

RESOLUTION NO. 16-01

A RESOLUTION OF THE CITY OF DEBARY, FLORIDA, AUTHORIZING THE ISSUANCE OF A WATER LINE ASSESSMENT REVENUE BOND, SERIES 2016 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$555,000 TO FINANCE THE DESIGN, CONSTRUCTION AND INSTALLATION OF A WATER MAIN EXTENSION FOR POTABLE WATER SERVICES AND FIRE FLOW PROTECTION TO CERTAIN PROPERTIES WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND TO EVIDENCE THE CITY'S OBLIGATION UNDER THE LOAN AGREEMENT, SUCH BOND TO BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM NON-AD VALOREM SPECIAL ASSESSMENTS AND A COVENANT TO BUDGET AND APPROPRIATE FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES AS PLEDGED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE BOND; DESIGNATING THE BOND AS A "QUALIFIED TAX EXEMPT OBLIGATION" PURSUANT TO SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; MAKING CERTAIN COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE PURCHASER OF THE BOND; AND PROVIDING FOR AN EFFECTIVE DATE.

IT IS HEREBY RESOLVED BY THE CITY OF DEBARY, FLORIDA AS FOLLOWS:

SECTION 1. AUTHORIZATION. This Resolution is adopted pursuant to the provisions of Chapter 166, Part II, Florida Statutes, the City of DeBary Charter, and other applicable provisions of law (the "Act").

SECTION 2. DEFINITIONS. Unless otherwise defined herein, capitalized terms shall have the meanings set forth below.

"**Act**" means Chapter 166, Part II, Florida Statutes, the Charter and other applicable provisions of law.

"**Bond**" means the not to exceed \$555,000 City of DeBary, Florida Water Line Assessment Revenue Bond, Series 2016 authorized by Section 5 hereof.

"**Business Day**" means any day except any Saturday or Sunday or day on which the principal office of the Owner is closed.

"Charter" means the charter of the City of DeBary, Florida.

"City" means the City of DeBary, Florida, a municipal corporation of the State of Florida.

"City Manager" means the City Manager of the City or his or her designee.

"Clerk" means the City Clerk or assistant or deputy City Clerk of the City, or such other person as may be duly authorized by the City Council of the City to act on his or her behalf.

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

"Council" means the City Council of the City.

"Loan Agreement" means the loan agreement authorized by Section 6 hereof.

"Mayor" means the Mayor of the City or his or her designee.

"Non-Ad Valorem Revenues" means amounts budgeted and appropriated by the City in its annual budget from all revenues of the City not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under the Bond as the same shall become due, all as more particularly set forth in Section 7 hereof.

"Owner" or "Purchaser" means the Person or Persons in whose name or names the Bond shall be registered on the books of the City kept for that purpose in accordance with the provisions of this Resolution.

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

"Pledged Revenues" means the Water Line Assessments and, to the extent that Water Line Assessments are insufficient to pay amounts due under the Bond, the Non-Ad Valorem Revenues.

"Project" means the permitting, design, construction and installation of a water main extension for potable water services and fire flow protection, and appropriate appurtenances thereto, along, under, over and through portions of Fort Florida Road, River Drive, Fifteenth Street, and Fort Florida Point Road within the City as more particularly set forth in Resolution 15-13 of the City.

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

"State" means the State of Florida.

"Water Line Assessments" means the non-ad valorem special assessments imposed by Resolution 15-13 of the City, as it may be amended and supplemented from time to time.

SECTION 3. FINDINGS. The Council hereby finds and determines that:

(a) The City is a duly constituted and validly existing municipality within the State of Florida with requisite home rule powers derived from the Constitution and Laws of the State of Florida.

(b) The City currently imposes and collects the Water Line Assessments pursuant to Resolution 15-13 adopted on July 29, 2015, as amended and supplemented.

(c) The Council hereby finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the City and its citizens to issue its \$555,000 Water Line Assessment Revenue Bond, Series 2016 (the "Bond") to finance the Project. Issuance of the Bond to finance the costs of the Project satisfies a paramount public purpose.

(d) The City is without adequate, currently available funds to pay the costs of the Project, and it is necessary and desirable and in the best interests of the City that it borrow the moneys necessary to accomplish the financing of the Project.

(e) Debt service on the Bond will be paid from Pledged Revenues. The Pledged Revenues are expected to be sufficient to pay the principal and interest on the Bond, as the same become due.

(f) The Bond to be issued under this Resolution does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and is not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. The Bond to be issued under the provisions of this Resolution is declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, is exempted from all taxes, except those taxes imposed by Chapter 220, Florida Statutes, on interest, income, or profits on debt obligations owned by corporations.

