

ORDINANCE 1235

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA AMENDING AND SUPPLEMENTING ORDINANCE NO. 1089 OF THE CITY; INCREASING THE PRINCIPAL AMOUNT OF THE CITY OF POLK CITY, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2005; AMENDING REQUIREMENTS RELATED TO THE REVOLVING LINE OF CREDIT; AMENDING REQUIREMENTS RELATED TO CONVERSION; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA, that:

Section 1: *Authority for this Supplemental Ordinance.* This Supplemental Ordinance supplements Ordinance No. 1089 adopted by the City Council of the City on November 23, 2005, as amended and supplemented (the "Ordinance") and is enacted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the City of Polk City, Florida (the "Issuer"), and other applicable provisions of law. For all purposes of this Ordinance, all capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in Ordinance No. 1089 unless otherwise expressly provided or unless the context otherwise requires.

Section 2: *Findings.*

(A) For the benefit of its inhabitants, the Issuer issued its Capital Improvement Revenue Note, Series 2005 in the stated principal amount of \$2,000,000 (the "Note") on November 23, 2005.

(B) The Ordinance provides that the aggregate principal amount of the Note is not to exceed \$2,000,000. The authorized denomination of the Note is the lesser of \$100,000 or the amount outstanding.

(C) The cost of the Project has increased since the issuance of the Note.

(D) The Issuer and the Bank now desire to increase the aggregate principal amount of the Note by \$1,500,000 to an amount such that the principal amount of the Note will equal \$3,500,000.

(E) The Issuer and the Bank further desire to amend the Ordinance in regards to the conversion to term loan mode feature of the Note.

(F) The Bank, as holder of the Note has provided its written consent to these amendments which is attached hereto as Exhibit A and has delivered its commitment which is attached hereto as Exhibit E, which is hereby approved. The Mayor is directed to sign and delivery the commitment to SunTrust.

(G) All other terms of the Ordinance and the Note shall remain unchanged.

Section 3: Amendments.

(A) Section 4 of the Ordinance is hereby amended and restated in its entirety to read as follows:

Section 4: Authorization of Note. Subject and pursuant to the provisions of this Ordinance, an obligation of the Issuer to be known as City of Polk City, Florida, Capital Improvement Revenue Note, Series 2005 (the "Note") is hereby authorized to be issued under and secured by this Ordinance, in the principal amount of not to exceed \$3,500,000 for the purpose of providing funds to reimburse and pay the costs of the Project and paying the costs of issuing the Note. Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to accept the offer of the Original Purchaser to purchase the Note at a private negotiated sale. Prior to the issuance of the Note, the Issuer shall receive from the Original Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

(B) Section 5 of the Ordinance is hereby amended and restated in its entirety to read as follows:

Section 5: Description of Note. (A) The Note shall be dated November __, 2005, and shall have such other terms and provisions, principal and interest payment terms, maturity dates and prepayment provisions as stated herein and/or in the form of the Note attached hereto as Exhibit A; provided, however, that the aggregate principal amount of the Note is not to exceed \$3,500,000 and the final maturity of the Note shall be not later than December 1, 2008, unless converted to a term loan mode pursuant to Section 12 hereof. The authorized denomination of the Note is the lesser of \$100,000 or the amount outstanding.

The Note shall bear interest at a variable interest rate calculated (on a 30/360 day basis) based on the following formula: 67% of the 180-Day LIBOR (as published in the Wall Street Journal) plus 100 basis points; provided, however, that such interest rate shall not exceed, under any circumstances, the maximum

rate permitted by applicable law (the "Interest Rate"). The Interest Rate shall initially be set three Business Days before the issuance of the Note, and shall be reset every 180 days following such issuance on the dates to be set forth on the Note.

(B) If (i) the interest on the Note becomes includable in the gross income of the Owner for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Owner's after-tax yield, or (ii) the Note shall not be "a qualified tax exempt obligation" as defined in Section 265(b)(3) of the Code, then the Owner shall have the right to adjust the Interest Rate in order to maintain the same after-tax yield as if the events in (i) or (ii) had not occurred. This adjustment shall survive payment of the Note until such time as the federal statute of limitations under which the interest on the Note could be declared taxable under the Code shall have expired. For so long as this Note is owned by the Owner, the Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Note is owned by the Owner, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

(C) The Note is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor and the City Manager. The Note shall be executed on behalf of the Issuer with the manual or facsimile signature of the Mayor and City Manager and the official seal of the Issuer, and be attested and countersigned with the manual or facsimile signature of the City Clerk. In case any one or more of the officers who shall have signed or sealed the Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Note so signed and sealed has been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Note shall hold the proper office of the Issuer, although, at the date of such Note, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the enactment of this Ordinance, notwithstanding that either or both shall have ceased to hold such office at the time the Note shall be actually sold and delivered.

