



## **RESOLUTION NO. 2022-013**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA; AUTHORIZING THE TOWN TO BORROW FUNDS FROM SYNOVUS BANK IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$5,050,000 TO PAY A PORTION OF THE COST OF CONSTRUCTING AND EQUIPPING A NEW FIRE STATION; AWARDING THE NOTE TO SYNOVUS BANK BY NEGOTIATED SALE; APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND SYNOVUS BANK; DESIGNATING THE NOTE AS A "BANK QUALIFIED OBLIGATION" UNDER SECTION 265(b) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA, THAT:**

**SECTION 1.** Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town of Highland Beach, Ordinance No. 2022-005, and other applicable provisions of law.

Additionally, the Town has enacted Chapter 33 of its Code of Ordinances, which sets forth those methods by which the Town is permitted to acquire property, goods, and services. Specifically, the Town has determined that the Sealed Competitive Method would not have been a proper and appropriate method for the procurement of a loan to pay for a portion of the cost of constructing and equipping the Town's new fire station. In consideration of the numerous factors for this acquisition, the Town determined that it must utilize the Best Interest Acquisition method that is delineated within subsection 33-2(c) of the Town Code of Ordinances.

Therefore, the Town Commission hereby declares that the Sealed Competitive Method identified within Section 33-2(a) of the Town Code of Ordinances is not in the best interests of the Town. Specifically, the Town Commission makes these specific factual findings that support this determination:

1. The Mayor and Town Commission sought to evaluate multiple, dissimilar financing structures and products that might be commercially available for the partial funding of the new fire station project.
2. The Mayor and Town Commission have recognized that commercial financial institutions and banks utilize different or varied practices for the evaluation, structuring, and execution of loans to municipalities, which results in different financial structures being extended, offered or available to the Town in order to identify the Best Interest Acquisition for the loan.

3. The Mayor and Town Commission determined that the price, responsiveness, and responsibility is/was NOT the sole determining factor(s) that the Town needed in order to identify the various types of financial structures that might be available for the partial financing of the new fire station project and, therefore, the Town concluded that proceeding with a Sealed Competitive Method would be detrimental to its best interests for the procurement of the loan for the new fire station.
4. The Town's issuance of a Request for Proposals (RFP), which was remitted to numerous potentially interested lenders, through a process of competitive negotiation but without limiting itself to the sealed competitive bid process for prospective lenders was necessary to identify the best financial structure for the loan to fund the partial construction costs and equipment for the new fire station. The Town recognized that the limitation of the sealed competitive bid process for written quotes was not appropriate, and would limit its ability to properly consider the different financing structures that might be available to the Town.
5. The RPF sought to identify any interested lenders that would provide the Town with written quotes that encapsulated the changing financial environment and the volatility of the financial markets for securing the most cost-efficient loan structure. The Mayor and Town Commission determined to utilize the Best Interest Acquisition method to allow the Town to accept, evaluate and categorize proposals from interested lenders offering different financing structures, and to allow the Town to analyze the proposals that contained a combination of pricing indications and firm pricing commitments, which is consistent within the financial sector.
6. In recognition of the volatility of the financial market(s), and as has been previously articulated by the Town Commission during prior Commission Meetings, coupled with the myriad financing structures presented to the Town from the various interested lenders, the Mayor and Town Commission hereby expressly determine that the Sealed Competitive Method is NOT in the best interest of the Town, and that the Best Interest Acquisition has been identified to be in the best interest of the Town pursuant to Section 33-2(c)(11) of the Town Code of Ordinances and the Town's adopted Purchasing Policy and Procedures pursuant to Section 33-1 of the Town Code of Ordinances.

**SECTION 2. Definitions.** The following words and phrases shall have the following meanings when used herein:

“Act” means Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town of Highland Beach, and other applicable provisions of law.

“Clerk” means the Clerk or any Deputy Clerk of the Town.

“Code” means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

“Commission Member” means a member of the Town Commission.

“Lender” means Synovus Bank, and its successors and assigns.

“Loan Agreement” means the Loan Agreement between the Town and the Lender authorized by Section 4 hereof.

“Mayor” means the Mayor or Vice Mayor of the Town.

“Note” means the Town’s Non-Ad Valorem Revenue Note, Series 2022, authorized by Section 3 hereof.

“Ordinance” means Ordinance No. 2022- 05 of the Town, enacted on May 17, 2022.

