

RESOLUTION NO. 08-R-46

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TALLAHASSEE, FLORIDA AUTHORIZING THE ISSUANCE OF CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2008 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$9,400,000, TO REFUND A PORTION OF CERTAIN OUTSTANDING OBLIGATIONS OF THE ISSUER; PROVIDING THAT THE BOND SHALL BE A LIMITED OBLIGATION OF THE ISSUER PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; DELEGATING CERTAIN RESPONSIBILITIES WITH RESPECT TO THE SALE OF THE BONDS TO THE MAYOR; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE BOND; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TALLAHASSEE, FLORIDA, as follows:

Section 1: *Authority for this Resolution.* This Resolution is adopted pursuant to the provisions of the Constitution of Florida, Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the "Act").

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

"Act" shall have the meaning ascribed thereto in Section 1 hereof.

"Authorized Denominations" means the stated amount of the Bond.

"Bond" means the City of Tallahassee, Florida Capital Improvement Refunding Revenue Bonds, Series 2008 authorized pursuant to this Resolution.

"Business Day" means any day except any Saturday or Sunday or day on which the principal office of the Original Purchaser is closed.

"Clerk" means the City Treasurer-Clerk or any Deputy Clerk.

"Commission" means the City Commission of the City of Tallahassee, Florida,

"Issuer" means the City of Tallahassee, Florida.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30.

"Mayor" means the Mayor of the Issuer or in his absence or inability to act, the Mayor Pro-Tem or such other person as may be duly authorized by the Commission to act on his behalf.

"Non-Ad Valorem Revenues" means all legally available non-ad valorem revenues of the Issuer, but shall not include any ad valorem taxes.

"Original Purchaser" means the initial purchaser of the Bond, as selected by the Commission pursuant to Section 12 hereof, and its successors and assigns.

"Owner" or "Owners" means the Person or Persons in whose name or names a Bond shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies and other legal entities.

"Refunded Obligation" shall mean a portion of the obligation evidenced by a loan agreement between the Sunshine State Governmental Financing Commission (the "Commission") and the Issuer dated as of November 18, 1986, amended and restated on April 25, 2001, in the original principal amount of \$18,200,000 and currently outstanding in the amount of \$16,999,730, funded from the Sunshine State Governmental Financing Commission Revenue Bond, Series 1986 (Governmental Financing Program).

"Resolution" means this Resolution, pursuant to which the Bond is authorized to be issued, including any supplemental resolution(s).

"State" means the State of Florida.

Section 3: Findings.

(A) For the benefit of the inhabitants of the Issuer, the Commission finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to refinance the Refunded Obligation. Issuance of the Bond to refinance the Refunded Obligation which originally funded capital projects satisfies a paramount public purpose.

(B) The Bond will be payable from Non-Ad Valorem Revenues. The Non-Ad Valorem Revenues will be sufficient to pay the Bond, as the same becomes due.

(D) Neither the Issuer nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the Bond and the Bond shall not constitute a lien upon any properties owned by or situated within the Issuer, except as provided herein with respect to the Non-Ad Valorem Revenues, in the manner and to the extent provided herein.

(E) Because of the characteristics of the Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Bond, it is in the best interest of the Issuer to purchase the Bond at a private negotiated sale from the Original Purchaser. Prior to the issuance of the Bond, the Issuer shall receive from the Original Purchaser, a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

Section 4: Authorization. The issuance of an obligation of the Issuer to be known as the "City of Tallahassee, Florida Capital Improvement Refunding Revenue Bonds, Series 2008" is hereby approved and authorized, in the aggregate principal amount of not to exceed \$9,400,000 for the purpose of providing funds to currently refund the Refunded Obligation and to pay the costs of issuing the Bond.

Section 5: Description of Bond. The Bond shall be issued as a single Bond and shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, and shall have such other terms and provisions, including interest rates not exceeding the maximum interest rates permitted by the Act, principal and interest payment terms, maturity date, and prepayment provisions as stated herein and/or in the form of the Bond attached hereto as Exhibit A or as determined by supplemental resolution. The Bond is to be in substantially the form set forth on Exhibit A attached hereto, together with such changes as shall be approved by the Mayor such approval to be conclusively evidenced by the execution thereof by the Mayor. The Bond shall be executed with the manual or facsimile signature of the Mayor and the Bond shall be attested with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. The Bond may be signed and sealed by such person who at the actual time of the execution of the Bond shall hold the proper office of the Issuer, although, at the date of the Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bond shall be actually sold and delivered.

Section 6: Registration and Exchange of Bond; Persons Treated as Owners. The Bond will initially be registered to the Original Purchaser. So long as the Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Bond. The Bond shall be transferable only upon such registration books and in Authorized Denominations.

The Person in whose name a Bond shall be registered shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of principal and interest on such Bond shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 7: Bond Mutilated, Destroyed, Stolen or Lost. In case a Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost and upon the Owner furnishing the Issuer reasonable proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Bond so surrendered shall be canceled.

