

# City of Palm Coast, Florida Agenda Item

Agenda Date : April 5, 2022

<b>Department</b> FINANCIAL SERVICES	<b>Amount</b>
<b>Division</b>	<b>Account #</b>
<b>Subject</b> RESOLUTION 2022-XX AUTHORIZING A BANK LOAN WITH SOUTHSTATE BANK FOR THE PURPOSE OF FINANCING STORMWATER IMPROVEMENTS	
<b>Presenter : Helena Alves, Finance Director</b>	
<p><b>Background :</b>            On September 18, 2018, City Council approved the rate resolution as outlined in the 2018 Stormwater Rate Study to adopt an accelerated plan for expediting Stormwater rehabilitation and improvement projects, to include debt funded projects.</p> <p>On January 11, 2022, staff provided City Council with the update regarding the Master Stormwater Plan and outlined the projects budgeted with the Series 2022 loan as included in the Adopted Fiscal Year 2022 Budget.</p> <p>On February 25, 2022 the City's Financial Advisor, Mark Galvin with Hilltop Securities Inc. prepared a Request for Proposals (RFP) to finance up to \$8 million to fund certain capital improvements to the Stormwater System consisting of clearing, dredging, materials, erosion control, sod and/or seed, MOT signage, concrete pipes and headwalls, earthwork and CEI services.</p> <p>On March 17, 2022 the City received 5 responses from banks to provide a fixed rate loan for 20 years. The interest rates ranged from a low of 2.59% to a high of 3.05%. Mr. Galvin has evaluated responses received and will provide Council with recommendations.</p> <p>After review the RFPs, Mr. Galvin recommends the SouthState Bank proposal that included an \$8 million qualified tax exempt loan with 20 year term, fixed rate of 2.59% for Series 2022. The loan allows the City to prepay the loan from existing funds at any time without a penalty and with a 1% prepayment penalty if the loan is refinanced. The loan will be secured solely by Stormwater Net Revenues. City Staff requests approval of the SouthState Bank proposal of a tax-exempt bank loan in an aggregate principal amount not to exceed \$8,000,000 based on Series 2022 at a fixed rate of 2.59% with final maturity at 10/1/2041. The maximum annual debt service on the 20-year loan will be approximately \$541,458. It is expected the loan will close on April 7, 2022.</p>	
<p><b>Recommended Action :</b>  <b>ADOPT RESOLUTION 2022-XX AUTHORIZING A BANK LOAN WITH SOUTHSTATE BANK FOR THE PURPOSE OF FINANCING STORMWATER IMPROVEMENTS</b></p>	

RESOLUTION 2022-\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AUTHORIZING A LOAN FROM SOUTHSTATE BANK IN THE AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000 FOR THE PURPOSE OF FINANCING STORMWATER IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND ACCEPTANCE OF THE BANK'S PROPOSAL; AUTHORIZING THE EXECUTION AND DELIVERY OF THE CITY'S STORMWATER REVENUE NOTE, SERIES 2022 TO EVIDENCE THE CITY'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH SERIES 2022 NOTE TO BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM NET REVENUES OF THE CITY'S STORMWATER UTILITY SYSTEM AS DESCRIBED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City of Palm Coast, Florida (the "City") has established and operates and maintains a stormwater management utility in accordance with Section 403.0893, Florida Statutes and the City's constitutional home rule authority, as more fully described in Chapter 24, Article III, Division 3 of the City Code (the "Stormwater System"); and

WHEREAS, the City desires to construct capital improvements for the Stormwater System, including improvements contemplated in the City's capital improvement plan for stormwater facilities (the "Project"); and

WHEREAS, the City Council of the City of Palm Coast (the "City Council") has determined that it is currently without sufficient funds to fund the costs of the Project; and

WHEREAS, the City previously issued its Stormwater Revenue Note, Series 2008 (the "Series 2008 Note"), and Stormwater Revenue Notes, Series 2019A and Series 2019B (collectively, the "Series 2019 Notes") to finance capital improvements and/or equipment for the Stormwater System; and

WHEREAS, the City previously obtained three loans from the Florida Department of Environmental Protection ("FDEP") to finance improvements to the Stormwater System by entering into State Revolving Fund Loan Agreement Nos. SW903040, SW903070 and SW180400 (collectively, the "SRF Loans"); and

WHEREAS, the City Council hereby determines that it is necessary and desirable and in the best interest of the inhabitants of the City to borrow funds to finance the Project in

accordance with Section 24-135 of the City Code and consistent with applicable law (the "Loan"); and

WHEREAS, following a competitive solicitation of bank loan proposals conducted by the City's financial advisor, the City received an offer from SouthState Bank (the "Original Purchaser") to provide the Loan to achieve these objectives; and

WHEREAS, amounts due under the Loan will be evidenced by the City's Stormwater Revenue Note, Series 2022 (the "Series 2022 Note") and the Loan Agreement to be entered into between the City and the Original Purchaser, the form of which is attached hereto as Exhibit A (the "Loan Agreement"); and

WHEREAS, the Series 2022 Note is being issued to (i) finance the costs of the Project, and (ii) pay the costs of issuance of the Series 2022 Note; and

WHEREAS, the Series 2022 Note will be secured by a lien on the Net Revenues of the Stormwater System (the "Pledged Revenues"), in parity with the Series 2008 Note, the Series 2019 Notes and the SRF Loans; and

WHEREAS, the City has obtained consent from FDEP for issuance of the Series 2022 Note in parity with the SRF Loans, in accordance with Section 7.02 of State Revolving Fund Loan Agreement Nos. SW903040, SW903070 and SW180400; and

WHEREAS, due to the present volatility of the market for tax-exempt public obligations such as the Series 2022 Note, the characteristics of the security pledged to repay the Loan, the need to access such market very quickly, the willingness of the Original Purchaser to purchase the Series 2022 Note at interest rates favorable to the City, and the critical importance of timing of the sale of the Series 2022 Note, the City has determined to accept the offer of the Original Purchaser to purchase the Series 2022 Note at a private negotiated sale which was based upon a competitive selection process, and it is hereby determined that it is in the best interest of the public and the City to accept the proposal of the Original Purchaser to purchase the Series 2022 Note at a negotiated sale pursuant to the terms of the Series 2022 Note and the Loan Agreement; and

WHEREAS, prior to acceptance by the City of the offer of the Original Purchaser to purchase the Series 2022 Note, the Original Purchaser will provide the City with all applicable disclosure information required by Section 218.385, Florida Statutes; and

WHEREAS, the Original Purchaser does not require the establishment of a debt service reserve fund as a condition of making the Loan to the City; and

WHEREAS the debt service on the Series 2022 Note shall be payable from and secured solely by the Pledged Revenues.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, Parts I and II, Florida Statutes, as amended, Section 24-135 (a)(9), City Code, the Charter of the City, and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** All capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Loan Agreement.

**SECTION 3. FINDINGS.** It is hereby found, ascertained, determined and declared that:

(A) The WHEREAS clauses recited above are hereby incorporated herein as a part of this Resolution.

(B) The City is a duly constituted and validly existing municipality within the State of Florida with requisite home rule powers derived from the Constitution and Laws of the State of Florida.

(C) It is in the public interest and a valid and proper municipal purpose to enter into the Loan Agreement and issue the Series 2022 Note to finance the Project.

(D) The City is authorized pursuant to the City Charter to borrow moneys necessary to pay the cost of self-liquidating projects such as the Project.

(E) The Net Revenues of the Stormwater System shall be sufficient to repay amounts due under the Series 2022 Note, the Series 2008 Note, the Series 2019 Notes and the SRF Loans.

(F) Prior to the issuance of the Series 2022 Note, the City shall have received 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, the form of which is attached hereto as Exhibit C.

(G) In consideration of the purchase and acceptance by the Original Purchaser of the Series 2022 Note authorized to be issued hereunder, this Resolution together with the terms and provisions of the Loan Agreement shall constitute a contract between the City and the Original Purchaser.

