspiracy, connivance, or unlawful agreement any advantage against  
(Recipient), or any person interested in the proposed work;

**NON-COLLUSIVE AFFIDAVIT (continued)**

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

Signed, sealed and delivered  
in the presence of:

*Amy R. Roberts*  
Witness

By: *Holly Kuhlman*

*Nancy A. Limb*  
Witness

Holly Kuhlman  
(Printed Name)

Senior Vice President  
(Title)

**ACKNOWLEDGMENT**

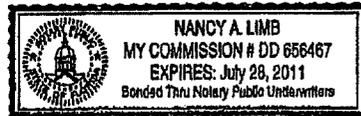
STATE OF FLORIDA            }  
  }        SS:  
COUNTY OF COLLIER        }

BEFORE ME, the undersigned authority personally appeared HOLLY KUHLMAN to me well known and known by me to be the person described herein and who executed the foregoing Affidavit and acknowledged to and before me that SHE executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this 19TH day of AUGUST, 2010.

My Commission Expires:

*Nancy A. Limb*  
Notary Public State of Florida at Large



Request for Taxpayer  
Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.\*

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return) <b>Bank of America, N.A.</b>	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input checked="" type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.) <b>401 North Tryon Street, NC1-021-02-20</b>	Requester's name and address (optional) <b>City of Aventura 19200 West Country Club Dr Aventura, FL 33180</b>
City, state, and ZIP code <b>Charlotte, NC 28255</b>	
List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number <b>94-1687665</b>

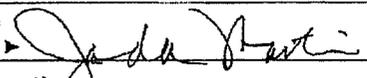
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶ 	Date ▶ <b>1/7/10</b>
------------------	--	----------------------

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity.

**EXHIBIT B – Estimated Debt Service**

Disclaimer: This is an estimated repayment schedule and not legally binding. Use appropriately.

Date	Rate	Interest	Principal	Total Payment	Balance
10/1/2010					16,415,000
4/1/2011	3.370%	276,592.75	560,000	836,593	15,855,000
10/1/2011	3.370%	267,156.75			15,855,000
4/1/2012	3.370%	267,156.75	610,000	1,144,314	15,245,000
10/1/2012	3.370%	256,878.25			15,245,000
4/1/2013	3.370%	256,878.25	635,000	1,148,757	14,610,000
10/1/2013	3.370%	246,178.50			14,610,000
4/1/2014	3.370%	246,178.50	660,000	1,152,357	13,950,000
10/1/2014	3.370%	235,057.50			13,950,000
4/1/2015	3.370%	235,057.50	690,000	1,160,115	13,260,000
10/1/2015	3.370%	223,431.00			13,260,000
4/1/2016	3.370%	223,431.00	715,000	1,161,862	12,545,000
10/1/2016	3.370%	211,383.25			12,545,000
4/1/2017	3.370%	211,383.25	745,000	1,167,767	11,800,000
10/1/2017	3.370%	198,830.00			11,800,000
4/1/2018	3.370%	198,830.00	780,000	1,177,660	11,020,000
10/1/2018	3.370%	185,687.00			11,020,000
4/1/2019	3.370%	185,687.00	810,000	1,181,374	10,210,000
10/1/2019	3.370%	172,038.50			10,210,000
4/1/2020	3.370%	172,038.50	840,000	1,184,077	9,370,000
10/1/2020	3.370%	157,884.50			9,370,000
4/1/2021	3.370%	157,884.50	875,000	1,190,769	8,495,000
10/1/2021	3.370%	143,140.75			8,495,000
4/1/2022	3.370%	143,140.75	915,000	1,201,282	7,580,000
10/1/2022	3.370%	127,723.00			7,580,000
4/1/2023	3.370%	127,723.00	955,000	1,210,446	6,625,000
10/1/2023	3.370%	111,631.25			6,625,000
4/1/2024	3.370%	111,631.25	995,000	1,218,263	5,630,000
10/1/2024	3.370%	94,865.50			5,630,000
4/1/2025	3.370%	94,865.50	1,035,000	1,224,731	4,595,000
10/1/2025	3.370%	77,425.75			4,595,000
4/1/2026	3.370%	77,425.75	1,080,000	1,234,852	3,515,000
10/1/2026	3.370%	59,227.75			3,515,000
4/1/2027	3.370%	59,227.75	1,125,000	1,243,456	2,390,000
10/1/2027	3.370%	40,271.50			2,390,000
4/1/2028	3.370%	40,271.50	1,170,000	1,250,543	1,220,000
10/1/2028	3.370%	20,557.00			1,220,000
4/1/2029	3.370%	20,557.00	1,220,000	1,261,114	-
<b>TOTALS</b>		<b>5,935,328</b>	<b>16,415,000</b>	<b>22,350,328</b>	

