

RESOLUTION NO. 2012-06

A RESOLUTION OF THE CITY OF BROOKSVILLE, FLORIDA AUTHORIZING THE ISSUANCE OF ITS FIRE SERVICE ASSESSMENT REVENUE NOTE, SERIES 2012, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$435,000 TO FUND THE ACQUISITION OF CERTAIN CAPITAL EQUIPMENT OF THE CITY; PROVIDING THAT THE SERIES 2012 NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY PAYABLE SOLELY FROM CERTAIN SPECIAL ASSESSMENTS AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS AND REMEDIES FOR THE OWNER OF THE SERIES 2012 NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the City of Brooksville, Florida, Ordinance No. 830, and other applicable provisions of law.

SECTION 2. DEFINITIONS. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Assessment Ordinance, unless the context herein otherwise requires. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The following words and phrases shall have the following meanings when used herein:

“Act” means Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Issuer, the Assessment Ordinance and other applicable provisions of law.

“Additional Notes” means additional obligations issued in compliance with the terms, conditions and limitations contained in Section 12 hereof which will have an equal lien on the Pledged Revenues, to the extent herein provided and rank equally in all other respects with the Series 2012 Note and other Additional Notes issued hereunder.

“Annual Debt Service Requirement” means the principal and interest on the Note coming due in the forthcoming Fiscal Year.

“Assessment Ordinance” means Ordinance No. 830 adopted by the Issuer on July 2, 2012.

“Business Day” means any day except any Saturday or Sunday or day on which the principal office of the Owner of a Note is closed.

“City Attorney” shall mean the City Attorney or any special counsel of the Issuer.

“City Manager” shall mean the City Manager or assistant, deputy, interim or acting City Manager of the Issuer.

“Clerk” shall mean the City Clerk or assistant or deputy City Clerk of the Issuer, or such other person as may be duly authorized by the City Council of the Issuer to act on his or her behalf.

“Code” means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

“Debt Service Fund” means the Debt Service Fund established herein with respect to the Series 2012 Note.

“Fiscal Year” means the period commencing on October 1 of each year and continuing through the following September 30, or such other period as may be prescribed by law as the Fiscal Year for the City.

“Fire Service Assessments” shall mean the special assessments, sometimes referred to as non-ad valorem assessments, imposed and collected by the Issuer pursuant to the Assessment Ordinance and any assessment resolution provided for therein.

“Issuer” means the City of Brooksville, Florida, a municipal corporation of the State of Florida.

“Mayor” means the Mayor of the Issuer or in his or her absence or inability to act, the Vice Mayor of the Issuer or such other person as may be duly authorized by the City Council to act on his or her behalf.

“Notes” means the Series 2012 Note and any outstanding Additional Notes.

“Owner” means the Person in whose name a Series 2012 Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

“Original Purchaser” means the original purchaser of the Series 2012 Note.

“Person” means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

“Pledged Revenues” means (i) the Fire Service Assessments, (ii) the moneys on deposit in the Debt Service Fund and the Project Fund established herein, and (iii) investment earnings on moneys in deposit in such funds.

“Project” means the acquisition and/or construction of capital improvements and equipment for the City’s fire protection services including, without limitation, the construction of fire stations and the acquisition of equipment necessary for the suppression of and protection from fires (including, but not limited to, fire engines or trucks), the plans and specifications of which shall be on file with the Clerk from time-to-time.

“Project Fund” means the Project Fund established herein with respect to the Series 2012 Note.

“Resolution” means this Resolution, pursuant to which the Series 2012 Note is authorized to be issued, including any supplemental resolution(s).

“Series 2012 Note” shall mean the Issuer's Fire Service Assessment Revenue Note, Series 2012, authorized by Section 4 hereof.

“State” means the State of Florida.

“Supplemental Resolution” means any resolution of the Issuer amending or supplementing this Resolution.

SECTION 3. FINDINGS.

(A) For the benefit of its inhabitants and property owners, and in order to maintain a continual state of preparedness to address fire incidents, the Issuer 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 acquire the Project. Issuance of the Series 2012 Note to finance the Project satisfies a paramount public purpose.

(B) Debt service on the Notes will be payable from a pledge of the Pledged Revenues as provided herein. The Pledged Revenues will be sufficient to pay the principal and interest on the Series 2012 Note herein authorized, as the same become due, and to make all deposits required by this Resolution.

(C) In consideration of the purchase and acceptance of the Series 2012 Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Owner.

(D) The Issuer does hereby authorize the acquisition of the Project.

SECTION 4. AUTHORIZATION OF SERIES 2012 NOTE. Subject

and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as City of Brooksville, Florida, Fire Service Assessment Revenue Note, Series 2012 (the "Series 2012 Note") is hereby authorized to be issued under and secured by the Pledged Revenues pursuant to this Resolution, in the principal amount of not to exceed \$435,000 for the purpose of providing funds to pay the costs of the Project and paying the costs of issuing the Series 2012 Note. The maturity date, interest rate and payment provisions shall be established by Supplemental Resolution following the validation of the Series 2012 Note pursuant to Section 22 hereof.

