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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2018 - 22

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AUTHORIZING
ACCEPTANCE OF A LOAN COMMITMENT FROM
CAPITAL BANK, A DIVISION OF FIRST TENNESSEE
BANK, NATIONAL ASSOCIATION, AS DESCRIBED
HEREIN; MAKING CERTAIN OTHER COVENANTS AND
AGREEMENTS IN CONNECTION THEREWITH;
PROVIDING FOR SEVERABILITY; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, the Village of Estero, Florida (the "Issuer") is a municipal corporation duly created and existing pursuant to the Constitution and laws of the State; and

WHEREAS, on October 17, 2018, the Issuer adopted Resolution No. 2018-18 (the "Land Purchase Resolution") authorizing the purchase of approximately 62.2 acres adjacent to the Estero River (the "Project"); and

WHEREAS, it is hereby ascertained, determined, and declared that financing the Project will serve a paramount public purpose for the reasons described in the Land Purchase Resolution; and

WHEREAS, pursuant to a request for proposals, dated October 25, 2018, the Issuer received nine proposals to finance the Project; and

WHEREAS, it is hereby ascertained, determined, and declared that, based on recommendations from staff of the Issuer and Public Resources Advisory Group, financial advisor to the Issuer (the "Financial Advisor"), the Loan Commitment (the "Commitment") submitted by Capital Bank, a Division of First Tennessee Bank, National Association (the "Lender"), dated November 14, 2018, as revised December 5, 2018, to provide a loan (the "Loan") to the Issuer to finance the Project contains terms and provisions favorable to the Issuer.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida (the "Village Council"):

Section 1. Adoption of Representations. The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

44 **Section 2. Authority.** This Resolution is adopted pursuant to the Constitution of
45 the State, Chapter 159, Part VII, Florida Statutes, Chapter 166, Florida Statutes, the Charter of
46 the Issuer, and other applicable provisions of law, each as amended (collectively, the "Act").
47

48 **Section 3. Approval of Loan Commitment.** The Issuer hereby approves and
49 accepts the Commitment, a copy of which is attached hereto as Exhibit A and incorporated
50 herein by reference.
51

52 **Section 4. Interest Rate.** In order to fix the interest rate on the Loan in advance of
53 the delivery date, upon the advice of the Financial Advisor that it is in the best interest of the
54 Issuer, the Finance Director, or her duly authorized designee, is hereby authorized to lock the
55 interest rate on the Loan in accordance with the formula provided in the Commitment by
56 selecting either Interest Rate Option A or Interest Rate Option B (subject to a not to exceed
57 principal amount of \$20,000,000 and a not to exceed interest rate of 4.60%).
58

59 **Section 5. Final Loan Documents.** Prior to closing the Loan with the Lender, the
60 final loan documents shall be submitted to the Village Council for approval at a subsequent
61 Village Council meeting.
62

63 **Section 6. General Authority.** The members of the Village Council, the Village
64 Manager, the Village Attorney, the Village Finance Director, and all other of officers,
65 attorneys, and other agents and employees of the Issuer are hereby authorized to perform all
66 acts and things required of them by this Resolution or desirable or consistent with the
67 requirements hereof for the full, punctual, and complete performance of all of the terms,
68 covenants, and agreements contained in this Resolution.
69

70 **Section 7. Prerequisites.** The Issuer has performed all other acts, conditions, and
71 things relating to the passage of this Resolution as are required by the Act.
72

73 **Section 8. Severability.** If any provision of this Resolution shall be held or deemed
74 to be or shall, in fact, be illegal, inoperative, or unenforceable in any context, the same shall
75 not affect any other provision herein or render any other provision (or such provision in any
76 other context) invalid, inoperative, or unenforceable to any extent whatever.
77

78 **Section 9. Applicable Provisions of Law.** This Resolution shall be governed by
79 and construed in accordance with the laws of the State of Florida.
80

81 **Section 10. Rules of Interpretation.** Unless expressly indicated otherwise,
82 references to sections or articles are to be construed as references to sections or articles of this
83 instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof,"
84 "hereinafter," "hereinafter," and other equivalent words refer to this Resolution and not solely
85 to the particular portion in which any such word is used.
86

87 **Section 11. Captions.** The captions and headings in this Resolution are for
88 convenience only and in no way define, limit, or describe the scope or intent of any provisions
89 or sections of this Resolution.
90

91 **Section 12. Members of the Village Council and Village Staff Exempt from**
92 **Personal Liability.** No recourse under or upon any obligation, covenant, or agreement of this
93 Resolution, or for any claim based thereon or otherwise in respect thereof, shall be had against
94 any member of the Village Council and Village Staff, as such, of the Issuer, past, present, or
95 future, either directly or through the Issuer it being expressly understood (a) that no personal
96 liability whatsoever shall attach to, or is or shall be incurred by, the members of the Village
97 Council and Village Staff, as such, under or by reason of the obligations, covenants, or
98 agreements contained in this Resolution, and (b) that any and all such personal liability, either
99 at common law or in equity or by constitution or statute, of, and any and all such rights and
100 claims against, every such member of the Village Council and Village Staff, as such, are
101 waived and released as a condition of, and as a consideration for, the execution of this
102 Resolution.
103

104 **Section 13. Repealer.** All resolutions or parts thereof in conflict herewith, if any,
105 are hereby repealed.
106

107 **Section 14. No Third Party Beneficiaries.** Except such other persons as may be
108 expressly described in this Resolution, nothing in this Resolution, expressed or implied, is
109 intended or shall be construed to confer upon any person, other than the Issuer any right,
110 remedy, or claim, legal or equitable, under and by reason of this Resolution, or any provision
111 thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit
112 of the Issuer.
113

114 **Section 15. Effective Date.** This Resolution shall take effect immediately upon
115 adoption.
116

117 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this
118 12th day of December, 2018.
119

120 Attest:

VILLAGE OF ESTERO, FLORIDA

121
122
123 By: Kathy Hall
124 Kathy Hall, MMC, Village Clerk
125
126

By: James R. Boesch
James R. Boesch, Mayor
127

128 Reviewed for legal sufficiency:

129 By: Burt Saunders
130 Burt Saunders, Esq., Village Attorney
131

132 Exhibit A: Loan Commitment