**SECTION 4. AUTHORIZATION OF LOAN AGREEMENT AND PROPOSAL.** To provide for the security of the Series 2022 Note and to express the contract between the City and the holder thereof, the City does hereby authorize the execution and delivery on behalf of the City by the Mayor under the seal of the City, attested by the City Clerk, of the Loan Agreement by and between the City and the Original Purchaser. The Loan Agreement shall be

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in substantially the form attached hereto as Exhibit A and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution constituting conclusive evidence of such officer's approval and the City's approval of any changes therein to the form of the Loan Agreement attached hereto. Subject and pursuant to the provisions of this Resolution and the terms and provisions of the Loan Agreement, there is hereby authorized to be issued the Series 2022 Note to evidence the City's obligations under the Loan Agreement.

The City Manager is hereby authorized to accept and execute the Original Purchaser's proposal.

**SECTION 5. AUTHORIZATION OF THE SERIES 2022 NOTE.**

(A) There is hereby authorized to be issued the "City of Palm Coast, Florida Stormwater Revenue Note, Series 2022" in the aggregate principal amount of Eight Million Dollars (\$8,000,000), which shall secure amounts outstanding under the Loan Agreement. The Series 2022 Note shall bear interest at a fixed rate equal to 2.59% per annum (subject to adjustment as provided in the Loan Agreement and the Series 2022 Note), calculated on a 30/360 day basis, and shall be dated the date of delivery. Principal shall be payable annually commencing October 1, 2023 and on each October 1 thereafter through and including October 1, 2041. Interest shall be payable semiannually commencing October 1, 2022 and on each April 1 and October 1 thereafter through and including October 1, 2041. The Series 2022 Note shall be subject to prepayment as provided in the Series 2022 Note.

(B) The Series 2022 Note shall be substantially in the form attached to the Loan Agreement, with such changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Series 2022 Note shall be executed on behalf of the City with the manual signature of the Mayor and the City Clerk and the official seal of the City, and be approved as to form and legality with the manual signature of the City Attorney. In case any one or more of the officers who shall have signed or sealed the Series 2022 Note shall cease to be such officer of the City before the Series 2022 Note so signed and sealed has been actually sold and delivered, such Series 2022 Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2022 Note had not ceased to hold such office. The Series 2022 Note may be signed and sealed on behalf of the City by such person who at the actual time of the execution of such Series 2022 Note shall hold the proper office of the City, although, at the date of such Series 2022 Note, such person may not have held such office or may not have been so authorized.

**SECTION 6. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.** The City promises that it will promptly pay the principal of and interest on the Series 2022 Note and all other amounts due under the Loan Agreement and the Series 2022 Note at the place, on the dates and in the manner provided in the Loan Agreement. Amounts due under the Loan Agreement shall not be or constitute a general obligation or indebtedness

of the City 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 and of the Loan Agreement. The holder of the Series 2022 Note issued hereunder shall never have the right to compel the exercise of any ad valorem taxing power by the City to pay the Series 2022 Note, or be entitled to payment of such Series 2022 Note from any funds of the City except from the Pledged Revenues as described herein and in the Loan Agreement.

**SECTION 7.        USE OF PROCEEDS.**    The proceeds of the Series 2022 Note shall be applied as follows:

(A)    The City shall pay the costs and expenses in connection with the preparation and issuance of the Series 2022 Note.

(B)    The balance shall be deposited to the "Stormwater Revenue Note, Series 2022 Project Fund" established in the Loan Agreement and used solely to pay the costs of the Project.

**SECTION 8.        RESERVE FUND.**    There will be no Reserve Fund established for the Series 2022 Note.

**SECTION 9.        GENERAL AUTHORITY.**    The Mayor, the City Manager, the Director of Financial Services, the City Attorney or any other appropriate officers of the City are hereby authorized and directed to execute any and all certifications or other instruments or documents necessary to effectuate issuance of the Series 2022 Note and any representations made therein shall be deemed to be made on behalf of the City. All action taken to date by the officers of the City in furtherance of the issuance of the Series 2022 Note is hereby approved, confirmed and ratified.

**SECTION 10.       BANK QUALIFICATION.**    The City hereby designates the Series 2022 Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The City and any subordinate entities of the City and any issuer of "tax-exempt" debt that issues "on behalf of" the City do not reasonably expect during the calendar year 2022 to issue more than \$10,000,000 of "tax-exempt" obligations including the Series 2022 Note, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and exclusive of bonds issued to currently refund any existing tax-exempt obligations.

**SECTION 11.       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 12.       APPLICABLE PROVISIONS OF LAW.**    This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 13. RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**SECTION 14. CAPTIONS.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**SECTION 15. MEMBERS OF THE CITY COUNCIL EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution, the Loan Agreement or the Series 2022 Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Council, as such, of the City, past, present or future, either directly or through the City it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the City Council, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, the Loan Agreement or the Series 2022 Note or implied therefrom, and (b) 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, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Loan Agreement and the issuance of the Series 2022 Note, on the part of the City.

**SECTION 16. NO THIRD PARTY BENEFICIARIES.** Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the City and the holder of the Series 2022 Note, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the City and the persons who shall from time to time be the holders of the Series 2022 Note.

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**SECTION 17. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

Passed and adopted by the City Council of the City of Palm Coast, Florida this 5th day of April, 2022.

*ATTEST:*

**CITY OF PALM COAST**

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY



**EXHIBIT A**

**FORM OF LOAN AGREEMENT**

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**LOAN AGREEMENT**

by and between

**CITY OF PALM COAST, FLORIDA**

and

**SOUTHSTATE BANK, N.A.**

Dated as of April 7, 2022

relating to

**CITY OF PALM COAST, FLORIDA  
STORMWATER REVENUE NOTE,  
SERIES 2022**

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## LOAN AGREEMENT

This **LOAN AGREEMENT** is made and entered into as of April 7, 2022 by and between **CITY OF PALM COAST, FLORIDA** (the "City") and **SOUTHSTATE BANK, N.A.** and its successors and assigns (the "Bank").

### WITNESSETH:

WHEREAS, the City of Palm Coast, Florida (the "City") has established and operates and maintains a stormwater management utility in accordance with Section 403.0893, Florida Statutes and the City's constitutional home rule authority, as more fully described in Chapter 24, Article III, Division 3 of the City Code (the "Stormwater System"); and

WHEREAS, the City desires to construct capital improvements for the Stormwater System, including improvements contemplated in the City's capital improvement plan for stormwater facilities (the "Project"); and

WHEREAS, the City Council of the City (the "City Council") has determined that it is a municipal public purpose, and necessary and desirable for the best interest of the City and its inhabitants that it borrow funds to finance the costs of the Project; and

WHEREAS, the City previously issued its Stormwater Revenue Note, Series 2008 (the "Series 2008 Note"), and Stormwater Revenue Notes, Series 2019A and Series 2019B (collectively, the "Series 2019 Notes") to finance capital improvements and/or equipment for the Stormwater System; and

WHEREAS, the City previously obtained three loans from the Florida Department of Environmental Protection ("FDEP") to finance improvements to the Stormwater System by entering into State Revolving Fund Loan Agreement Nos. SW903040, SW903070 and SW180400 (collectively, the "SRF Loans"); and

WHEREAS, the City Council has determined that it is necessary and desirable and in the best interest of the inhabitants of the City to borrow funds to finance the Project (the "Loan"); and

WHEREAS, the City received an offer from the Bank to provide the Loan to achieve these objectives; and

WHEREAS, amounts due under the Loan will be evidenced by the City's Stormwater Revenue Note, Series 2022 (the "Series 2022 Note") and this Loan Agreement; and

WHEREAS, the Series 2022 Note is being issued to (i) finance the costs of the Project, and (ii) pay the costs of issuance of the Series 2022 Note; and

WHEREAS, the Series 2022 Note will be secured by a lien on the Net Revenues of the Stormwater System (the "Pledged Revenues"), in parity with the Series 2008 Note, the Series 2019

Notes and the SRF Loans; and

WHEREAS, neither the Series 2022 Note nor any interest granted to the Bank herein shall be or constitute a lien upon the Project or upon any other property of or in the City; and

WHEREAS the debt service on the Series 2022 Note shall be payable from and secured solely by the Pledged Revenues.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**SECTION 1. DEFINITIONS.** Capitalized terms used in this Loan Agreement and not defined in the recitals above or in this Section 1 shall have the meaning assigned in the Resolution. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

"Act" means Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, Parts I and II, Florida Statutes, as amended, Section 24-135(a)(9), City Code, the Charter of the City, and other provisions of law.

