

## RESOLUTION NO. 47 - 17

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY COMMISSION OF DELRAY BEACH, FLORIDA; AUTHORIZING THE ISSUANCE OF ITS NOT-TO-EXCEED \$31,500,000 CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2017, PURSUANT TO THE HEREIN DESCRIBED "AUTHORIZING RESOLUTION," TO FINANCE THE COST OF CERTAIN INFRASTRUCTURE PROJECTS IN THE CITY; APPROVING THE AWARD OF THE SERIES 2017 BONDS TO BANC OF AMERICA PREFERRED FUNDING CORPORATION BY NEGOTIATED SALE; FIXING THE PARAMETERS FOR THE, MATURITY, INTEREST RATE AND OTHER DETAILS WITH RESPECT TO THE SERIES 2017 BONDS; DESIGNATING THE FINANCE DEPARTMENT OF THE CITY AS THE PAYING AGENT AND REGISTRAR FOR THE SERIES 2017 BONDS; PROVIDING ADDITIONAL COVENANTS TO BE COMPLIED WITH BY THE CITY; PROVIDING FOR AMENDMENTS TO THE AUTHORIZING RESOLUTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City Commission (the "City Commission") of the City of Delray Beach, Florida (the "City") has, by Resolution No. R-76-99, duly adopted on December 14, 1999 (the "Authorizing Resolution"), authorized the issuance of its Bonds in one or more Series, and now desires to issue pursuant to the Authorizing Resolution its not-to-exceed \$31,500,000 Capital Improvement Revenue Bonds, Series 2017 (the "Series 2017 Bonds") in one or more series, as more particularly described herein; and

**WHEREAS**, the City desires to amend and supplement the Authorizing Resolution by adoption of this Resolution (the "Supplemental Resolution, and together with the Authorizing Resolution, the "Resolution"); and

**WHEREAS**, the City hereby finds that the present favorable rates in the municipal bond market and the present volatility of such rates require that the terms of the Series 2017 Bonds be negotiated at private sale rather than offered by competitive bid at a public sale, and therefore has determined to sell the Series 2017 Bonds at a private, negotiated sale; and

**WHEREAS**, the City, through its Financial Advisor, PFM Financial Advisors LLC (the "Financial Advisor"), disseminated a Request for Proposals dated May 19, 2017, requesting offers to provide to the City a fixed-rate term loan (the "RFP"); and

**WHEREAS**, Bank of America, N.A. has provided to the City an offer for its affiliate Banc of America Preferred Funding Corporation (the "Lender") to purchase the Series 2017 Bonds, which offer is attached as Exhibit "A" hereto (the "Offer") which, based on the

recommendation of the Financial Advisor and subject to the "Parameters" (as defined herein), provides the overall borrowing cost and terms most favorable to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF DELRAY BEACH, FLORIDA, THAT:

**SECTION 1. RECITALS; DEFINITIONS.**

The foregoing recitals are hereby affirmed and ratified. All capitalized terms used in this Supplemental Resolution shall have the meaning ascribed to such terms in the Authorizing Resolution unless the context otherwise requires.

**SECTION 2. AUTHORIZATION AND DESCRIPTION OF THE SERIES 2017 BONDS; PARAMETERS.**

The City hereby authorizes the issuance of Bonds in one or more Series pursuant to the Authorizing Resolution in the aggregate principal amount not to exceed \$31,500,000 to be known as the "City of Delray Beach, Florida, Capital Improvement Revenue Bonds, Series 2017" for the purpose of providing funds that, together with other available funds of the City, will be used to finance the costs of all or a portion of the cost of certain capital improvement projects identified by the City, or such other or additional capital improvement projects as the City may determine to undertake (collectively, the "Series 2017 Project").

For purposes of this Resolution, the "Parameters" shall be as follows: (i) the original aggregate principal amount of the Series 2017 Bonds shall not exceed \$31,500,000; (ii) the true interest cost rate per annum on the Series 2017 Bonds shall not exceed 2.25%, subject to adjustment in the event of taxability or default; (iii) the maximum annual debt service on the Series 2017 Bonds shall not exceed \$3,600,000; (iv) the final maturity date of the Series 2017 Bonds shall not be later than October 1, 2026; (v) the purchase price of the Series 2017 Bonds shall not be less than 100% of the original aggregate principal amount thereof; and (vi) the maturity or sinking fund redemption schedule for the Series 2017 Bonds shall provide for principal payments in such amounts as will result in roughly equal annual debt service payments. A certificate of the Financial Advisor stating that the Series 2017 Bonds are within the parameters shall be conclusive evidence that such parameters have not been exceeded.