**EXHIBIT B**  
**FORM OF LOAN AGREEMENT**

## LOAN AGREEMENT

This **LOAN AGREEMENT** (the "Loan Agreement") is made and entered into as of February 1, 2011, and is by and between the City of Aventura, Florida, a municipal corporation of the State of Florida, and its successors and assigns (the "City"), and Bank of America, N.A., a national banking association, and its successors and assigns, as holder(s) of the hereinafter defined Series 2011 Note (the "Bank").

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

### ARTICLE I DEFINITION OF TERMS

**SECTION 1.01 DEFINITIONS.** The words and terms used in this Loan Agreement shall have the meanings as set forth in the recitals above and the following words and terms as used in this Loan Agreement shall have the following meanings:

**"Available Non-Ad Valorem Funds"** means all Non-Ad Valorem Funds other than (i) any revenues which are restricted by a contract in existence on the date hereof, or created subsequent to the date hereof in connection with the incurrence of debt permitted by Section 3.02(b) hereof, from being used to pay principal and interest on the Series 2011 Note, (ii) any revenues which are prohibited by a general or special law of the State in existence on the date hereof from being used to pay principal and interest on the Series 2011 Note and (iii) any source of Non-Ad Valorem Funds which is created after the date hereof and which is prohibited by a general or special law of the State from being used to pay principal and interest on the Series 2011 Note.

**"Bond Counsel"** means an attorney-at-law or firm of such attorneys having expertise in the legal aspects of the issuance of indebtedness by states and political subdivisions thereof.

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

**"Closing Date"** means the date so indicated in the Series 2011 Note.

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

**"Event of Default"** shall mean an event of default specified in Article VI of this Loan Agreement.

"**Fiscal Year**" means the period commencing on October 1 through the next succeeding September 30.

"**Loan**" shall mean the loan by the Bank to the City contemplated hereby.

"**Loan Agreement**" or "**Agreement**" shall mean this Loan Agreement and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"**Loan Amount**" means \$ \_\_\_\_\_.

"**Loan Documents**" means this Loan Agreement and the Series 2011 Note.

"**Non-Ad Valorem Funds**" means all revenues of the City derived from any source other than ad valorem taxation on real and personal property, which are legally available to pay principal and interest on the Series 2011 Note.

"**Notice Address**" means,

As to the City:       City Manager and City Attorney  
                              City of Aventura, Florida  
                              19200 West Country Club Drive, 5th Floor  
                              Aventura, FL 33180

As to the Bank:       Bank of America, N.A.  
                              9000 Southside Boulevard  
                              Building 100  
                              Jacksonville, Florida 32256

or to such other address as either party may have specified in writing to the other using the procedures specified in Section 7.06.

"**Ordinance**" means the Ordinance adopted by the Commission on September 22, 2010, authorizing the borrowing of money, as required by Section 4.03(b) of the City Charter.

"**Principal Office**" means, with respect to the Bank, the office located at 9000 Southside Boulevard, Building 100, Jacksonville, Florida, 32256, or such other office as the Bank may designate to the City in writing.

"**Refunded Debt**" shall mean the obligations of the City pursuant to the Loan Agreement, dated as of April 1, 1999, between the Florida Municipal Loan Council and the City.

**"Resolution"** means the Resolution, adopted by the City Commission of the City on January 20, 2011 authorizing the issuance of the Series 2011 Note.

**"Series 2011 Note"** means the City's Promissory Note in the form attached hereto as Attachment "A."

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

**SECTION 1.02 TITLES AND HEADINGS.** The titles and headings of the articles and sections of this Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## **ARTICLE II REPRESENTATIONS OF CITY**

The City represents and warrants to the Bank that:

**SECTION 2.01 POWERS OF CITY.** The City is a municipal corporation, duly organized and validly existing under the laws of the State. The City has the power to borrow the amount provided for in this Loan Agreement, to execute and deliver the Loan Documents, to secure the Series 2011 Note in the manner contemplated hereby and to perform and observe all the terms and conditions of the Loan Documents on its part to be performed and observed.