"Authorized Investments" means any investment, obligation, agreement or other financial instrument to the extent not inconsistent with the terms of the investment policy of the City and applicable law.

"Bank" means SouthState Bank, N.A. and its successors and assigns, with offices located at 175 Cypress Point Parkway, Palm Coast, Florida 32164.

"Business Day" means any day of the year other than a day on which the Bank or the City are lawfully closed for business.

"City" means the City of Palm Coast, Florida, a municipal corporation of the State of Florida.

"City Attorney" means the City Attorney of the City.

"City Code" means the code of ordinances of the City.

"City Council" means the City Council of the City, as the governing body of the City.

"City Manager" means the City Manager of the City.

"Clerk" means the City Clerk or Deputy City Clerk of the City.

"Code" means the Internal Revenue Code of 1986, as amended.

"Cost of Operation and Maintenance" of the Stormwater System means the then current expenses, paid or accrued, in the operation, maintenance and repair of the Stormwater System, as calculated in accordance with generally accepted accounting principles, including, but not limited to, general administrative and indirect labor costs, personnel, contractual services, repairs and maintenance, and materials and supplies, but shall not include expenses not annually recurring, any reserve for renewals and replacements, extraordinary repairs or any allowance for depreciation, all debt service requirements on debt obligations secured by Net Revenues, any payments in lieu of taxes, franchise fees or other transfers.

"Date of Delivery" means April 7, 2022.

"Debt Service Fund" means the fund created pursuant to Section 9 hereof.

"Default" means an Event of Default as defined and described in Section 14 hereof.

"Default Rate" means the lower of (i) 7.59% per annum, or (ii) the highest rate of interest allowed for the Series 2022 Note by applicable law.

"Fiscal Year" means the period from each October 1 to the succeeding September 30.

"Gross Revenues" means Stormwater Management Service Charges and all income or earnings received by the City from the ownership or operation of its Stormwater System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Stormwater System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Stormwater System.

"Interest Rate" means the rate of interest payable on the Series 2022 Note described in Section 4 hereof and in the form of Series 2022 Note attached hereto as Exhibit A.

"Loan Agreement" means this Loan Agreement between the Bank and the City setting forth the terms and details of the Loan.

"Mayor" means the Mayor of the City, or in her absence, the Vice Mayor of the City.

"Net Revenues" means the Gross Revenues derived yearly from the operation of the Stormwater System after payment of the Cost of Operation and Maintenance.

"Note Counsel" means Bryant Miller Olive P.A.

"Paying Agent" means the Clerk.

"Payment Date" means the dates set forth in Section 4 hereof upon which principal and/or interest payments on the Series 2022 Note are due.

"Person" or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

"Pledged Revenues" means the Net Revenues of the Stormwater System, including funds on deposit in the Debt Service Fund created and established pursuant to Section 9 hereof.

"Project" means capital improvements for the Stormwater System which may include, but are not limited to, clearing, dredging, materials (erosion control, sod and/or seed, MOT signage, concrete pipes & headwalls), earthwork, and construction, engineering and inspection (CEI) services.

"Project Costs" means all or a portion of the cost of undertaking the acquisition and construction of the Project, including, but not limited to (i) the City's cost of physical construction, (ii) the costs of acquisition by or for the City of the Project (iii) the costs of land and interests therein and the cost of the City incidental to such acquisition, (iv) the cost of any indemnity and surety bonds and premiums for insurance during construction, (v) engineering, legal and other consultant fees and expenses, (vi) costs and expenses incidental to the issuance of the Series 2022 Note for up to one year, including the fees and expenses of any attorneys, financial advisors, auditors, engineers, or depository, and (vii) any other costs properly attributable to such construction or acquisition, as determined by generally accepted accounting principles and shall include reimbursement to the City for any such items of cost heretofore paid by the City.

"Register" means the books maintained by the Registrar in which are recorded the name and address of the Registered Owner of the Series 2022 Note.

"Registered Owner" means the person in whose name the ownership of the Series 2022 Note is registered on the books maintained by the Registrar. The initial Registered Owner shall be the Bank.

"Registrar" means the Person maintaining the Register. The Registrar shall be the Clerk.

"Regulations" means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Code.

"Resolution" means a resolution adopted by the City Council on April 5, 2022, authorizing execution of this Loan Agreement and issuance of the Series 2022 Note.

"Series 2008 Note" means the City's Stormwater Revenue Note, Series 2008.

"Series 2019 Notes" means, collectively, the City's Stormwater Revenue Notes, Series 2019A and Series 2019B.

"SRF Loans" means, collectively, the loans obtained by the City from the Florida Department of Environmental Protection evidenced by State Revolving Fund Loan Agreement Nos. SW903040, SW903070 and SW180400.

"State" means the State of Florida.

"Stormwater Management Service Charges" means all fees and charges imposed and collected by the City pursuant to Article III, Section 24-136 of the City's Code of Ordinances.

"Stormwater System" means all devices and facilities owned by the City for collection, transmission, detention, retention, treatment, and management of stormwater.

**SECTION 2. INTERPRETATION.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof (a) have been negotiated between the City and the Bank; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**SECTION 3. THE LOAN; PROJECT FUND.**

A. Loan. The Bank hereby makes and the City hereby accepts the Loan in the aggregate principal amount of \$8,000,000, upon the terms and conditions set forth herein.

B. Project Fund. There is hereby established the "Stormwater Revenue Note, Series 2022 Project Fund" (the "Project Fund"). Upon issuance of the Series 2022 Note, the proceeds thereof shall be applied as follows:

1. The City shall pay the costs and expenses in connection with the preparation and issuance of the Series 2022 Note.
2. The balance shall be deposited to the Project Fund and used solely to pay the Project Costs.
3. Upon completion of the acquisition and construction of the Project, any amounts remaining on deposit in the Project Fund shall be used to prepay the Series 2022 Note in accordance with its terms.

**SECTION 4. DESCRIPTION OF NOTE.** The obligation of the City to repay the Loan shall be evidenced by the Series 2022 Note. The Series 2022 Note shall be dated as of the Date of Delivery, and shall be in registered form.

The Series 2022 Note shall be issued in the aggregate principal amount of \$8,000,000 and shall bear interest at a fixed rate equal to 2.59% per annum (subject to adjustment as provided



herein and in the Series 2022 Note), calculated on a 30/360 day basis, and shall be dated the Date of Delivery. Principal shall be payable annually commencing October 1, 2023 and on each October 1 thereafter through and including October 1, 2041, in the annual amounts set forth in the Series 2022 Note. Interest shall be payable semiannually commencing October 1, 2022 and on each April 1 and October 1 thereafter through and including October 1, 2041.

The City hereby appoints the City Clerk to serve as Paying Agent and Registrar on the Series 2022 Note.

**SECTION 5. EXECUTION OF NOTES.** The Series 2022 Note shall be executed in the name of the City by the Mayor and attested by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2022 Note may be signed and sealed on behalf of the City by any person who at the actual time of the execution of the Series 2022 Note shall hold the appropriate office in the City, although at the date thereof the person may not have been so authorized. The Series 2022 Note may be executed by the facsimile signatures of the Mayor and/or Clerk, provided that at least one of the foregoing signatures must be a manual signature.

