

**RESOLUTION NO. 2024-69**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA, AUTHORIZING A LOAN FROM REGIONS CAPITAL ADVANTAGE, INC. IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$21,000,000 FOR THE PURPOSE OF PROVIDING FINANCING FOR THE REPAIR AND REPLACEMENT OF DAMAGED PORTIONS OF THE FLAGLER BEACH FISHING PIER AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF THE CITY OF FLAGLER BEACH, FLORIDA CAPITAL IMPROVEMENT NON-AD VALOREM REVENUE NOTE, SERIES 2024 TO EVIDENCE THE CITY'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE CITY, PAYABLE FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES BUDGETED, APPROPRIATED AND DEPOSITED INTO THE CITY'S DEBT SERVICE FUND, TOGETHER WITH CERTAIN GRANT RECEIPTS AS DESCRIBED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Flagler Beach Fishing Pier incurred significant damage caused by multiple hurricanes; and

**WHEREAS**, the City Commission (the "Commission") of the City of Flagler Beach, Florida (the "City") enacted Ordinance No. 2024-21 on November 14, 2024 (the "Ordinance") to authorize the City to obtain a loan in an aggregate principal amount of not to exceed \$21,000,000 (the "Loan"), for the purpose of financing the repair and replacement of damaged portions of the Flagler Beach Fishing Pier (the "Project"), by issuing the City's Capital Improvement Non-Ad Valorem Revenue Note, Series 2024 authorized herein (the "Note");

**WHEREAS**, the City Commission hereby determines, based on recommendations from Hilltop Securities Inc., the City's financial advisor, and City staff, that it is in the best interest of the City to accept the terms of the proposal (the "Proposal"), submitted by Regions Capital Advantage, Inc. (the "Lender"); and

**WHEREAS**, it is in the City's best interest and a valid and proper municipal purpose to issue the Note to finance the Project;

**WHEREAS**, pursuant to the terms of that certain Hurricane Matthew Disaster Declaration (FEMA-4283-DR-FL) Federally Funded Public Assistance Agreement, with an effective date of January 7, 2017, by and between the State of Florida Division of Emergency Management and the City, the City was awarded federal funding from the Federal Emergency Management Agency ("FEMA") to be applied to the costs of the Project (the "FEMA Grant"); and

**WHEREAS**, pursuant to the terms of that certain State of Florida Department of Environmental Protection Standard Grant Agreement, dated March 25, 2024, by and between State of Florida Department of Environmental Protection ("FDEP") and the City, as amended on April 22, 2024, the City was awarded state funding to be applied to the costs of the Project (the "FDEP Grant", and collectively with the FEMA Grant, the "Grants"); and

**WHEREAS**, the debt service on the Note shall be payable solely from a covenant to budget and appropriate from legally available non-ad valorem revenues of the City (the "Non-Ad Valorem Revenues") and amounts received by the City pursuant to the Grants ("Grant Receipts"); and

**WHEREAS**, the Note will not be secured by a lien on any Non-Ad Valorem Revenues until such amounts are actually budgeted, appropriated and deposited into the Debt Service Fund created hereunder.

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

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Constitution and laws of the State of Florida, Chapter 166, Parts I and II, Florida Statutes, the municipal charter of the City, and other applicable provisions of law (collectively, the "Act").

**SECTION 2. RECITALS.** It is hereby found, ascertained, determined and declared that:

A. The WHEREAS clauses recited above are hereby incorporated herein as a part of this Resolution.

B. It is in the public interest and a valid and proper public purpose to obtain financing for the Project and issue the Note, as described herein.

C. The Lender's offer to provide the loan to the City at the terms set forth in its Proposal and the Loan Agreement, as defined herein, is the best proposal to provide financing for the Project.

D. Upon deposit in the Debt Service Fund, the City's Non-Ad Valorem Revenues and Grant Receipts shall be used to pay principal of and interest on the Note and any other amounts due under the Loan Agreement or the Note.

E. Because of the characteristics of the security pledged to repay the Loan and prevailing conditions in the financial markets, it is in the best interest of the City to accept the offer of the Lender to enter into the Loan Agreement and sell the Note to the Lender at a negotiated sale. Prior to the issuance of the Note, the City shall receive from the Lender a Lender's Certificate, the form of which is attached hereto as Exhibit A and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, the form of which is attached hereto as Exhibit B.

F. In consideration of the purchase and acceptance by the Lender of the Note authorized to be issued hereunder, this Resolution, together with the terms and provisions of the Loan Agreement, shall constitute a contract between the City and the Lender.

**SECTION 3. AUTHORIZATION OF LOAN AGREEMENT.** To provide for the security of the Note and to express the contract between the City and the holder thereof, 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 by and between the City and the Lender (the "Loan Agreement"). The Loan Agreement shall be in substantially the form attached hereto and marked Exhibit "C" and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution constituting conclusive evidence of such officer's approval and the City's approval of any changes therein to the form of the Loan Agreement attached hereto. Subject and pursuant to the provisions of this Resolution and the terms and provisions of the Loan Agreement, there is hereby authorized to be issued a promissory note to evidence the City's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount of not to exceed \$21,000,000, subject to the provisions of Section 4 hereof.