**SECTION 2.02 AUTHORIZATION OF LOAN.** The City had, has, or will have, as the case may be, at all relevant times, full legal right, power, and authority to execute the Loan Documents, to make the Series 2011 Note, and to carry out and consummate all other transactions contemplated hereby, and the City has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The City has duly authorized the borrowing of the amount provided for in this Loan Agreement, the execution and delivery of this Loan Agreement, and the making and delivery of the Series 2011 Note to the Bank and to that end the City warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Series 2011 Note. The Series 2011 Note has been duly authorized, executed, issued and delivered to the Bank and constitutes the legal, valid and binding obligation of the City enforceable in accordance with the terms thereof and the terms hereof, and is entitled to the benefits and security of this Loan Agreement, subject to the provisions of the bankruptcy laws of the United States of America and to other applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights, heretofore or hereinafter enacted, to the extent constitutionally

applicable, and provided that its enforcement may also be subject to equitable principles that may affect remedies or other equitable relief, or to the exercise of judicial discretion in appropriate cases. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Series 2011 Note or the execution and delivery of or the performance by the City of its obligations under this Loan Agreement and the Series 2011 Note have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

**SECTION 2.03 NO VIOLATION OF LAW OR CONTRACT.** The City is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound, the breach of which could result in a material and adverse impact on the financial condition of the City or the ability of the City to perform its obligations hereunder and under the Series 2011 Note. The making and performing by the City of this Loan Agreement and the Series 2011 Note will not violate any applicable provision of law, and will not result in a material breach of any of the terms of any agreement or instrument to which the City is a party or by which the City is bound, the breach of which could result in a material and adverse impact on the financial condition of the City or the ability of the City to perform its obligations hereunder and under the Series 2011 Note.

**SECTION 2.04 PENDING OR THREATENED LITIGATION.** There are no actions or proceedings pending against the City or affecting the City or, to the knowledge of the City, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the City, or which question the validity of this Loan Agreement or the Series 2011 Note or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

**SECTION 2.05 FINANCIAL INFORMATION.** The financial information regarding the City furnished to the Bank by the City in connection with the Loan is complete and accurate, and there has been no material and adverse change in the financial condition of the City from that presented in such information.

### **ARTICLE III COVENANTS OF THE CITY**

**SECTION 3.01 AFFIRMATIVE COVENANTS.** For so long as any of the principal amount of or interest on the Series 2011 Note is outstanding or any duty or obligation of the City hereunder or under the Series 2011 Note remains unpaid or unperformed, the City covenants to the Bank as follows:

(a) Payment. The City shall pay the principal of and the interest on the Series 2011 Note at the time and place and in the manner provided herein and in the Series 2011 Note.

(b) Use of Proceeds. Proceeds from the Series 2011 Note will be used only to refund the Refunded Debt, pay expenses of refunding the Refunded Debt, and to pay closing costs of the Loan.

(c) Notice of Defaults. The City shall within ten (10) days after it acquires knowledge thereof, notify the Bank in writing at its Notice Address upon the happening, occurrence, or existence of any Event of Default, and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Bank with such written notice, a detailed statement by a responsible officer of the City of all relevant facts and the action being taken or proposed to be taken by the City with respect thereto.

(d) Maintenance of Existence. The City will take all legal action within its control in order to maintain its existence until all amounts due and owing from the City to the Bank under this Loan Agreement and the Series 2011 Note have been paid in full.

(e) Records. The City agrees that any and all records of the City with respect to the Loan shall be open to inspection by the Bank or its representatives at all reasonable times at the offices the City.

(f) Financial Statements. The City will cause an audit to be completed of its books and accounts and shall furnish to the Bank audited year-end financial statements of the City certified by an independent certified public accountant to the effect that such audit has been conducted in accordance with generally accepted auditing standards and stating whether such financial statements present fairly in all material respects the financial position of the City and the results of its operations and cash flows for the periods covered by the audit report, all in conformity with generally accepted accounting principles applied on a consistent basis. The City shall provide the Bank with the City's audited financial statements for each fiscal year ending on or after September 30, 2010 within 270 days after the end thereof.

(g) Notice of Liabilities. The City shall promptly inform the Bank in writing of any actual or potential contingent liabilities or pending or threatened litigation of any amount that could reasonably be expected to have a material and adverse effect upon the financial condition of the City or upon the ability of the City to perform its obligation hereunder and under the Series 2011 Note.

