

RESOLUTION NO. 2017-10

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 2017-07 OF POLK CITY, FLORIDA REGARDING THE NEGOTIATED SALE OF NOT TO EXCEED \$9,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF POLK CITY, FLORIDA WATER AND SEWER SYSTEM REFUNDING REVENUE BONDS, SERIES 2017; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission (the "City Commission") of Polk City, Florida (the "Issuer") enacted Ordinance No. 2017-04 on October 30, 2017 (the "Ordinance") and Resolution No. 2017-06 on October 30, 2017, amending and restating in its entirety Resolution No. 2011-06 (the "Bond Resolution") to authorize the issuance of Polk City, Florida Water and Sewer System Refunding Revenue Bonds, Series 2017 (the "Series 2017 Bonds"); and

WHEREAS, the City Commission previously adopted Resolution No. 2017-07, supplementing the Bond Resolution to provide for certain terms of the Series 2017 Bonds to authorize the negotiated sale thereof (the "Award Resolution"); and

WHEREAS, the City Commission now desires to amend and supplement the Award Resolution as set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF POLK CITY, FLORIDA, AS FOLLOWS:

SECTION 1. Financial Guaranty Insurance. Section 3 of the Award Resolution having previously authorized the Mayor, Vice Mayor or City Manager to determine whether it is in the best financial interests of the Issuer to obtain financial guaranty insurance for some, all or none of the Series 2017 Bonds, and it having been determined that it is in the best financial interests of the Issuer to obtain such insurance for the Series 2017 Bonds (the "Insured Bonds") from Municipal Assurance Guaranty Corp. (the "Insurer"), the authority of the Mayor, Vice Mayor and City Manager to take such further actions (including, without limitation, approval of changes to the documents approved in form in the Award Resolution) and to execute such commitments, agreements, certificates, instruments and opinions as shall be necessary or desirable to procure the issuance of the Financial Guaranty Insurance Policy by the Insurer is hereby expressly ratified and confirmed, and all such actions previously taken by the Mayor, Vice Mayor and City Manager are hereby also ratified and confirmed, including without limitation the execution of the Municipal Bond Insurance Commitment dated November 20, 2017 from the Insurer. The provisions attached hereto as **Exhibit A** shall apply for so long as Insured Bonds remain Outstanding and insured by the Financial Guaranty Insurance Policy. Notwithstanding the foregoing or any of the provisions herein or in the Bond Resolution or Award Resolution to the contrary, all of the rights of the Insurer granted herein and in the Bond Resolution shall be null and void if the Insurer is in default under the Financial Guaranty Insurance Policy; provided, however, that the Insurer shall retain all rights to the extent it has become subrogated to the rights of the Owners of any Insured Bonds.

SECTION 2. Registrar and Paying Agent; Authorization of Execution and Delivery of Registrar and Paying Agent Agreement. The first sentence of the first paragraph of Section 7 of the Award Resolution is hereby amended to provide as follows:

"U.S. Bank National Association, Jacksonville, Florida (the "Registrar and Paying Agent") is hereby appointed Registrar and Paying Agent relating to the Series 2017 Bonds."

All references in the Award Resolution to the Registrar and Paying Agent shall be deemed to refer to U.S. Bank National Association, or to such other entity as the Mayor, Vice Mayor or City Manager may hereafter designate. The Mayor, Vice Mayor and City Manager are each hereby authorized to make such modifications to the form of the Registrar and Paying Agent Agreement previously approved in the Award Resolution as they may, in consultation with Bond Counsel and the City Attorney, deem appropriate.

SECTION 3. Escrow Agent; Authorization of Execution and Delivery of the Escrow Agreement. The first sentence of the second paragraph of Section 7 of the Award Resolution is hereby amended to provide as follows:

"U.S. Bank National Association, Jacksonville, Florida (the "Escrow Agent") is hereby appointed Escrow Agent relating to the Series 2017 Bonds."

All references in the Award Resolution to the Escrow Agent shall be deemed to refer to U.S. Bank National Association, or to such other entity as the Mayor, Vice Mayor or City Manager may hereafter designate. The Mayor, Vice Mayor and City Manager are each hereby authorized to make such modifications to the form of the Escrow Deposit Agreement previously approved in the Award Resolution as they may, in consultation with Bond Counsel and the City Attorney, deem appropriate.

