

Proposed Resolution No. 2017-R-14

RESOLUTION NO. \_\_\_\_

EXHIBIT "D"

FORM OF ESCROW DEPOSIT AGREEMENT

## **ESCROW DEPOSIT AGREEMENT**

This ESCROW DEPOSIT AGREEMENT, dated as of \_\_\_\_\_ 1, 2017, by and between the CITY OF PEMBROKE PINES, FLORIDA, a municipal corporation of the State of Florida (the "Issuer"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America, as Escrow Agent (the "Escrow Agent").

### W I T N E S S E T H:

WHEREAS, the Issuer has previously authorized and issued obligations of the Issuer as hereinafter set forth defined as the "Refunded Bonds," as to which the Aggregate Debt Service (as defined herein) is set forth on Exhibit A; and

WHEREAS, the Issuer has determined to provide for payment of the Aggregate Debt Service of the Refunded Bonds by depositing with the Escrow Agent pursuant to the provisions hereof, cash and the Federal Securities (as defined herein), the principal of and interest on which will be at least equal to the Aggregate Debt Service; and

WHEREAS, in order to obtain the funds needed for such purpose, the Issuer has authorized and is, concurrently with the delivery of this Agreement, issuing the Series 2017 Bonds (as defined herein); and

WHEREAS, the Issuer has determined that the amount to be on deposit from time to time in the Escrow Account (as defined herein), will be sufficient to pay the Aggregate Debt Service;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Issuer and the Escrow Agent agree as follows; provided, however, that the Escrow Agent in agreeing to the foregoing shall not be held or deemed responsible in any manner whatsoever for the recitals made herein or in the Bond Resolution (as defined herein), or the adequacy or sufficiency of the Escrow Requirement (as defined herein):

Section 1. Definitions. As used herein, the following terms mean:

(a) "Aggregate Debt Service" means, collectively, the 2006 Aggregate Debt Service and the 2007 Aggregate Debt Service.

(b) "Agreement" means this Escrow Deposit Agreement.

(c) "Annual Debt Service" means, collectively, the 2006 Annual Debt Service and the 2007 Annual Debt Service.

(d) "Bond Resolution" means, collectively, Resolution No. \_\_\_\_\_ adopted by the City Commission on \_\_\_\_\_, 2017, as amended and supplemented, and as particularly amended and supplemented by Resolution No. \_\_\_\_ adopted by the City Commission of the Issuer on \_\_\_\_\_, 2017.

(e) "Bonds" or "Series 2017 Bonds" means the Capital Improvement Revenue Refunding Bonds, Series 2017, of the Issuer, authorized by the Bond Resolution, as herein defined.

(f) "Call Date" shall mean \_\_\_\_\_, 2017.

(g) "Escrow Account" means, collectively, the 2006 Escrow Account and the 2007 Escrow Account.

(h) "Escrow Agent" means U.S. Bank National Association, a national banking association organized under the laws of the United States of America.

(i) "Escrow Requirement" means, collectively, the 2006 Escrow Requirement and the 2007 Escrow Requirement.

(j) "Federal Securities" means direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America.

(k) "Irrevocable Instruction and Authorization to Redeem Bonds" means, collectively, the 2006 Irrevocable Instruction and Authorization to Redeem Bonds and the 2007 Irrevocable Instruction and Authorization to Redeem Bonds.

(k) "Issuer" means the City of Pembroke Pines, Florida.

(l) "Paying Agent" shall mean the Paying Agent for the Refunded Bonds.

(m) "Refunded Bonds" means, collectively, the 2006 Refunded Bonds and the 2007 Refunded Bonds.

(n) "2006 Aggregate Debt Service" means, as of any date, the sum of all present and future 2006 Annual Debt Service payments then remaining unpaid with respect to the 2006 Refunded Bonds.

(o) "2006 Annual Debt Service" means, with respect to the redemption date for the 2006 Refunded Bonds, the principal of, premium, and interest on the 2006 Refunded Bonds coming due on the redemption date as shown on Exhibit A attached hereto.

