

RESOLUTION NO. 16-24

A RESOLUTION OF THE CITY OF DEBARY, FLORIDA, AUTHORIZING THE ISSUANCE OF ITS STORMWATER UTILITY ASSESSMENT REFUNDING REVENUE BOND, SERIES 2016 IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$4,000,000 TO REFUND THE CITY'S STORMWATER UTILITY ASSESSMENT REVENUE NOTE, SERIES 2009 ORIGINALLY ISSUED TO FINANCE STORMWATER RELATED IMPROVEMENTS; 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 STORMWATER UTILITY ASSESSMENTS AND A COVENANT TO BUDGET AND APPROPRIATE 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.

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 \$4,000,000 City of DeBary, Florida Stormwater Utility Assessment Refunding 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 or Vice Mayor serving as Interim 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 Stormwater Utility Assessments and, to the extent that Stormwater Utility Assessments are insufficient to pay amounts due under the Bond, the Non-Ad Valorem Revenues.

"Project" means those stormwater related capital projects financed by the Series 2009 Note.

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

"Series 2009 Note" means the City's Stormwater Utility Assessment Revenue Note, Series 2009 currently outstanding in the aggregate principal amount of \$4,000,000.

"Series 2012 Note" means the City's Stormwater Utility Assessment Refunding Revenue Note, Series 2012 currently outstanding in the aggregate principal amount of \$3,575,000.

"Series 2016 Water Line Assessment Bond" means the City's Water Line Assessment Bond, Series 2016 currently outstanding in the aggregate principal amount of \$555,000.

"Series 2016 Fire Station Bond" means the City's First Station Bond, Series 2016 currently outstanding in the aggregate principal amount of \$1,880,000.

"State" means the State of Florida.

"Stormwater Utility Assessments" has the meaning set forth in City Ordinance No. 05-05.

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 Stormwater Utility Assessments pursuant to Ordinance No. 05-05 enacted on February 28, 2005, as amended and supplemented.

(c) Pursuant to Section 11.03 of the Charter, the Council adopted Resolution No. 06-10 on August 2, 2006, directing the holding of a referendum to authorize the City to borrow up to \$10,000,000 to finance the Project, the repayment of which exceeds sixty (60) months, but shall not exceed twenty (20) years. Pursuant to a referendum held on November 7, 2006, the citizens authorized the City to borrow moneys necessary to pay the costs of the Project. The repayment of the debt financing the Project will not exceed the twenty (20) years repayment period approved by the referendum held pursuant to Resolution No. 06-10 with the issuance of the Bond or previous notes/bonds financing the Project.

(d) 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 not to exceed \$4,000,000 Stormwater Utility Assessment Refunding Revenue Bond, Series 2016 (the "Bond") to refund the Series 2009 Note in order to obtain debt service savings. Issuance of the Bond to refund the Series 2009 Note satisfies a paramount public purpose.

(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. The Bond shall be issued upon parity with the outstanding Series 2012 Note. The City may also issue additional Bonds and other obligations secured by the Pledged Revenues as set forth in the Loan Agreement. The Series 2012 Note, the Series 2016 Water Line Assessment Bond and the Series 2016 Fire Station Bonds are also outstanding and are secured, at least in part, by a covenant to budget and appropriate from Non-Ad Valorem Revenues.

(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 refunding of the Series 2009 Note pursuant to which the City Manager, in conjunction with its financial advisor, has recommended that the City accept the proposal of Whitney Bank d/b/a Hancock Bank (the "Purchaser") as the response containing the terms most favorable to the City. 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 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. AUTHORIZATION OF REFUNDING. The City hereby authorizes the refunding of the Series 2009 Note. Because of the characteristics of the Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Bond, it is in the best interest of the City to accept the Commitment from the Purchaser and 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. Subject and pursuant to the provisions of this Resolution, an obligation of the City to be known as the "City of DeBary, Florida Stormwater Utility Assessment Refunding Revenue Bond, Series 2016" is hereby authorized to be issued under and secured by this Resolution, in the principal amount not to exceed \$4,000,000 for the purpose of providing funds to refund the Series 2009 Note 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 will mature June 1, 2023. Interest will be due and payable semi-annually commencing June 1, 2017 and each December 1 and June 1 thereafter. Principal payments will be due and payable annually commencing June 1, 2017 and each June 1, thereafter, as set forth in Schedule I to the Bond. Principal of and interest on the Bond shall be payable from, and secured by, the Pledged Revenues. Upon ten Business Days written notice, the Bond will be subject to

prepayment without penalty at the option of the City in whole on any date or in part on any principal payment date. Any prepayments shall be applied to the sums last maturing under the Bond. The prepayment price shall equal the principal amount thereof to be prepaid, plus accrued interest to the date fixed for prepayment, and shall be in multiples of \$1,000.

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 or the City Manager 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 Stormwater Utility 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 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 and in the Loan Agreement.

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, provided the City covenants not to pledge the Available Non-Ad Valorem Revenues to the payment of obligations if such pledge will result in insufficient Available Non-Ad Valorem Revenues being available to meet the City's obligations hereunder). 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 Bonds 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 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 equally and ratably by a pledge of and lien upon the Pledged Revenues on a parity with the Series 2012 Note. 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 and the Loan Agreement. 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.

Additional Bonds or other obligations may be issued by the City and secured by the Pledged Revenues as set forth in the Loan Agreement. The Series 2012 Note, the Series 2016 Water Line Assessment Bond and the Series 2016 Fire Station Bonds are also outstanding and are secured, at least in part, by a covenant to budget and appropriate from Available Non-Ad Valorem Revenues.

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 "C" and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit "D".

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 the 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 the 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 5th day of October, 2016.

CITY OF DEBARY, FLORIDA

[SEAL]

By: _____
Lita Handy-Peters, Interim Mayor

ATTEST:

Warren Graham, 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 its not to exceed \$4,000,000 Stormwater Utility Assessment Refunding Revenue Bond, Series 2016 (the "Bond"), 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 December 1, 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, provided that by stating the foregoing we do not waive any rights we may have against the Issuer or its representatives with respect to information so supplied or any misstatements or omissions.

We acknowledge and understand that Resolution No. 16-24 enacted by the City Council of the Issuer on October 5, 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 understand that the Bond may not be transferred except to an "accredited investor" as described below in accordance with the restrictions set forth in the Bond.

We are a bank 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 ____th day of _____, 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 its not to exceed \$4,000,000 Stormwater Utility Assessment Refunding Revenue Bond, Series 2016 (the "Bond"). 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 Senterfitt
Bank Counsel Fees -- \$3,500.00

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) other than its counsel.

(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 refinance a portion of the cost of acquisition and construction of certain stormwater improvements within the City of DeBary, Florida. Unless earlier redeemed, the Bond is expected to be repaid by June 1, 2023. At a fixed interest rate of 1.65% per annum, total interest paid over the life of the Bond is estimated to equal approximately \$338,217.00.

The Bond will be payable solely from Stormwater Utility Assessments and the Non-Ad Valorem Revenues (the "Pledged Revenues"), as described in Resolution No. 16-24 of the Issuer adopted on October 5, 2016 (the "Resolution"). Issuance of the Bond is estimated to result in an average of approximately \$ 667,418.00 of revenues of the Issuer not being available to finance the services of the Issuer in any one year during the life of the Bond.

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

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

WHITNEY BANK D/B/A HANCOCK BANK

By: _____

Name: _____

Title: _____

EXHIBIT D
COMMITMENT LETTER