SECTION 4. Reserve Fund and 2017 Reserve Account. Section 4 of the Award Resolution having previously established a separate account of the Reserve Fund designated the "2017 Reserve Account" and authorized the Mayor, Vice Mayor or City Manager to determine the amount of the Reserve Requirement for the Series 2017 Bonds, and it having been determined that it is in the best financial interests of the Issuer to establish a Reserve Requirement in the amount of the initial maximum annual debt service on the Series 2017 Bonds (\$572,725.00) and to fund the Reserve Requirement through the deposit of a Reserve Fund Insurance Policy issued by the Insurer, pursuant to Section 20(B)(2) of the Bond Resolution (the "Reserve Account Policy"), the authority of the Mayor, Vice Mayor and City Manager to take such further actions (including, without limitation, approval of changes to the documents approved in form in the Award Resolution) and to execute such commitments, agreements, certificates, instruments and opinions as shall be necessary or desirable to procure the issuance of the Reserve Account Policy by the Insurer is hereby expressly ratified and confirmed, and all such actions previously taken by the Mayor, Vice Mayor and City Manager are hereby also ratified and confirmed, including without limitation the execution of the Municipal Bond Debt Service Reserve Insurance Commitment dated November 20, 2017 from the Insurer.

SECTION 5. Additional Bond Terms. Interest on the Series 2017 Bonds will be computed in all cases on the basis of a 360-day year of twelve 30-day months. In any case in which an Interest Date or the maturity date of the Series 2017 Bonds or the date fixed for the redemption of any Series 2017 Bonds shall be other than a business day, then payment of interest, principal or redemption price need not be made on such date but may be made on the next succeeding business day, with the same force and effect as if made on the due date, and no interest on such payment shall accrue for the period after such due date if payment is made on such next succeeding business day.

SECTION 6. General Authority. The Mayor, Vice Mayor, the City Manager, the City Clerk, the Finance Director, the City Attorney or any other appropriate officers of the Issuer are hereby authorized and directed to execute any and all certifications or other instruments or documents required by the Bond Resolution and the Award Resolution, as herein amended, the Purchase Agreement or any other document referred to above as a prerequisite or precondition to the issuance of the Series 2017 Bonds and any such representation made therein shall be deemed to be made on behalf of the Issuer. All action taken to date by the officers of the Issuer in furtherance of the issuance of the Series 2017 Bonds is hereby approved, confirmed and ratified.

SECTION 7. No Third Party Beneficiaries. Except as may be expressly described herein or in a Supplemental Resolution, nothing in the Bond Resolution or Award Resolution, as supplemented herein, or in the Series 2017 Bonds, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer, the Holders and the Insurer with respect to the Series 2017 Bonds, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision of the Bond Resolution or the Award Resolution, as supplemented herein, or of the Series 2017 Bonds, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer, the Holders from time to time and the Insurer with respect to the Series 2017 Bonds.

SECTION 8. Severability. If any one or more of the covenants, agreements or provisions of the Bond Resolution or the Award Resolution, as supplemented herein, shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of the Bond Resolution or the Award Resolution, as supplemented herein, and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof, thereof or of the Series 2017 Bonds issued under the Bond Resolution or the Award Resolution, as supplemented herein.

SECTION 9. No Personal Liability. Neither the members of the City Commission, nor the Mayor, Vice Mayor, City Manager or any officials or employees of the Issuer, nor any person executing the Series 2017 Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 10. Prior Resolutions. All prior resolutions of the Issuer, including without limitation the Bond Resolution and the Award Resolution, except to the extent amended and supplemented herein, are hereby expressly ratified and confirmed and shall remain in full force and effect.

SECTION 11. Effective Date. This Resolution shall take effect immediately upon its adoption.

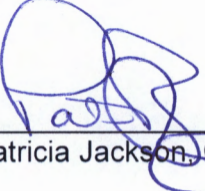
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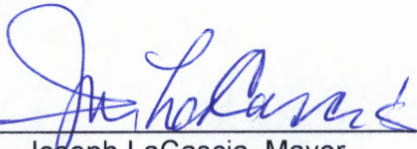
**RESOLVED, PASSED, AND CERTIFIED AS TO PASSAGE THIS 18th DAY OF
DECEMBER, 2017.**

(SEAL)

ATTEST:

POLK CITY, FLORIDA

By: 
Patricia Jackson, City Clerk

By: 
Joseph LaCascia, Mayor

APPROVED AS TO FORM AND LEGALITY:

By: 
Thomas A. Cloud, City Attorney

EXHIBIT A

PROVISIONS RELATING TO FINANCIAL GUARANTY INSURANCE POLICY

Section 1. Matters Pertaining to the Insurer.

(a) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Series 2017 Reserve Account. Notwithstanding anything to the contrary set forth in the Bond Resolution or this Resolution, amounts on deposit in the Series 2017 Reserve Account shall be applied solely to the payment of debt service due on the Series 2017 Bonds.

(b) The Insurer shall be deemed to be the sole Owner of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Insured Bonds are entitled to take pursuant to the Bond Resolution pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Issuer. In furtherance thereof and as a term of the Bond Resolution and each Insured Bond, each Owner of the Insured Bonds appoints the Insurer as their agent and attorney-in-fact with respect to the Insured Bonds and agrees that the Insurer may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a "Claim"), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, each Owner of the Insured Bonds delegates and assigns to the Insurer, to the fullest extent permitted by law, the rights of each Owner of the Insured Bonds with respect to the Insured Bonds in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(c) No grace period for a default pursuant to the Bond Resolution shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.