(h) Insurance. The City shall maintain such liability, casualty and other insurance as is reasonable and prudent for similarly situated governmental entities of the State of Florida.

(i) Compliance with Laws. The City shall comply with all applicable federal, state and local laws and regulatory requirements, the violation of which could reasonably be expected to have a material and adverse effect upon the financial condition of the City

or upon the ability of the City to perform its obligation hereunder and under the Series 2011 Note.

(j) Payment of Document Taxes. In the event the Series 2011 Note or this Loan Agreement should be subject to the excise tax on documents or the intangible personal property tax of the State, the City shall pay such taxes or reimburse the Bank for any such taxes paid by it.

**SECTION 3.02 NEGATIVE COVENANTS.** For so long as any of the principal amount of or interest on the Series 2011 Note is outstanding or any duty or obligation of the City hereunder or under the Series 2011 Note remains unpaid or unperformed, the City covenants to the Bank as follows:

(a) No Adverse Borrowings. The City shall not issue or incur any indebtedness or obligation if such would materially and adversely affect the ability of the City to pay debt service on the Series 2011 Note or any other amounts owing by the City under this Loan Agreement.

(b) Anti-Dilution Covenant. Without the prior written consent of the Bank, the City shall not hereafter incur any indebtedness payable from any Non-Ad Valorem Funds (which includes any increases in the outstanding amount under any line of credit or similar arrangement), unless (i) the aggregate Available Non-Ad Valorem Funds received by the City during the two (2) fiscal years most recently concluded prior to the incurrence of such debt equals or exceeds 300% of the maximum annual debt service in the then current or any future fiscal year of the City on debt, including the proposed debt, secured by and/or payable from such Available Non-Ad Valorem Funds; and (ii) the maximum annual debt service requirements in the then current or any future fiscal year of the City for all debt, including the proposed debt, secured by and/or payable from Non-Ad Valorem Funds will not exceed 20% of governmental fund revenues (defined as general fund, special fund, debt service fund and capital projects funds) of the City for the fiscal year most recently concluded prior to the incurrence of such proposed debt, exclusive of (i) ad valorem revenues restricted to payment of debt service on any debt and (ii) any debt proceeds. For purposes of calculating the foregoing, (i) if any indebtedness bears a rate of interest that is not fixed for the entire term of the debt (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default), then the interest rate on such indebtedness shall be assumed to be the highest of (1) the average rate of actual interest borne by such indebtedness during the most recent complete month prior to the date of issuance of such proposed indebtedness, (2) for tax-exempt debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date of issuance of such proposed indebtedness plus one percent, or (3) for taxable debt, the yield on a U.S. Treasury obligation with a constant maturity closest to but not before the maturity date of such indebtedness, as reported in Statistical Release H.15 of the Federal Reserve on the last day of the month preceding the date of issuance of such proposed indebtedness, plus three percent,

provided that if the City shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such indebtedness for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the period of such swap or cap, and provided further that if The Bond Buyer Revenue Bond Index or Statistical Release H.15 of the Federal Reserve is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Bank shall be utilized in the foregoing calculations; and (ii) if any indebtedness has 25% or more of the original principal amount maturing during any one Fiscal Year, then the maximum annual debt service on such indebtedness shall be determined assuming such indebtedness is amortized over 20 years.

**SECTION 3.03. AUTOMATIC PAYMENT PROCEDURE.** On the due date thereof, the City hereby authorizes the Bank to automatically deduct from a bank account of the City designated to the Bank the amount of any payment of principal or interest due from the City to the Bank under this Loan Agreement or the Series 2011 Note. If the funds in the account are insufficient to cover any payment, the Bank shall not be obligated to advance funds to cover the payment. The Bank covenants that it shall not debit the City's account for any amount in excess of the principal and interest due from the City to the Bank as the same becomes due.

**SECTION 3.04. REGISTRATION AND EXCHANGE OF SERIES 2011 NOTE.** The Series 2011 Note is owned by Bank of America, N.A. The ownership of the Series 2011 Note may only be transferred, and the City will transfer the ownership of the Series 2011 Note, upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee, and the City will keep a record setting forth the identification of the owner of the Series 2011 Note.

