

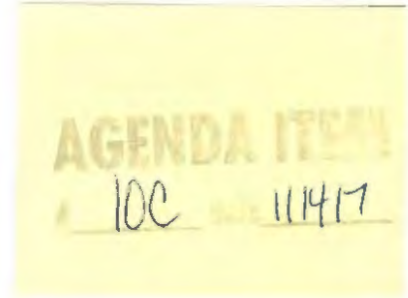
**City of South Daytona**

**Office of the City Manager / Department of Finance**

Post Office Box 214960 • South Daytona • FL 32121 • 386/322-3060 • FAX 386/322-3099



**MEMORANDUM**



**TO: Joseph W. Yarbrough, City Manager**

**FROM: Kevin T. Lewis, Finance Director**

**RE: Hurricane Loan - Irma**

**DATE: November 6, 2017**

Hurricane Irma has resulted in significant expenses to the City. While the City expects to receive grant funding from the State of Florida and the US Federal Emergency Management Agency, that funding could take an extended period of time to receive.

Following Hurricane Matthew, Wells Fargo loaned the City \$1.5M to cover those expenses pending receipt of grant funds. At the end of October, the City received the debris portion of grant funding related to Hurricane Matthew and paid off that loan with Wells Fargo. Staff has contacted Wells Fargo to inquire regarding a second hurricane loan but Wells Fargo declined primarily due to uncertainty regarding the timing of payment from FEMA.

Staff then contacted Compass Bank which also holds other City debt. Compass Bank offered the City a bridge loan to cover up to \$1,000,000 of hurricane related expenses for up to two years from the date of closing at 3.67% (actual rate to be determined at the time of rate lock). This loan would include an immediate advance of \$1,000,000 to offset initial expenses and provide ongoing funding pending receipt of grant funds. This loan is slightly different than the previous hurricane loan in that it includes a subordinated lien on water and sewer revenues in addition to the grant revenues but does not include a general covenant to budget and appropriate. Given the short term nature of this loan and the City's existing loan profile, the City's Financial Advisor has recommended this revenue pledge and structure.

Attached is a resolution authorizing the issuance of this debt and the proposal from Compass Bank, dated November 1, 2017, referenced in the resolution. Also attached is a substantially complete Loan Agreement and Promissory Note.

If it is the desire of the City Council to move forward with the bridge loan, staff requests authorization to proceed with finalizing the loan documents as well as authorization to close on the loan subject to review and approval of City staff. Staff estimates that issuance cost of this loan to be approximately \$25,000 including bank fees, the City's financial advisor, bond counsel and other out of pocket expenses.

## Summary of Terms and Conditions of Proposed Credit Facility

**Date: November 1, 2017**

*This summary of indicative terms and conditions is not a commitment to lend or to provide any other service related to a financing. Any such commitment or undertaking will be issued only in writing subject to appropriate documentation, the terms of which are not limited to those set forth herein. This summary of indicative terms and conditions is intended as an outline of certain of the material terms of a proposed financing and is not intended to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in definitive loan documents, and is subject to, among other things, completion of due diligence and credit approval by Lender. This summary is delivered to the Borrower on the basis that the Borrower and each Guarantor will retain as confidential the matters outlined herein.*

<b>Borrower:</b>	City of South Daytona, Florida ("Borrower" or "City")
<b>Lender:</b>	Compass Bank ("BBVA Compass Bank" or "Bank" or "Lender")
<b>Facility:</b>	Up to \$1,000,000.00 (One Million Dollar) Bank-Qualified Tax-Exempt Term Loan" ("Term Loan" or "Facility")
<b>Purpose:</b>	Proceeds to be used to finance Hurricane repairs.
<b>Maturity:</b>	2 (two) years from the Closing Date.
<b>Repayment:</b>	Term Loan Facility – Semi Annual Interest Payments with all Principal and any accrued Interest due at Maturity.
<b>Interest Rate:</b>	As of November 1, 2017 if the facility were to close and fully fund, the indicative tax-exempt fixed rate would be 3.67%, calculated on an actual/360 basis. The actual rate will be determined upon formal selection of this proposal. At that point in time, the rate can be locked in for a period of up to 60 days.
<b>After-Tax Yield Maintenance Language:</b>	The tax exempt interest rate will be subject to gross-up upon an event of taxability based on any action or inaction on the part of the borrower. Lender will require satisfactory review of a legal opinion regarding the tax-exempt status of interest due and payable on the Facility from bond counsel acceptable to the Bank.
<b>Prepayment:</b>	Principal may be repaid in whole or in part without penalty.
<b>Upfront Fee:</b>	\$1,000.00 (One Thousand Dollar) non-refundable and payable in full upon execution of the loan documentation for the Facility.