(d) Any amendment, supplement, modification to, or waiver of, the Bond Resolution or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Owners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.

(e) The rights granted to the Insurer under the Bond Resolution or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Financial Guaranty Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Owners and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Owners or any other person is required in addition to the consent of the Insurer.

(f) Notwithstanding anything to the contrary in the Bond Resolution, only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S&P or any combination thereof, shall be used to effect defeasance of the Insured Bonds unless the Insurer otherwise approves.

(i) To accomplish defeasance of the Insured Bonds, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Insured Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Insured Bonds are no longer "Outstanding" under the Bond Resolution and (iv) a certificate of discharge of the Registrar with respect to the Insured Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, the Registrar and the Insurer. The Insurer shall be provided with final drafts of the above referenced documentation not less than five Business Days prior to the funding of the escrow.

(ii) Insured Bonds shall be deemed "Outstanding" under the Bond Resolution unless and until they are in fact paid and retired or the above criteria are met.

(g) Amounts paid by the Insurer under the Financial Guaranty Insurance Policy shall not be deemed paid for purposes of the Bond Resolution and the Insured Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Bond Resolution. The Bond Resolution shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

Section 2. Claims Upon the Financial Guaranty Insurance Policy and Payments to the Insurer.

(a) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Bond Resolution, moneys sufficient to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or teletype of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Paying Agent shall make a claim under the Financial Guaranty Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Insured Bonds and the amount required to pay principal of the Insured Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by

filling in the form of Notice of Claim and Certificate delivered with the Financial Guaranty Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Insured Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Bonds registered to the then current Owner of the Insured Bonds, whether DTC or its nominee or otherwise, and shall issue a replacement Insured Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Insured Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Insured Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Insured Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Financial Guaranty Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Owners of the Insured Bonds referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Financial Guaranty Insurance Policy in trust on behalf of Owners of the Insured Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Owners of the Insured Bonds in the same manner as principal and interest payments are to be made with respect to the Insured Bonds under the sections of the Bond Resolution regarding payment of Insured Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything in the Bond Resolution to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Financial Guaranty Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3% and (ii) the then applicable highest rate of interest on the Insured Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Pledged Revenues and payable from such Pledged Revenues on a parity with debt service due on the Insured Bonds.

(b) The Insurer shall, to the extent it makes any payment of principal of or interest on the Insured Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Financial Guaranty Insurance Policy (which subrogation rights shall also include the rights of any such recipients in connection with any Insolvency

Proceeding). Each obligation of the Issuer to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.

(c) From Pledged Revenues, the Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Bond Resolution or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Bond Resolution or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Bond Resolution or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Financial Guaranty Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Resolution or any other Related Document.

(d) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Insured Bonds and amounts required to restore the Series 2017 Reserve Account to the Series 2017 Reserve Requirement.

(e) The Insurer shall be entitled to pay principal or interest on the Insured Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Financial Guaranty Insurance Policy), whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Financial Guaranty Insurance Policy) or a claim upon the Financial Guaranty Insurance Policy.

(f) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 1633 Broadway, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. _____, Telephone: (212) 974-0100; Telecopier: (212) 339 3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(g) The Insurer shall be provided with the following information by the Issuer:

(i) Annual audited financial statements within 180 days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Bond Resolution), and the Issuer's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;

(ii) Notice of any draw upon the Series 2017 Reserve Account within two Business Days after knowledge thereof other than (1) withdrawals of amounts in excess of the Series 2017 Reserve Requirement and (2) withdrawals in connection with a refunding of Insured Bonds;

(iii) Notice of any default known to the Issuer within five (5) Business Days after knowledge thereof;

(iv) Notice of the resignation or removal of the Paying Agent and Registrar and the appointment of, and acceptance of duties by, any successor thereto;

(v) Prior notice of the advance refunding or redemption of any of the Insured Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(vi) Notice of the commencement of any Insolvency Proceedings;

(vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Insured Bonds;

(viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and

(ix) All reports, notices and correspondence to be delivered to Owners under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Insured Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

(h) The Insurer shall have the right to receive such additional information as it may reasonably request.

(i) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Insured Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.

(j) The Paying Agent shall notify the Insurer of any known failure of the Issuer to provide notices, certificates and other information under the Bond Resolution.

(k) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Bond Resolution would adversely affect the security for the Insured Bonds or the rights of the Owners, the Issuer shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Financial Guaranty Insurance Policy.

(l) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Insured Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.

(m) The Issuer shall not enter into any interest rate exchange agreement or any other interest rate maintenance agreement secured by and payable from the Pledged Revenues without the prior written consent of the Insurer.