(C) Section 12 of the Ordinance is hereby amended and restated in its entirety to read as follows:

Section 12: *Conversion to Term Loan Mode.* Upon original issuance, the Note shall initially be in the mode of a line of credit permitting the Issuer to draw not to exceed \$3,500,000. Interest on each Note shall be paid semi-annually commencing June 1, 2006, and on each subsequent December 1 and June 1 until conversion of the mode to the Term Loan mode. Before such conversion or the Maturity Date, no principal on the Note shall be due.

Effective on any interest payment date, the Issuer may, by sending a Notice of Conversion in the form attached hereto as Exhibit E at least 15 days before such applicable interest payment date to the Owner thereof, convert the mode on the Note into a term loan. A Notice of Conversion shall not be honored by the Owner if an Event of Default, or event that with the giving of notice or the passage of time would constitute an Event of Default, then exists. As of the conversion date, the fixed interest rate on the Note during the term loan mode, which shall be applicable until ten (10) years following the conversion date, shall be determined by the ask price listed on the Six-year U.S. Dollar Swap Curve as published on Bloomberg or such similar service as mutually agreed upon by the Issuer and the Owner, which corresponds to the average life of the respective Note calculated from the applicable conversion date, plus 100 basis points divided by 1.40, but in no event shall it exceed the maximum interest rate permitted by applicable law. The principal of a term loan relating to the applicable Note shall be payable each December 1, commencing on the first December 1 that is at least twelve months after the applicable conversion date. Interest on the applicable Note following conversion shall be payable to the Owner on each December 1 and June 1, commencing on the first December 1 or June 1 after conversion, as the case may be. Upon conversion to a term loan, the Owner shall provide an amortization schedule to the Issuer that, with the approval of the City Manager, such approval not to be unreasonably withheld, shall provide substantially level annual debt service payments until the a date ten (10) years after the conversion date. Such amortization schedule shall be attached to the Note as Schedule B.

Alternatively, effective on any interest payment date, the Issuer may, by sending a Notice of Conversion in the form attached hereto as Exhibit E at least 15 days before such applicable interest payment date to the Owner thereof, convert the mode on the Note into a term loan. A Notice of Conversion shall not be honored by the Owner if an Event of Default, or event that with the giving of notice or the passage of time would constitute an Event of Default, then exists. As of the conversion date, the fixed interest rate on the Note during the term loan mode, which shall be applicable until fifteen (15) years following the conversion date, shall be determined by the ask price listed on the Nine-year U.S. Dollar Swap Curve as published on Bloomberg or such similar service as mutually agreed upon by the Issuer and the Owner, which corresponds to the average life

of the respective Note calculated from the applicable conversion date, plus 135 basis points divided by 1.40, but in no event shall it exceed the maximum interest rate permitted by applicable law. The principal of a term loan relating to the applicable Note shall be payable each December 1, commencing on the first December 1 that is at least twelve months after the applicable conversion date. Interest on the applicable Note following conversion shall be payable to the Owner on each December 1 and June 1, commencing on the first December 1 or June 1 after conversion, as the case may be. Upon conversion to a term loan, the Owner shall provide an amortization schedule to the Issuer that, with the approval of the City Manager, such approval not to be unreasonably withheld, shall provide substantially level annual debt service payments until the a date fifteen (15) years after the conversion date. Such amortization schedule shall be attached to the Note as Schedule B.

Upon conversion to a term loan mode as provided in this section, the Issuer will fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals and other charges for the use of the products, services and facilities of the System which will always provide Sewer Net Revenues in each year sufficient to pay the 1.50x the principal and interest on the Series 1999 Bonds and the Note. Nothing herein will obligate the Issuer to increase Sewer Impact Fees upon conversion to a term loan mode.

(C) All references in the Ordinance to the authorized principal amount of the Note are hereby amended to allow that the principal amount of the Note will equal \$3,500,000.

Section 4: Amendments to the Note. A First Amendment to the Note Note shall be executed by the City and the Bank containing the amendments described in Section 3 above.

Section 5: Severability. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 6: Applicable Provisions of Law. This Ordinance shall be governed by and construed in accordance with the laws of the State.

Section 7: Captions. The captions and headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Section 8: Members of the City Council of the Issuer Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Ordinance or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of

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

Section 9: *Authorizations.* The Mayor and any member of the City Council, the City Manager, the City Attorney, the City Clerk and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Ordinance.

Section 10: *Repealer.* All ordinances or parts thereof in conflict herewith are hereby repealed.

Section 11: *No Third Party Beneficiaries.* Except such other persons as may be expressly described in this Ordinance or in the Note, nothing in this Ordinance or in the Note, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owners, any right, remedy or claim, legal or equitable, under and by reason of this Ordinance, or any provision thereof, or of the Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the holders.

[Remainder of page intentionally left blank]

Section 12: Effective Date. This Ordinance shall be in full force and take effect immediately upon its adoption.

ENACTED BY THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA, this ____ day of September, 2007.

(SEAL)

CITY COUNCIL OF THE CITY OF POLK CITY

Donald Penton, Mayor

ATTEST:

Sylvia S. Simms, City Clerk

APPROVED AS TO CONTENT AND FORM:

City Attorney

EXHIBIT A

CONSENT OF SUNTRUST BANK RELATED TO

**CITY OF POLK CITY, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2005**

SunTrust Bank, as the current holder of the City of Polk City, Florida Capital Improvement Revenue Note, Series 2005 (the "Note") does hereby consent to (i) the amendment by the City to Ordinance No. 1089 (the "Ordinance"), which authorized the issuance of the Note, and (ii) the amendment of the Note, to increase the principal amount of the Note from \$2,000,000 to \$3,500,000; to amend the requirements related to the revolving line of credit; and to amend the requirement relating to the conversion to term loan mode.

All other terms of the Ordinance and the Note shall remain unchanged.

IN WITNESS WHEREOF, the undersigned has executed this Consent on behalf of the Bank this ____ day of September, 2007.

SUNTRUST BANK

By: _____
Name: _____
Its: _____

EXHIBIT B

FORM OF PURCHASER'S CERTIFICATE

This is to certify that SunTrust Bank (the "Purchaser") has not required the City of Polk City, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of the not to exceed \$3,500,000 City of Polk City, Florida, Capital Improvement Revenue Note, Series 2005 (the "Note"), and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on Bryant Miller Olive P.A. ("Note Counsel") or Stidham & Stidham ("City Attorney") as to any such matters other than the legal opinion rendered by Note Counsel and by the City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in Ordinance No. _____ enacted by the City Council of the Issuer on September __, 2007 (the "Ordinance").

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

We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Note may not be transferred except to an "accredited investor" as described below in accordance with the restrictions set forth in the Note.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" as such term is defined in the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this ___ day of September, 2007.

SUNTRUST BANK

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of Polk City, Florida (the "Issuer") for the private purchase of its City of Polk City, Florida, Capital Improvement Revenue Note, Series 2005 (the "Note") in the principal amount of not to exceed \$3,500,000. Prior to the award of the Note, the following information is hereby furnished to the Issuer:

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

GrayRobinson, P.A.
Bank Counsel Fees -- \$2,500

2. (a) No fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Note to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes).

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

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

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

5. Truth-in-Bonding Statement:

The Note is being issued primarily to reimburse and finance the cost of a new Wastewater Treatment Plant.

Unless earlier redeemed or converted to a term loan mode, the Note is expected to be repaid by December 1, 2008. At an assumed variable interest rate of ____%, total interest paid over the life of the Note is estimated to equal \$_____.

The Note will be payable solely from Sewer Impact Fees, Available Net Revenues of the Water System, Available Net Revenues of the Sewer System and a covenant to budget and appropriate from Non-Ad Valorem Revenues moneys sufficient to make such payments,

appropriated and deposited (collectively, the "Pledged Funds") as described in Ordinance No. 1089 of the Issuer enacted on November 23, 2005 (the "2005 Ordinance") and Ordinance No. _____ of the Issuer enacted on September __, 2007 (the "2007 Ordinance", collectively with the 2005 Ordinance, the "Ordinance"). See the Ordinance for a definition of Pledged Funds. Based on the assumed variable interest rate described above, issuance of the Note is estimated to result in a maximum of approximately \$_____ of revenues of the Issuer not being available to finance the services of the Issuer in any one year during the life of the Note.

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

SunTrust Bank
200 South Orange Avenue, MC 1100
Orlando, Florida 32801

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this __ day of September, 2007.

SUNTRUST BANK

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF NOTICE OF CONVERSION

City of Polk City, Florida
Capital Improvement Revenue Note, Series 2005

TO: Owner of the above-referenced Note

DATE: _____, 200_

This Notice shall serve as formal notice of the City of Polk City, Florida (the "City") of its intent to convert the above-referenced Note from a line of credit mode to a term loan mode maturing [ten (10) or fifteen (15)] years from _____, effective on _____ 1, 200__.

CITY OF POLK CITY, FLORIDA

By: _____

Name: _____

Its: _____