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**CONFIDENTIAL**

***This term sheet does not represent a commitment to lend and may not be relied upon as such.***

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.

<b>Security:</b>	The repayment of the Bonds will be secured by Pledged Revenues. Pledged Revenues will consist of any and all funds that the City receives from FEMA relative to Hurricane Irma, directly or indirectly, and/or from the State of Florida, with respect to disaster recovery activities, together with any available revenues from the City's water and sewer system, which such lien in any water and sewer revenues shall be subordinated to prior liens.
<b>Financial Reporting:</b>	<ul style="list-style-type: none"> <li>▪ Annual audited financial statements of Borrower prepared in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Governmental Auditing Standards, issued by the Comptroller General of the United States, due within 30 days of receipt, however in no event later than June 30th after the close of each Fiscal Year.</li> <li>• Annual Borrower Prepared Budget shall be due within 30 days of the beginning of each fiscal year. Budget shall include at a minimum: income statement, balance sheet, with details on capital expenditures and financing plans.</li> <li>• Borrower shall furnish at Lender's request such additional information that Lender may from time to time reasonably request.</li> </ul>
<b>Representations, Warranties, Additional Covenants and Events of Default:</b>	<ul style="list-style-type: none"> <li>• Maintenance of existence.</li> <li>• Notices of (i) default, (ii) material litigation.</li> </ul> <p>Additional representations and warranties, and other affirmative and negative covenants that Lender considers customary and reasonably appropriate for the Facility. Such representations may include, but are not limited to: (i) a written opinion from Borrower's Counsel, in form and substance acceptable to Lender and Lender's Counsel, that all documents are valid, binding and enforceable in accordance with their terms, that execution and delivery of documents has been duly authorized, and addressing such other matters as the Lender and the Lender's Counsel deem appropriate (ii) Receipt of written opinion from Bond Counsel in form and substance satisfactory to Lender, which shall include, without limitation, opinion that the interest on the Bond is excludable from gross income of the owners thereof for federal income tax.</p>
<b>Expenses:</b>	Borrower will pay all out-of-pocket costs and expenses incurred by Lender in connection with (a) the due diligence and the preparation of loan documentation, regardless of whether or not the Facility is closed, and (b) the administration and enforcement of the loan documentation. These out-of-pocket costs may include, but are not limited to, legal costs, real estate or equipment appraisal costs, and collateral examination expenses.
<b>Indemnity:</b>	The Borrower shall indemnify, pay and hold harmless the Lender (and its affiliates and their respective officers, directors, employees, advisors and agents) against any loss, liability, cost or expense incurred in respect to the financing contemplated hereby, the use or the proposed use of the proceeds thereof or any loss incurred as a result of environmental issues.
<b>Initial Conditions Precedent:</b>	<p>The availability of the Facility shall be conditioned upon satisfaction of, among other things, the following conditions precedent</p> <ul style="list-style-type: none"> <li>• Completion of Lender's due diligence</li> <li>• Bank's satisfactory review of FEMA's commitment to fund the related expenses</li> <li>• Legal opinions of Borrower's / Guarantors' counsel</li> <li>• Properly executed documents in form and substance satisfactory to Lender and/or Lender's counsel evidencing or supporting the Facility, which may include, but are not limited to, a promissory note and/or credit agreement, pledge or security agreements, financing statements and general/unlimited/unconditional guarantees.</li> <li>• Repayment in full of all obligations under existing loan facilities paid from FEMA/State funds, termination of the commitments thereunder and release of all liens, if any, granted thereunder.</li> <li>• Additional conditions precedent that Lender considers customary and reasonably appropriate for the Facility.</li> </ul> <p><i>*Note, all of the foregoing are subject to Lender's receipt and satisfactory review.</i></p>
<b>Conditions to Each Advance:</b>	The making of each advance under the Facility (including the initial advances) shall be conditioned upon customary conditions for facilities of this type, including without limitation, (a) the accuracy of all representations and warranties under the loan documentation, and (b) there being no default or event of default in existence at the time of, or after giving effect to the making of, such advance.

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**Patriot Act  
Information:**

The Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 10756 (signed into law October 26, 2001)) (the "Act"), the Lender is required to obtain, verify and record information that identifies Borrower, which information includes that name and address of Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act.