(p) "2006 Escrow Account" means, the account established and held by the Escrow Agent pursuant to this Agreement, in which cash and investments will be held for payment of the 2006 Refunded Bonds.

(q) "2006 Escrow Requirement" means, as of any date of calculation, the sum of an amount in cash and principal amount of Federal Securities in the 2006 Escrow Account which, together with the interest due on the Federal Securities, will be sufficient to pay, as the installments thereof become due, the 2006 Aggregate Debt Service.

(r) "2006 Irrevocable Instruction and Authorization to Redeem Bonds" means a certificate executed by the Issuer which provides for redemption of the 2006 Refunded Bonds on the Call Date, irrevocably instructs the Escrow Agent in its capacity as Paying Agent to give notice of such redemption and directs the Paying Agent to pay the 2006 Refunded Bonds and the interest thereon upon surrender thereof at maturity or on their Call Date, whichever is earlier.

(s) "2006 Refunded Bonds" means the Issuer's Capital Improvement Revenue Bonds, Series 2006 maturing on and after December 1, 2017.

(t) "2007 Aggregate Debt Service" means, as of any date, the sum of all present and future 2007 Annual Debt Service payments then remaining unpaid with respect to the 2007 Refunded Bonds.

(u) "2007 Annual Debt Service" means, with respect to the redemption date for the 2007 Refunded Bonds, the principal of, premium, and interest on the 2007 Refunded Bonds coming due on the redemption date as shown on Exhibit A attached hereto.

(v) "2007 Escrow Account" means, the account established and held by the Escrow Agent pursuant to this Agreement, in which cash and investments will be held for payment of the 2007 Refunded Bonds.

(w) "2007 Escrow Requirement" means, as of any date of calculation, the sum of an amount in cash and principal amount of Federal Securities in the 2007 Escrow Account which, together with the interest due on the Federal Securities, will be sufficient to pay, as the installments thereof become due, the 2007 Aggregate Debt Service.

(x) "2007 Irrevocable Instruction and Authorization to Redeem Bonds" means a certificate executed by the Issuer which provides for redemption of the 2007 Refunded Bonds on the Call Date, irrevocably instructs the Escrow Agent in its capacity as Paying Agent to give notice of such redemption and directs the Paying Agent to pay the 2007 Refunded Bonds and the interest thereon upon surrender thereof at maturity or on their Call Date, whichever is earlier.

(y) "2007 Refunded Bonds" means the Issuer's Capital Improvement Revenue Bonds, Series 2007 maturing on and after December 1, 2017.

Section 2. Deposit of Funds. The Issuer hereby deposits \$\_\_\_\_\_ with the Escrow Agent in immediately available funds, to be held in irrevocable escrow by the Escrow Agent and applied solely as provided in this Agreement. The Issuer represents that:

(a) Such funds are all derived from the net proceeds of the Bonds and other legally available funds of the Issuer, and

(b) Such funds, when applied pursuant to Section 3 below, will at least equal the Escrow Requirement as of the date hereof.

Section 3. Use and Investment of Funds in the 2006 Escrow Account. The Escrow Agent acknowledges receipt of \$\_\_\_\_\_ and agrees:

(a) to hold the funds in irrevocable escrow during the term of this Agreement, and

(b) to hold the sum of \$\_\_\_\_\_ in [cash] from the amount received by the Issuer in the 2006 Escrow Account.

Section 4. Use and Investment of Funds in the 2007 Escrow Account. The Escrow Agent acknowledges receipt of \$\_\_\_\_\_ and agrees:

(a) to hold the funds in irrevocable escrow during the term of this Agreement, and

(b) to hold the sum of \$\_\_\_\_\_ in [cash] from the amount received by the Issuer in the 2007 Escrow Account.

Section 5. Payment of Refunded Bonds.

(a) Refunded Bonds. On the redemption dates for the Refunded Bonds, the Escrow Agent shall pay to the Paying Agent for the Refunded Bonds, from the cash on hand in the Escrow Account, a sum sufficient to pay the Annual Debt Service for the Refunded Bonds coming due on such date, as shown on Exhibit A.