**SECTION 6. REGISTRATION AND TRANSFER OF NOTES.** The Series 2022 Note shall be and shall have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2022 Note, shall be conclusively deemed to have agreed that such Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar who shall be responsible for maintaining the Register. The person in whose name ownership of a Note is shown on the Register shall be deemed the Registered Owner thereof by the City and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2022 Note for all purposes, whether or not the Series 2022 Note shall be overdue, and any notice to the contrary shall not be binding upon the City or the Registrar.

Ownership of the Series 2022 Note may be transferred only in whole and not in part and denominations not less than \$100,000 even in whole, and only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2022 Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Note of the same series, amount, maturity and interest rate as the Series 2022 Note surrendered.

The Series 2022 Note presented for transfer, exchange, redemption or payment (if so required by the City or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature

satisfactory to the City or the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The City and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Note. The Registrar or the City may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Note shall be delivered.

The new Note delivered upon any transfer or exchange shall be a valid obligation of the City, evidencing the same debt as the Series 2022 Note surrendered, shall be secured under this Loan Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2022 Note surrendered.

Whenever a Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the City.

**SECTION 7. NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** In case the Series 2022 Note shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur, the Registrar shall issue and deliver a new Note of like tenor as the Series 2022 Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2022 Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Note, upon surrender of such mutilated Note, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2022 Note shall have matured or be about to mature, instead of issuing a substitute Note, the City may pay the same, upon being indemnified as aforesaid, and if such Note be lost, stolen or destroyed, without surrender thereof. Any Note surrendered under the terms of this Section 7 shall be cancelled by the Registrar.

Any such new Note issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the City whether or not, as to the new Note, the lost, stolen or destroyed Note be at any time found by anyone, and such new Note shall be entitled to equal and proportionate benefits and rights as to security for payment to the same extent as the Series 2022 Note originally issued hereunder.

**SECTION 8. FORM OF NOTE.** The Series 2022 Note shall be in substantially the forms attached hereto as Exhibit A, with such with such changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor.

**SECTION 9. SECURITY FOR NOTES; NOTES NOT DEBT OF THE CITY; DEBT SERVICE FUND.** The payment of the principal of and interest on the Series 2022 Note shall be

secured forthwith solely by a lien upon and pledge of the Pledged Revenues on a parity with the SRF Loan, the Series 2008 Note and the Series 2019 Notes. The principal of and interest on the Series 2022 Note shall not constitute a general obligation or indebtedness of the City, but shall be a limited obligation of the City payable solely from the Pledged Revenues as provided herein. The Registered Owner shall never have the right to compel the levy of taxes upon any property of or in the City for the payment of the principal of and interest on the Series 2022 Note. The Series 2022 Note shall not be secured by, nor constitute, a lien upon the Project, the Stormwater System or upon any property of or in the City, but shall be secured solely by the Pledged Revenues in the manner provided herein.

There is hereby created and established a "Stormwater Revenue Note, Series 2022 Debt Service Fund," which shall be maintained on the books of the City as a separate account (but need not be maintained as a separate bank or deposit account) (the "Debt Service Fund"). On or before each Payment Date, the City shall deposit Net Revenues into the Debt Service Fund in amounts required to pay the principal and interest due on the Series 2022 Note on such Payment Date. Moneys in the Debt Service Fund shall be used only to pay principal of and interest on the Series 2022 Note and for no other purpose. Provided, however, the City shall deposit Net Revenues to the credit of the Debt Service Fund and the Loan Debt Service Account established under and pursuant to the SRF Loans, and the sinking funds established for the Series 2008 Note and Series 2019 Notes, in proportion to the outstanding amounts due respectively on the Series 2022 Note, the Series 2008 Note, the Series 2019 Notes and the SRF Loans in the event that the Net Revenues are insufficient to fully fund such accounts.

Amounts on deposit in the Debt Service Fund may be invested and reinvested by the City in Authorized Investments maturing or redeemable at the option of the City not later than the date such amounts are needed for the payments required hereunder. All income from the investment of moneys in the Debt Service Fund shall be retained therein and used for the purposes thereof.

The City shall not be required to make any further payments into the Debt Service Fund when the aggregate amount of money and Authorized Investments therein is at least equal to the maximum principal amount outstanding on the Series 2022 Note plus accrued interest thereon through maturity.

The designation of the Debt Service Fund (including subaccounts therein) and the Project Funds established in Section 3 hereof as special funds for this Loan Agreement shall not be construed to require the establishment of completely independent, self-balancing fund, as such term is commonly used and defined in governmental accounting, but is intended solely to constitute an earmarking of certain moneys and investments for certain purposes and to establish certain priorities for application of such moneys and investments as herein provided. The moneys and investments required to be accounted for in such funds may be pooled with other moneys in a single fund or account, provided that adequate accounting records are maintained to reflect the allocation of the moneys and investments on deposit therein to the respective funds and to control the restricted uses of such moneys and investments for the various purposes as herein provided.

**SECTION 10. COVENANTS OF THE CITY.** Until the principal of and interest on the Series 2022 Note shall have been paid in full or until (a) there shall have been set apart in the Debt Service Fund a sum sufficient to pay when due the entire principal of and interest accrued and to accrue on the Series 2022 Note through maturity, or (b) provision for payment of the Series 2022 Note shall have been made in accordance with the provisions of this Loan Agreement, the City covenants with the Registered Owner of the Series 2022 Note as follows:

A. Payments. The City will punctually pay all principal of and interest on the Series 2022 Note when due by wire transfer or other medium acceptable to the City and the Bank.

B. Financial Report. Not later than 270 days following the end of the City's Fiscal Year, beginning with the fiscal year ended September 30, 2022, the City will provide the Bank a copy of the City's comprehensive annual financial report together with a certificate of the City's Director of Financial Services certifying that for such Fiscal Year, the City was in compliance with the rate coverage covenant set forth in paragraph G below. The certificate shall be in substantially the form attached hereto as Exhibit B.

C. Annual Budget and Other Information. The City will prepare its annual budget in accordance with the Act, and will provide to the Bank a copy of its final annual budget for each Fiscal Year within 30 days of adoption thereof by the City Council and such other financial or public information as the Bank may reasonably request.

D. Tax Compliance. Neither the City, nor any third party over whom the City has control, will make any use of the proceeds of the Series 2022 Note or of the Project at any time during the term of the Series 2022 Note which would cause the Series 2022 Note to be (a) a "private activity bond" within the meaning of Section 103(b)(1) of the Code or (b) an "arbitrage bond" within the meaning of Section 103(b)(2) of the Code. The City covenants throughout the term of the Series 2022 Note to comply with the requirements of the Code and the Regulations, as amended from time to time, and to take all actions necessary to maintain the exclusion from gross income for purposes of the Code of interest on the Series 2022 Note.

E. Additional Debt. The City shall have the right to issue additional debt payable from Net Revenues on a parity with the Series 2022 Note provided the following conditions are satisfied:

(i) The City is not in default under the Series 2022 Note;

(ii) The Net Revenues of the Stormwater System for the fiscal year immediately preceding the issuance date of the proposed additional debt for which audited financial statements are available (the "Applicable Fiscal Year"), are at least 125% of the maximum annual debt service payable in any future fiscal year on the Series 2022 Note and all other debt obligations payable from the Net Revenues on a parity with the Series 2022 Note.

For purposes of calculating the sufficiency of Net Revenues in clause (ii), the City may consider the following: (a) rate increases that were not in effect during the Applicable Fiscal Year which

are in effect at the time of calculating debt service coverage for the proposed additional debt; and (b) increases in Gross Revenues generated by service provided by the Stormwater System to additional equivalent residential units that were not included in Gross Revenues of the Stormwater System during the Applicable Fiscal Year.

F. Collection of Revenues. The City shall use its best efforts to collect all Stormwater Management Service Charges and other rates and fees due to it. The City shall establish liens on premises served by the Stormwater System for the amount of all delinquent Stormwater Management Service Charges and other rates and fees where such action is permitted by law. In the event Stormwater Management Service Charges are collected on the City's utility bills the City shall use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of amounts collected on the utility bill.

