

RESOLUTION NO. 17-1801

RESOLUTION APPROVING AN AGREEMENT, A TRUST AGREEMENT, AN AGENCY AGREEMENT, AND RELATED DOCUMENTS PERTAINING TO THE CITY OF GOODYEAR PUBLIC IMPROVEMENT CORPORATION (THE "CORPORATION"); AUTHORIZING THE ISSUANCE OF THE CORPORATION'S SUBORDINATE LIEN MUNICIPAL FACILITIES REVENUE BONDS, TAXABLE SERIES 2017 FOR THE PURPOSE OF EXPANDING AND REFURBISHING THE CITY'S BASEBALL STADIUM FACILITIES; PLEDGING THE CITY'S EXCISE TAXES ON A SUBORDINATE BASIS TOWARD CERTAIN PAYMENTS DUE TO THE CORPORATION UNDER THE AGREEMENT; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DELEGATING CERTAIN DUTIES AND DECLARING AN EMERGENCY.

WHEREAS, the City of Goodyear, Arizona (the "City") owns a parcel of real property (the "Baseball Property") on which training facilities and related improvements were previously constructed, and the City and users of such facilities now desire to expand and refurbish such facilities (the "2017 Project"); and

WHEREAS, the City of Goodyear Public Improvement Corporation (the "Corporation") desires to assist the City and facilitate the financing of the 2017 Project through the issuance and sale of not to exceed \$11,000,000 aggregate principal amount of the Corporation's Subordinate Lien Municipal Facilities Revenue Bonds, Taxable Series 2017, to be dated the date of initial authentication and delivery thereof (the "Bonds"); and

WHEREAS, the City desires and deems it necessary to: (1) enter into an Agreement, dated the first day of the month of the issuance of the Bonds (the "Agreement"), pursuant to which the City shall pledge its Excise Taxes (as defined herein) on a subordinate basis to the payment of certain payments (the "Payments") due under the Agreement from the City to the Corporation, in order to provide for the financing of the 2017 Project; and (2) approve the sale by the Corporation of its Bonds secured by Payments made pursuant to the terms of the Agreement and other moneys received or to be received by the Corporation or U.S. Bank National Association, as trustee (the "Trustee"), pursuant to the Agreement, including investment earnings, which will be assigned to the Trustee pursuant to the Trust Agreement, to be dated the date of the Agreement (the "Trust Agreement"), by and between the Corporation and the Trustee; and

WHEREAS, for the security of the owners of the Bonds and pursuant to the terms of an Assignment Agreement, to be dated as of the date of the Agreement (the "Assignment Agreement"), by and between the Corporation and the Trustee, the Corporation will assign to the Trustee its interests in, among other things, the Agreement; and

WHEREAS, in connection with the acquisition and construction of the 2017 Project, the Corporation shall assign any of its rights and responsibilities to supervise such acquisition and construction to the City pursuant to an Agency Agreement, to be dated the date of the Agreement (the "Agency Agreement"); and

WHEREAS, the Corporation desires to sell the Bonds through either a (i) negotiated public offering of municipal securities or (ii) direct placement with a financial institution; and

WHEREAS, the firm of FirstSouthwest, a Division of Hilltop Securities Inc., will serve as the financial advisor (the "Financial Advisor") to the City and the Corporation with respect to the Bonds and assist the City and Corporation to determine the optimal means of sale; and

WHEREAS, if the Bonds are sold through a negotiated public offering, the Corporation shall receive a proposal for the purchase of the Bonds from one or more underwriters (the "Underwriter"), in substantially the form of a bond purchase agreement previously entered into by the Corporation and the City, and, with the advice of the Financial Advisor, the City and Corporation shall determine the Bonds to be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the City Finance Director, acting on behalf of the Corporation; and

WHEREAS, if the Bonds are sold through a direct placement with one or more financial institutions, the Corporation shall receive a proposal for the purchase of all or a portion of the Bonds in the form of either municipal securities or a bank loan from one or more financial institutions (the "Purchaser"); and

WHEREAS, by this resolution, the City shall approve a purchase contract in the form now on file with the City Clerk, including the attached letter of representations to be executed and delivered by the City, and order the proposed purchase contract to be completed with the final terms of the Bonds and entered into between the Corporation, the City and the Purchaser when the final terms of the sale have been determined for the sale of the Bonds to the Purchaser (as so completed, the "Purchase Contract"); and