*This term sheet is intended for the sole and exclusive benefit of Borrower and Lender and may not be relied upon by third parties.*

Very truly yours,

**COMPASS BANK**

By:   
Josh Johnson  
Vice President

**ACKNOWLEDGED AND ACCEPTED:**

**CITY OF SOUTH DAYTONA, FLORIDA**

By:   
Joseph Yarbrough  
City Manager

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**CONFIDENTIAL**

## RESOLUTION NO. 17-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA AUTHORIZING ENTERING INTO A LOAN AGREEMENT WITH COMPASS BANK IN AN AMOUNT NOT TO EXCEED \$1,000,000 FOR THE PURPOSE OF FINANCING THE COSTS AND EXPENSES ASSOCIATED WITH CLEAN-UP AND RECONSTRUCTIVE EFFORTS RELATED TO HURRICANE IRMA AS DESCRIBED HEREIN AND PAYING COSTS RELATED THERETO; PROVIDING THAT OBLIGATIONS UNDER THE LOAN AGREEMENT AND THE NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM REIMBURSEMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND OTHER STATE OR FEDERAL AGENCIES, AND A SUBORDINATE LIEN ON THE NET REVENUES OF THE CITY'S WATER AND SEWER SYSTEM AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE LENDER; AUTHORIZING THE PRIVATE NEGOTIATED DIRECT PLACEMENT OF THE LOAN WITH THE LENDER PURSUANT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE NOTE; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD THE NOTE "BANK QUALIFIED" STATUS; AUTHORIZING OTHER REQUIRED ACTIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, that:

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is enacted pursuant to the provisions of Chapter 166, Florida Statutes and other applicable provisions of law.

**SECTION 2. FINDINGS.** It is hereby ascertained, determined and declared that:

A. The City received a proposal dated November 1, 2017 (the "Proposal") from Compass Bank, an Alabama banking corporation (the "Lender") to finance and reimburse the City for the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma (the "Project") and to pay the costs of issuance related thereto. It is hereby determined to be in the best financial interest of the City to accept such Proposal and finance the costs of the Project on a short term basis pending reimbursement of such costs from relief agencies such as the Federal Emergency Management Agency ("FEMA").

B. It is necessary and desirable to authorize entering into the loan agreement with the Lender to evidence the City's obligation to repay the Lender (the "Loan Agreement"). Amounts due under the Loan Agreement are to be evidenced by a note (the "Note") payable from and secured by a lien on funds expected to be received from FEMA and other State or Federal agencies for the Project (collectively, the "Grant Proceeds") and a subordinate lien on the Net Revenues of the City's water and sewer system (as described and defined in that certain Amended and Restated Master Utility System Bond Resolution No. 13-05, as amended, of the

City) all as to be provided for in the Loan Agreement, and the amounts derived therefrom on deposit in the funds and accounts described in the Loan Agreement herein authorized. The Grant Proceeds shall first be used to repay the Note and then for costs of the Project. The City shall not use the Grant Proceeds for any uses other than repaying the Note, paying the costs and expenses of the Project and paying the costs of issuance of the Note.

C. The City does not expect to issue more than ten million dollars in tax-exempt obligations during the calendar year ending December 31, 2017.

**SECTION 3. AUTHORIZING OF LOAN AGREEMENT AND THE NOTE.** Subject and pursuant to the provisions of this Resolution, the City Council hereby authorizes entering into the Loan Agreement with the Lender consistent with the terms as set forth in the Proposal and further authorizes the execution and delivery of the Note to the Lender in order to borrow not to exceed \$1,000,000 for the purpose above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided in the form of the Loan Agreement and the Note referred to below and in the Proposal, is hereby authorized.

**SECTION 4. SECURITY FOR THE LOAN AGREEMENT AND NOTE.** The amounts due under the Loan Agreement and Note shall be secured by a pledge of and lien on the Grant Proceeds and a subordinate lien on the Net Revenues of the City's water and sewer system as provided in this Resolution and the Loan Agreement.

**SECTION 5. RATIFICATION OF ACCEPTANCE OF PROPOSAL.** The City Council hereby ratifies the prior acceptance of the Proposal from the Lender by the execution thereof by the City Manager.