G. Rate Coverage. The City shall fix, establish and maintain such rates and collect such Stormwater Management Service Charges, and other fees, rentals and charges for the services provided by the Stormwater System, and revise the same from time to time whenever necessary, as will always provide Net Revenues in each fiscal year equal to at least 125% of the annual debt service requirement for the Series 2022 Note and all other debt payable from Net Revenues of the Stormwater System for the then current fiscal year. Such Stormwater Management Service Charges, fees, rentals and other charges shall not be reduced as to be insufficient to meet the requirements of the preceding sentence.

H. Prohibition Against Encumbrances. So long as the Series 2022 Note is outstanding, the City is prohibited from selling, leasing, or disposing of any part of the Stormwater System which would materially reduce the operational integrity or Gross Revenues, unless the City obtains prior written consent from the Bank, which shall not be unreasonably withheld or delayed.

I. Maintenance of the Stormwater System. The City shall operate and maintain the Stormwater System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

J. Additions and Modifications. The City may make any additions, modifications or improvements to the Stormwater System which it deems desirable and which do not materially reduce the operational integrity of any part of the Stormwater System. All such renewals, replacements, additions, modifications and improvements shall become part of the Stormwater System.

K. Payment of taxes, assessments and other claims. The City shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or payments in lieu thereof, lawfully imposed upon the properties constituting the Stormwater System or the Gross Revenues when the same shall become due, as well as all lawful claims for labor and materials and supplies which, if not paid, might become a lien or charge upon such properties or any part thereof, or upon the Gross Revenues or which

might in any way impair the security of the Series 2022 Note, except assessments, charges or claims which the City shall in good faith contest by proper legal proceedings.

**SECTION 11. REPRESENTATIONS AND WARRANTIES.** The City represents and warrants to the Bank that:

A. Organization. The City is a municipal corporation, duly organized and existing under the laws of the State of Florida.

B. Authorization of Loan Agreement and Related Documents. The City has the power and has taken all necessary action to authorize the execution and delivery of and the performance by the City of its obligations under, this Loan Agreement and the Series 2022 Note in accordance with their respective terms. This Loan Agreement and the Series 2022 Note have been duly executed and delivered by the City and are valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding bankruptcy, insolvency, reorganization or moratorium applicable to the City or by general principles of equity regarding the availability of specific performance.

C. Pledged Revenues. The City currently receives the Pledged Revenues and is legally entitled to pledge such Pledged Revenues to pay the principal of and interest on the Series 2022 Note when due as provided herein. The City estimates that the Pledged Revenues will be available in amounts sufficient to pay the principal of and interest on the Series 2022 Note as the same becomes due through maturity.

**SECTION 12. CONDITIONS PRECEDENT.** The obligation of the Bank to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Initial Disbursement Date:

A. Action. The Bank shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Loan Agreement, the executed Series 2022 Note, and the customary closing certificates.

B. Incumbency of Officers. The Bank shall have received an incumbency certificate of the City in respect of each of the officers who is authorized to sign this Loan Agreement and the related financing documents on behalf of the City.

C. Opinion of City Attorney. The Bank shall have received a written opinion of the City Attorney as to (1) the valid existence of the City as a municipal corporation of the State; (2) the due adoption of the Resolution; (3) the due authorization, execution, validity and enforceability of this Loan Agreement and the Series 2022 Note and the related financing documents; and (4) the absence of litigation against the City relating to (a) its existence or powers, and (b) the proceedings for the authorization of the Loan Agreement and issuance of the Series 2022 Note, in a form and substance satisfactory to the Bank.

D. Opinion of Note Counsel. The Bank shall have received a letter from Note Counsel authorizing the Bank to rely on the approving opinion of Note Counsel delivered to the City with respect to the Series 2022 Note to the same extent as if such opinion were addressed to the Bank. The opinion, in form and substance satisfactory to the Bank, shall, at a minimum, address the status of interest on the Series 2022 Note under the provisions of Section 103 of the Code.

E. Representations and Warranties; No Default. The representations and warranties made by the City herein shall be true and correct in all material respects on and as of the Date of Delivery, as if made on and as of such date; no Default shall have occurred and be continuing as of the Date of Delivery or will result from the consummation of the Loan; and the Bank shall have received a certificate from the City to the foregoing effect.

F. Other Documents. The Bank shall have received such other documents, certificates and opinions as the Bank or its counsel shall have reasonably requested.

**SECTION 13. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

City: City of Palm Coast, Florida  
160 Lake Avenue  
Palm Coast, Florida 32164  
Attention: Director of Financial Services

Bank: SouthState Bank, N.A.  
175 Cypress Point Parkway  
Palm Coast, Florida 32164  
Attention: Garry R. Lubi, Senior Vice President

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

**SECTION 14. EVENTS OF DEFAULT DEFINED.** The following shall be "Events of Default" under this Loan Agreement, and the terms "Default" and "Events of Default" shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. Failure by the City to make any payment of principal of or interest on the Series 2022 Note within ten (10) days of the applicable Payment Date (a "Payment Default");

B. Except for a Payment Default described in paragraph A above, failure by the City to observe and perform any other covenant, condition or agreement on its part to be observed or

performed under this Loan Agreement for a period of thirty (30) days after written notice of such failure shall have been delivered to the City by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

C. The making of any warranty, representation or other statement by the City or by an officer or agent of the City in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement which is false or misleading in any material adverse respect;

D. The filing of a petition against the City under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, if an order for relief is entered under such petition or such petition is not dismissed within sixty (60) days of such filing;

E. The filing by the City of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the City to the filing of any petition against it under such law; or

F. The admission by the City of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become due, or the City's becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the City or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

G. The Bank may, at its option, collect a late charge equal to five percent (5%) of the amount due on any payment not received within ten (10) days of the due date.

H. Upon the occurrence of an Event of Default, the Interest Rate on the Series 2022 Note shall be adjusted to the Default Rate until such time as the Event of Default has been cured by the City.

**SECTION 15. REMEDIES.** The Bank may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida, of the United States of America, or granted and contained in this Loan Agreement, and to enforce and compel the performance of all duties required by this Loan Agreement or by any applicable laws to be performed by the City, the City Council or by any officer thereof, and may take all steps to enforce this Loan Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America; provided acceleration of amounts due under this Loan Agreement or the Series 2022 Note shall not be a remedy upon an Event of Default so long as no other debt obligations secured by Net Revenues on a parity basis with the Series 2022 Note shall have a right of acceleration. The City and the Bank each waives, to the fullest extent permitted by law, any right to trial by jury in respect of any litigation based upon the Series 2022 Note or arising out of, under or in conjunction with the Series 2022 Note or this Loan Agreement.



Upon an Event of Default, the Bank may recover from the City all expenses incurred in the collection and enforcement of the Series 2022 Note including without limitation reasonable attorney's fees, at all levels of the proceedings whether incurred in connection with collection, bankruptcy proceedings, trial, appeal or otherwise.

**SECTION 16. NO PERSONAL LIABILITY.** No recourse shall be had for the payment of the principal of and interest on the Series 2022 Note or for any claim based on the Series 2022 Note or on this Loan Agreement, against any present or former member or officer of the City Council or any person executing the Series 2022 Note.

**SECTION 17. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS.** In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Loan Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

**SECTION 18. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Loan Agreement may be amended only by a writing signed by both parties hereto.

**SECTION 19. BINDING EFFECT.** To the extent provided herein, this Loan Agreement shall be binding upon the City and the Bank and shall inure to the benefit of the City and the Bank and their respective successors and assigns. This Loan Agreement shall be discharged and neither the City nor the Bank shall have any further obligations hereunder under the Series 2022 Note when the City shall have paid the principal of and interest on the Series 2022 Note in full and shall have paid in full all other amounts, if any, due under the Series 2022 Note or this Loan Agreement.

**SECTION 20. SEVERABILITY.** In the event any court of competent jurisdiction shall hold any provision of this Loan Agreement invalid or unenforceable such holding shall not invalidate or render unenforceable, any other provision hereof.