**SECTION 3.05. SERIES 2011 NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** In case the Series 2011 Note shall become mutilated, or be destroyed, stolen or lost, the City shall issue and deliver a new note, in exchange and in substitution for such mutilated Series 2011 Note, or in lieu of and in substitution for the Series 2011 Note destroyed, stolen or lost and upon the Bank furnishing the City proof of ownership thereof and indemnity reasonably satisfactory to the City and paying such expenses as the City may incur.

**SECTION 3.06. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.** The City hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Funds lawfully available in each Fiscal Year, amounts sufficient to pay debt service on the Series 2011 Note when due, as provided herein and in the Series 2011 Note. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Funds shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Funds or other legally available funds in amounts sufficient to make all

such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Funds.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Funds, nor does it preclude the City from pledging in the future its Non-Ad Valorem Funds, nor does it require the City to levy and collect any particular Non-Ad Valorem Funds, nor does it give the holder of the Series 2011 Note a prior claim on the Non-Ad Valorem Funds as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Funds is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Funds heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of scheduled debt service on the Series 2011 Note in the manner described herein and in the Series 2011 Note, Non-Ad Valorem Funds and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes; and, to the extent and only to the extent necessary to avoid a violation of Article VII, Section 12 of the Florida Constitution, subject, further, to the payment of services and programs which are for essential public purposes of the City and those within its jurisdiction or which are legally mandated by applicable law.

**SECTION 3.07 OFFICERS AND EMPLOYEES OF THE CITY EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Loan Agreement or the Series 2011 Note or for any claim based hereon or thereon or otherwise in respect thereof, shall be had against any officer, agent or employee, as such, of the City past, present or future, it being expressly understood (a) that the obligation of the City under this Loan Agreement and under the Series 2011 Note is solely a corporate one, limited as provided in the preceding Section 3.06, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the officers, agents, or employees, as such, of the City, or any of them, under or by reason of the obligations, covenants or agreements contained in this Loan Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such officer, agent, or employee, as such, of the City under or by reason of the obligations, covenants or agreements contained in this Loan Agreement and under the Series 2011 Note, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Loan Agreement and the issuance of the Series 2011 Note on the part of the City.

**SECTION 3.08. BUSINESS DAYS.** In any case where the due date of interest on or principal of the Series 2011 Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Bank.

**SECTION 3.09. TAX REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY.**

(a) The City hereby covenants and represents that it has taken and caused to be taken and shall make and take and cause to be made and taken all actions that may be required of it for the interest on the Series 2011 Note to be and remain excluded from the gross income of the Bank for federal income tax purposes to the extent set forth in the Code, and that to the best of its knowledge it has not taken or permitted to be taken on its behalf, and covenants that to the best of its ability and within its control, it shall not make or take, or permit to be made or taken on its behalf, any action which, if made or taken, would adversely affect such exclusion under the provisions of the Code.

The City acknowledges that the continued exclusion of interest on the Series 2011 Note from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Sections 103(b)(2) and 148 of the Code. The City hereby acknowledges responsibility to take all reasonable actions necessary to comply with these requirements. The City hereby agrees and covenants that it shall not permit at any time or times any of the proceeds of the Series 2011 Note or other funds of the City to be intentionally used, directly or indirectly, to acquire or to replace funds which were used directly or indirectly to acquire any higher yielding investments (as defined in Section 148 of the Code), the acquisition of which would cause the Series 2011 Note to be an arbitrage bond for purposes of Sections 103(b)(2) and 148 of the Code. The City further agrees and covenants that it shall do and perform all acts and things necessary in order to assure that the requirements of Sections 103(b)(2) and 148 of the Code are met.

The City understands that the foregoing covenants impose continuing obligations on it to comply with the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of the Code so long as such requirements are applicable.

(b) The City will comply with, and timely make or cause to be made all filings required by, all effective rules, rulings or regulations promulgated by the Department of the Treasury or the Internal Revenue Service.

(c) The City will not use the projects financed by the Refunded Debt in any manner which might cause the Series 2011 Note to become a "private activity bond" within the meaning of Sections 141 and 145 of the Code.

**SECTION 3.10. SECTION 265 DESIGNATION OF SERIES 2011 NOTE.**

The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code), which have been or will be issued by the City and all entities which are subordinate to or which issue obligations on behalf of the City during 2011 does not exceed \$10,000,000, and the City hereby designates the Series 2011 Note as a "qualified tax-exempt obligation" ("QTEO") for purposes of Section 265(b)(3)(B)(i) of the Code, and the City covenants and agrees not to take any action or to fail to take any action if such action or failure would cause the Series 2011 Note to no longer be a QTEO.

