Fort Myers Beach Town Council

Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Agenda | **Monday, November 16, 2020** | **9:00 AM**

ORDER OF BUSINESS

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. PUBLIC COMMENT

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

VIII. APPROVAL OF MINUTES

A. November 2, 2020 Town Council

IX. ADMINISTRATIVE AGENDA

A. FY2019-2020 Re-Appropriation
Approve Re-Appropriation FY2019-2020 - 2nd reading

B. Res 20-51: Town Wide Capital Improvements Projects
Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED

OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; 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.

C. Proposed 2021 Town Council Meeting Schedule
Approve the monthly schedule for Town Council meetings through June 2021

X. FINAL PUBLIC COMMENT

XI. TOWN MANAGER'S ITEMS

XII. TOWN ATTORNEY'S ITEMS

XIII. COUNCILMEMBERS ITEMS AND REPORTS

XIV. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.

	For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		**Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.**

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

Fort Myers Beach Town Council

Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes | **Monday, November 2, 2020** | **9:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Deputy Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Town Manager Hernstadt revealed that First Federal Integrity Bank requested that they defer Administrative Agenda Item D. until the November 16, 2020, meeting.
Vice Mayor Hosafros moved to approve the final agenda, removing item D. temporarily and adding a TDC projects request; second by Council Member Veach.
Motion carried unanimously.

V. PUBLIC COMMENT

Chris Schaab discussed his late submittal for his chair and umbrella permit and requested flexibility and compassion with his renewal.

Megan Heil, Chair of the Local Planning Agency (LPA), stated that LPA Member Forrest Critser volunteered to be part of the Historic Preservation Advisory Committee (HPAC). She noted they would review the enabling ordinance of the committee, and she requested a joint meeting with Town Council to discuss priorities. She explained why they requested a second reading for height and side setbacks. Town Manager Hernstadt commented that he would review where they were with the ordinance.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach thanked everyone for voting.

VII. PRESENTATION

Lobbyist Ronald L. Book

Mr. Book stated his goal was to make sure that they communicated to Town Council what was going on in Tallahassee before anyone else did. He described how COVID-19 affected the legislature and stated that virtual meetings ended November 1, 2020. He explained how meetings would move forward while the Capitol remained closed. He noted the public would not be allowed into the building unless they had a special pass and the current plan would continue until May of 2021. Mr. Book reviewed challenges ahead regarding a tort reform bill, a COVID-19 liability reform bill and the doctrine of sovereign immunity. He discussed the local political players' experience, the trust fund, future transportation and water projects, state reserves and CARES Act funds. He expected that pre-K-12 would be seriously underfunded in the future and that pension reform would be brought back.

Council Member Atterholt encouraged Mr. Book to bring up water quality funding. He described a letter-writing program for residents to contact their legislative members regarding water quality issues. Mr. Book replied that water quality had to be separated from climate change and messaging was important. He discussed money in politics and stated that both parties supported water quality issues.

Mr. Book stated that his representation for the Town was at the state level and would be happy to represent them at the federal level if requested.

Council Member Veach brought up releases from Lake Okeechobee and how it affected their water quality. Mr. Book remarked that his concern was justified.

Town Manager Hernstadt described his relationship with Mr. Book and felt they were fortunate to have him working for the Town. Mr. Book stated that they needed to pay attention after the election because there would be a new Chair of the Appropriations Committee, a powerful position.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Anchorage Advisory Committee (AAC)

Katherine Light, Chair of the Anchorage Advisory Committee (AAC), stated that they unanimously voted to pass their Strategic Plan. Council Member Atterholt questioned their vision statement. Chair Light explained their intent. She stated that the AAC recommended that Council consider pursuing the two-unit option at Harbor House for the upland services provider. Council Member Allers asked if the space at Harbor House would be adequate even with an expansion of the Mooring Field. Chair Light believed so. She noted the committee would review their rates in the next couple of months. Mayor Murphy stated that he would like to see a financial analysis before making a decision.

IX. APPROVAL OF MINUTES

A. October 15, 2020 Management & Planning Session

Correction on M&P Session 10-15-20: Council Member Veach ~~mentioned that~~ questioned whether they would have to pay a retainer for the prosecutor.

Vice Mayor Hosafros moved to approve both sets of minutes with the amendment for the October 15, 2020 minutes; second by Council Member Allers.

Motion carried unanimously.

B. October 19, 2020 Regular Town Council

Vice Mayor Hosafros moved to approve both sets of minutes with the amendment for the October 15, 2020 minutes; second by Council Member Allers.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. VAR20200036: 5043 Williams Drive

Approve/ Approve with condition/ Deny VAR20200036 at a Parcel 5043 Williams Drive to Allow a Relief from LDC Table 34-3 for a Principal Structure Setback and from Sec. 34-1174 for an Accessory Structure Setback.

Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communication: Vice Mayor Hosafros and Council Member Allers - drive by and Council Members Atterholt and Veach - site visit. Mayor Murphy - none.

Assistant Community Development Director Carl Benge utilized PowerPoint for his presentation. Slides included: Property Information; Variance Requests; Staff Findings and Recommendations; LPA Recommendation; and Conditions of Approval. Council Member Veach confirmed that all structures existed.

James Reichlin, owner, stated that an architect recommended that they obtain variances before upgrading. He agreed with the conditions of approval and described the renovations.

Town Manager Hernstadt noted that the prior paperwork was not perfected and this was an opportunity to correct it. Mayor Murphy thanked Mr. Reichlin for straightening out the paperwork.

Council Member Allers moved to approve VAR20200036 with the staff and LPA recommendations and that the applicant met all the criteria for granting the variances, second by Council Member Veach.

Motion carried unanimously.

B. VAR20200052: 4690/4700 Estero Blvd

Approve/ Approve with conditions/ Deny VAR20200052 at a Parcel 4690/4700 Estero Boulevard to allow a variance from LDC Sec.34-1174 for Accessory Structures, to allow an accessory structure to be located closer to the street right-of-way than the principal structure

Ex parte communication: Vice Mayor Hosafros and Council Member Allers - drive by and Council Members Atterholt and Veach - site visit. Mayor Murphy - none.

Assistant Director Benge utilized PowerPoint for his presentation. Slides included: Property Information; Variance Request; Site Plan; Staff Findings and Recommendations and LPA Recommendations.

Vice Mayor Hosafros requested that the staff recommendations be prioritized in the resolution rather than the LPA recommendations. Town Manager Hernstadt stated that staff did not change their recommendations. Community Development Services Director Jason Green explained that the LPA eliminated condition 6 because they felt that the current 60-foot setback was sufficient. Vice Mayor Hosafros preferred that they put condition 6 back in the resolution.