**SECTION 6. APPROVAL OF FORM OF LOAN AGREEMENT AND NOTE.** To provide for the security of the Note and to express the contract between the City and the holder thereof, the City Council does hereby authorize the execution and delivery, on behalf of the City, by the Mayor, under the seal of the City, attested by the Clerk, of the Loan Agreement. The Loan Agreement shall be in substantially the form attached hereto and marked Exhibit "A" and is hereby approved, with such changes, modifications, additions and deletions therein as shall be approved by the authorized officer 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, the Note is hereby authorized to be issued to evidence and secure the City's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount not to exceed \$1,000,000 subject to the provisions hereof and of the Loan Agreement.

**SECTION 7. BANK QUALIFIED.** The City hereby designates the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The 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 2017 to issue more than \$10,000,000 of "tax-exempt" obligations including the 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).

**SECTION 8. GENERAL AUTHORITY.** The Mayor, the members of the City Council of the City, the City Manager, the City Attorney, the Finance Director and all other of the City's officers, attorneys and other agents and employees are hereby authorized to perform all acts and things required of them by this Resolution or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Loan Agreement, the Note and this Resolution, and they are hereby authorized to execute and deliver all documents which shall be required by Note Counsel or the Lender to effectuate the sale of the Note to said Lender.

**SECTION 9. REPEAL OF INCONSISTENT PROVISIONS.** All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

**SECTION 10. SEVERABILITY.** In the event that any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Resolution and such remaining portions shall remain in full force and effect.

**SECTION 11. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its final passage and adoption.

**PASSED AND ADOPTED UPON FIRST AND FINAL READING AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA HELD IN THE CITY OF SOUTH DAYTONA, FLORIDA ON THE 14th DAY OF NOVEMBER, 2017.**

**THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA**

---

William C. Hall, Mayor

**ATTEST:**

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Joseph W. Yarbrough, City Manager

**APPROVED AS TO FORM**

---

Scott Simpson, City Attorney



**EXHIBIT A**  
**FORM OF LOAN AGREEMENT**

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**LOAN AGREEMENT**

**By and Between**

**CITY OF SOUTH DAYTONA, FLORIDA**

**and**

**COMPASS BANK**

**Dated November [ ], 2017**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement"), made and entered into this [ ]th day of November, 2017 by and between the CITY OF SOUTH DAYTONA, FLORIDA (the "City"), a municipal corporation in the State of Florida and its successors and assigns, and COMPASS BANK, an Alabama banking corporation authorized to do business in Florida, and its successors (the "Bank").

### WITNESETH:

WHEREAS, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

WHEREAS, the City, pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, Sections 218.20 through 218.26, Florida Statutes, as amended, the municipal charter of the City and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 17-27 adopted by the City Council of the City on November 14, 2017 (the "Note Resolution"), is authorized to incur debt to finance the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma (the "Project"); and

WHEREAS, the City is willing to pledge for the repayment of such debt a lien on funds expected to be received from FEMA and other State or Federal agencies (collectively, the "Grant Proceeds") and a subordinate lien on the Net Revenues of the City's water and sewer system (as described and defined in that certain Amended and Restated Master Utility System Bond Resolution No. 13-05, as amended, of the City) (collectively, the "Pledged Revenues"); and

WHEREAS, the Bank has proposed the financing evidenced by this Agreement in accordance with the term sheet of the Bank dated November 1, 2017 (the "Term Sheet") for purposes of providing funds to finance the Project; and

WHEREAS, the City has approved the Term Sheet and the Bank is willing to purchase the Note, but only upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

## ARTICLE I

### DEFINITION OF TERMS

**Section 1.01. Definitions.** Capitalized terms used in this Agreement shall have the followings meanings:

"Act" shall have the meaning assigned to that term in the recitals hereof.

"Agreement" shall mean this Loan Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Bank" shall mean Compass Bank, and its successors and assigns.

"Bond Counsel" shall mean Bryant Miller Olive P.A., Orlando, Florida, or any other 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.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which the payment office of the Bank is lawfully closed.

"City" shall mean the City of South Daytona, Florida, a municipal corporation.

"City Clerk" shall mean the City Clerk or Deputy City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable rules and regulations promulgated thereunder.

"Determination of Taxability" shall mean the circumstance that shall be deemed to have occurred if interest paid or payable on the Note becomes includable for federal income tax purposes in the gross income of the Noteholder as a consequence of any action or inaction on the part of the City. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or a Noteholder 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 the Note is includable in the gross income of the Noteholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Note is includable in the gross income of a Noteholder; (c) the Note is determined not to be a qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code; or (d) receipt by the City or the Noteholder of an opinion of Bond Counsel to the effect that any interest on the Note has become includable in the gross income of the Noteholder 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 the Note is deemed includable in the gross income of the Noteholder. 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), (b) and (c) above, no Determination of Taxability shall be deemed to occur unless the City has been given timely written notice that such a determination has been made by the Internal Revenue Service and 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 Bank an opinion of Bond Counsel acceptable to the Bank 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.