(b) Surplus. On the redemption dates for the Refunded Bonds, after making the payments from the Escrow Account described in Subsection 4(a), the Escrow Agent shall pay to the Issuer any remaining cash in the Escrow Account in excess of the Escrow Requirement, to be used for any lawful purpose of the Issuer.

(c) Priority of Payments. The holders of the Refunded Bonds shall have an express first lien on the funds in the applicable Escrow Account until such funds are used and applied

as provided in this Agreement. If the cash on hand in the applicable Escrow Account is ever insufficient to make the payments required under Subsection 4(a), all of the payments required under Subsection 4(a) shall be made when due before any payments shall be made under Subsections 4(b).

Section 6. Reinvestment.

(a) Except as provided in Sections 3 and 4 hereof, and in this Section, the Escrow Agent shall have no power or duty to invest any funds held under this Agreement or to sell, transfer or otherwise dispose of or make substitutions of the Federal Securities held hereunder.

(b) At the written request of the Issuer and upon compliance with the conditions hereinafter stated, the Escrow Agent shall sell, transfer, otherwise dispose of or request the redemption of any of the Federal Securities acquired hereunder and shall either apply the proceeds thereof to the full discharge and satisfaction of the Refunded Bonds or substitute other Federal Securities for such Federal Securities. The Issuer will not request the Escrow Agent to exercise any of the powers described in the preceding sentence in any manner which would cause any Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder. The transactions may be effected only if (i) an independent certified public accountant shall certify to the Escrow Agent that the cash and principal amount of Federal Securities remaining on hand after the transactions are completed, together with the interest due thereon, will be not less than the Escrow Requirement, and (ii) the Escrow Agent shall receive an unqualified opinion from a nationally recognized bond counsel or tax counsel to the effect that the transactions will not cause such Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect on the date of the transactions and applicable to transactions undertaken on such date.

Section 7. No Redemption or Acceleration of Maturity. Except as provided in the Irrevocable Instruction and Authorization to Redeem Bonds, the Issuer will not accelerate the maturity or due date of the Refunded Bonds.

Section 8. Responsibilities of Escrow Agent. The Escrow Agent and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Account, the acceptance of the funds deposited therein, the purchase of the Federal Securities, the retention of the Federal Securities or the proceeds thereof or any payment, transfer or other application of money or securities by the Escrow Agent in any non-negligent act, non-negligent omission or non-negligent error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall, however, be liable to the Issuer for its negligent or willful acts, omissions or errors which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel, who

may or may not be counsel to the Issuer, and in reliance upon the opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Issuer.

The Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency where the performance or the failure of performance of the Issuer with respect to arrangements or contracts with others, the Escrow Agent's sole duty and responsibility hereunder being to safeguard the Escrow Account and dispose of and deliver the same strictly in accordance with this Agreement.

Section 9. Resignation of Escrow Agent. The Escrow Agent may resign and thereby become discharged from the duties and obligations hereby created, by notice in writing given to the Issuer and published once in a newspaper of general circulation published in the territorial limits of the Issuer, and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, not less than sixty (60) days before such resignation shall take effect. Such resignation shall take effect immediately upon the appointment of a successor Escrow Agent hereunder and payments of all amounts due the resigning Escrow Agent.

Section 10. Removal of Escrow Agent.

(a) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of not less than fifty-one per centum (51%) in aggregate principal amount of each series of Refunded Bonds then outstanding, such instruments to be filed with the Issuer, and notice in writing given by such holders to all of the registered holders of each series of the Refunded Bonds and published once in a newspaper of general circulation published in the territorial limits of the Issuer, and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, not less than sixty (60) days before such removal is to take effect as stated in such instrument or instruments. A photographic copy of any instrument filed with the Issuer under the provisions of this paragraph shall be delivered by the Issuer to the Escrow Agent.