The Series 2017 Bonds will be issued as one (1) typewritten certificate in fully registered form without coupons, shall be numbered R-1, and shall be dated the date of their issuance. Interest will be calculated based upon a 360-day year consisting of 12 thirty day months. Principal of and interest on the Series 2017 Bonds shall be paid by wire transfer by the Paying Agent without presentation of the Series 2017 Bonds to the address or account provided to the Paying Agent by the Holder of the Series 2017 Bonds. Alternatively, if agreed upon in writing by the City and the Holder, payment of principal and interest may be made by direct debit of an account of the City. The Record Date with respect to the Series 2017 Bonds shall be the day preceding each interest payment date, whether or not such day is a Business Day (as defined in the form of Series 2017 Bond

attached as Exhibit "B" hereto), notwithstanding the provisions of the Authorizing Resolution to the contrary.

As further provided in the Series 2017 Bonds, accrued interest on the Series 2017 Bonds will be payable on April 1 and October 1 of each year, beginning October 1, 2017. As further provided in the Series 2017 Bonds, the principal of the Series 2017 Bonds will be payable on October 1 of each year, with the first installment due October 1, 2017.

Notwithstanding the form of Bond set forth in the Authorizing Resolution, the Series 2017 Bonds shall be in substantially the form attached as Exhibit "B" hereto, with such omissions, insertions and variations as may be necessary and desirable, as evidenced by the City's execution thereof. Registration and transfer of the Series 2017 Bonds shall not be by the Book-Entry System.

The Series 2017 Bonds and the Resolution shall supersede all prior agreements between the City and the Holder, including, but not limited to, the provisions of the Offer. If the terms of the Series 2017 Bonds conflict with the terms of the Resolution or of the Offer, the terms of the Series 2017 Bonds shall control.

### **SECTION 3. APPROVAL OF RFP; AWARD OF THE SERIES 2017 BONDS BY NEGOTIATED SALE.**

The City hereby approves the use and distribution of the RFP by the Financial Advisor on behalf of the City in connection with the award of the Series 2017 Bonds. The City hereby finds, determines, and declares that because of the size, nature, and maturity of the Series 2017 Bonds and the prevailing market conditions, the negotiated sale of the Series 2017 Bonds to the Lender in substantial accordance with the Offer, based on the recommendation of the Financial Advisor, provides the overall borrowing cost and terms most favorable to the City, and therefore the City awards the Series 2017 Bonds to the Lender. The Lender will provide the City with the information required by Section 218.385, *Florida Statutes*, in connection with the negotiated sale of the Series 2017 Bonds.

### **SECTION 4. USE OF PROCEEDS.**

All of the proceeds of the Series 2017 Bonds shall be deposited into the Construction Fund created by the Authorizing Resolution and used to pay the cost of the Series 2017 Project, including the costs of issuance of the Series 2017 Bonds. There shall be no funding of a Reserve Account with respect to the Series 2017 Bonds.

### **SECTION 5. EXECUTION OF SERIES 2017 BONDS AND AUTHORIZATION OF ALL OTHER NECESSARY ACTION.**

The proper officers of the City are hereby authorized and directed to execute the Series 2017 Bonds when prepared and deliver the same to the Lender. The Mayor, the Clerk and any other proper officers of the City, the Financial Advisor and Greenspoon Marder, P.A., Bond Counsel for the City, are each designated agents of the City in

connection with the issuance and delivery of the Series 2017 Bonds and to execute and deliver any and all instruments, documents, and contracts on behalf of the City that are necessary or desirable in connection with the execution and delivery of the Series 2017 Bonds and that are not inconsistent with the terms and provisions of this Resolution and other actions relating to the Series 2017 Bonds heretofore taken by the City, including, but not limited to, an agreement locking the interest rate on the Series 2017 Bonds until the closing date.

#### **SECTION 6. DESIGNATION OF PAYING AGENT AND REGISTRAR.**

The Finance Department of the City is hereby designated and approved as the Paying Agent and Registrar for the Series 2017 Bonds.

#### **SECTION 7. REDEMPTION.**

The Series 2017 Bonds shall be subject to redemption prior to maturity at the time or times, at the redemption price or prices, and upon such terms as are set forth in the form of Series 2017 Bond attached hereto as Exhibit "B."