**SECTION 4. AUTHORIZATION OF THE FINANCING OF THE PROJECT AND ISSUANCE OF THE NOTE.**

The financing of the Project is hereby authorized.

There is hereby authorized to be issued the "City of Flagler Beach, Florida Capital Improvement Non-Ad Valorem Revenue Note, Series 2024," in an aggregate principal amount of not to exceed TWENTY-ONE MILLION DOLLARS (\$21,000,000), which shall evidence amounts outstanding under the Loan Agreement, and will be repaid no later than November 1, 2027 (the "Maturity Date") as provided in the Loan Agreement and the Note. The Note may be drawn upon at any time until the Maturity Date, provided the aggregate principal amount that can be drawn shall not exceed \$21,000,000, subject to restrictions set forth in the Loan Agreement. The Note shall bear interest at a variable rate per annum equal to the sum of (i) 79% of One-Month Term SOFR (as defined in the Loan Agreement) plus (ii) 70 basis points, subject

to adjustment as provided in the Loan Agreement and in the Note, calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months, and shall be dated the date of delivery. Interest shall be payable semiannually commencing May 1, 2025 and on each May 1 and November 1 thereafter until the Note is paid in full. Principal on the Note, together with any accrued interest, will be due and payable on the Maturity Date, subject to prepayment as provided in the Loan Agreement and the Note.

The Note shall be substantially in the form attached to the Loan Agreement, 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. The Note shall be executed on behalf of the City with the manual signature of the Mayor and attested to by the City Clerk and the official seal of the City affixed thereto. In case any one or more of the officers who shall have signed or sealed the Note shall cease to be such officer of the City 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 City by such person who at the actual time of the execution of such Note shall hold the proper office of the City, although, at the date of such Note, such person may not have held such office or may not have been so authorized.

**SECTION 5. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.** The City promises that it will promptly pay the principal of and interest on the Note and all other amounts due under the Loan Agreement at the place, on the dates and in the manner provided in the Loan Agreement according to the true intent and meaning hereof and thereof. Amounts due under the Loan Agreement shall not be or constitute a general obligation or indebtedness of the City as a "bond" within the meaning of the Constitution and the laws of the State of Florida, but shall be payable solely from the Non-Ad Valorem Revenues and Grant Receipts in accordance with the terms hereof and of the Loan Agreement. The holder of the Note issued hereunder shall never have the right to compel the exercise of any ad valorem taxing power to pay the Note, or be entitled to payment of such Note from any funds of the City except from the Non-Ad Valorem Revenues and Grant Receipts as described herein and in the Loan Agreement.

**SECTION 6. USE OF PROCEEDS.** The proceeds of the Note shall be used by the City to provide financing to pay the costs of the Project and pay the costs of issuance of the Note.

**SECTION 7. GENERAL AUTHORIZATION.** The members of the City Commission of the City, the City Manager, the City Attorney, the Finance Director and all other of the City's officers, attorneys and other agents and employees are hereby authorized to perform all acts and things required of them by this Resolution or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Loan Agreement, the Note and this Resolution, and they are hereby authorized to execute and deliver all documents which shall be required by Note

Counsel or the initial purchaser of the Note to effectuate the sale of the Note to said initial purchaser.

**SECTION 8. PREREQUISITES PERFORMED.** The City has performed all acts, conditions, and things relating to the passage of this Resolution as are required by the Constitution and Laws of the State of Florida.

**SECTION 9. SEVERABILITY.** If any provision of this Resolution 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 10. APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 11. RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**SECTION 12. CAPTIONS.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**SECTION 13. MEMBERS OF THE CITY COMMISSION EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution, the Loan Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Commission, as such, of the City, past, present or future, either directly or through the City 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 Commission, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, the Loan Agreement or the Note 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 Commission, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Loan Agreement and the issuance of the Note, on the part of the City.

**SECTION 14. REPEALER.** All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

**SECTION 15. NO THIRD PARTY BENEFICIARIES.** Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the City and the holder

of the Note, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the City and the persons who shall from time to time be the holders of the Note.

**SECTION 16. EFFECTIVE DATE.** This Resolution shall be in full force and effect immediately upon its passage this 12th day of December, 2024.

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CITY OF FLAGLER BEACH, FLORIDA  
A political subdivision of the State  
of Florida

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Patti King  
Mayor

Attest:

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Penny Overstreet  
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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D. Andrew Smith, III  
City Attorney

[Signature Page | Resolution Authorizing 2024 Loan]

**EXHIBIT A**  
**FORM OF LENDER'S CERTIFICATE**

This is to certify that Regions Capital Advantage, Inc., (the "Lender") is making a loan to the City of Flagler Beach, Florida (the "City"). The Lender has not required the City 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 City in connection with the issuance by the City of its Capital Improvement Non-Ad Valorem Revenue Note, Series 2024 (the "Note") evidencing amounts due to the Lender relating to the loan from the Lender in the amount of not to exceed \$21,000,000 (the "Loan") pursuant to a Loan Agreement dated \_\_\_\_\_, 202\_\_ by and between the City and the Lender (the "Loan Agreement"), and no inference should be drawn that the Lender, in the acceptance of said Note, is relying on Bryant Miller Olive P.A. ("Note Counsel"), the City Attorney ("City Attorney") or Hilltop Securities Inc. (the "Financial Advisor") as to any such matters other than the legal opinions 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 the Loan Agreement.

We are aware that the acquisition of the Note involves various risks, that the Note is not a general obligation of the City, and that the payment of the Note is secured solely from the sources described in the Loan Agreement.

We have made such independent investigation of the security as we, in the exercise of sound business judgment, considered to be appropriate under the circumstances.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our purchase of the Note and can bear the economic risk of acquiring the Note.

We acknowledge and understand that neither the Note Resolution or the Loan Agreement are being qualified under the Trust Indenture Act of 1939, as amended, and are 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, as amended, and/or Section 517.061(7), Florida Statutes, as amended, and that neither the City, Note Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

We acknowledge and understand that the Note is initially issued in a single denomination equal to the principal amount of the Loan and may be transferred in whole or in part, but will not be transferred in an amount less than \$100,000 and only to a Permitted Lender.

We acknowledge that there will be no CUSIPs obtained on the Loan.

We acknowledge there will be no credit rating obtained on the Loan.



We understand that the Note is not a municipal security and that, unless otherwise required, no filing will be made with respect to the Note with EMMA, the Municipal Securities Rulemaking Boards continuing disclosure site.

We are not acting as a broker or other intermediary and are funding the Loan with our own capital and for our own account and not with a present view to a resale or other distribution to the public. We intend to hold the Note to the earlier of maturity or prepayment. 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 an “accredited investor” within the meaning of Rule 501(a) promulgated under the Securities Act of 1933, as amended.

We have in our possession and have had access to all material information concerning the security and sources of payment of the Note, and, as a result thereof, are thoroughly familiar with the nature and risks of acquiring the Note. We have been afforded access to all material information and have had sufficient opportunity to discuss the business of the City and the projects financed with the proceeds of the Note, with its officers, employees and others, and have been permitted to make an investigation of the City and its operations. We do not require any further information or data concerning the City.

In purchasing the Note, we have relied upon our own investigation, examination, and evaluation of the City and other relevant matters, and we have relied upon the financial information of the City contained in the links in the Request For Proposals dated September 20, 2024 in evaluating the merits of the transaction.

DATED this \_\_\_ day of \_\_\_\_\_, 202\_\_.

**REGIONS CAPITAL ADVANTAGE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**  
**FORM OF DISCLOSURE LETTER**

The undersigned, as purchaser and lender, proposes to negotiate with the City of Flagler Beach, Florida (the "City") for the purchase of the City's Capital Improvement Non-Ad Valorem Revenue Note, Series 2024 (the "Note") securing amounts due under a Loan Agreement by and between Regions Capital Advantage, Inc. (the "Lender") and the City in a principal amount of not to exceed \$21,000,000 (the "Loan Agreement"). Prior to the award of the Note, the following information is hereby furnished to the City:

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

Lender Counsel Fees – \$[\_\_\_\_\_]

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Lender in connection with the issuance of the Note to any person not regularly employed or retained by the Lender (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Lender, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Lender, or to the knowledge of the Lender, with the City, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the City and the Lender 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 Lender is \$0.

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

5. Truth-in-Bonding Statement:

The Note is being issued primarily to provide interim funding for the repair and replacement of damaged portion of the Flagler Beach Fishing Pier.

Unless earlier redeemed, the Note is expected to be repaid on November 1, 2027. Assuming that the interest rate on the Note is [\_\_\_]%, and assuming the full amount available to be drawn is advanced, total interest paid over the life of the Note is estimated to be \$[\_\_\_\_\_].

The principal of and interest on the Note will be payable solely from the Non-Ad Valorem Revenues and Grant Receipts as described in Resolution No. 2024-\_\_\_ of the City duly adopted on December 12, 2024 (the "Resolution") and in the Loan Agreement. Based on the above assumptions and assuming a full draw of \$21,000,000, issuance of the Note is estimated to result in approximately \$[\_\_\_\_\_] of Non-Ad Valorem Revenues of the City not being

available to finance the services of the City annually during the life of the Note. Grant Receipts are not available to finance services of the City.

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

Regions Capital Advantage, Inc.  
1900 Fifth Avenue N., Suite 2400  
Birmingham, AL 35203

**IN WITNESS WHEREOF**, the undersigned has executed this Disclosure Statement on behalf of the Lender this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**REGIONS CAPITAL ADVANTAGE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**FORM OF LOAN AGREEMENT**