"Event of Default" shall mean an Event of Default as defined in Section 5.01 of this Agreement.

"Final Maturity Date" shall mean the date on which all principal and all unpaid interest accrued on the Note shall be due and payable in full, which date shall be, if not sooner due to acceleration or prepayment, November [\_\_], 2019.

"Finance Director" shall mean the Finance Director or any assistant, deputy or interim Finance Director of the City.

"Fiscal Year" shall mean the twelve month period commencing October 1 of each year and ending on the succeeding September 30, or such other twelve month period as the City may designate as its "fiscal year" as permitted by law.

"Loan" shall have the meaning set forth in Section 3.01 hereof.

"Note" shall mean the promissory note defined in Section 3.01 of this Agreement.

"Note Rate" shall mean a fixed per annum interest rate equal to [\_\_] %.

"Note Resolution" shall mean a resolution related to the Note which was adopted by the City Council of the City on November 14, 2017, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

"Noteholder" shall mean the Bank as the initial holder of the Note and any subsequent registered holder of the Note.

"Pledged Revenues" shall have the meaning assigned to that term in the recitals hereof.

"Project" shall have the meaning assigned to that term in the recitals hereof.

"Registrar" shall mean the City Clerk.

"Taxable Rate" shall have the meaning assigned to that term in Section 3.02 hereof.

**Section 1.02. 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. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**Section 1.03. Titles and Headings.** The titles and headings of the Articles and Sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE PARTIES

**Section 2.01. Representations and Warranties of City.** The City represents and warrants to the Bank as follows:

(a) **Existence.** The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Note to the Bank. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the City and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the City or any of its material properties is bound.

(b) **Validity, Etc.** This Agreement and the Note are and will be valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.



(c) No Financial Material Adverse Change. No financial material adverse change has occurred in the City since the last audited financial statement was prepared.

(d) Powers of City. The City has the legal power and authority to pledge the Pledged Revenues to repayment of the Note in the manner and to the extent described herein.

**Section 2.02. Representations and Warranties of Bank.** The Bank represents and warrants to the City as follows:

(a) Existence. The Bank is an Alabama banking corporation authorized to do business in the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Loan. The performance of this Agreement on the part of the Bank and the making of the Loan have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights (and specifically creditors' rights as the same relate to banks) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note; (ii) has received and reviewed such financial information concerning the City as it has needed in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; and (iii) is purchasing the Note as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Note except to other banks affiliated with Compass Bank or any subsidiary thereof, or an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933, as amended.

### ARTICLE III

#### THE NOTE

**Section 3.01. The Loan.** Subject to the terms and conditions hereof, the Bank agrees to make a loan (the "Loan") to the City in an aggregate principal amount of One Million Dollars (\$1,000,000). The Loan shall be evidenced by the City of South Daytona, Florida, Grant Proceeds Note, Series 2017 in substantially the form attached hereto as Appendix A (as amended, extended or renewed from time to time, the "Note") of even date herewith, executed by the City in favor of the Bank in the principal amount set forth above. Repayment of the Loan shall be in

the amounts and on the dates set forth on Schedule A to the Note, commencing on May 1, 2018, until the Final Maturity Date. Interest calculated at the Note Rate shall be payable on each May 1 and November 1, commencing on May 1, 2018. A final payment in the amount of the entire principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Final Maturity Date.

**Section 3.02. Adjustments to Note Rate.** The Note Rate shall be subject to adjustment by the Bank as hereinafter described. Upon the occurrence of a Determination of Taxability, then the Bank shall have the right to adjust the Note Rate in order to maintain the same after-tax yield as if such events had not occurred (the "Taxable Rate"). Any adjustments in this Section 3.02 shall survive payment of the Note until such time as the federal statute of limitations under which the interest on the Note could be declared taxable under the Code shall have expired. The Bank shall provide the City with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the City.

**Section 3.03. Compliance with Section 215.84, Florida Statutes.** The City represents, warrants, and covenants that the Note Rate is in compliance with Section 215.84, Florida Statutes.