(b) The Escrow Agent may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Agreement with respect to the duties and obligations of the Escrow Agent, by the Issuer or by the holders of not less than twenty-five per centum (25%) in aggregate principal amount of each series of the Refunded Bonds then outstanding.

(c) No such removal shall take effect until a successor Escrow Agent shall be appointed hereunder.

Section 11. Successor Escrow Agent.

(a) If at any time hereafter the Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Escrow Agent shall thereupon become vacant. If the position of Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Issuer shall appoint a successor Escrow Agent to fulfill the duties of Escrow Agent hereunder. The Issuer shall publish notice of any such appointment once in each week for four (4) successive weeks in a newspaper of general circulation published in the territorial limits of the Issuer and in a daily newspaper of general circulation or a financial journal published or circulated in the Borough of Manhattan, City and State of New York, and, before the second publication of such notice shall mail a copy thereof to the current owner of record of the Refunded Bonds as shown in the records of the Registrar.

(b) At any time within one year after such vacancy shall have occurred, the holders of a majority in principal amount of each series of Refunded Bonds then outstanding, by an instrument or concurrent instruments in writing, executed by all such bondholders and filed with the governing body of the Issuer, may appoint a successor Escrow Agent, which shall supersede any Escrow Agent theretofore appointed by the Issuer. Photographic copies of each such instrument shall be delivered promptly by the Issuer, to the predecessor Escrow Agent and to the Escrow Agent so appointed by the bondholders.

(c) If no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this section, the holder of any Refunded Bonds then outstanding, or any retiring Escrow Agent may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Agent.

Section 12. Term. This Agreement shall commence upon its execution and delivery and shall terminate when the Refunded Bonds have been paid and discharged in accordance herewith, and all amounts held by the Escrow Agent hereunder have been applied in accordance herewith.

Section 13. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the Issuer or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreements herein contained shall be null and void and shall be severed from the remaining covenants and agreements and shall in no way affect the validity of the remaining provisions of this Agreement.



Section 14. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as duplicate originals and shall constitute and be but one and the same instrument.

Section 15. Governing Law. This Agreement shall be construed under the laws of the State of Florida.

Section 16. Security for Accounts and Funds. All accounts and funds maintained or held pursuant to this Agreement shall be continuously secured in the same manner as other deposits of municipal funds are required to be secured by the laws of Florida.

Section 17. Fees of Escrow Agent. The Issuer will pay the Escrow Agent a fee for its services as Escrow Agent in the amount of \$750.00, payable in advance.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and their official seals to be hereunto affixed as of the date first above written.

THE CITY OF PEMBROKE PINES, FLORIDA

(SEAL)

\_\_\_\_\_  
[Vice] Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to Form,  
Sufficiency and Correctness:

\_\_\_\_\_  
City Attorney

[Issuer's Signature Page to Escrow Deposit Agreement]

U.S. BANK NATIONAL ASSOCIATION,  
as Escrow Agent

By: \_\_\_\_\_  
Amanda Kumar  
Assistant Vice President

[Escrow Agent's Signature Page to Escrow Deposit Agreement]

## EXHIBIT A

### 2006 Annual Debt Service

<u>Payment Date</u>	<u>Interest</u>	<u>Principal</u>	<u>Total Debt Service</u>
_____, 2017	\$ _____	\$ _____	\$ _____

### 2007 Annual Debt Service

<u>Payment Date</u>	<u>Interest</u>	<u>Principal</u>	<u>Total Debt Service</u>
_____, 2017	\$ _____	\$ _____	\$ _____

### 2006 Escrow Cash Flow

<u>Date</u>	<u>Escrow Requirement</u>	<u>Net Escrow Receipts</u>	<u>Excess Receipts</u>	<u>Excess Balance</u>
_____, 2017	\$ _____	\$ _____	0.00	0.00

### 2007 Escrow Cash Flow

<u>Date</u>	<u>Escrow Requirement</u>	<u>Net Escrow Receipts</u>	<u>Excess Receipts</u>	<u>Excess Balance</u>
_____, 2017	\$ _____	\$ _____	0.00	0.00