**ARTICLE IV  
CONDITIONS OF LENDING**

The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

**SECTION 4.01 REPRESENTATIONS AND WARRANTIES.** The representations and warranties set forth in this Loan Agreement and the Series 2011 Note are and shall be true and correct on and as of the date hereof.

**SECTION 4.02 NO DEFAULT.** On the date hereof, the City shall be in compliance with all the terms and provisions set forth in this Loan Agreement and the Series 2011 Note on its part to be observed or performed, and no Event of Default nor any event that, upon notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing.

**SECTION 4.03 SUPPORTING DOCUMENTS.** On or prior to the date hereof, the Bank shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the purchase of the Series 2011 Note by the Bank):

(a) the opinion of the attorney for the City or bond counsel to the City, regarding the due enactment or adoption, as the case may be, of the Ordinance and the Resolution authorizing this Loan Agreement and the Series 2011 Note;

(b) the opinion of bond counsel to the effect that, (1) the interest on such Series 2011 Note is excluded from gross income for federal income tax purposes and such Series 2011 Note is not an item of tax preference under Section 57 of the Code, and (2) the Series 2011 Note is a QTEO; and

(c) such additional supporting documents as the Bank may reasonably request.

**ARTICLE V  
FUNDING THE LOAN**

**SECTION 5.01 THE LOAN.** The Bank hereby agrees to Loan to the City the Loan Amount on the date hereof and upon the terms and conditions set forth in this Loan Agreement. The City agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in this Loan Agreement and the Series 2011 Note.

**SECTION 5.02 DESCRIPTION AND PAYMENT TERMS OF THE SERIES 2011 NOTE.** To evidence the obligation of the City to repay the Loan, the City shall make and deliver to the Bank the Series 2011 Note in the form attached hereto as Attachment A.

**ARTICLE VI  
EVENTS OF DEFAULT**

**SECTION 6.01 GENERAL.** An "Event of Default" shall be deemed to have occurred under this Loan Agreement if:

(a) The City shall fail to make any payment of the principal of or interest on the Loan when the same shall become due and payable, whether by maturity, by acceleration at the discretion of the Bank as provided for in Section 6.02, or otherwise; or

(b) The City shall default in the performance of or compliance with any term or covenant contained in this Loan Agreement or the Series 2011 Note, other than a term or covenant a default in the performance of which or noncompliance with which is elsewhere specifically dealt with, which default or non-compliance shall continue and not be cured within thirty (30) days after (i) notice thereof to the City by the Bank, or (ii) the Bank is notified of such noncompliance or should have been so notified pursuant to the provisions of Section 3.01(c) of this Loan Agreement, whichever is earlier; or

(c) Any representation or warranty made in writing by or on behalf of the City in this Loan Agreement or the Series 2011 Note shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(d) The City admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(e) The City is adjudged insolvent by a court of competent jurisdiction, or it is adjudged a bankrupt on a petition in bankruptcy filed by or against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its

property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) The City shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State; or

(g) The City shall default in the due and punctual payment or performance of covenants related to (i) any obligation for the payment of money to the Bank or any other subsidiary or affiliate of Bank of America Corporation, or (ii) any obligation for the repayment of borrowed money secured and payable by a covenant to budget and appropriate in excess of \$250,000 to any other obligee.

**SECTION 6.02 EFFECT OF EVENT OF DEFAULT.** Immediately and without notice, upon the occurrence of an Event of Default described in Sections 6.01(a), (d), (e) and (f) of this Loan Agreement or upon a violation of the Anti-Dilution Covenant set forth in Section 3.02(b) of this Loan Agreement, the Bank may declare all obligations of the City under this Loan Agreement and the Series 2011 Note to be immediately due and payable without further action of any kind and upon such declaration the Series 2011 Note and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, and for all other Events of Default, the Bank may seek enforcement of and exercise all remedies available to it under any applicable law.