Section 8: Payment of Bond; Limited Obligation. The Issuer promises that it will promptly pay the Bond at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Bond shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. No holder of any Bond issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Bond, or be entitled to payment of such Bond from any funds of the Issuer except from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. Nothing in this section shall be construed as to limit the Issuer's ability to use any Non-Ad Valorem Revenues to make any payments coming due.

Section 9. Bank Qualified. The Issuer designates the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer and any subordinate entities of the Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during calendar year 2008 to issue more than \$10,000,000 of "tax-exempt" obligations, exclusive of any private activity bonds, as defined in Section 141(a) of the Code.

Section 10. Security for the Bond. The Issuer covenants and agrees to appropriate in its annual budget for each Fiscal Year in which the Bond remains outstanding, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of and interest on the Bond in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be for the term and of the Bond and be cumulative and shall continue until all payments of principal of and interest on the Bond shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement to budget and appropriate Non-Ad Valorem Revenue shall be deemed to be entered into for the benefit of the holders of the Bond and that this obligation may be enforced in a court of competent jurisdiction. This covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage upon any assets owned by the Issuer and no Person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder. The Bond shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida. The obligation of the Issuer to appropriate Non-Ad Valorem Revenues shall be subject in all respects

to the obligation of the Issuer to provide for essential governmental services and further shall be subject to the provisions of Section 166.241, Florida Statutes. Notwithstanding any provisions of this Resolution to the contrary, the Issuer shall not be obligated to exercise ad valorem taxing power to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or other Non-Ad Valorem Revenues.

Section 11: Application of Proceeds of Bond. At the time of delivery of the Bond, proceeds from the sale of the Bond shall be used to refinance the Refunded Obligation and to pay the costs of issuance (including but not limited to legal fees and expenses). Upon issuance of the Bond, the Clerk shall transfer funds to pay the Refunded Obligation without any further direction.

Section 12. Application of Revenues. For so long as any of the principal of and interest on the Bond shall be outstanding and unpaid or until the Issuer has made provision for payment of principal of and interest, with respect to the Bond, the Issuer covenants as follows:

A. **Funds and Accounts.** The Issuer covenants and agrees to establish separate funds to be known as the "Revenue Fund," the "Debt Service Fund" and the "Rebate Fund." Moneys in the aforementioned funds, other than the Rebate Fund, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Owner and for the further security of the Owner.

The Issuer may, but shall not be required to, at any time and from time to time appoint one or more depositories to hold, for the benefit of the Owner, any one or more of the funds and accounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds and accounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than five million dollars (\$5,000,000).

All deposits into the funds and accounts created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

B. **Flow of Funds.**

(1) The Issuer shall credit the appropriated and budgeted amounts of Non-Ad Valorem Revenue to the Revenue Fund. The moneys in the Revenue Fund shall be deposited or credited on or before the last day of each month, commencing with the month in which delivery of the Bond shall be made to the purchaser or purchasers thereof, or such later date as hereinafter provided, in the following manner and in the following order of priority:

(a) Debt Service Fund. The Issuer shall deposit into or credit to the Debt Service Fund the sum which, together with the balance in said fund, shall be equal to the interest and the principal amount on the Bond accrued and unpaid and to accrue to the end of the then current calendar month. Moneys in the Debt Service Fund shall be used to pay principal of and interest on the Bond as and when the same become due, whether by redemption or otherwise, and for no other purpose. In determining the amount to deposit for principal, the Issuer shall take into account that portion of the principal due on the next principal payment date which would have accrued on said Bond during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months of thirty (30) days each) in equal amounts from the next preceding principal payment due date, or, if there is no such preceding principal payment due date, from a date one year preceding the due date of such principal amount. The Issuer shall adjust the amount of the deposit into the Debt Service Fund not later than the month immediately preceding any payment date so as to provide sufficient moneys in the Debt Service Fund to pay the principal of and interest on the Bond coming due on such payment date.

(b) Balance. The balance of any moneys after the deposits required by Section 12(B)(1) hereof may be transferred to any appropriate fund or account of the Issuer or may be used for any lawful purpose.

(2) The Issuer, in its discretion, may use moneys in the Debt Service Fund to prepay the principal or interest coming due in future years under the terms and conditions as provided in the Bond.

(3) On the date established for payment of any principal of or redemption price, if applicable, or interest on the Bond, the Issuer shall withdraw from the Debt Service Fund sufficient moneys to pay such principal or redemption price, if applicable, or interest and deposit such moneys with the Paying Agent.

C. Rebate Fund. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Fund) and the Owner shall have no right to have the same applied for debt service on the Bond. The Issuer agrees to undertake all actions required of it in its arbitrage certificate, dated the date of issuance of the Bond, relating to such Bond, including, but not limited to:

(1) making a determination in accordance with the Code of the amount, if any, required to be deposited in the Rebate Fund;

(2) depositing the amount determined in clause (1) above into the Rebate Fund;

(3) paying on the dates and in the manner required by the Code to the United States Treasury from the Rebate Fund and any other legally available moneys of the Issuer such amounts as shall be required by the Code to be rebated to the United States Treasury; and

(4) keeping such records of the determinations made pursuant to this Section as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Bond.