WHEREAS, the City shall approve the preparation of an amendment to the Sports Facilities Use Agreement, dated as of May 29, 2007, by and between the City and the Cleveland Indians Baseball Company Limited Partnership (the "Baseball Use Agreement Amendment"), related to certain payments from the Cleveland Indians Baseball Company Limited Partnership (the "Cleveland Indians") for use of the 2017 Project, and the City shall approve the preparation of such other agreements necessary to consummate the construction and financing of the 2017 Project as contemplated by this resolution; and

WHEREAS, there have been placed on file with the City and presented at this meeting the proposed forms of the following documents: (i) the Trust Agreement; (ii) the Agreement; (iii) the Purchase Contract; (iv) the Request for Taxable, Fixed-Rate Lending Proposals; (v) the Preliminary Official Statement (the "Preliminary Official Statement") with respect to the Bonds; (vi) the Agency Agreement; and (vii) the Continuing Disclosure Certificate to be dated the date of delivery of the Bonds (the "Continuing Disclosure Certificate"), if applicable, from the City;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, ARIZONA, THAT:

Section 1. The Mayor and Council find and determine that the financing of the costs of the 2017 Project pursuant to the terms of the Agreement, the Trust Agreement, the Continuing Disclosure Certificate, as applicable, the Agency Agreement, the Purchase Contract or a bond purchase agreement, as applicable, and the Preliminary Official Statement, as applicable, is in furtherance of the purposes of the City and in the public interest and that the 2017 Project and the manner of financing, including the City's payment of the Payments due to the Corporation under the Agreement, will enhance the standard of living within the City.

Section 2. The Mayor and Council hereby approve the sale, issuance and delivery of the Bonds by the Corporation. The Bonds shall be issued in the aggregate principal amount of not to exceed \$11,000,000. The Bonds shall be in the denomination of \$5,000 or any integral multiples thereof (or such other denominations specified in the Purchase Contract), shall be dated such date as is set forth in the Purchase Contract and shall bear interest from such date payable on January 1 and July 1 of each year, commencing the date as is set forth in the Purchase Contract and shall be fully registered bonds without coupons initially issued in book-entry form (or issued in the name of the Purchaser, if so specified in the Purchase Contract) as provided in the Trust Agreement. The interest on the Bonds shall not exceed 9.00% per annum, or 10.00% per annum if a non-payment Event of Default described in Section 10(a)(1) of the Agreement has occurred, and the Bonds shall mature on July 1 in some or all of the years from 2018 through and including 2037.

The forms, terms and provisions of the Bonds and the provisions for the series designation, signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as determined by the Finance Director, consistent with this resolution and as is set forth in the Third Supplement and the same are hereby approved.

The names and terms of the documents and Bonds approved by this resolution may be modified to reflect a different date of sale or delivery.

The City Manager and Finance Director are hereby authorized and directed to assist the Corporation in order to cause the Bonds to be delivered to or upon the order of the Purchaser upon receipt of payment therefor.

Section 3. If the Bonds are sold as a direct placement and registered in the name of the Purchaser the Bonds may not be transferred unless (i) to a transferee that is a Qualified Investor (as defined herein) and provides the Trustee and the Corporation with a completed Certificate of Qualified Investor and (ii) the Qualified Investor agrees to comply with all applicable federal and state securities laws. For the purposes of the Bonds, "Qualified Investor" means a qualified institutional buyer, as such term is defined in Rule 144A of the Securities Act of 1933, as amended (the "1933 Act"), or an accredited investor (excluding natural persons) as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, who executes the Certificate of Qualified Investor. The Trustee, the Corporation, the City and the Purchaser may provide other terms for the signatures, authentication, registration, transfer and exchange in the Purchase Contract. The Purchaser may elect to hold and book the Bonds as a loan in its loan portfolio and in such situation the Purchaser will use the word "Bonds" as the name of the debt instrument for convenience only and without any intent to indicate that the debt instrument is a security within the meaning of the 1933 Act.