#### **SECTION 8. ADDITIONAL COVENANTS OF THE CITY RELATING TO THE SERIES 2017 BONDS.**

A. Notwithstanding anything in Article IV, Section 1 of the Authorizing Resolution to the contrary, so long as the Series 2017 Bonds are Outstanding, no modification or amendment to the Authorizing Resolution shall be effective without the written consent of the Holder.

B. The City shall provide the Lender with (i) the City's annual audited financial statements within 270 days after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2017, and (ii) within thirty (30) days after request such other financial information as the Lender may reasonably request.

C. In addition to the covenant set forth in Article III, Section 4E of the Authorizing Resolution (until that section is amended pursuant to Section 9A hereof), the City may incur additional debt secured by or payable from all or a portion of the Non-Ad Valorem Revenues only if the total amount of Non-Ad Valorem Revenues, other than water and sewer revenues, for the most recently ended Fiscal Year for which audited financial statements are available were at least 1.50 times the maximum annual debt service of all debt (including all long-term financial obligations appearing on the City's most recent audited financial statements and the debt proposed to be incurred) to be paid from Non-Ad Valorem Revenues other than water and sewer revenues (collectively, "Debt"), including any Debt payable from one or several specific revenue sources.

For purposes of calculating maximum annual debt service, if the terms of the Debt are such that interest thereon for any future period of time is to be calculated at a rate which is not then susceptible of precise determination ("Variable Rate Debt"), interest on

such Variable Rate Debt shall be deemed to bear interest as provided in the third paragraph of Article III, Section 4E of the Authorizing Resolution, with the last sentence of said paragraph disregarded.

For purposes of calculating maximum annual debt service, balloon indebtedness shall be assumed to amortize over 20 years on a level debt service basis. In the event that the City is required to fund a deposit to the Reserve Account of the Debt Service Fund or, in the case of Debt not issued under the Authorizing Resolution, a reserve fund, the funding of the Reserve Account or such reserve fund shall be included in the calculation of debt service. For purposes of this paragraph, "balloon indebtedness" includes indebtedness if 25% or more of the principal amount thereof comes due in any one Fiscal Year.

D. The City shall not issue any debt pursuant to the Authorizing Resolution that is secured by a Credit Facility without the prior written consent of the Lender, unless the Credit Facility Issuer waives its right under Article IV, Section 4G of the Authorizing Resolution to exercise remedies under said section in lieu of the Owners of the Bonds secured by such Credit Facility.

E. Any one or more of the following events shall be an "Event of Default":

(i) the City shall fail to pay the principal of or interest on the Bonds within ten (10) days of when due;

(ii) the City shall (a) fail to duly and punctually perform of any of its covenants, conditions, agreements and provisions contained in the Series 2017 Bonds or in the Resolution, and (b) if and only if such failure is capable of being cured, such failure shall continue for thirty (30) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the City by the Registered Owner, or the Registered Owner is notified of such failure, whichever is earlier; provided that such failure described in this subparagraph (ii) shall not be an Event of Default if the City commences such action as is necessary to cure the same within such 30 day period and carries out such action with due diligence to completion.

(iii) any representation or warranty made in writing by the City in the Resolution or the Series 2017 Bonds shall prove to be false or incorrect in any material respect on the date made or reaffirmed;

(iv) the City shall (a) admit in writing its inability to pay its debts generally as they become due, (b) file (or have filed against it and not dismissed within 90 days) a petition in bankruptcy or take advantage of any insolvency act, (c) make an assignment for the general benefit of creditors, (d) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property, or (e) be adjudicated a bankrupt; or

(v) the City fails to promptly remove any execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations under the Resolution and the Series 2017 Bonds; or

(vi) a monetary judgment is entered against the City obligating the City to pay an amount in excess of \$1,000,000 that is not covered by insurance, unless the City files, within sixty (60) day of the entry of said final judgment, an appeal that has the effect of staying same; or

(vii) the City fails to pay the principal of or interest on (a) any Bonds or any other indebtedness of the City secured by a covenant to budget and appropriate Non-Ad Valorem Revenues or by a pledge of a specific source of Non-Ad Valorem Revenues, or (b) any other indebtedness of the City to the Lender, within ten (10) days of when due; or

(viii) to the extent the City has rated general obligation debt outstanding, the rating on any of the City's general obligation debt falls below investment grade by any nationally recognized statistical rating agency.