**SECTION 21. EXECUTION IN COUNTERPARTS.** This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 22. APPLICABLE LAW.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Loan Agreement as of the date first above written.

(SEAL)

**CITY OF PALM COAST, FLORIDA**

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David Alfin, Mayor

ATTEST:

---

Virginia Smith, City Clerk

[City Signature Page to Loan Agreement]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Loan Agreement as of the date first above written.

**SOUTHSTATE BANK, N.A.**

By: \_\_\_\_\_

Name: Garry R. Lubi

Title: Senior Vice President

[Bank Signature Page to Loan Agreement]

**EXHIBIT A**

**FORM OF SERIES 2022 NOTE**

**ANY REGISTERED OWNER OF THIS NOTE, PRIOR TO BECOMING A REGISTERED OWNER, SHALL EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE NOTE RESOLUTION (HEREINAFTER DEFINED)**

**CITY OF PALM COAST, FLORIDA  
STORMWATER REVENUE NOTE, SERIES 2022**

<b><u>RATE OF INTEREST</u></b>	<b><u>MATURITY DATE</u></b>	<b><u>DATE OF DELIVERY</u></b>
As described herein	October 1, 2041	April 7, 2022

**REGISTERED OWNER:     SouthState Bank, N.A.**

**PRINCIPAL AMOUNT:     \$8,000,000.00**

The City of Palm Coast, Florida (the "City"), for value received, hereby promises to pay to the Registered Owner on the Payment Dates and Maturity Date specified above, or sooner as provided herein, the Principal Amount hereof, plus interest accrued thereon from the Date of Delivery at the Rate of Interest described herein from the Pledged Revenues as described herein, until payment of the Principal Amount stated above.

This Series 2022 Note shall bear interest from the Date of Delivery until payment of the entire outstanding Principal Amount due thereon. The Rate of Interest on this Series 2022 Note shall be a fixed rate of interest equal to 2.59% per annum, subject to adjustment as provided below. Interest on this Series 2022 Note shall be calculated using a 30/360 day count basis with no compounding of interest.

Interest on this Series 2022 Note shall be paid semiannually each April 1 and October 1, commencing October 1, 2022. Principal on this Series 2022 Note shall amortize on October 1 of the following years:

<u>Year</u>	<u>Principal Amount</u>
2023	\$330,000
2024	340,000
2025	350,000
2026	360,000
2027	370,000
2028	375,000

2029	385,000
2030	395,000
2031	405,000
2032	415,000
2033	430,000
2034	440,000
2035	450,000
2036	460,000
2037	475,000
2038	485,000
2039	500,000
2040	510,000
2041	525,000

The Registered Owner may, at its option, collect a late charge equal to five percent (5%) of the amount owing if any payment due hereunder is not received by the Registered Owner within ten (10) days after the payment is due.

In the event of a Determination of Taxability (as defined below), the Registered Owner shall have the right to adjust the rate of interest on this Series 2022 Note to the Taxable Rate. "Taxable Rate" shall mean the interest rate per annum that shall provide the Registered Owner with the same after-tax yield that the Registered Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Registered Owner. The Registered Owner shall provide the City with a written statement explaining the calculation of the Taxable Rate, which shall, in the absence of manifest error, be conclusive and binding on the City. This adjustment shall survive payment of this Series 2022 Note until such time as the federal statute of limitations under which the interest on this Series 2022 Note could be declared taxable under the Code shall have expired.

"Determination of Taxability" shall mean, with respect to this Series 2022 Note, the circumstance that shall be deemed to have occurred if interest paid or payable on this Series 2022 Note becomes includable for federal income tax purposes in the gross income of the Registered Owner as a consequence of any action or inaction by the City. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or the Registered Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on this Series 2022 Note is includable in the gross income of the Registered Owner; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on this Series 2022 Note is includable in the gross income of the Registered Owner; or (c) receipt by the City or the Registered Owner of an opinion of an attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions to the effect that any interest on this Series 2022 Note has become includable in the gross income of the Registered Owner for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the

interest on this Series 2022 Note is deemed includable in the gross income of the Registered Owner. A Determination of Taxability shall not occur in the event such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum tax imposed on corporations.

In the case of (a) and (b) above, upon the Determination of Taxability and timely written notice thereof, the City shall have an opportunity to participate in and seek, at its own expense, a final administrative determination or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the existence of such event of taxability; provided that the City, at its own expense, delivers to the Registered Owner an opinion of an attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions acceptable to the Registered Owner to the effect that such appeal or action for judicial or administrative review is not without merit and there is a reasonable possibility that the judgment, order, ruling or decision from which such appeal or action for judicial or administrative review is taken will be reversed, vacated or otherwise set aside.

This Note is issued being issued to finance the acquisition and construction of capital improvements for the City's Stormwater System, under and pursuant to the authority of Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, as amended, the Charter of the City, and other provisions of law, and pursuant and subject to the terms and conditions of a resolution duly adopted by the City Council of the City on April 5, 2022 (the "Note Resolution"), and the Loan Agreement dated as of April 7, 2022 between the City and SouthState Bank, N.A. (the "Loan Agreement"). Capitalized terms used in this Series 2022 Note and not otherwise defined shall have the meaning ascribed to them in the Loan Agreement.

This Note is payable from and secured solely by a lien on the Pledged Revenues, as defined in and in the manner provided in, and subject to the terms and conditions of, the Note Resolution and the Loan Agreement and on a parity with the SRF Loans, the Series 2008 Note and the Series 2019 Notes. The Pledged Revenues consist of the Net Revenues of the Stormwater System.

The City may prepay this Note in whole or in part, at any time, without premium or prepayment penalty; provided, however, that if such prepayment is effectuated in whole or in part through proceeds of a refinancing revenue note or other City debt obligation issued prior to April 7, 2027, the prepayment amount shall include a premium equal to one percent (1%) of the principal amount of this Note being refinanced.

This Note has been designated by the City as a "qualified tax exempt obligation" pursuant to Section 265(b)(3) of the Code.

This Note shall not constitute a general obligation or indebtedness of the City, and the Registered Owner thereof shall never have the right to require or compel the levy of taxes on any property of or in the City for the payment of the principal of and interest on this Note. This Note

shall not constitute a lien upon any property of or in the City, but shall be payable solely from the Pledged Revenues in the manner provided in the Loan Agreement. Reference is made to the Loan Agreement for the provisions relating to the security for payment of this Note and the duties and obligations of the City hereunder.

Upon and during the continuation of an Event of Default, the Registered Owner may increase the interest rate applicable to the Series 2022 Note to the Default Rate.

This Series 2022 Note shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and the registered owner, in accepting this Series 2022 Note, shall be conclusively deemed to have agreed that such Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

The City Clerk shall be the Registrar who shall be responsible for maintaining the Register of the ownership of this Note. The person in whose name ownership hereof is shown on the Register shall be deemed the owner thereof by the City, and any notice to the contrary shall not be binding upon the City or the Registrar. The City and the Registrar may treat the registered owner as the absolute owner of the Series 2022 Note for all purposes, whether or not such Note shall be overdue, and shall not be bound by any notice to the contrary.

Ownership of this Note may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of any Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the registered owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the registered owner or the transferee or transferees, as the case may be, a new fully registered Note of authorized denominations and of the same maturity and interest rate and for the aggregate principal amount as the Series 2022 Note surrendered.

The new Note delivered upon any transfer or exchange shall be a valid obligation of the City, evidencing the same debt as the Series 2022 Note surrendered and shall be entitled to all of the security and benefits to the same extent as the Series 2022 Note surrendered.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to happen, exist and be performed precedent to and in the issuance of this Note, have happened, exist and have been performed in regular and due form and time as so required.

**IN WITNESS WHEREOF**, the City of Palm Coast, Florida, has caused this Note to be executed by the Mayor, and attested by the City Clerk, either manually or with their facsimile signatures, and its seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon, and this Note to be dated as of April 7, 2022.

**CITY OF PALM COAST, FLORIDA**

By: \_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
City Clerk



**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to

\_\_\_\_\_  
PLEASE INSERT NAME, ADDRESS AND SOCIAL SECURITY OR OTHER IDENTIFYING  
NUMBER OF ASSIGNEE the within Series 2022 Note and does hereby irrevocably constitute  
and appoint \_\_\_\_\_  
as his agent to transfer the Series 2022 Note on the books kept for registration thereof, with full  
power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

\_\_\_\_\_

NOTICE: Signature must be guaranteed  
by an institution which is a participant  
Registered in the Securities Transfer Agent  
within Medallion Program (STAMP) or  
alternation or similar program.

\_\_\_\_\_

NOTICE: The signature to this assignment  
must correspond with the name of the  
Owner as it appears upon the face of the  
Note in every particular, without  
enlargement or change whatever.

\_\_\_\_\_

(Authorized Officer)

**EXHIBIT B**

**FORM OF RATE COVENANT COMPLIANCE CERTIFICATE**

Pursuant to Section 10.B of the Loan Agreement by and between the City of Palm Coast, Florida and SouthState Bank, N.A. dated April 7, 2022 (the "Loan Agreement"), the undersigned hereby certifies that for the fiscal year ending September 30, 20\_\_, the City was in compliance with the rate covenant set forth in Section 10.G of the Loan Agreement.

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Name:

Title: Director of Financial Services

Date:

## EXHIBIT B

### FORM OF PURCHASER'S CERTIFICATE

This is to certify that SouthState Bank (the "Purchaser") has not required the City of Palm Coast, Florida (the "City") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the City in connection with the issuance of the City's \$8,000,000 Stormwater Revenue Note, Series 2022 (the "Note"), and no inference should be drawn that the Purchaser, in the acceptance of the Note, is relying on Note Counsel or the City Attorney as to any such matters other than the legal opinions rendered by Note Counsel, Bryant Miller Olive P.A. and by Garganese, Weiss, D'Agresta & Salzman, P.A., the City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in Resolution No. 2022-\_\_ duly adopted by the City Council of the City on April 5, 2022 (the "Resolution").

We acknowledge and understand that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the City, Note Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Note may only be transferred in whole and not in part and denominations not less than \$100,000 even in whole, and will not be transferred to any kind of trust under any circumstances. The Note will not be used in the future on a securitized transaction and is not a municipal security.

The Note may only be transferred to a Permitted Lender in whole, in a denomination of not less than \$100,000. As used herein, "Permitted Lender" means any bank, trust company, savings institution or insurance company that is engaged as a regular part of its business in making loans authorized to do business in the State of Florida.

We are a bank as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We understand that the Note is not a municipal security and that no filing will be made with respect to the Note with EMMA, the Municipal Securities Rulemaking Boards continuing disclosure site.

We understand that there will be no CUSIP Number obtained on the Note and that there will be no credit rating obtained on the Note.

We are an accredited investor within the meaning of Rule 501(a) promulgated under the Securities Act of 1933, as amended.

The representations in this Certificate shall not relieve the City from any obligation to disclose any information required by the Resolution, the documents in connection with the issuance of the Note or as required by applicable law.

This Certificate is expressly for the benefit of the City and may not be relied upon by any other party.

DATED this \_\_\_\_ day of April, 2022.

**SOUTHSTATE BANK**

By: \_\_\_\_\_

Name: Garry R. Lubi

Title: Senior Vice President

## EXHIBIT C

### FORM OF DISCLOSURE LETTER

Following a competitive selection process, the undersigned, as purchaser, proposes to negotiate with the City of Palm Coast, Florida (the "City") for the private purchase of its \$8,000,000 Stormwater Revenue Note, Series 2022 (the "Note"). Prior to the award of the Note, the following information is hereby furnished to the City:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Note (such fees and expenses to be paid by the City):

Bank Counsel Fees – \$5,000

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Note to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Bank, as set forth in paragraph 1 above.

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the City, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the City and the Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Note.

3. The amount of the underwriting spread expected to be realized by the Bank is \$0.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance capital improvements for the City's stormwater utility system.

Unless earlier redeemed, the Series 2022 Note is expected to be repaid on October 1, 2041. At an interest rate of 2.59%, total interest paid over the life of the Series 2022 Note is estimated to be \$2,329,877.67.

The principal of and interest on the Note will be payable solely from the Pledged Revenues as described in Resolution No. 2022-\_\_ of the City duly adopted on April 5, 2022 (the "Resolution"). See the Resolution for a definition of Pledged Revenues. Based on the above assumptions, issuance of the Note is estimated to result in a maximum of approximately \$541,458.00 of revenues of the City not being available to finance other services of the City any year during the life of the Note.

6. The name and address of the Bank is as follows:

SouthState Bank  
175 Cypress Point Parkway  
Palm Coast, Florida 32164

**IN WITNESS WHEREOF**, the undersigned has executed this Disclosure Statement on behalf of the Bank this \_\_\_\_ day of April, 2022.

**SOUTHSTATE BANK**

By: \_\_\_\_\_

Name: Garry R. Lubi

Title: Senior Vice President



**Primary Contact:**

**Mark Galvin**

**Managing Director**

450 S. Orange Avenue, Suite 225

Orlando, FL 32801

(407) 426-9611

mark.galvin@hilltopsecurities.com

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## ***Stormwater Revenue Note, Series 2022***

***April 5, 2022***



# Outstanding Stormwater Utility System Debt

	Stormwater System Revenue Note, Series 2008 (Amended in 2012)	Stormwater System Revenue Note, Series 2019A & B	State Revolving Fund Loan SW903040	State Revolving Fund Loan SW903070	State Revolving Fund Loan SW180400
Original Amount	\$9,000,000	\$1,240,000 / \$4,111,000	\$4,822,150	\$2,875,904	\$1,621,830
Par Outstanding (as of 9/30/2021)	\$1,680,000	\$4,810,000	\$1,415,342	\$1,353,225	\$195,518
Interest Rates	2.35%	2.37% / 2.48%	2.5282%	3.14	0%
Final Maturity	10/1/23	2029 / 2039	2026	2030	2042
Max Annual Debt Service	\$869,985	\$401,575	\$303,170	\$182,632	\$82,714
<b>Callable</b>	<b>Anytime @ 100%</b>	<b>Anytime @ 100%</b>	<b>Anytime @ 100%</b>	<b>Anytime @ 100%</b>	<b>Anytime @ 100%</b>
<b>Rate Covenant</b>	1.25x	1.25x	1.15x	1.15x	1.15x
Security	Net Revenues of the Stormwater System	Net Revenues of the Stormwater System	Net Revenues of the Stormwater System	Net Revenues of the Stormwater System	Net Revenues of the Stormwater System
Lead Underwriter / Lender	PNC Bank (formerly RBC Bank)	SouthState Bank (formerly CenterState Bank)	Florida Department of Environmental Protection	Florida Department of Environmental Protection	Florida Department of Environmental Protection

City of Palm Coast, FL Finance Department




# Proposed Stormwater Project

## P-1 Control Structure

- Currently under design
- Design scope increased to include dredging of upstream canal (Funding for Dredging shall be separate from this Loan)

## L-4 Control Structure

- Plans and Permits process completed
- Project went out for bid... came back over budget
- Currently under value engineering to send out for re-bidding



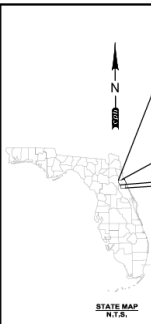
**CITY OF PALM COAST**  
**P-1 CONTROL STRUCTURE**  
**CONSTRUCTION PLANS**

**City Officials**  
MAYOR  
TERRY ALEN  
**COUNCIL MEMBERS**  
District 1: Ed Danko  
District 2: Victor Barbosa  
District 3: Nick Kelle  
District 4: Eddie Branganho  
**CITY MANAGER**  
Denise Ewan


**City of Palm Coast**  
105 Lake Avenue  
Palm Coast, Florida 32137  
Phone: 386.465.5252 Fax: 386.467.2991  
Attn: Jeff Patterson, P.E.