Section 4. The forms, terms and provisions of the Trust Agreement, the Agreement, the Purchase Contract, the Request for Taxable, Fixed-Rate Lending Proposals, the Preliminary Official Statement, the Agency Agreement, and the Continuing Disclosure Certificate, in substantially the forms of such documents (including the exhibits thereto) on file with the City Clerk are hereby approved, with such insertions, omissions and changes as shall be approved by the Mayor, any member of the Council, the City Manager or the City Finance Director, the execution and delivery of such documents being conclusive evidence of such approval and the performance by the City of the obligations contained in such agreements and the Bonds is hereby authorized and approved. The Mayor, any member of the Council, the City Manager or the City Finance Director are each hereby authorized and directed to execute and deliver the foregoing documents and any instruments and receipts to complete the transactions contemplated by such agreements. The City Clerk is hereby authorized and directed to attest any of the foregoing signatures, as necessary.

The City Manager and the City Finance Director, with the advice of the Financial Advisor, are hereby authorized to determine the optimal method of sale for the Bonds, to accept responses to the Request for Taxable, Fixed-Rate Lending Proposals and select the best qualified response from the Purchaser, and to take such other necessary action to consummate the transactions contemplated by this resolution. The preparation and distribution of the Request for Taxable, Fixed-Rate Lending Proposals is hereby ratified and approved.

Section 5. The City hereby requests the Corporation to take any and all actions necessary to cause the execution and delivery of the Third Amendment, the Third Supplement, the Agency Agreement, and the bond purchase agreement or Purchase Contract; as applicable. The City Finance Director is directed to obtain proposals from prospective trustees and to designate a trustee to act as Trustee for the Bonds. The Trustee is hereby requested to take any and all action necessary in connection with the execution and delivery of the Agreement, the Trust Agreement, and the issuance and sale of the Bonds. The Trustee shall also serve as registrar, transfer agent, paying agent and is hereby approved to serve in such capacities. The City hereby requests the Corporation and the Trustee to take any and all action necessary in connection with the execution and delivery of the Agreement, the Trust Agreement, the Purchase Contract, and the Continuing Disclosure Certificate.

Section 6. (a) (i) If the Bonds are sold through a negotiated offering the preparation and dissemination of the Preliminary Official Statement is hereby authorized and approved. The Mayor, any member of the Council or the City Manager are each authorized and directed to deem the Preliminary Official Statement final as of its date within the meaning of Rule 15c2-12 of the Securities and Exchange Commission (the "*Rule*").

(ii) The City Finance Director is authorized to prepare or cause to be prepared, and the Mayor, any member of the Council, the City Manager or the City Finance Director is each hereby authorized and directed to approve, deliver and execute, on behalf of the City, a final Official Statement to be dated the date of the bond purchase agreement (the "*Official Statement*"), in substantially the form of the Preliminary Official Statement with changes effected by the sale of the Bonds for use in connection with the offering and sale of the Bonds. The execution of the Official Statement by the Mayor, any member of the Council, the City Manager or the City Finance Director, shall be conclusively deemed to evidence the approval of the status, form and contents thereof by the City and that the Official Statement is final for all purposes. The Mayor, any member of the Council or the City Manager or the City Finance Director may execute

and deliver such certificates as may be requested pertaining to the accuracy and truthfulness of the Official Statement.

(b) (i) The City hereby agrees that it is the "Obligated Person" (as defined in the Rule) with respect to the Bonds and, therefore, the City shall comply with and carry out all the provisions of the Continuing Disclosure Certificate with respect to the Bonds for purposes of the Rule (any costs associated with compliance with the Rule shall be paid from Excise Taxes as described in the Agreement).

(ii) This Subsection 6(b) shall constitute a contract between the City and certain owners of the Bonds as described in the Continuing Disclosure Certificate.

(iii) In the event of a failure of the City to comply with the provisions of this Section, certain owners of the Bonds described in the Continuing Disclosure Certificate may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Section. A default under this Section shall not be deemed an event of default for other purposes of this resolution, the Agreement, and the Trust Agreement and the sole remedy under this Section in the event of any failure of the City to comply with the terms of the Continuing Disclosure Certificate shall be an action to compel performance.

Section 7. For the payment of the principal of, premium, if any, and interest on the Bonds, the Payments and any other amounts due under the Agreement or Trust Agreement, the City shall pay and transfer directly to the Trustee the Payments provided for in the Agreement and the other amounts required to be paid by the City pursuant to the provisions of the Agreement.