Claudia Metcalfe, owner, stated that she would not install pavers on the property. She explained the intent of her design.

Fred Drovdlic from Waltrip Engineering represented Ms. Metcalfe. He displayed and explained slides of the North Western Facade; North Eastern Facade and the Site Plan.

No public comment.

Council Member Allers moved to approve VAR20200052 with the LPA recommended conditions; second by Council Member Veach.

Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Sunset Celebration FY 21

Sunset Celebration Special Event Permit and Fees.

Town Manager Hernstadt reviewed the request and he noted that the merchants requested a rebate for the time spent under COVID-19 restrictions. He noted the credit would pay off the fee for 2021. Vice Mayor Hosafros noted this was not the only recurring event that was canceled and if they gave credit to one group, everyone should get credit. Town Manager Hernstadt felt they should do whatever they could to minimize the financial impact on them. Council Member Veach questioned the number of canceled recurring events. Town Manager Hernstadt replied that it would not affect their budget.

Council Member Atterholt moved to approve the Sunset Celebration Special Event Permit and Fees; second by Council Member Allers.

Motion carried unanimously.

Vice Mayor Hosafros moved that the Town in the same manner as set out in the above request, credit the fees for any organization that had a prior recurring event and reapplies for days missed; second by Council Member Atterholt.

B. Resolution 20-49; Mooring Field Strategic Plan

Motion to Approve Resolution 20-49, adopting the Mooring Field Strategic Action Plan

Town Manager Hernstadt reviewed the background of the document and noted that approving the plan did not mean that Council was obligated to approve every item in the plan.

Vice Mayor Hosafros moved to approve Resolution 20-49; second by Council Member Allers.

Motion carried unanimously.

C. Resolution 20-50; SRF Loan

Approve Resolution #20-50 authorizing the Town to finalize a loan agreement for the eligible Stormwater portions of the North Estero Phase 2 Part 2, Tier 1 Side Streets, and North Estero Phase 2 Part 1 projects and have the Town Manager finalize the application to the State of Florida Revolving Fund Loan.

Town Manager Hernstadt confirmed that they could separate a portion of it and use it for a grant application per Mr. Book. Utilities Director Christy Cory stated that they were working with the state regarding the hazard mitigation program and expected to receive a few stormwater grants.

Vice Mayor Hosafros moved to approve Resolution 20-50; second by Council Member Veach.

Motion carried unanimously.

D. Res 20-51: Town Wide Capital Improvements Projects

Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; 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.

Town Manager Hernstadt revealed that First Federal Integrity Bank requested that they defer item D. until the November 16, 2020, meeting.

E. TDC Projects for Grant Cycle FY21 22

Town Manager Hernstadt requested that Council review the list of projects and provide input. Council Member Veach suggested including six interpretive signs for beach accesses. Vice Mayor Hosafros agreed. Council Member Allers questioned adding the Times Square project and Bay Oaks. Town Manager Hernstadt replied that they could apply. Vice Mayor Hosafros noted that the Lee County Commissioners constrained what the funds could be spent on. She did not think the time was right to increase their request due to the decline in income. Council Member Veach discussed requesting funds for items included in projects that the Town was currently funding. Town Manager Hernstadt agreed that Lee County should be helping them fund projects. Vice Mayor Hosafros reiterated that it was not the time to request more money. She described projects that were not approved by the TDC.

Town Manager Hernstadt explained beach renourishment funding. Council Member Veach commented that he would like to add a kayak launch at Bay Oaks. Cultural Parks & Recreation Director Alison Giesen reported that the kayak launch was already vetted and was not approved. Vice Mayor Hosafros felt that the Times Square project would be a better request but not this year.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt questioned whether Council was interested in giving Mr. Schaub relief regarding his late application for a chair and umbrella permit. Consensus was reached to allow Mr. Schaub to resubmit his application.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated that they prevailed on the motions of summary judgment regarding the Jamison matter. He noted the property owner indicated he would potentially settle the dispute. He indicated that he would meet with outside Counsel concerning the Jamison matter and the dune walkover/Bert Harris Act matter.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach questioned enforcing the mask mandate. Town Manager Hernstadt replied that staff was not trained to deal with confrontations with the public. Council Member Veach clarified that he meant establishments. Town Manager Hernstadt stated that business owners had to follow the ordinance. Mayor Murphy questioned whether the Town did a sufficient job of educating the public concerning the mask mandate. Council Member Veach

suggesting fining businesses whose employees were not wearing masks. Vice Mayor Hosafros did not want to micromanage the Town Manager. Town Attorney Herin, Jr. stated that staff would follow up if complaints were received.
Mayor Murphy felt it was up to the Town Manager to enforce the ordinance.
Vice Mayor Hosafros indicated a hazardous waste collection was scheduled at Bay Oaks on Friday. She noted the hazardous waste collection would occur quarterly and she encouraged the community to participate.
Council Member Allers questioned whether they had any projects for Mr. Book.
Town Manager Hernstadt explained the strategy and noted there should be a couple of projects that met the criteria.
Mayor Murphy requested an excused absence for the November 16, 2020 meeting. Vice Mayor Hosafros granted the request.

XVI. ADJOURNMENT

Mayor Murphy adjourned the meeting at 12:12 p.m.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2020-86**

1. **Requested Motion:**

Meeting Date: November 16, 2020

Approve Re-Appropriation FY2019-2020 - 2nd reading

Why the action is necessary:
Meets State Statute requirements.

What the action accomplishes:
Updates the Town's Budget for Fiscal Year 2019-2020.

2. **Agenda:**	3. **Requirement/Purpose:**	4. **Submitter of Information:**
ADMINISTRATIVE AGENDA	Resolution	

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5. **Background:**
The purpose of this fiscal year close out budget amendment is to recognize the revisions to the FY 2019-2020 Budget. Town Council initially reviewed and approved this items previously, with a vote of 5-0, at the November 2, 2020 meeting. There is no impact to the total budget amount.

Attachments:
1. 20-52, FY19-20 Budget Appropriations 2nd reading
2. Exhibit A to Resolution 20-52

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Deputy Town Clerk	Created/Initiated - 11/6/2020
Robert Lange, Finance Director	Approved - 11/9/2020
John R Herin Jr, Town Attorney	Approved - 11/10/2020
Roger Hernstadt, Town Manager	Final Approval - 11/10/2020

RESOLUTION 20-52

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT TO THE TOWN GENERAL FUND; WATER UTILITY AND OTHER TOWN FUNDS PROVIDING AUTHORITY; EFFECTIVE DATE.