The provisions of the above-described arbitrage certificate may be amended from time to time as shall be necessary, in the opinion of Bond Counsel, to comply with the provisions of the Code.

Section 13: *Delegated Award and Payment for the Bond.* (A) In order to obtain the most favorable interest rates and terms, the Clerk, in conjunction with the Financial Advisor, is hereby authorized to solicit bids from interested purchasers and the Mayor is authorized to accept, execute and deliver the commitment letter (the "Commitment Letter") of whichever purchaser provides the terms and provisions which, after consultation with the Issuer's Financial Advisor, provides the lowest interest rate and is in the best interest of the Issuer.

(B) Subject to full satisfaction of the conditions set forth in this Section 13(B), the Issuer hereby authorizes a delegated negotiated sale of the Bond to the Original Purchaser in accordance with the terms of the Commitment Letter, with such changes, amendments, modifications, omissions and additions thereto as shall be approved by the Commission in accordance with the provisions of this Section 13(B) upon recommendation of the Financial Advisor (including, without limitation, making the final determination concerning the structuring and marketing of the Bond to obtain the most favorable ratings and interest rates on the Bond). The Bond may provide additional provisions to comply with the Commitment Letter.

Notwithstanding the foregoing, the Bond shall not be issued until such time as all of the following conditions have been satisfied:

1. Receipt by the Mayor or Clerk of a written offer in the form of a Commitment Letter, said offer to provide for, among other things, (i) the issuance of not exceeding \$9,400,000 principal amount of Bond, (ii) a true interest cost of not more than 4.0% per annum and (iii) the final maturity no later than October 1, 2016.

2. The Bond may be subject to such optional redemption provisions as provided in the Commitment Letter and the Bond.

3. Receipt by the Clerk of a disclosure statement and truth-in-bonding information complying with Section 218.385, Florida Statutes and substantially in the form attached hereto as Exhibit C.

Upon satisfaction of the conditions set forth in this Section, the Mayor is hereby authorized to execute and deliver the Bond and any other documents, agreements or certificates relating to the Bond, and is further authorized and directed to prepare and furnish to the Original Purchaser of the Bond, when the Bond are issued, certified copies of all the proceedings and records of the Issuer relating to the Bond, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the

Bond as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.

Section 14: Covenants of the Issuer.

A. The Issuer covenants to provide its Certified Audited Financial Report, budgets and other reasonable financial information, if requested by the Owner and not readily publicly available.

B. The Owner will have the right to inspect the Issuer's books and records during normal business hours.

C. The Issuer will not incur any additional indebtedness payable from Non-Ad Valorem Revenues, unless such Non-Ad Valorem Revenues will be greater than 2.00 times the maximum annual debt service on all outstanding debt payable from such Non-Ad Valorem Revenues.

Section 15: Tax-Exemption. The Issuer covenants with the Owner of the Bond that it shall not use the proceeds of such Bond in any manner which would cause the interest on such Bond to be or become includable in the gross income of the Owner for federal income tax purposes and the Issuer further covenants with the Owner of the Bond that it will comply with all provisions of the Internal Revenue Code (the "Code") necessary to maintain the exclusion of interest on the Bond from the gross income of the Owner 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.

(a) The Issuer makes each of the representations, warranties and covenants contained in the Tax Certificate delivered with respect to the Bond. By this reference, such Tax Certificate is incorporated in and made a part of this Resolution.

(b) If the Owner receives a final, non-appealable notice, in any form, from the Internal Revenue Service that Owner may not exclude any interest paid under the Bond from its federal gross income (an "Event of Taxability"), the Issuer shall pay to Owner upon demand (x) an amount which, with respect to payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Owner its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Bond through the date of such event and (y) as additional payments to Owner on each succeeding date of payment such amount as will maintain such after-tax yield to Owner.

Section 16: Events of Default; Remedies of Bondholder. The following shall constitute Events of Default: (i) if the Issuer fails to pay any payment of principal of or interest on any Bond within 10 days after the same becomes due and payable; (ii) if the Issuer defaults in the

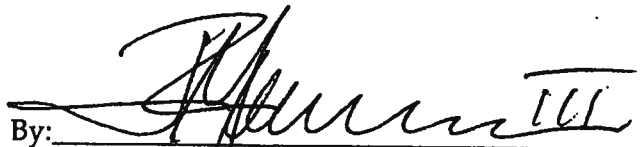
any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the persons who shall from time to time be the holders.

Section 29: Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED by the City Commission of the City of Tallahassee this 25th day of November, 2008.


CITY OF TALLAHASSEE

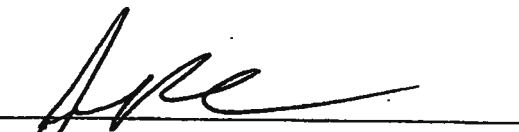
(SEAL)

By: 
John R. Marks, III, Mayor

ATTEST:

APPROVED AS TO FORM:

By: 
Gary Herridon
City Treasurer-Clerk

By: 
James R. English
City Attorney

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CITY TREASURER-CLERK
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