**Section 3.04. Conditions Precedent to Delivery of Note.** Prior to or simultaneously with the delivery of the Note issued hereunder by the City, there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the City to the effect that (i) this Agreement and the Note have been duly authorized, executed and delivered by the City and each constitutes a valid, binding and enforceable agreement of the City in accordance with their respective terms, except to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and execution and issuance of the Note are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not heretofore obtained or effected, and no taxes are payable in connection therewith; (iii) the execution, issuance and delivery of the Note has been duly and validly authorized by the City, and the Note constitutes a valid and binding special obligation of the City enforceable in accordance with its terms; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, and (B) has power and authority to execute and deliver this Agreement, to execute and deliver the Note, and to consummate the transactions contemplated by such instruments; (v) the execution, delivery and performance of the Note and this Agreement, and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or

conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) to the best of such counsel's knowledge, there is no claim, action, suit, proceeding, inquiry, investigation, litigation or other proceeding, at law or in equity, pending or threatened in any court or other tribunal, state or federal (W) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Note, (X) in any way questioning or affecting the validity or enforceability of any provision of this Agreement or the Note, (Y) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Note, or of any provision made or authorized for the payment thereof, or (Z) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City had the legal power to pledge the Pledged Revenues to repayment of the Note in the manner and to the extent as described; and (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Note have been complied with; and

(b) an opinion of Bond Counsel, stating that such counsel are of the opinion that: (i) this Agreement constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms; (ii) the Note is a valid and binding special obligation of the City enforceable in accordance with its terms, payable solely from the sources provided therefore in this Agreement; (iii) the Note is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code; and (iv) assuming compliance by the City with certain covenants relating to requirements contained in the Code (a) interest on the Note is excluded from gross income for purposes of federal income taxation, and (b) interest on the Note is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations; and

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the City; and

(d) such other documents as the Bank reasonably may request.

When the documents and items mentioned in clauses (a) through (d), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, the City shall deliver the Note to or upon the order of the Bank, but only against the City's receipt of the proceeds of the Note.

**Section 3.05. Registration of Transfer; Assignment of Rights of Bank.** The City shall keep at the office of the City Clerk in the City's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon

surrender thereof to the City together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Appendix A to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Note on the registration books of the City shall be deemed to affect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The City and the transferor shall execute and record such instruments and take such other actions as the City and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

In the event the Note is mutilated, lost, stolen, or destroyed, the City shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Note, there first shall be furnished to the City evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

Notwithstanding anything herein to the contrary, no transfer shall be permitted absent the City's (and the Bank's) receipt of a letter in form and substance similar to the one delivered by the Bank pursuant to Section 218.385, Florida Statutes from such proposed transferee, and a certificate in form and substance similar to the one attached hereto as Appendix B certifying, among other things, that such holder is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933, as amended.

**Section 3.06. Ownership of the Note.** The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

**Section 3.07. Use of Proceeds of Note Permitted Under Applicable Law.** The City represents, warrants and covenants that the proceeds of the Note will be used solely to finance the Project, and that such use is permitted by applicable law.

**Section 3.08. Authentication.** Only if the Note shall have endorsed thereon a certificate of authentication substantially in the form set forth in Appendix A, duly executed by the manual signature of the Registrar and authenticating agent, shall it be entitled to any benefit or security under this Agreement. The Note shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the Registrar and such certificate of the Registrar upon any such Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Agreement.

## ARTICLE IV

### COVENANTS OF THE CITY

**Section 4.01. Performance of Covenants.** The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the City relating to the Loan.

**Section 4.02. Payment of Note.**

(a) The City covenants that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided herein and in the Note, in accordance with the terms thereof. The Note shall be payable solely from Pledged Revenues in accordance with the terms hereof.

(b) The Note will be a special obligation of the City secured solely by the Pledged Revenues, in the manner and to the extent described in Section 4.02(a) hereof. The Note will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Note and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Note shall not constitute a lien upon any property of the City except upon the Pledged Revenues.

(c) The City hereby grants the Noteholder a lien on the Pledged Revenues.

**Section 4.03. Tax Covenant.** The City covenants to the purchasers of the Note provided for in this Agreement that the City will not make any use of the proceeds of the Note at any time during the term of such Note which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The City will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion

of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

**Section 4.04. Budget and Other Financial Information.** The City shall provide the Noteholder with a copy of the City's annual audited financial statements for the preceding Fiscal Year, prepared in accordance with Governmental Auditing Standards, issued by the Comptroller General of the United States, within 30 days of receipt thereof; however in no event later than June 30th of each year. The City shall provide the Noteholder with a copy of the City's annual budget within thirty (30) days of the beginning of each Fiscal Year. The annual budget shall include at a minimum income statements and a balance sheet with details on capital expenditures and financing plans. The City shall furnish such additional information that the Noteholder may from time to time reasonably request.