WHEREAS, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 23, 2019, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2019-2020, as set forth with greater specificity in Town Resolution 19-25; and

WHEREAS, Section 11.05 of Article XI of the Charter of the Town of Fort Myers Beach provides that the Town Manager will report to Town Council regarding any anticipated excess revenues; any reduction of appropriations and any request for transfers for the Town operating budget, including the estimated amount of such increase, decrease, remedial action(s) taken, and recommendations as to any other steps to be taken; and

WHEREAS, Section 11.05(c) of Article XI of the Town Charter further provides that the Council shall take such action as it deems necessary to prevent or minimize any such deficit and for that purpose may, by resolution, reduce one or more appropriations; and

WHEREAS, the Town Manager has made various recommendations as set forth in the Budget Amendment, which is attached hereto as Exhibit "A" and hereby incorporated by reference.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals as set forth in the various "Whereas" clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts Budget Amendment, which is attached to this Resolution, as a formal amendment to the 2019-2020 Town Budgets. The Town Council further finds that Budget Amendment is consistent with the requirements of Section 11.05 (a), (c) and (d) of Article XI of the Town Charter in that such amendment is to provide sufficient funding for all cost incurred during fiscal year 2020.

Section 3. This resolution is effective immediately upon adoption.

The foregoing Resolution was ___________ by the Town Council upon a motion by ________________ and seconded by ___________________ and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	___
Rexann Hosafros, Vice Mayor	___
Dan Allers, Council Member	___
Bill Veach, Council Member	___
Jim Atterholt, Council Member	___

ADOPTED this 16th day of November, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

____
Rexann Hosafros, Vice Mayor

ATTEST:

____
Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

____
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of November 2020.

Town of Fort Myers Beach
- Budget Detail by Object by Department by Fund
From 10/1/2019 Through 9/30/2020

Town of Fort Myers Beach
All Funds Budget for FY 2020

EXHIBIT "A"

		Current Year Actual - Expenditures	Total Budget - Original/Revised	Amendments	Total Original	Adjustments		Revised Balance	Difference	Comments	
Expenses											
Town Council	10	192,251.10	216,219.96		216,219.96			216,219.96			
Town Manager	12	276,748.64	295,075.00		295,075.00			295,075.00			
Town Clerk	14	391,081.65	365,735.00		365,735.00	30,000.00	*	395,735.00			
Finance	16	439,560.14	450,705.00		450,705.00			450,705.00			
Short Term Rental Services	17	57,017.93	60,720.00		60,720.00			60,720.00			
Legal	18	220,474.87	226,000.00		226,000.00			226,000.00			
General Government	19	1,684,949.48	2,588,795.00	397,775.00	2,986,570.04	(250,500.00)		2,736,070.04		FHIB Grant Match $63,800 & Lani Kai Sidewalk $23,000 - Resolution 20-03	a
Community Development	20	443,299.68	345,080.00		345,080.00	100,000.00	*	445,080.00			
Code Enforcement	21	209,075.82	272,460.00		272,460.00			272,460.00			
Building	24	662.87	0.00		0.00			0.00			
Public Works Admin	30	228,205.26	204,320.00		204,320.00	25,000.00	*	229,320.00			
Public Works Maintenance	31	750,471.31	753,385.00		753,385.00	2,000.00		755,385.00			
Times Square	32	35,911.93	37,300.00		37,300.00			37,300.00			
Maritime	33	92,282.33	127,300.00		127,300.00			127,300.00			
Parking Meter Operations	34	535,204.90	472,125.00		472,125.00	70,000.00	*	542,125.00			
Storm Water Maintenance	35	0.00	0.08		0.08			0.08			
Mooring operations	36	137,619.44	165,010.00		165,010.00			165,010.00			
Water Services	40	696.00	310,975.00	(310,975.00)	0.00			0.00			
Bay Oaks Recreation Center	50	646,421.72	832,475.00		832,475.00			832,475.00			
Bay Oaks Pool	51	235,724.55	315,125.00		315,125.00			315,125.00			
Mound House	70	499,933.22	484,290.00		484,290.00	20,000.00	*	504,290.00			
Newton Park	71	38,735.32	36,450.00		36,450.00	3,500.00		39,950.00			
Total Expenses		7,116,328.16	8,559,545.04	86,800.00	**8,646,345.08**	0.00		**8,646,345.08**			

* **Budget increase for FBIP Grant & Lani Kai to Times Square Sidewalk**
* **Appropriating/Distrubuting of new Property/Flood Insurance Premiums to user Departments**
* **Contracted Services & Insurace Premiums**
* **Reclass as a Loan Transfer per Town Council directive**

		Current Year Actual - Expenditures	Total Budget - Original/Revised	Amendments	Total Original	Adjustments	Revised Balance	Difference	Comments	
Expenses										
Road Impact	11	61,266	58,300		970,500	912,200	970,500		CIP Rollover PY	b
Parks Impact	12	124,800	138,050		263,050	125,000	263,050		CIP Rollover PY	b
Emergency	13		-							
Contingency	58100		490,000	*	490,000		490,000			
Contractual Services	53401	4,471	10,000	*	10,000		10,000			
Gas Tax	20	680,886	563,865		776,165	212,300	776,165		Use of gas tax Reserves + Resolution 20-03	b
Storm Water	21	2,946,226	1,590,975		1,590,975		1,590,975			
Beach Access	22	1,086,363	1,135,230		1,135,230		1,135,230			
Building	24	650,602	952,325		952,325		952,325			
Capital	40	1,104,586	1,291,025		2,117,459	826,434	2,117,458.69		CIP Rollover PY	b
Community Enhancement Projects	41	184,619	276,450		276,450		276,450			
Water Utility	50	12,715,801	5,606,820		5,905,178	298,358	5,905,177.93		CIP Rollover PY	b
Total Expenses		27,295,544	20,672,585.04	86,800	23,046,877	2,374,292	23,133,677			

a. Town Council Authorized

b. Previous year audited carryover from FY 2019
c. Building Fund Revenue to Exxpenditure shortfalll ($185,667.41) to be funded from General Funds thropugh a Due To and Due From. Reason - TPI Permit delay.

* **Transfer from Contingency to Contract Services**

1. **Requested Motion:**

Meeting Date: November 16, 2020

Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN’S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN’S COMMUNICATION SERVICE TAX REVENUES; 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.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**
ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**

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5. **Background:**
During FY19/20, Town Council tasked staff with initiating funding for redevelopment projects at Bay Oaks Recreational Campus, Bayside Park and Times Square.

A Loan Commitment was executed in September 2020 with First Florida Integrity Bank.

Attorney's for First Florida Integrity Bank and the Town have reviewed and approved the documentation. Approval of this resolution is the final required step to close on the loan and execute all of the final loan documentation for the projects.