(g) The City has received responses to its request for proposals for the financing of the Project pursuant to which the City Manager, in conjunction with its financial advisor, has recommended Whitney Bank d/b/a Hancock Bank as the response containing the terms most favorable to the City (the "Purchaser"). The Purchaser's Commitment is attached hereto as Exhibit "D" (the "Commitment"). Due to the immediate need for funds, prevailing market conditions, and the nature of the contemplated financing, it is hereby determined that it is in the best interests of the public and the City to issue the Bond and to enter into a loan agreement with the Purchaser.

(h) The principal of and interest on the Bond shall be payable from and secured solely by the Pledged Revenues. Neither the City, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the Bond or any amounts due under the Loan Agreement and neither the Bond nor the Loan Agreement shall constitute a lien upon the Project, or upon any properties owned by or situated within the City except as provided herein with respect to the Pledged Revenues.

(i) Including the proposed Bond, the City and any subordinate entities of the City and any issuer of "tax-exempt" debt that issues "on behalf of" the City has not issued more than \$10,000,000 of tax-exempt obligations under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), in calendar year 2016 nor does it reasonably expect to do so.

SECTION 4. APPROVAL OF THE BOND AND SALE OF THE BOND TO PURCHASER. The City hereby approves the issuance of the Bond and sale of same to the Purchaser. The City Manager is hereby authorized and directed to accept the terms of the Commitment by execution thereof and delivery to the Purchaser.

SECTION 5. AUTHORIZATION OF THE BOND AND PROJECT. Subject and pursuant to the provisions of this Resolution, an obligation of the City to be known as the "City of DeBary, Florida Water Line Assessment Revenue Bond, Series 2016" is hereby authorized to be issued under and secured by this Resolution, in the principal amount not to exceed \$555,000 for the purpose of providing funds to pay the costs of the Project and to pay the costs of issuing the Bond. The Bond shall be substantially in the form attached to the Loan Agreement and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution to constitute conclusive evidence of such officer's approval and the City's approval of any changes therein from the form attached to the Loan Agreement attached hereto.

The Bond shall have a term not to exceed seven (7) years. Interest on the Bond shall be payable as set forth in the Loan Agreement and the Bond. Principal of and interest on the Bond shall be payable from, and secured by, the Pledged Revenues. The Bond may be prepaid as set forth in the Loan Agreement and the Bond.

The Project is hereby authorized.

SECTION 6. AUTHORIZATION OF LOAN AGREEMENT. In order to provide for the security of the Bond, and to express the contract between the City and the owners thereof, subject to the provisions of this Resolution, the City does hereby authorize the execution and delivery on behalf of the City by the Mayor under the seal of the City, attested by the City Clerk, of the Loan Agreement (the "Loan Agreement") with the Purchaser. The Loan Agreement shall be in substantially the form thereof attached hereto and marked Exhibit "A" and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution to constitute conclusive evidence of such officer's approval and the City's approval of any changes therein from the form of the Loan Agreement attached hereto.

SECTION 7. COVENANT TO BUDGET AND APPROPRIATE. Subject to the next paragraph, to the extent that Water Line Assessments are insufficient to pay amounts due and payable on the Bond, the City covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from all revenues of the City not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under the Bond ("Available Non-Ad Valorem Revenues"), amounts sufficient to pay principal of and interest on amounts due under the Bond as the same shall become due and to deposit the amounts so budgeted and appropriated into the Revenue Fund established pursuant to the Loan Agreement.

Such covenant and agreement on the part of the City to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. No lien upon or pledge of such budgeted Available Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated. The City further acknowledges and agrees that the obligations of the City to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Available Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Available Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Available Non-Ad Valorem Revenues, nor does it give the holder of the Bond a prior claim on the Available Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate Available Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Available Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the City hereunder shall be payable from the portion of Available Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the City and no holder of the Bond nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the City. Notwithstanding any provisions of this Resolution or the Bond to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City, which generate user service charges, regulatory fees or any Available Non-Ad Valorem Revenues. Except as provided hereafter, neither this Resolution nor the obligations of the City hereunder shall be construed as a pledge of or a lien on all or any legally available Available Non-Ad Valorem Revenues of the City, but shall be payable solely as provided herein and is subject, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City ("Essential Government Services"), and is subject further in all respects to the provisions of Section 166.241, Florida Statutes, provided that, except to the extent required to provide for Essential Government Services and payment of debt secured by a lien on specific non-ad valorem revenues, the City shall not be entitled to fail to budget and appropriate debt service on the Bond in order to balance its budget.

SECTION 8. SECURITY FOR BOND. The payment of principal of and interest on the Bond shall be secured by a pledge of and lien upon the Pledged Revenues. The City hereby irrevocably pledges the Pledged Revenues to the payment of the principal of and interest on the Bond in accordance with this Resolution. The Pledged Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City.

SECTION 9. DESIGNATION OF BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION. The City hereby designates the Bond as a "qualified tax-exempt obligation"

under Section 265(b)(3) of the Code. This designation is based upon the findings of the City set forth in Section 3(i) of this Resolution. The Mayor, a Council Member or the Clerk are authorized to certify such finding upon the issuance of the Bond. The City acknowledges that any action which adversely impacts the status of the Bond as a "qualified tax-exempt obligation" will result in an upward adjustment to the interest rate on such Bond.

SECTION 10. PURCHASER'S CERTIFICATE AND DISCLOSURE LETTER. Prior to the issuance of the Bond, the City shall receive from the 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".

SECTION 11. AUTHORIZATION OF EXECUTION OF TAX EXEMPTION CERTIFICATE, OTHER CERTIFICATES AND OTHER INSTRUMENTS. The Mayor or other member of the Council or authorized City staff is hereby authorized and directed to execute and deliver certificates of the City certifying such facts as Greenberg Traurig, P.A., as bond counsel, shall require, in connection with the issuance, sale and delivery of the Bond and to execute and deliver such other instruments, including but not limited to, a tax exemption certificate relating to certain requirements set forth in Section 148 of the Code, as shall be necessary or desirable to perform the City's obligations under any agreement securing such Bond.

SECTION 12. REMEDIES OF BONDHOLDER. The holder of a Bond may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by the Loan Agreement which secures such Bond, to be performed by the City.

SECTION 13. GENERAL AUTHORITY. The City Manager, the members of the Council, the Mayor and its officers, counsel, agents and officials are hereby authorized to do all acts and things required of them consistent with the requirements of this Resolution, the Loan Agreement and any other document relating to the issuance of the Bond for the full punctual and complete performance of all the terms, covenants and agreements contained in the Bond, this Resolution, the Loan Agreement and such other documents. The Vice Mayor and any other member of the Council is authorized to do all things required or permitted by this Resolution of the Mayor in his or her absence or unavailability.

SECTION 14. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions contained herein shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this Resolution.

SECTION 15. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

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ADOPTED at a meeting of the City Council of the City of DeBary on the 6th day of January, 2016.

CITY OF DEBARY, FLORIDA

[SEAL]

By: _____
Clint Johnson, Mayor

ATTEST:

City Clerk

EXHIBIT "A"

FORM OF LOAN AGREEMENT

EXHIBIT "B"

FORM OF PURCHASER'S CERTIFICATE

This is to certify that Whitney Bank d/b/a Hancock Bank (the "Purchaser") has not required the City of DeBary, 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 Issuer's Water Line Assessment Revenue Bond, Series 2016 (the "Bond") in an amount not to exceed \$555,000, and no inference should be drawn that the Purchaser, in the acceptance of said Bond, is relying on Greenberg Traurig, P.A. ("Bond Counsel") or Fishback Dominick ("City Attorney") as to any such matters other than the legal opinions rendered by Bond Counsel and by the City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the loan agreement dated January 15, 2016 by and between the Issuer and the Purchaser (the "Loan Agreement").

We have been afforded access to all information we have requested in making our decision to purchase the Bond and have had sufficient opportunity to discuss the business of the City with its officers, employees and others. We do not require any further information or data incident to our purchase of the Bond. In purchasing the Bond, we have relied solely upon our own investigation, examination, and evaluation of the City, and other relevant matters and upon the accuracy of the information and representations provided to us by the City officers, employees and agents.

We acknowledge and understand that Resolution No. 16-01 enacted by the City Council of the Issuer on January 6, 2016 is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor 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 Bond as an investment for our own account and not with a present view to a resale or other distribution to the public.

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 Bond 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 January, 2016.

WHITNEY BANK D/B/A HANCOCK BANK

By: _____

Name: _____

Title: _____

EXHIBIT "C"

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of DeBary, Florida (the "Issuer") for the private purchase of the Issuer's Water Line Assessment Revenue Bond, Series 2016 (the "Bond") securing an amount not to exceed \$555,000. Prior to the award of the Bond, 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 Bond (such fees and expenses to be paid by the Issuer):

Akerman LLP
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 Bond 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 Bond.

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 Bond is being issued primarily to finance a portion of the cost of the design, construction and installation of certain water line improvements within the City of DeBary, Florida. Unless earlier redeemed, the Bond is expected to be repaid by October 1, 2022. At a fixed interest rate of 1.67% per annum, total interest paid over the life of the Bond is estimated to equal \$35,715.73.

The Bond will be payable solely from Water Line Assessments and the covenant to budget and appropriate from Non-Ad Valorem Revenues (the "Pledged Revenues"), as described in Resolution No. 16-01 of the Issuer adopted on January 6, 2016 (the "Resolution"). Issuance of the Bond is estimated to result in an average of approximately \$88,020.56 of revenues of the Issuer not being available to finance the services of the Issuer in each year during the life of the Bond.

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

Whitney Bank d/b/a Hancock Bank
113 Designer Circle
Dothan, Alabama 36303
Attn: Senior Vice President/Public Finance

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this _____ day of January, 2016.

WHITNEY BANK D/B/A HANCOCK BANK

By: _____

Name: _____

Title: _____

EXHIBIT "D"

COMMITMENT

ORL 299189075v3