**Survey**  
GPH, INC.  
529 Palm Coast Pkwy, SW  
Palm Coast, FL 32137  
Phone: 386.465.5252 Fax: 386.467.2991  
Attn: Jeff Patterson, P.E.

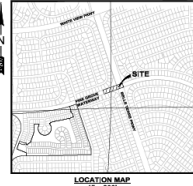
**Civil Engineer**  
GPH, INC.  
529 Palm Coast Pkwy, SW  
Palm Coast, FL 32137  
Phone: 386.465.5252 Fax: 386.467.2991  
Attn: Jason R. Kallag, P.E.




FLA. STATE MAP  
N.T.S.



FLOOD ZONE MAP  
1" = 800'



LOCATION MAP  
1" = 800'



SITE MAP  
1" = 200'

**Drawings**

- 1 COVER SHEET
- 2 GENERAL NOTES
- 3 SITE AND DIMENSION PLAN
- 4 CROSS SECTIONS
- 5 DETAILS

THIS IS TO CERTIFY THAT THE DESIGN REPRESENTED ON THE PLANS AND SPECIFICATIONS HERETOFORE SET FORTH IS THE DESIGN OF THE ENGINEER AND IS IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS OF THE FLORIDA CONSTRUCTION CODE.

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

**COVER SHEET**

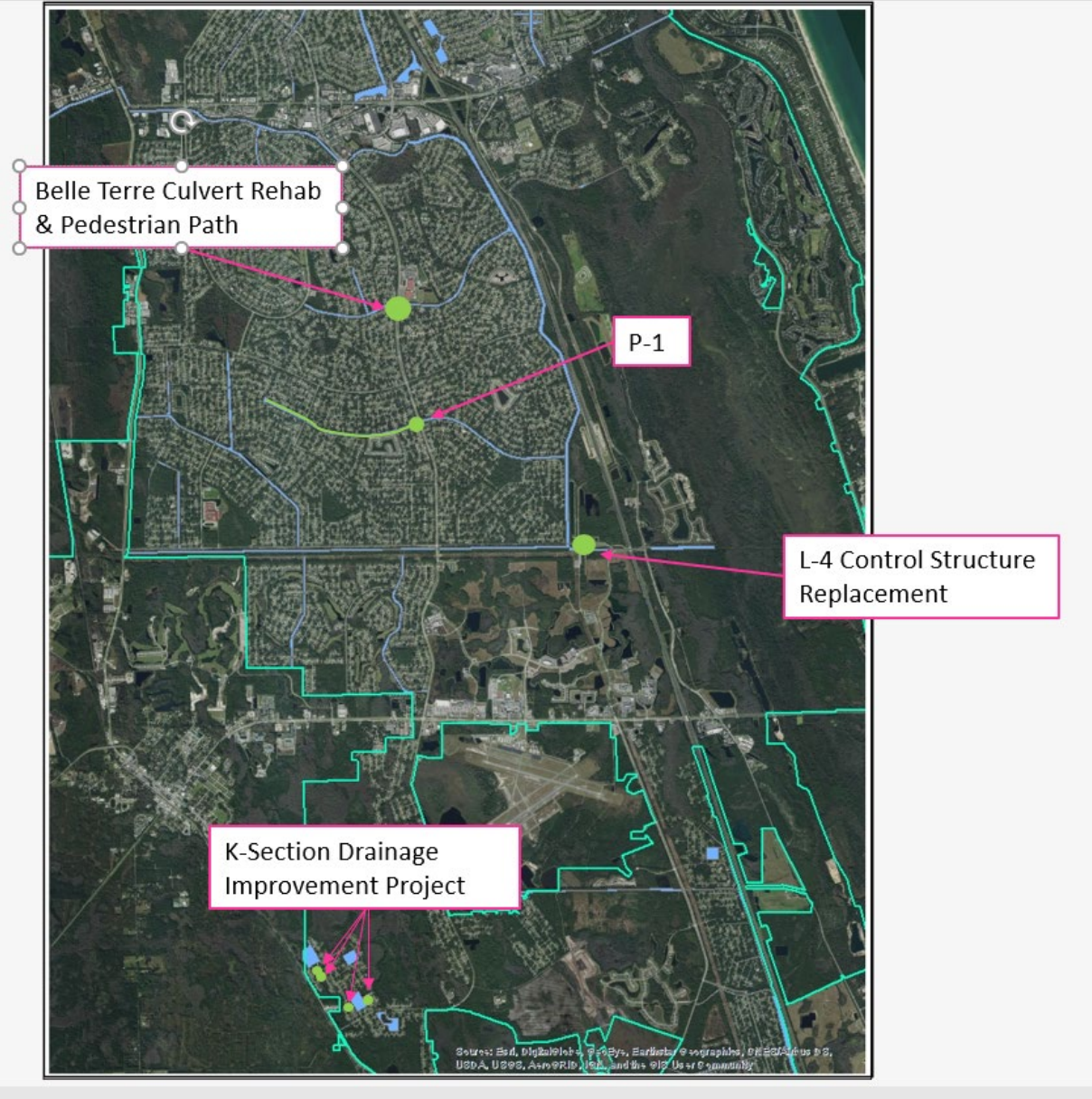
JOB# P61275 DATE: August 2021

Sheet No. **1**





# Proposed Stormwater Project



# Financing Plan

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- 20-Year Fixed Rate Loan - \$ 8 million
- Level Annual Debt Service lock in for the full 20 years
- Option to Prepay
- Security / Payable from Stormwater Utility System Net Revenues
- Loan will be on parity (equal lien basis) with the City's outstanding
  - Stormwater Utility System Revenue Notes, Series 2008
  - Stormwater Utility System Revenue Notes, Series 2019 A & B
  - SRF Loans SW903040, SW903070 and SW180400

# The Bank Loan RFP Process

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- February 25, 2022 – HilltopSecurities sent out RFP to banks
- The City Posted on its website
- On March 17, 2022 the City received 5 responses with interest rates ranging from 2.59% to 3.05%
- Responding Banks included:
  - SouthState Bank
  - Key Government Finance Inc.
  - Pinnacle Public Finance
  - SouthState Bank (formerly CenterState Bank)
  - Truist Bank (formerly SunTrust and BB&T Bank)

Lowest Bidder: SouthState Bank

# Summary of SouthState Proposal Recommendation

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- 20-year fixed rate tax exempt loan with a rate of 2.59%
- Locked in for the life of the financing – willing to hold the rate until Closing
- Provided the opportunity to prepay without penalty in whole or in part by the City. However, if the City refinances the loan with another financing institution the prepayment penalty would be 1% of the outstanding balance for the first 5 years after that period, no prepayment penalty
- Estimated Annual Debt Service is approximately \$532,926.

**We asked the City's Bond Counsel to also review their proposal for any legal issue and there were none.**

**Discussed the Proposals with Staff; both Staff and HilltopSecurities Recommends the City Council accept the SouthState Proposal.**

# Next Steps

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- City Council approves the selection of SouthState Bank
- City Council approves both the Supplement Resolution and the Loan Agreement.
- Thursday, April 7<sup>th</sup> Closing and Transfer of Funds

# Questions

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# General Disclosure

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This communication is intended for issuers for educational and informational purposes only and does not constitute legal or investment advice, nor is it an offer or a solicitation of an offer to buy or sell any investment or other specific product or service. Financial transactions may be dependent upon many factors such as, but not limited to, interest rate trends, tax rates, supply, change in laws, rules and regulations, as well as changes in credit quality and rating agency considerations. The effect of such changes in such assumptions may be material and could affect the projected results. Any outcome or result Hilltop Securities Inc. ("HilltopSecurities"), or any of its employees, may have achieved on behalf of our clients in previous matters does not necessarily indicate similar results can be obtained in the future for current or potential clients. HilltopSecurities makes no claim the use of this communication will assure a successful outcome. This communication is intended for institutional use only. For additional information, comments or questions, please contact HilltopSecurities.