Attachments:
1. 20-51, 115551105_1_Resolution Authorizing 2020 Loan-C2
2. Loan Agreement (01672376-5)-C3

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**
Amy Baker, Deputy Town Clerk — Created/Initiated - 11/5/2020

John R Herin Jr, Town Attorney	Approved - 11/5/2020
Amy Baker, Deputy Town Clerk	Approved - 11/5/2020
Roger Hernstadt, Town Manager	Final Approval - 11/9/2020

RESOLUTION NO. 20-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; 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, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the "Town") desires to borrow money to fund the redevelopment of Bay Oaks, Bayside Park and Times Square, all located in the Town, and referred to herein collectively, as the "Project"; and

WHEREAS, the Town Council of the Town ("Town Council") has determined it to be in the best interests of the citizens to finance the Project; and

WHEREAS, the Town Council has determined it to be in the best interest of the Town and the citizens thereof to finance the Project through a loan from First Florida Integrity Bank (the "Bank") in an aggregate principal amount not to exceed $10,000,000 to be payable from and secured by a pledge of the Town's public service tax levied pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, *Florida Statutes*, as amended (the "Public Service Tax") and if ever insufficient to pay debt service on the Note (as hereinafter defined), a pledge of the Town's communication service tax revenues authorized by

Section 202, *Florida Statutes*, as amended and authorized by the Chapter 26 of the Town Code (the "Communications Tax, and together with the Public Service Tax, the "Pledged Revenues"); and

WHEREAS, the Town Council adopted Resolution 20-32 on August 17, 2020 authorizing the borrowing of not to exceed $10,000,000 to finance the Project in accordance with the Town Charter; and

WHEREAS, the Town Council has determined that it is in the best interests of the Town to borrow $10,000,000 from the Bank to finance the Project (the "Loan") pursuant to the terms and conditions of a Loan Agreement to be entered into between the Town and the Bank, substantially in the form attached hereto as Exhibit "A" (the "Loan Agreement"); and

WHEREAS, amounts due under the Loan will be evidenced by the Town's Capital Improvement Revenue Note, Series 2020 (the "Note") authorized herein to be issued pursuant to the Loan Agreement; and

WHEREAS, debt service on the Note shall be payable from and secured solely by a first priority pledge of and lien on the Public Service Tax and if ever insufficient to pay debt service on the Note, the Communications Tax; and

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 166, *Florida Statutes*, as amended, Chapter 202, *Florida Statutes*, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law.

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

A. The above recitals are true and correct and are hereby incorporated herein as a part of this Resolution.

B. The Town is a duly constituted and validly existing municipal corporation and public body corporate and politic of the State of Florida, with requisite powers derived from the Constitution and laws of the State of Florida and the Charter and ordinances of the Town to authorize, execute and deliver this Resolution and the Note and to carry out and perform its duties and obligations hereunder and thereunder.

C. It is in the public interest and serves a valid and proper public purpose to finance the Project.

D. It is in the best interests of the Town and the citizens thereof to accept the Bank's offer to provide the Loan to the Town on the terms set forth in the Loan Agreement to finance the Project and to pay the costs of issuance of the Note, including the Bank's Commitment Fee (as defined in the Loan Agreement).

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 Town to accept the offer of the Bank to enter into the Loan Agreement and sell the Note to the Bank at a negotiated sale.

F. In consideration of the purchase and acceptance by the Bank 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 Town and the Bank.

SECTION 3. AUTHORIZATION OF LOAN AGREEMENT. To provide for the issuance of and security for the Note and to express the contract between the Town and the holder thereof, the Town does hereby authorize the execution and delivery, on behalf of the Town, by the Mayor, under the seal of the Town, attested by the Town Clerk of the Town, of the Loan Agreement by and between the Town and the Bank. The form of the Loan Agreement attached hereto as Exhibit "A" is hereby authorized and approved, subject to such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor, execution of the Loan Agreement by the Mayor constituting conclusive evidence of such approval. 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 Town's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount not to exceed $10,000,000 and subject to the provisions of Section 4 hereof.

SECTION 4. AUTHORIZATION OF THE PROJECT AND THE NOTE. Financing of the Project is hereby authorized. To finance the Project, there is hereby authorized to be issued the "Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020," in an aggregate principal amount not to exceed TEN MILLION DOLLARS ($10,000,000), which shall evidence and secure amounts outstanding under the Loan Agreement, and will be repaid over a term ending not later than November 1, 2040 as provided in the Loan Agreement. The Note shall bear interest at the Note Rate, as defined in the Loan Agreement, subject to adjustment and prepayment as provided in the Loan Agreement and the Note, and shall be dated the date of delivery. Interest on the Note shall be paid monthly on the first day of each month, as provided in the Loan Agreement and the Note. Principal on the Note will be payable in monthly installments payable on the first day of each month, commencing December 1, 2023 in accordance with Schedule I to the Note, subject to prepayment as provided in the Note and in the Loan Agreement.

The Note shall be substantially in the form attached to the Loan Agreement, with such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor of the Town, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Note shall be executed on behalf of the Town with the manual signature of the Mayor and the Town Clerk and the official seal of the Town, and be approved as to form and correctness with the manual signature of the Town Attorney. 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 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 Town by such person who at the actual time of the execution of such Note shall hold the proper office of the Town, 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 Town promises that it will promptly pay the principal of and interest on the Note and all other amounts due under the Note and 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 Note and Loan Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of the Constitution and the laws of the State of Florida, but shall be payable solely from the Pledged Revenues 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 Town except from the Pledged Revenues as described herein and in the Loan Agreement.

SECTION 6. USE OF PROCEEDS. The proceeds of the Note shall be used by the Town to finance the Project and to pay the costs of issuance related thereto, including the Bank's Commitment Fee (as defined in the Loan Agreement).

SECTION 7. GENERAL AUTHORIZATION. The Town Council hereby authorizes the Mayor, the Town Clerk, the Town Manager and the Town Attorney to execute the Note, the Loan Agreement, this Resolution, and any and all other documents necessary to initiate the loan closing in this matter.

SECTION 8. PREREQUISITES PERFORMED. The Town has performed all acts, conditions, and things relating to the passage of this Resolution and the authorization of the Loan, the Loan Agreement and the Note, as are required by the Constitution and Laws of the State of Florida and the Charter and ordinances of the Town.

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 TOWN COUNCIL 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 Town Council, as well as any appointee, employee or agent, of said Town, past, present or future, either directly or through the Town it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any member of the Town Council, appointee, employee or agent of the Town 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 Town Council, appointee, employee or agent 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 Town.

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 Town 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 Town and the persons who shall from time to time be the holders of the Note.