## **ARTICLE VII MISCELLANEOUS**

**SECTION 7.01 NO WAIVER; CUMULATIVE REMEDIES.** No failure or delay on the part of the Bank in exercising any right, power, remedy hereunder or under the Series 2011 Note shall operate as a waiver of the Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

**SECTION 7.02 AMENDMENTS, CHANGES OR MODIFICATIONS TO THE LOAN AGREEMENT.** This Loan Agreement shall not be amended, changed or modified except in writing signed by the Bank and the City. The City agrees to pay all of the Bank's costs and reasonable attorneys' fees incurred in modifying and/or amending this Loan Agreement at the City's request or behest.

**SECTION 7.03 COUNTERPARTS.** This Loan Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Loan

Agreement, and, in making proof of this Loan Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**SECTION 7.04 SEVERABILITY.** If any clause, provision or section of this Loan Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Loan Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

**SECTION 7.05 TERM OF LOAN AGREEMENT.** Except as otherwise specified in this Loan Agreement, this Loan Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the City in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Series 2011 Note is outstanding.

**SECTION 7.06 NOTICES.** All notices, requests, demands and other communications which are required or may be given under this Loan Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to the Notice Address.

**SECTION 7.07 APPLICABLE LAW; VENUE.** This Loan Agreement shall be construed pursuant to and governed by the substantive laws of the State. The City and the Bank waive any objection either might otherwise have to venue of any action lying in Miami-Dade County, Florida.

**SECTION 7.08 BINDING EFFECT; ASSIGNMENT.** This Loan Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The City shall have no rights to assign any of its rights or obligations hereunder without the prior written consent of the Bank.

**SECTION 7.09 NO THIRD PARTY BENEFICIARIES.** It is the intent and agreement of the parties hereto that this Loan Agreement is solely for the benefit of the parties hereto and no person not a party hereto shall have any rights or privileges hereunder.

**SECTION 7.10 ATTORNEYS FEES.** To the extent legally permissible, the City and the Bank agree that in any suit, action or proceeding brought in connection with

this Loan Agreement or the Series 2011 Note (including any appeal(s)), the prevailing party shall be entitled to recover costs and attorneys' fees from the other party.

**SECTION 7.11 ENTIRE LOAN AGREEMENT.** Except as otherwise expressly provided, this Loan Agreement and the Series 2011 Note embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

**SECTION 7.12 FURTHER ASSURANCES.** The parties to this Loan Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of out the transactions contemplated by this Loan Agreement.

**SECTION 7.13 ARBITRATION AND WAIVER OF JURY TRIAL.**

(a) This Section 7.13 concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, that arise out of or relate to: (i) this Loan Agreement (including any renewals, extensions or modifications); or (ii) any Loan Document (collectively a "Claim"). For the purposes of this arbitration provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of the Bank involved in the servicing, management or administration of any obligation described or evidenced by this Loan Agreement.

(b) At the request of any party to this Loan Agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Arbitration Act"). The Arbitration Act will apply even though this Loan Agreement provides that it is governed by the law of a specified state. The arbitration will take place on an individual basis without resort to any form of class action.

(c) Arbitration proceedings will be determined in accordance with the Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this Section. In the event of any inconsistency, the terms of this paragraph shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, any party to this Loan Agreement may substitute another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted in Miami-Dade County, Florida. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of

commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed, judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Loan Agreement.

(f) This Section does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this Loan Agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This provision is a material inducement for the parties entering into this Loan Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Loan Agreement to be effective between them as of the date of first set forth above.

**CITY OF AVENTURA, FLORIDA**

By: \_\_\_\_\_  
Eric M. Soroka, City Manager

**ATTEST:**

\_\_\_\_\_  
Teresa M. Soroka, MMC, City Clerk

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Name: Holly L. Kuhlman  
Title: Senior Vice President

**ATTACHMENT A**  
**FORM OF PROMISSORY NOTE**

## PROMISSORY NOTE, SERIES 2011

**KNOW ALL MEN BY THESE PRESENTS** that the undersigned maker, City of Aventura, Florida (the "City"), a political subdivision and municipality created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of Bank of America, N.A. or registered assigns (hereinafter, the "Bank"), the principal sum of \$ \_\_\_\_\_ or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate of \_\_\_% per annum (subject to adjustment as hereinafter provided) based upon a 360 day year consisting of twelve thirty-day months. This Promissory Note (the "Series 2011 Note") is issued in conjunction with a Loan Agreement, dated of even date herewith, between the City and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement.

Principal of and interest on this Series 2011 Note are payable in immediately available funds constituting lawful money of the United States of America at such place as the Bank may designate to the City.