“Project” means the construction and equipping of a new fire station in the Town.

“Resolution” means this Resolution, pursuant to which the Note is authorized to be issued, including any resolution or resolutions supplemental hereto.

“State” means the State of Florida.

“Town” means Town of Highland Beach, a Florida municipal corporation.

“Town Manager” means the Town Manager or his or her designee.

**SECTION 3. Authorization of Note.** Subject and pursuant to the provisions of the Ordinance and this Resolution, an obligation of the Town is hereby authorized to be issued in the principal amount not to exceed \$5,050,000 for the purpose of providing funds, together with other available funds of the Town, to pay the costs of the Project and pay closing costs. Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an award of the Note by negotiated sale, it is in the best interest of the Town to award the Note to the Lender by negotiated sale in substantial accordance with the Lender's Term Sheet to the Town in response to the Town’s Request for Proposals, which letter is attached hereto as Exhibit “A” (the “Term Sheet”); provided, however, that the provisions of this Resolution and the Loan Agreement shall control to the extent of any conflict with the Term Sheet.

Prior to the issuance of the Note the Town shall receive from the Lender a disclosure statement containing the information required by Section 218.385, Florida Statutes. The Note shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Town and the Lender, and shall have such other terms and provisions, including the interest rate and maturity date, as stated in the form of Note attached to the Loan Agreement as Exhibit “A.” The Note is to be in substantially the form set forth on Exhibit “A” to the Loan Agreement, together with such 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 in the name of the Town by the signature of the Mayor and its official seal shall be affixed thereto or imprinted or reproduced thereon and attested by the Clerk. The signatures of said Mayor and Clerk on the Note may be manual or facsimile signatures. 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 Town before the Note so signed and sealed shall have been actually delivered, such

Note may nevertheless be 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.

**SECTION 4. Loan Agreement.** Notwithstanding any other provision hereof, the Note shall not be issued nor shall the Town be obligated to issue the same nor shall the Lender be obligated to purchase the same, unless and until the Town and the Lender shall execute a Loan Agreement in substantially the form attached hereto as Exhibit “B” (the “Loan Agreement”). The form of the Loan Agreement is hereby approved by the Town and the Mayor is authorized to execute the same, with such changes as may be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Loan Agreement shall be executed in the name of the Town by the signature of the Mayor and its official seal shall be affixed thereto or imprinted or reproduced thereon and attested by the Clerk.

**SECTION 5. Applicable Provisions of Law.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**SECTION 6. 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,” “hereat,” “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 7. 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 8. Authorizations.** The Town Manager, the Clerk, and any Commission Member, and such other officials and employees of the Town as may be designated by the Mayor are each designated as agents of the Town in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Town that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 9. Bank Qualified Issue.** The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which have been or will be issued by the Town during calendar year 2022 does not exceed \$10,000,000. There are no entities which are subordinate to or which issue obligations on behalf of the Town. The Town hereby designates the Note as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3)(B)(i) of the Code. The Town shall not to take any action or to fail to take any action if such action or failure would cause the Note to no longer be a “qualified tax-exempt obligation.”

**SECTION 10. Conflict Waiver.** The Town acknowledges that its bond counsel, Greenspoon Marder LLP, has previously represented and currently represents the Lender in other unrelated transactions, and consents to such representation. The Town Manager is authorized to execute a conflict waiver in a form approved by the Town Attorney.

**SECTION 11. Severability.** If any section or portion of a section of this Resolution proves

to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

**SECTION 12. Conflicts.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 13. Effective Date.** The Resolution shall take effect immediately upon passage.

**DONE AND ADOPTED** by the Town Commission of the Town of Highland Beach, Florida, this 7th day of June, 2022.

**ATTEST:**

\_\_\_\_\_  
Douglas Hillman, Mayor

**REVIEWED                      FOR                      LEGAL  
SUFFICIENCY**

\_\_\_\_\_  
Lanelda Gaskins, MMC  
Town Clerk

\_\_\_\_\_  
Glen Torcivia, Town Attorney  
Town of Highland Beach

**VOTES:**

**YES   NO**

Mayor Douglas Hillman  
Vice Mayor Natasha Moore  
Commissioner Peggy Gossett-Seidman  
Commissioner Evalyn David  
Commissioner John Shoemaker

EXHIBIT “A”

TERM SHEET FROM LENDER

EXHIBIT “B”

FORM OF LOAN AGREEMENT