SECTION 5. DESCRIPTION OF NOTES. The Notes shall be dated the date of their respective execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser. Obligations may, if and when authorized by the Issuer pursuant to this Resolution and any Supplemental Resolution, be issued in one or more Series, with such further appropriate particular designations added to or incorporated in such title for the Notes of any particular series as the Issuer may determine. The Notes shall bear interest at such rate or rates not exceeding the maximum rate permitted by law as provided in the Supplemental Resolution; and shall be payable and/or prepayable in lawful money of the United States of America on such dates all as determined herein or by Supplemental Resolution. The Notes may bear interest at fixed or variable rates and may be issued as current interest bonds, capital

appreciation bonds, lease-purchase obligations subject to annual appropriation or other legal structures as approved by Supplemental Resolution. The Notes shall be in the form set forth by Supplemental Resolution.

SECTION 6. REGISTRATION AND EXCHANGE OF NOTES; PERSONS TREATED AS OWNER. The Person in whose name the Notes shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on such Note 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 Note to the extent of the sum or sums so paid.

SECTION 7. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION. The Issuer promises that it will promptly pay the principal of and interest on the Notes at the place, on the dates and in the manner provided herein and by Supplemental Resolution according to the true intent and meaning hereof and thereof. The Notes shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues in accordance with the terms hereof. No holder of any Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Note, or be entitled to payment of such Note from any funds of the Issuer except from the Pledged Revenues as described herein.

SECTION 8. DEBT SERVICE FUND.

(A) The Issuer hereby covenants that it will establish with a depository in the State of Florida, which is eligible under the laws of the State of Florida to receive municipal funds, a fund to be known as the “City of Brooksville, Florida, Fire Service Assessment Revenue Note, Series 2012 Debt Service Fund” (the “Debt Service Fund”).

(B) Upon receipt, the Issuer shall deposit all proceeds of the Fire Service Assessments, after payment of any collection costs and administration costs associated therewith (whether imposed by the Tax Collector, Property Appraiser, or otherwise), into the Debt Service Fund until such time as moneys sufficient to pay the Annual Debt Service Requirement for the then current Fiscal Year are on deposit therein.

(C) Upon deposit of the Annual Debt Service Requirement in any Fiscal Year, no further deposits shall be made into the Debt Service Fund and the Fire Service Assessments shall be transferred to the general fund or other appropriate fund of the Issuer and shall be used for any lawful purpose and shall no longer be considered Pledged Revenues hereunder.

(D) Moneys on deposit in the Debt Service Fund shall be used solely to pay the Annual Debt Service Requirement as it becomes due.

SECTION 9. COLLECTION OF PLEDGED REVENUES.

(A) The principal of and interest on the Notes will be secured solely by a lien upon and pledge of the Pledged Revenues.

(B) The Issuer does hereby irrevocably pledge the Pledged Revenues to the payment of principal of and interest on the Series 2012 Note in accordance with the provisions hereof. The Pledged Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

(C) The Issuer covenants to do all things necessary on its part to collect the Pledged Revenues. The Issuer will not amend or modify the ordinances pursuant to which the Pledged Revenues are assessed so as to impair or adversely affect the power and obligation of the Issuer to assess such Pledged Revenues or impair or adversely affect in any manner the pledge of such Pledged Revenues made herein or the rights of the Owner.

(D) The Issuer shall annually and timely adopt an assessment resolution as required by the Assessment Ordinance imposing Fire Service Assessments for each Fiscal Year in an amount sufficient to satisfy the Annual Debt Service Requirement until the Notes have been paid in full.

**SECTION 10. APPLICATION OF PROCEEDS OF SERIES 2012 NOTE;
PROJECT FUND.**

(A) At the time of delivery of the Series 2012 Note, proceeds from the sale of the Series 2012 Note shall be used to reimburse and fund the Project and associated

costs of issuance (including, but not limited to, legal fees and expenses) in accordance with the provisions in this Section.

(B) The Issuer hereby covenants that it will establish with a depository in the State of Florida, which is eligible under the laws of the State of Florida to receive municipal funds, one fund to be known as the "City of Brooksville, Florida, Fire Service Assessment Revenue Note, Series 2012, Project Fund" (the "Project Fund").

(C) Proceeds from the sale of the Series 2012 Note herein authorized shall be deposited into the Project Fund and shall be used as described above. When the acquisition of the Project has been completed and all acquisition-related costs and other costs of issuance have been paid in full, all funds remaining in the Project Fund shall be used to redeem the outstanding balance of the Series 2012 Note corresponding to the Project and the Project Fund shall be closed. All moneys deposited in said Project Fund shall be and constitute a trust fund created for the purposes herein stated, and there is hereby created a lien upon such fund in favor of the holders of the Series 2012 Note until the moneys thereof shall have been applied in accordance with this Resolution.