As used in this Series 2011 Note:

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

"Determination of Taxability" shall mean interest on this Series 2011 Note is determined or declared, by the Internal Revenue Service or a court of competent jurisdiction to be included in the gross income of the Owner for federal income tax purposes under the Code.

The City shall pay the Bank installments of the principal hereof each April 1, commencing April 1, 2012 as set forth below and interest hereon each April 1 and October 1, commencing on April 1, 2011, and the remaining unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on April 1, 2029 (the "Final Maturity Date"). Principal on this Series 2011 Note shall be payable in the amounts as set for the below:

<u>Year</u> <u>(April 1)</u>	<u>Amount</u>
2012	
2013	
2014	
2015	

<u>Year</u> <u>(April 1)</u>	<u>Amount</u>
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029*	

\*Final Maturity Date

All payments by the City pursuant to this Series 2011 Note shall apply first to accrued interest, then to other charges due the Bank, and the balance thereof shall apply to the principal sum due.

Upon the occurrence of a Determination of Taxability, the interest rate on this Series 2011 Note shall be adjusted to a rate equal to 154% of the interest rate otherwise borne hereby (the "Adjusted Interest Rate"), as of and from the date such Determination of Taxability would be applicable with respect to this Series 2011 Note (the "Accrual Date"); and (i) the City shall on the next interest payment date (or if this Series 2011 Note shall have matured, within 30 days after demand by the Bank) hereon pay to the Bank an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on this Series 2011 Note at the Adjusted Interest Rate from the Accrual Date to such next interest payment date, and (B) the actual interest paid by the City on this Series 2011 Note from the Accrual Date to such next interest payment date, and (2) any interest and penalties required to be paid as a result of any additional State of Florida and federal income taxes imposed upon such Bank arising as a result of such Determination of Taxability; and (ii) from and after the date of the Determination of Taxability, this Series 2011 Note shall continue to bear interest at the Adjusted Interest Rate for the period such determination continues to be applicable with respect to this Series 2011 Note. This adjustment shall survive payment of this Series 2011 Note until such time as the federal statute of limitations under which the interest on this Series 2011 Note could be declared taxable under the Code shall have expired.

This Series 2011 Note 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:

(a) "Original Payment Dates" mean the dates on which the prepaid 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.

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

(c) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: \_\_\_% 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).

(d) "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.

Upon the occurrence of an Event of Default described in Sections 6.01(a), (d), (e) or (f) of the Loan Agreement or upon a violation of the Anti-Dilution Covenant set forth in Section 3.02(b) of the Loan Agreement, then the Bank may declare the entire debt then remaining unpaid hereunder immediately due and payable; and in any such default and acceleration, the City shall also be obligated to pay (but only from the Non-Ad Valorem Funds) as part of the indebtedness evidenced by this Series 2011 Note, all costs of collection and enforcement hereof, including such fees as may be incurred on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist, including specifically but without limitation, claims, disputes and proceedings seeking adequate protection or relief from the automatic stay. If any payment hereunder is not made within fifteen (15) days after it is due, then the City shall also be obligated to pay, from any Non-Ad Valorem Funds of the City, as a part of the indebtedness evidenced by this Series 2011 Note a late payment fee in the amount of three percent (3%) of delinquent payment, which late payment shall be due and payable immediately.

Interest at the maximum lawful rate per annum shall be payable on the entire principal balance owing hereunder from and after the occurrence of and during the continuation of a default described in the preceding paragraph, irrespective of a declaration of maturity.

The City to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

This Series 2011 Note is payable solely from the Non-Ad Valorem Funds to the extent provided in the Loan Agreement. Notwithstanding any other provision of this Series 2011 Note, the City is not and shall not be liable for the payment of the principal of and interest on this Series 2011 Note or otherwise monetarily liable in connection herewith from any property other than as provided in the Loan Agreement.

All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Series 2011 Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Series 2011 Note may be exchanged or transferred but only as provided in the Loan Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Series 2011 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Series 2011 Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the City has caused this Series 2011 Note to be executed in its name as of the date hereinafter set forth.

The date of this Series 2011 Note is February 1, 2011.

**CITY OF AVENTURA, FLORIDA**

By: \_\_\_\_\_  
Eric M. Soroka, City Manager

**ATTEST:**

\_\_\_\_\_  
Teresa M. Soroka, MMC, City Clerk