SECTION 16. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

[Remainder of this page intentionally left blank]

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _______________________ and seconded by ______________________ and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	___
Rexann Hosafros, Vice Mayor	___
Dan Allers, Council Member	___
Jim Atterholt, Council Member	___
Bill Veach, Council Member	___

ADOPTED this 16th day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA

____

Rexann Hosafros, Vice Mayor

ATTEST:

____

Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA SOLELY:

____

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of November 2020.

EXHIBIT A

FORM OF LOAN AGREEMENT

LOAN AGREEMENT

dated November 4, 2020

by and between

THE TOWN OF FORT MYERS BEACH, FLORIDA
(the "Town")

and

FIRST FLORIDA INTEGRITY BANK
(the "Bank")

TABLE OF CONTENTS

The Table of Contents for this Loan Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement"), made and entered as of the 4th day of November, 2020, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **FIRST FLORIDA INTEGRITY BANK,** a Florida banking corporation authorized to do business in Florida, and its successors (the "Bank").

W I T N E S S E T H:

WHEREAS, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

WHEREAS, the Town, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution 20-32 adopted by the Town Council of the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the "Act") and Resolution No. [______] adopted by the Town Council of the Town on November 2, 2020 (the "Note Resolution"), is authorized to borrow money to finance the redevelopment Bay Oaks, Bayside Park and Times Square, all located in the Town and referred to herein collectively as the "Project", and to pay the costs of issuance related thereto, including, but not limited to the Bank's Commitment Fee; and

WHEREAS, the Town receives the Pledged Revenues, as described herein; and

WHEREAS, the Town desires to borrow $10,000,000 to finance the Project (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues; and

WHEREAS, the Bank is willing to provide the Loan to the Town as provided herein, but only upon the terms and conditions of this Agreement and the Note;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
DEFINITION OF TERMS

Section 1.01. <u>Definitions</u>. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings as follows:

"Act" shall have the meaning assigned to that term in the recitals hereof.

"Agreement" shall mean this Loan Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Bank" shall mean First Florida Integrity Bank, a Florida banking corporation and its successors or affiliates.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in the Lee County, Florida are authorized or required to be closed.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations promulgated thereunder.

"Commitment Fee" means a fee charged by the Bank in an amount equal to $20,000.00 payable on the Date of Delivery.

"Communication Service Tax Revenues" shall mean monies received by the Town from the communications services tax authorized under Chapter 202, Florida Statutes, as amended.

"Date of Delivery" shall mean November 4, 2020.

"Debt Service" means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

"Debt Service Account" means the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 Debt Service Account created pursuant to Section 3.09 hereof.

"Determination of Taxability" shall mean, with respect to the Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Owner thereof.

"Event of Default" shall mean an Event of Default as defined in Section 5.01 of this Agreement.

"Fiscal Year" shall mean the twelve month period commencing [______] of each year and ending on the succeeding [______], or such other twelve month period as the Town may designate as its "fiscal year" as permitted by law.

"Loan" shall refer to the loan in a principal amount of Ten Million Dollars ($10,000,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

"Maturity Date" shall mean November 1, 2040.

"Maximum Rate" means the maximum rate of interest permitted by applicable law to be borne by the Note.

"Note" shall mean the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 issued by the Town under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

"Note Rate" shall mean the rate of interest to be borne by the Note, which shall be for the period from the Date of Delivery of the Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) hereof, so long as no Event of Default has occurred and is continuing on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described herein.

"Note Resolution" shall mean the Resolution No. [____] adopted by the Town Council of the Town on November 2, 2020, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

"Noteholder," "Owner" or "Holder" shall mean the Bank as the purchaser and initial holder of the Note and any subsequent registered owner of the Note.

"Pledged Revenues" means the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, the Communications Service Tax Revenues.

"Project" has the meaning provided in the Recitals hereof.

"Public Service Tax Revenues" shall mean the moneys received by the Town from the utility services tax levied by the Town or the purchase of electricity pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, Florida Statutes, as amended.

"Taxable Rate" shall mean a rate equal to the interest rate per annum which after the Determination of Taxability will result in the same after-tax yield to the Owner of the Note as before said Determination of Taxability, as determined by the Owner of the Note in good faith and communicated in writing to the Town.

"Town" shall mean the Town of Fort Myers Beach, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

Section 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this

Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.03. Titles and Headings. The titles and headings of the Articles and Sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 2.01. Representations and Warranties of Town. The Town represents and warrants to the Bank as follows:

(a) Existence. The Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Note Resolution, to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Note to the Bank. The making, execution and performance of this Agreement on the part of the Town and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the Town and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the Town or any of its material properties is bound.

(b) Validity, Etc. This Agreement, the Note and the Note Resolution are valid and binding obligations of the Town enforceable against the Town in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) No Financial Material Adverse Change. There are no actions, proceedings or investigations pending against the Town or affecting the Town (or any basis therefor known to the Town) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the Town or in any of its properties or assets, or in any material impairment of the right or ability of the Town to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and/or collection of the Pledged Revenues or in any material liability on the part of the Town and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. There are no pledges of, or liens or encumbrances on, the Public Service Tax Revenues.

(e) Levy and Collection of Pledged Revenues. The Town currently levies the utilities services tax on purchases of electricity at the rate of [ten percent (10%)] of the amount of such sale, exclusive of governmental charges with respect to the Public Service Tax Revenues, and receives the communications services tax as authorized by Chapter 202, Florida Statutes, as amended.

(f) No Litigation. There are no suits or proceedings pending or to the knowledge of the Town, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Town, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of Town to fulfill its obligations under this Agreement.

(g) Confirmation. The representations and warranties of the Town contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

Section 2.02. Representations and Warranties of Bank. The Bank represents and warrants to the Town as follows:

(a) Existence. The Bank is a Florida banking corporation, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Loan. The performance of this Agreement on the part of the Bank and the making of the Loan have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights (and specifically creditors' rights as the same relate to Georgia banking corporations) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note, (ii) has received and reviewed such financial information concerning the Town as it has requested in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; (iii) is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933; and (iv) is purchasing the Note as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Note except to another accredited investor.

ARTICLE III
THE NOTE

Section 3.01. The Loan; Purpose and Use. On the date of this Agreement, the Bank shall provide the Loan to the Town in the aggregate principal amount of Ten Million Dollars ($10,000,000).

(a) The proceeds of the Loan shall be used to finance the Project and to pay the costs of issuance related thereto, including the Commitment Fee.

(b) Proceeds of the Loan may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan. On the Date of Delivery a minimum amount of $50,001 must be drawn down by the Town. In no event shall the total principal amount drawn exceed $10,000,000. The Town shall make draw requests in writing to the Bank stating the amount and use of the funds requested. Each amount drawn shall be funded by the Bank within 24 hours of the written request into a checking account of the Town held by the Bank.

Section 3.02. The Note. The Town shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Note shall be as follows; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) Amount of Note. The Note shall have an initial principal amount of Ten Million Dollars ($10,000,000).

(b) Interest. The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery through November 1, 2030. Thereafter, subject to subject subsection (e) below, interest on the Note shall be adjusted through the Maturity Date at a fixed rate of interest based on the prevailing ten year treasury rate plus 255 basis points. In connection with such adjustment, the City shall pay to the Bank a loan fee equal to 50 basis points on the outstanding principal amount of the Loan, plus reasonable costs and expenses of the Bank, including reasonable legal fees in documenting the adjustment. Upon the occurrence of one or more of the events specified in Section 3.03 of this Agreement, the Note Rate shall be adjusted as therein provided. Interest on the Note shall be computed on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. Interest shall accrue only on the outstanding principal amount of the Loan drawn down.

(c) Payments. Interest on the Note shall be paid on the first day of each month, with interest payments commencing December 1, 2020 until the Note is paid in full and principal payments paid on the first day of each month commencing on December 1, 2023, as set forth on Schedule I attached to the Note, subject to prepayment by the Town prior to the Note's maturity as provided in subsection 3.02(d) below and mandatory prepayment subject to subsection 3.02(e) below.

(d) Prepayment. The Town may prepay the Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

(e) Mandatory Prepayment. The Note shall be subject to mandatory prepayment by the City on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under this Agreement or the Note. The Bank will notify the City of its intent to call the Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

Section 3.03. Adjustments to Note Rate.

(a) Adjustment of Note Rate in the Event of a Determination of Taxability. In the event a Determination of Taxability shall have occurred, the Note Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof. In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(b) Adjustment of Note Rate for Partial Taxability. In the alternative, in the event that interest on the Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Note, then the interest rate on the Note shall be increased during such period by an amount equal to: (A-B) x C where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the interest rate on the Note (expressed as a percentage); and

(C) "C" equals the portion of the Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(c) Anything provided herein or in the Note to the contrary notwithstanding, in no event shall the Note bear interest in excess of the Maximum Rate. In the event the Note Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Note Rate to a rate less than the Maximum Rate until such time as interest shall accrue on the Note in an amount (the "Excess Interest") that would have accrued thereon had the Note Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on the Note, the Town shall pay to the Owner of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

(d) If required, the Town agrees to take whatever action is necessary to comply with the provisions of Section 215.84, Florida Statutes, relating to the Maximum Rate of interest including, but not limited to, filing a request with the State Board of Administration for the authorization of an adjusted interest rate derived by the terms of this Section 3.03, if such rate is in excess of the Maximum Rate.

Section 3.04. <u>Compliance with Section 215.84.</u> The Town represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.05. <u>Conditions Precedent to Funding</u>. Prior to or simultaneously with the delivery of the Note by the Town there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the Town to the effect that (i) the Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida and has full legal right, power and authority to adopt and perform its obligations under the Note Resolution, and to authorize, execute and deliver and to perform its obligations under this Agreement and the Note; (ii) the Town has duly adopted the Note Resolution and duly authorized, executed and delivered this Agreement and such instruments constitute legal, binding and valid obligations of the Town, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion; (iii) except for post-closing disclosures to be filed with the State Division of Bond Finance and Form 8038-G to be filed with the Internal Revenue Service, all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for the Town's enactment, adoption, execution, approval and performance of this Agreement, the Note, and the Note Resolution have been obtained, provided that no opinion shall be required with respect to any authorizations, consents, approvals or reviews required by the securities laws of the United States of America or of any state, or of any other jurisdiction; (iv) the meetings of the Town Council during which matters relating to the Note, the Note Resolution and this Agreement were considered were held in accordance with all applicable rules and all of the laws of the State that govern the meetings of the Town Council; (v) the adoption of the Note Resolution and the authorization, execution and delivery of this Agreement and the Note, and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the Town is subject nor will such adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Town, or under the terms of any law, administrative regulation, resolution or instrument, except as expressly provided hereby; (vi) this Agreement and the Note have been duly executed and delivered and the Town is in compliance with all conditions precedent contained in the Note Resolution, and under applicable law and this Agreement to the issuance of the Note; and (vii) the Town is duly authorized to pledge the Pledged Revenues for payment of amounts due under the Note; and (viii) as of the Date of Delivery that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of his knowledge, threatened against the Town, affecting or seeking to prohibit, restrain or enjoin the Town from adopting the Note Resolution, entering into this Agreement or the issuance or delivery of the Note or contesting or affecting as to the Town the validity or enforceability of the Act in any respect relating to the authorization of this Agreement or authorization for the issuance of the Note and the Note Resolution, or contesting the tax-exempt status of interest on the Note, or contesting the powers of the Town to impose, levy, collect and pledge the Pledged Revenues or any authority for the issuance of the Note or the adoption of the Note Resolution. Notwithstanding the foregoing, no opinion shall be required as to the applicability of any approvals, consents or orders as may be required under the blue sky or securities laws or legal investment laws of any state in connection with the offering and sale of the Note or in connection with the registration of the Note under the Federal securities laws.

(b) an opinion of Bryant Miller Olive P.A., counsel to the Bank, (who may rely on the opinion of Counsel to the Town), stating that such counsel is of the opinion that assuming compliance by the Town with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the Town; and

(d) a certificate of the Town indicating that since September 30, 2009, there has been no material adverse change in the financial condition, operations or prospects of the Town or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the Town's ability to comply with its obligations hereunder and under the Note.

(e) such other documents as the Bank reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (e), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, and all conditions of the Note Resolution have been met, the Town shall deliver the Note to or upon the order of the Bank, but only against the Town's receipt of the proceeds of the Loan.

Section 3.06. **Registration of Transfer; Assignment of Rights of Bank.** The Town shall keep at the office of the Town Clerk in the Town's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the Town together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit "A" to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the Town shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the Town shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The Town may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the Town) with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Note on the registration books of the Town shall be deemed to affect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The Town and the transferor shall execute and record such instruments and take such other actions as the Town and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

In the event any Note is mutilated, lost, stolen, or destroyed, the Town shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of such a mutilated Note, such mutilated Note shall first be surrendered to the Town, and in the case of a lost, stolen, or destroyed Note, there first shall be furnished to the Town evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

Nothing in this Agreement or in the Note shall be construed to prohibit the Bank from granting a participation or participations in the Note to any other bank or banks affiliated with the Bank or any subsidiary thereof. No such bank participant shall, however, be a registered holder of the Note or any portion thereof.

Section 3.07. **Ownership of the Note.** The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of the Note; provided, however, that the Note may be transferred only in whole and not in part. Every prior registered owner of the Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

Section 3.08. **Use of Proceeds of Loan Permitted Under Applicable Law.** The Town represents, warrants and covenants that the proceeds of the Loan will be used solely to finance costs of the Project in accordance with applicable law.

Section 3.09. **[Reserved].**

ARTICLE IV
COVENANTS OF THE CITY

Section 4.01. **Performance of Covenants.** The Town covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the Town relating to the Loan.

Section 4.02. **Use of Proceeds.** The proceeds of the Note shall be applied by the Town to pay to pay the costs of the Project, and the costs of issuance related thereto, including the Bank's Commitment Fee.

Section 4.03. **Payment of the Note.** The Town promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Public Service Tax Revenues, and if ever insufficient from the Town's Communication Service Tax Revenues in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the Town except from the Pledged Revenues, as described herein and in the Note.

Section 4.04. Security for Note. The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, a pledge of the Town's Communication Service Tax Revenues. The Town does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, from the Town's Communication Service Tax Revenues, to provide for and secure the payment of principal of and interest on the Note and all other obligations of the Town under the Note and this Agreement.

The Pledged Revenues shall immediately be subject to the pledge and lien created and granted hereby without physical delivery thereof or further act, and such pledge and liens shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Town.

The Town shall not grant, create or suffer to be created a pledge of or lien on the Pledged Revenues prior to or on a parity with the pledge thereof and lien thereon created hereby securing the Note. Any pledge of or lien on the Pledged Revenues shall be, and shall be expressed to be, junior and subordinate in all respects to the pledge of and lien on the Pledged Revenues securing the Note.

Section 4.05. Books and Records. The Town shall keep books and records of the receipt of the Pledged Revenues and the application of the proceeds of the Note in accordance with generally accepted accounting principles, and the Owners of the Note shall have the right at all reasonable times to inspect the records, accounts and data of the Town relating thereto.

Section 4.06. Annual Audit. The Town shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the Town to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished within one hundred eighty (180) days following the close of each Fiscal Year to the Owner of the Note. The Town will annually provide to the Owner of the Note the Town's annual budget within 30 days after the Town Council's approval thereof.

Section 4.07. No Impairment. As long as the Note remains outstanding, the pledging of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Town Council.

Section 4.08. Collection of Pledged Revenues. The Town covenants to do all things necessary on its part to continue the receipt of the Pledged Revenues in compliance with the Act, and any successor provision of law governing the same and will not reduce the rate at which the Public Service Tax Revenues are currently levied. The Town will proceed diligently to perform legally and effectively all steps required on its part to receive the Pledged Revenues and shall exercise all legally available remedies to enforce such collections, as applicable, now or hereafter available under State law.

Section 4.09. Federal Income Tax Covenants.

(A) The Town covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owner thereof for federal income tax purposes.

(B) The Town covenants with the Owners from time to time of the Note that neither the Town nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the Town nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owner thereof for federal income tax purposes.

(C) The Town hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

Section 4.10. Coverage Covenant. The Town covenants that for each Fiscal Year it shall generate a minimum annual Debt Service Coverage Ratio during such Fiscal Year of not less than 1.10 to 1. "Debt Service Coverage Ratio" shall mean total annual revenues less total annual expenses divided by the annual aggregate total debt service obligations of the Town.

Section 4.11. Primary Bank Deposit Accounts. So long as the Loan is outstanding, the Town covenants that it will maintain its primary bank deposit accounts with the Bank.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following is hereby declared an "Event of Default:"

1. payment of the principal of or interest on the Note or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

2. the Town shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the Town by the Noteholder specifying such default and requiring the same to be remedied;

3. any representation or warranty of the Town contained in this Agreement or in any certificate or other closing document executed and delivered by the Town in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;

4. any proceedings are instituted with the consent or acquiescence of the Town, for the purpose of effecting a compromise between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the Town admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the Town is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the Town, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Town, a receiver or trustee of the Town or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Town or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control; or

8. the Town fails to pay when due any payment of principal of or interest on any other obligation of the Town held by the Bank.

9. failure by the Town to maintain its primary bank deposit accounts with the Bank.

Section 5.02. **<u>Exercise of Remedies</u>.** Upon the occurrence and during the continuance of an Event of Default, a Noteholder may, upon providing written notice, declare the principal of the Note (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable, anything contained in the Note or this Agreement to the contrary notwithstanding. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the Town to perform its obligations under Article IV of this Agreement.

Notwithstanding anything herein, or in the Note to the contrary, an Event of Default under Section 5.01.9 above for which the Bank does not accelerate the Loan as a result of the Town's failure to maintain the required deposit accounts as required pursuant to Section 4.11 hereof, the Bank shall increase the Note Rate by 0.50% beginning ten (10) days after written notice of said Event of Default to the Town. Such Event of Default interest rate shall apply to the outstanding principal balance of the Loan. Upon the curing of the Event of Default, the interest rate on the Loan shall revert to the initially agreed upon Note Rate effective on the date on which such Event of Default is cured.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the Town for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, with interest on overdue payments of principal and interest (to the extent permitted by law) at the Default Rate, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), without prejudice to any other right or remedy of the Noteholder, and to recover and enforce any judgment or decree against the Town, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect in any manner provided by law, the monies adjudged or decreed to be payable.

Section 5.03. **<u>Remedies Not Exclusive</u>.** No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

Section 5.04. **<u>Waivers, Etc</u>.** No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholder may be exercised from time to time and as often as may be deemed expedient.

The Noteholder may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.01. **<u>Covenants of Town, Etc.; Successors</u>.** All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 6.02. **<u>Term of Agreement</u>.** This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax-exempt status of the Note.

Section 6.03. **<u>Notice of Changes in Fact</u>.** Promptly after the Town becomes aware of the same, the Town will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the Town has taken, is taking and/or proposes to take with respect thereto.

Section 6.04. **<u>Amendments and Supplements</u>.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by the Town and the Noteholder.

Section 6.05. **<u>Notices</u>.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Town or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

As to the Town:

Town of Fort Myers Beach, Florida
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Attention: Town Manager

As to the Bank:

First Florida Integrity Bank of Florida, N.A.
3560 Kraft Road
Naples, Florida 34105
Attention: Michael Kozak

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

Section 6.06. Waiver of Jury Trial. To the extent permitted by applicable law, each of the Town and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Note or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

Section 6.07. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the Noteholder.

Section 6.08. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent from time to time permitted by law.

Section 6.09. Business Days. In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall not be a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, but interest on any such principal amount shall accrue through the date payment is received.

Section 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 6.11. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.12. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Town in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the Town Council, officer, employee or agent of the Town, officer, employee or agent of a successor to the Town, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Town or any successor to the Town, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

Section 6.13. Incorporation by Reference. All of the terms and obligations of the Note Resolution and the Exhibit hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank – Signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

TOWN OF FORT MYERS BEACH, FLORIDA

(SEAL)

By: ______________________________
Raymond P. Murphy, Mayor

ATTEST:

By: ______________________________
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL

:

____
John R. Herin, Jr., Town Attorney

FIRST FLORIDA INTEGRITY BANK

By: ______________________________
Name: Michael J. Kozak
Title: Senior Vice President

EXHIBIT A

FORM OF NOTE

TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE,
SERIES 2020

Principal Sum	Interest Rate	Maturity Date	Date of Issuance
$10,000,000	The "Note Rate" as defined herein.	November 1, 2040	November 4, 2020

The **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), for value received, hereby promises to pay to the order of **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation, or its registered assigns (the "Holder"), at 3560 Kraft Road, Naples, Florida 34105, or at such other place as the Holder may from time to time designate in writing, solely from the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on this Note, from the Communication Service Tax Revenues, each as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the Town, dated November 4, 2020 (the "Agreement"), the Principal Sum stated above loaned to the Town by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate as hereinafter provided until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by bank wire or bank transfer as such Holder may specify in writing to the Town or otherwise as the Town and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest per annum at the Note Rate, as defined below, calculated on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstandingThe "Note Rate" shall mean the rate of interest to be borne by this Note, which shall be for the period from the Date of Issuance of this Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) of the Agreement, so long as no Event of Default has occurred and is continuing, on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described therein.

Interest Rate on this Note is subject to adjustment as provided herein and in the Agreement. The Holder shall provide to the Town such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Interest Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

In the event a Determination of Taxability shall have occurred, the Interest Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder. "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

"Taxable Rate" shall mean a rate equal to the interest rate which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Interest Rate on this Note shall be increased during such period by an amount equal to: (A-B) x C where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the Interest Rate on this Note (expressed as a percentage); and

(C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holder or former Holders of this

Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder.

Proceeds from the sale of the Note may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan as provided in the Agreement. Interest on this Note shall be paid monthly on the first day of each month, commencing December 1, 2020 until this Note is paid in full. Principal on this Note shall be paid in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the Town prior to the Note's maturity as provided below and in subsections 3.02(d) and (e) of the Agreement.

The Town may prepay this Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

This Note shall be subject to mandatory prepayment by the City on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under the Agreement or this Note. The Holder will notify the City of its intent to call this Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

All payments made by the Town hereon shall apply first to accrued interest, then to other charges due the Holder, and the balance thereof shall apply to the principal amount then due on this Note.

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter of the Town, Chapters 24 and 26 of the Town Code, Resolution 20-32 adopted by the Town Council on August 17, 2020, and other applicable provisions of law and Resolution No. [____] adopted by the Town Council of the Town on November 2, 2020 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

Notwithstanding any provision in this Note to the contrary, in no event shall the Note bear interest in excess of the Maximum Rate, as defined in the Agreement. In the event the Interest Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Interest Rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued thereon had the Interest Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the Interest Rate otherwise payable on this Note, the Town shall pay to the Holder of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Public Service Tax Revenues, and if ever insufficient a pledge of the Town's Communication Service Tax Revenues, in accordance with the terms of this Agreement.

Upon the occurrence of an Event of Default the principal of this Note may become or be declared due and payable before the Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement. The Holder shall also have such other remedies as described in the Agreement.

The Town hereby waives presentment, demand, protest and notice of dishonor. This Note is governed and controlled by the Note Resolution and the Agreement and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

This Note is transferrable in accordance with the terms of the Agreement only on the registration books of the Town. The Town may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Note shall be overdue, and shall not be affected by any Notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, in regular and due form and time as required by the laws of and Constitution of the State of Florida and the Charter and Ordinances of the Town, applicable thereto, and that the issuance of this Note does not violate any constitution or statutory or other legal limitations or provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town has caused this Note to be signed by the Mayor, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Town Clerk of the Town and this Note to be dated the Date of Issuance set forth above.

TOWN OF FORT MYERS BEACH, FLORIDA

(SEAL)

By:____________________________________
Raymond P. Murphy, Mayor

ATTEST:

By:____________________________________
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By:____________________________________
John R. Herin, Jr, Town Attorney

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto ______________________________ (please print or typewrite name, address and tax identification number of assignee) ______________________________ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints ______________________________ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder:______________________

By:______________________________

SCHEDULE I

Principal Amortization Schedule

Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on this Note shall be payable in equal monthly installments of $48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Agreement and this Note.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2020-81**

1. **Requested Motion:**

Meeting Date: November 16, 2020

Approve the monthly schedule for Town Council meetings through June 2021

Why the action is necessary:
Assist to prepare calendar for the upcoming months

What the action accomplishes:

2. **Agenda:**
ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

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5. **Background:**

Attachments:
1. Proposed 2021 Town Council Meeting Schedule

Financial Impact:
None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Deputy Town Clerk	Created/Initiated - 11/4/2020
John R Herin Jr, Town Attorney	Approved - 11/5/2020
Roger Hernstadt, Town Manager	Final Approval - 11/5/2020

MEMORANDUM

To: Mayor, Vice Mayor, Town Council Members and Town Manager
From: Amy Baker, Town Clerk
Date: November 16, 2020
Re: Proposed Town Council Meeting Schedule

2021 Town Council Meeting Schedule

JANUARY

Monday, January 11, 2021	9:00 a.m.	Regular Town Council meeting	
Tuesday, January 19, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, January 21, 2021	9:00 a.m.	Management & Planning Session	

FEBRUARY

Monday, February 1, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, February 4, 2021	9:00 a.m.	Management & Planning Session	
Tuesday, February 16, 2021	9:00 a.m.	Regular Town Council meeting	

MARCH

Monday, March 1, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, March 4, 2021	9:00 a.m.	Management & Planning Session	
Monday, March 15, 2021	9:00 a.m.	Regular Town Council meeting	

APRIL

Monday, April 5, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, April 8, 2021	9:00 a.m.	Management & Planning Session	*Alt: Wed, Apr 7, 2021
Monday, April 19, 2021	9:00 a.m.	Regular Town Council meeting	

MAY

Monday, May 3, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, May 6, 2021	9:00 a.m.	Management & Planning Session	
Monday, May 17, 2021	9:00 a.m.	Regular Town Council meeting	

JUNE

Monday, June 7, 2021	9:00 a.m.	Regular Town Council meeting	
Thursday, June 10, 2021	9:00 a.m.	Management & Planning Session	*Alt: Wed, Jun 9, 2021
Monday, June 21, 2021	9:00 a.m.	Regular Town Council meeting	

* conflicts with TDC meeting schedule