As used in this resolution, the Trust Agreement and the Agreement, "Excise Taxes" means all amounts received from the imposition of unrestricted fines and forfeitures, license and permit fees, transaction privilege (sales) taxes, other transaction privilege, excise and business taxes, franchise fees and taxes, bed and rental taxes which the City now or in the future imposes and collects, and all state shared sales and income taxes and state revenue sharing collected and allocated or apportioned, now or hereafter to the City by the State or any political subdivision thereof, or by any other governmental unit or agency and which are not required by State law, rule or regulation to be expended for other purposes, such as the motor vehicle fuel tax. Excise Taxes shall not include revenue from development fees or building permit fees. The City may impose taxes, license and permit fees for restricted purposes the revenues from which will not be Excise Taxes and will not be pledged to the payment of the Payments due pursuant to the Agreement or this Trust Agreement.

The City has previously pledged its Excise Taxes on a first lien basis to certain rental payments to be made by the City to the Corporation pursuant to a Lease-Purchase Agreement, dated as of December 1, 2007, by and between the City and the Corporation, as thereafter amended by the First Amendment to Lease (2007), dated as of November 1, 2011 and the Second Amendment to Lease (2007), dated as of October 1, 2016 (collectively, the "Senior Obligations").

The City hereby absolutely and unconditionally pledges, on a subordinate lien basis that is junior to the City's pledge under the Senior Obligations, its Excise Taxes, as security for the payment of all Payments and all other amounts required to be paid by the City pursuant to the Agreement. The obligation to make Payments will not constitute an obligation of the City for

which the City is obligated to levy or pledge any form of ad valorem taxation nor does the obligation to make Payments under the Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise.

The Payments to be paid by the City to the Corporation pursuant to the Agreement may be paid, at the option of the City, from any other lawful revenue or source of the City, including payments received from the Cleveland Indians pursuant to the Baseball Use Agreement Amendment. Such payments or moneys are not pledged to the Payments, and, if commenced, the use of such payments or moneys may be discontinued at any time by the City.

Section 8. After any of the Bonds are delivered by the Trustee to the Underwriter or the Purchaser, as applicable, upon receipt of payment therefor, this resolution shall be and remain irrevocable until the Bonds and the interest thereon shall have been fully paid, cancelled and discharged.

The City agrees to be bound by the terms and provisions of the Trust Agreement, the Agreement, the Continuing Disclosure Certificate, the Baseball Use Agreement Amendment and the Purchase Contract, as applicable. The City further covenants that it will do all things necessary to assist the Corporation and the Trustee in the issuance and delivery of the Bonds.

Section 9. The Mayor, any member of the Council, the City Manager or the City Finance Director, on behalf of the City or the Corporation, or both, and the President or any member of the Board of Directors of the Corporation, on behalf of the Corporation, may expend Bond proceeds to purchase bond insurance or other credit enhancements for all or part of the Bonds and to approve, execute and deliver any agreements to reimburse any provider of credit enhancements for amounts drawn thereunder. The City Finance Director and the Trustee are authorized and directed to pay or cause to be paid such premiums, fees or costs, together with all other fees, costs and expenses of issuance, from Bond proceeds.

Section 10. The City Manager and the City Finance Director are hereby directed to negotiate and supervise the preparation of the Baseball Use Agreement Amendment, and such other necessary agreements or documents, to provide for the acquisition and construction of the 2017 Project contemplated by the Trust Agreement and the Agreement, and the payments therefor from the Cleveland Indians.

Section 11. All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance of the Bonds and the lease-purchase transaction between the Corporation and the City as contemplated by this resolution and the Official Statement or the Request for Taxable, Fixed-Rate Lending Proposals, whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution and the Official Statement or the Request for Taxable, Fixed-Rate Lending Proposals.

Section 12. (a) If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of

such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

(b) All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 13. To permit the immediate sale of the Bonds in order to avoid fluctuations in the bond market and to have the necessary funds available to acquire and construct the 2017 Project, the immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist and this resolution will be in full force and effect from and after its passage by the Mayor and Council and it is hereby excepted from the referendum provisions of the Constitution.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Arizona, on May 8, 2017.

Mayor

ATTEST:

Clerk

APPROVED AS TO FORM:

Bond Counsel

CERTIFICATION

I, the Clerk of City of Goodyear, Arizona, do hereby certify that the above and foregoing Resolution No. 17-1801 was duly passed by the Mayor and Council of the City at a regular meeting held on May 8, 2017, and the vote was ____ aye's and ____ nay's and that ____ Council Members were present thereat.

DATED: _____

Clerk, City of Goodyear, Arizona