While any of the above shall have occurred and continue to be in effect, the interest rate on the Series 2017 Bonds shall increase by 6% (the "Default Rate"), and the Lender shall have the right to enforce and compel performance in the manner permitted by Article III, Section 4G of the Authorizing Resolution.

## **SECTION 9. AMENDMENTS TO AUTHORIZING RESOLUTION.**

The Authorizing Resolution is amended as follows; provided, that such amendments shall only take effect when either (a) the Owners of the City's Revenue Refunding and Improvement Bonds, Series 2003 and the City's Revenue Bonds, Series 2000 (collectively, the "Prior Bonds") consent in writing to such amendments, or (b) the Prior Bonds are no longer Outstanding:

A. Article III, Section 4E of the Authorizing Resolution is amended in its entirety to read as follows:

E. **Additional Debt of the City Payable from Non-Ad Valorem Revenues.**

The City may incur additional debt secured by or payable from all or a portion of the Non-Ad Valorem Revenues only if the total amount of Non-Ad Valorem Revenues, other than water and sewer revenues, for the most recently ended Fiscal Year for which audited financial statements are available were at least 1.50 times the maximum annual debt service of all debt (including all long-term financial obligations appearing on the City's most recent audited financial statements and the debt proposed to be incurred) to be paid from Non-Ad Valorem Revenues other than water and sewer revenues (collectively, "Debt"), including any Debt payable from one or several specific revenue sources.

For purposes of calculating maximum annual debt service, if the terms of the Debt are such that interest thereon for any future period of time is to be calculated at a rate which is not then susceptible of precise determination ("Variable Rate Debt"), interest on such Variable Rate Debt shall be deemed to bear interest at the greater of (i) 1.25 times the most recently published Bond Buyer Revenue Bond 30-Year Index, or (ii) 1.25 times actual average interest rate during the prior Fiscal Year of the City, or (iii) 6% per annum.

For purposes of calculating maximum annual debt service, balloon indebtedness shall be assumed to amortize over 20 years on a level debt service basis. In the event that the City is required to fund a deposit to the Reserve Account of the Debt Service Fund or, in the case of Debt not issued under the Authorizing Resolution, a reserve fund, the funding of the Reserve Account or such reserve fund shall be included in the calculation of debt service. For purposes of this paragraph, "balloon indebtedness" includes indebtedness if 25% or more of the principal amount thereof comes due in any one Fiscal Year.

B. The third paragraph of Article III, Section 4G of the Authorizing Resolution – Remedies, is deleted in its entirety.

#### **SECTION 10. CONTINUING DISCLOSURE.**

The Continuing Disclosure requirements contained in Section 4.I of Article III of the Authorizing Resolution shall not apply to the Series 2017 Bonds.

#### **SECTION 11. WAIVER OF TRIAL BY JURY.**

The City, by accepting the proceeds of the Series 2017 Bonds, and the Lender, by acceptance of the Series 2017 Bonds issued hereunder mutually and willingly waive the right to a trial by jury of any and all claims made between them whether now existing or arising in the future, including, without limitation, any and all claims, and intervenor's claims, whether arising from or related to negotiations, execution and/or performance of this Resolution or the Series 2017 Bonds.

#### **SECTION 12. REIMBURSEMENT RESOLUTION.**

The City may pay for a portion of the costs of the Series 2017 Project before the Series 2017 Bonds are issued in anticipation of the reimbursement of such expenditures from proceeds of the Series 2017 Bonds. In accordance with Section 1.150-2 of the Federal income tax regulations requires an issuer to officially declare its intent to use proceeds of a tax exempt borrowing to reimburse expenditures paid prior to issuance thereof as a prerequisite to the proceeds being treated as used for reimbursement purposes.

To the extent the City has not previously done so, the City hereby declares its reasonable official intention to finance the costs of the Series 2017 Project through the issuance of the Series 2017 Bonds by the City in an amount, at a minimum, that is necessary to finance the costs of the Series 2017 Project, up to a maximum principal amount of \$31,500,000.

**SECTION 13. CONFLICTS.**

All resolutions in conflict herewith are hereby repealed.

**SECTION 14. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the ability of the remaining portions of this Resolution.

**SECTION 15. EFFECTIVE DATE.**

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 20TH DAY OF JUNE, 2017.

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CARY D. GLICKSTEIN, MAYOR

ATTEST:

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CITY CLERK



**EXHIBIT “A”**

OFFER OF BANK OF AMERICA, N.A.

**EXHIBIT “B”**

FORM OF SERIES 2017 BOND