SECTION 11. SPECIAL FUNDS. The funds created and established by this Resolution shall constitute trust funds for the purpose provided herein for such funds. All of such funds shall be continuously secured in the same manner as municipal deposits of funds are required to be secured by the laws of the State of Florida. Moneys on deposit to the credit of all funds created hereunder may be invested pursuant to

applicable law and the Issuer's investment policy and Supplemental Resolution; and, shall mature not later than the dates on which such moneys shall be needed to make payments in the manner herein provided. The securities so purchased as an investment of funds shall be deemed at all times to be a part of the fund from which the said investment was withdrawn, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund, and any loss resulting from such investment shall likewise be charged to said fund.

SECTION 12. TAX COVENANT. The Issuer covenants to the Owner of the Notes provided for in this Resolution that the Issuer will not make any use of the proceeds of the Notes which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

SECTION 13. ADDITIONAL BONDS.

(A) The Issuer will not issue any obligations payable from the Fire Service Assessments or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of any Note issued pursuant to this Resolution upon the Pledged Revenues

except under the terms and conditions and in the manner provided herein. Any obligations issued by the Issuer other than in accordance with this Section and payable from the Fire Service Assessments shall contain an express statement that such obligations are junior and subordinate in all respects to the Notes issued hereunder as to lien on, and source of and security for payment from, the Pledged Revenues.

(B) No Additional Notes may be issued hereunder unless the Issuer's City Manager shall sign and issue a certificate that shall state and certify that the Fire Service Assessments for the most recently audited fiscal year of the Issuer preceding the issuance of Additional Notes equaled at least one (1) times the maximum Annual Debt Service Requirement for Notes then outstanding and on the Additional Notes proposed to be issued.

(C) Each ordinance, resolution or enabling instrument authorizing the issuance of such Additional Notes will recite that all of the covenants herein contained will be fully applicable to such Additional Notes as if originally issued hereunder.

SECTION 14. LIMITATION OF RIGHTS. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Notes is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and

provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

SECTION 15. AMENDMENT; IMPAIRMENT OF CONTRACT. This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Notes except with the written consent of the Owner of the Note. The Issuer covenants with the Owners of the Note that it will not, without the written consent of the Owners of the Note, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owners the rights granted to the Owners of the Note hereunder.

SECTION 16. EVENTS OF DEFAULT; REMEDIES OF OWNER.

(A) The following shall constitute "Events of Default": (i) if the Issuer fails to pay any payment of principal of or interest on any Note as the same becomes due and payable; (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Note (other than set forth in (i) above) and fails to cure the same within thirty (30) days after written notice to the Issuer by the Owner; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of

a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undismitted or undischarged.

(B) Any Owner of the Note may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the Laws of the State of Florida, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable State or Federal statutes to be performed by the Issuer or by any officer thereof. Nothing herein, however, shall be construed to grant to any Owner of the Note any lien on any real property of the Issuer.

SECTION 17. 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 18. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State.

SECTION 19. MEMBERS OF THE CITY COUNCIL OF THE ISSUER EXEMPT FROM PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Notes or for any claim based

thereon or otherwise in respect thereof, shall be had against any member of the City Council of the Issuer, as such, past, present or future, either directly or through the Issuer it being expressly understood (1) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the City Council of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (2) 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 City Council of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Notes, on the part of the Issuer.

SECTION 20. AUTHORIZATIONS. The Mayor and any member of the City Council, the City Manager, the City Attorney, the Clerk and such other officials, employees and agents of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Series 2012 Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Series 2012 Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

SECTION 21. SALE OF BONDS. The Notes may be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the requirements of this Resolution, as further approved by a Supplemental Resolution and other applicable provisions of law.

SECTION 22. VALIDATION. The City Attorney is hereby directed and authorized to institute appropriate proceedings for the validation pursuant to Chapter 75, Florida Statutes, of the Series 2012 Note and any and all matters connected therewith or other proceedings necessary for the Issuer to determine its authority to issue the Series 2012 Note, construct or acquire the Project, including the validity and use of the Pledged Revenues in all respects, and the proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer any pleadings in such proceedings.

SECTION 23. DECLARATION OF INTENT. The Issuer hereby expresses its intention to be reimbursed from proceeds of a future tax-exempt financing for expenditures to be paid by the Issuer in connection with the Project. Pending reimbursement, the Issuer has used and will use funds on deposit in its general fund to pay costs of the Project. It is reasonably expected that the total amount of debt to be incurred by the Issuer with respect to the Project will not exceed \$435,000. This Resolution is intended to constitute a “declaration of official intent” within the meaning of Section 1.150-2 of the Code with respect to the Project.

SECTION 24. REPEALER. All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed.

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SECTION 25. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

PASSED, ADOPTED AND APPROVED as of this 2nd day of July, 2012.

(SEAL)
Attest: 
Janice L. Peters, CMC, City Clerk

**CITY COUNCIL OF THE
CITY OF BROOKSVILLE, FLORIDA**
By: 
Joseph E. Johnston, III, Mayor

APPROVED AS TO FORM FOR THE RELIANCE
OF THE CITY OF BROOKSVILLE ONLY:


Thomas S. Hogan, The Hogan Law Firm, LLC
City Attorney

VOTE OF COUNCIL:

Bernardini AYE
Bradburn AYE
Burnett AYE
Hohn AYE
Johnston AYE