**Section 4.05. Compliance with Laws and Regulations.** The City shall maintain compliance with all federal, state and local laws and regulations regarding the acquisition and maintenance of the Project.

**Section 4.06. Prepayment.** The Note shall be prepayable in whole or in part at any time without prepayment premium or penalty and upon at least two (2) Business Days' prior written notice to the Noteholder specifying the amount of prepayment. The City shall, at the time of such prepayment, pay to the Noteholder the interest accrued to the date of prepayment on the principal amount being prepaid.

**Section 4.07. Application of Proceeds of Note; General Fund.** At the time of delivery of the Note herein authorized, proceeds from the sale of the Note shall be deposited into the General Fund of the City and used to finance the Project.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**Section 5.01. Events of Default.** Each of the following is hereby declared an "Event of Default:"

(a) payment of the interest on or principal of the Note shall not be made when the same shall become due and payable (a "Payment Default"); or

(b) the City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) days after written notice shall have been given to the City by the Noteholder specifying such default and requiring the same to be remedied; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed

to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action; or

(c) the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(d) the City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(e) if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) days from the date of assumption of such custody or control.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, with interest on overdue payments of principal and interest (to the extent permitted by law), together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), but payable from the sources provided and in the manner and to the extent provided herein, without prejudice to any other right or remedy of the Noteholder, and to recover and enforce

any judgment or decree against the City, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect (but from sources provided and in the manner and to the extent provided herein) in any manner provided by law, the monies adjudged or decreed to be payable.

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**Section 5.04. Waivers, Etc.** No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholder may be exercised from time to time and as often as may be deemed expedient.

The Noteholder may waive any default which, in its opinion, shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**Section 6.01. Covenants of City, Etc.; Successors.** All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

**Section 6.02. Term of Agreement.** This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax exempt status of the Note.

**Section 6.03. Notice of Changes in Fact.** Promptly after the City becomes aware of the same, the City will notify the Bank of any default under this Agreement and/or the pendency of



litigation material to the City's ability to repay the Loan, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

**Section 6.04. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by each of the City and the Noteholder.

**Section 6.05. Notices.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

(a) As to the City:

City of South Daytona, Florida  
1672 South Ridgewood Avenue  
South Daytona, Florida 32119  
Attention: Finance Director

(b) As to the Bank:

Compass Bank  
Attn: Josh Johnson, Vice President  
5500 SW College Road  
Ocala, Florida 34474

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

**Section 6.06. Benefits Exclusive.** Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the Noteholder.

**Section 6.07. Indemnification.** To the extent permitted by law, the City shall indemnify, pay and hold harmless the Bank (and its affiliates and their respective officers, directors, employees, advisors and agents) against any loss, liability, cost or expense incurred in connection with the financing of the Project contemplated hereby, including the use or the proposed use of the proceeds.

**Section 6.08. Severability.** In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

**Section 6.09. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 6.10. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.11. No Personal Liability.** Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Council, officer, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

**Section 6.12. Incorporation by Reference.** All of the terms and obligations of this Agreement and the Appendices hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

CITY OF SOUTH DAYTONA, FLORIDA

By: \_\_\_\_\_  
Name: William C. Hall  
Title: Mayor

By: \_\_\_\_\_  
Name: Joseph W. Yarbrough  
Title: City Manager

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Debbie Fitz-Gerald  
Title: Deputy City Clerk

COMPASS BANK

By: \_\_\_\_\_  
Name: Josh Johnson  
Title: Vice President

**APPENDIX A**

**FORM OF NOTE**

ANY OWNER SHALL, PRIOR TO BECOMING A REGISTERED OWNER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH REGISTERED OWNER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

November [\_\_\_], 2017

\$1,000,000

**CITY OF SOUTH DAYTONA, FLORIDA  
GRANT PROCEEDS NOTE, SERIES 2017**

The City of South Daytona, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of Compass Bank or its registered assigns (hereinafter, the "Noteholder"), the principal sum of \$1,000,000 on the Maturity Date (as defined below), and interest on the outstanding principal balance from the date hereof (the "Note Issuance Date"), or from the most recent interest payment date to which interest has been paid, at a per annum rate equal to [\_\_\_]%, subject to adjustment as provided herein (the "Note Rate"); provided, however, that the Note Rate shall in no event exceed the maximum interest rate permitted by applicable law. Interest shall be payable on each May 1 and November 1, commencing on May 1, 2018.

Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months and will be paid by wire transfer to an account in the United States designated in writing by the Noteholder at such account as it appears on the registration .

A final payment in the amount of the entire principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on November [\_\_\_], 2019 (the "Final Maturity Date").

The Note Rate shall be subject to adjustment by the Noteholder as hereinafter described. Upon the occurrence of a Determination of Taxability, then the Noteholder shall have the right to adjust the Note Rate in order to maintain the same after-tax yield as if such events had not occurred (the "Taxable Rate"). Any such adjustments shall survive payment of this Note until such time as the federal statute of limitations under which the interest on this Note could be declared taxable under the Internal Revenue Code shall have expired. The Noteholder shall

provide the Issuer with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer.

This Note shall be prepayable in whole or in part at any time without prepayment premium or penalty and upon at least two (2) Business Days' prior written notice to the Noteholder specifying the amount of prepayment. Any prepayment in part shall be applied to reduce the amortization installments of this Note in inverse order of their due dates. The Issuer shall, at the time of such prepayment, pay to the Noteholder the interest accrued to the date of prepayment on the principal amount being prepaid.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day (as defined in the Loan Agreement), the payment due on such date shall be due on the next succeeding day which is a Business Day, but the Issuer shall not receive credit for the payment until it is actually received by the Noteholder.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Noteholder, and the balance thereof shall apply to principal.

**THIS NOTE DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH NOTEHOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN OR USE OR APPLICATION OF AD VALOREM TAX REVENUES OF THE ISSUER FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.**

This Note is issued pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, the municipal charter of the Issuer, Resolution No. 17-27 adopted by the City Council of the City on November 14, 2017 and the Loan Agreement, and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement including, without limitation, remedies in the Event of Default, are by this reference thereto incorporated herein as a part of this Note. Payment of the Note is secured by a pledge of lien upon the Pledged Revenues, in the manner and to the extent described in the Loan Agreement. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Note may be exchanged or transferred by the Noteholder hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Loan Agreement. This Note may be only be transferred in whole and not in part.

This Note is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Florida.

The Issuer and the Noteholder by acceptance of this Note, hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of, under or in connection with this Note and any other document or instrument contemplated to be executed in conjunction with the this Note, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This provision is a material inducement for the each of the Issuer and the Noteholder selling or purchasing (as the case may be) this Note.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of South Daytona, Florida has caused this Note to be executed in its name by the manual signature of its Mayor, attested by the manual signature of its Deputy City Clerk, and its seal to be impressed hereon, all as of this [ ]th day of November, 2017.

CITY OF SOUTH DAYTONA, FLORIDA

By: \_\_\_\_\_  
Name: William C. Hall  
Title: Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Debbie Fitz-Gerald  
Title: Deputy City Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

Date of Authentication: November [ ], 2017

This Note is being delivered pursuant to the within mentioned Loan Agreement.

Deputy City Clerk,  
City of South Daytona, Florida,  
as Registrar

By: \_\_\_\_\_  
Name: Debbie Fitz-Gerald  
Title: Deputy City Clerk

## APPENDIX B

### FORM OF PURCHASER'S CERTIFICATE

This is to certify that Compass Bank (the "Purchaser") has not required the City of South Daytona, 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 \$1,000,000 City of South Daytona, Florida Grant Proceeds Note, Series 2017 (the "Note"), and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on Bond Counsel or the City's General Counsel as to any such matters other than the legal opinions rendered by Bond Counsel, Bryant Miller Olive P.A. and by the City's General Counsel, Scott E. Simpson, Esq. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in a resolution adopted by the City Council of the City on November 14, 2017 (the "Resolution").

We are aware that investment in the Note involves various risks, that the Note is not a general obligation of the City or payable from ad valorem tax revenues, and that the payment of the Note is secured solely from Pledged Revenues as described in the Loan Agreement dated November [ ], 2017, between the City and Compass Bank (the "Pledged Revenues").

We have made such independent investigation of the Pledged Revenues the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the City.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Note and can bear the economic risk of our investment in the Note.

We acknowledge and understand that the Note 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, Bond Counsel nor City's General Counsel 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 not be transferred except to a bank, savings



association, insurance company or other "accredited investor" as described below in accordance with the restrictions set forth in the Note.

We are an Alabama banking corporation authorized to do business in Florida. 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.

DATED this [\_\_]th of November, 2017.

Compass Bank

By: \_\_\_\_\_  
Name:  
Title: