

City of South Daytona

Office of the City Manager / Department of Finance

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MEMORANDUM

AGENDA ITEM
E17 DATE 11/10/20

To: James L. Gillis, Jr, City Manager

From: Jason E. Oliva, Finance Director

Re: Resolution No. 2020-42 - Series 2013 Capital Improvement Revenue Note Reset Rate

Date: November 2, 2020

Resolution No. 2013-24 authorized the issuance of a Series 2013 Capital Improvement Revenue Note with Wells Fargo Bank in an amount not to exceed \$4,200,000. This Note provided financing for reimbursement of costs associated with the failed electric utility system acquisition, non-reimbursable costs related to the US 1 Corridor Phase II project, Oak Lea Sub-Division entrance bridge replacement project, Big Tree Road/Magnolia Avenue intersection improvements, and the Green Street drainage improvement project. Additionally, this loan provided partial funding for the City's match of the Lantern Park sub-division entrance bridge replacement project and allowed for closing costs associated with the loan. A more detailed use of funds is as follows:

Electric System Acquisition	\$2,492,821.50
US1 Corridor Phase II	1,052,504.75
Oak Lea Sub-Division Entrance Bridge	215,931.45
Big Tree Road/Magnolia Avenue Intersection Improvements	122,337.12
Green Street Drainage Improvements	<u>121,951.62</u>
Total Reimbursable Costs	\$4,005,546.44
Lantern Park Entrance Bridge Replacement	150,000.00
Loan Closing Costs (Estimated)	<u>30,000.00</u>
Total Use of Funds	<u>\$4,185,546.44</u>

Terms of this loan were negotiated with Wells Fargo. Some of the more important provisions of the original loan agreement are as follows:

1. The loan will be secured by Half-Cent Sales Tax receipts and shall provide at all times at least a 1.5 times coverage factor of the maximum annual debt service.
2. The interest will be a tax-exempt fixed rate and will be set three days prior to closing. The rate will be indexed to 70% of the 10-year Treasury Note rate plus 75 basis points at that time. The original interest rate was set at 2.71%.

3. The term of the loan is seven-years with principal and interest payments based on a 15-year amortization schedule. Sixty days prior to the end of the seven- year term, known as the Interest Rate Reset Date, the City can petition the Bank in writing of its desire to continue the loan. The Bank will have thirty days from receipt of that notification to decide whether or not to continue holding the Series 2013 Note. If the Bank declines or fails to notify the City of its intent, the principal amount due at that time plus accrued interest will need to be paid or refinanced.
4. The initial draft of the Loan Documents included provisions for the Bank to pass along costs incurred by changes in Federal Law or other means. This, in essence, would increase the interest rate and, therefore, increase loan costs to the City. The City was able to negotiate terms that mandate the Bank provide notice to the City at least 90 days in advance of any prospective change in the interest rate and will allow the City to prepay the loan without a prepayment penalty.
5. Except for instances as stated above in #3 and #4, the City would be required to pay a breakage fee if the City decided to prepay the loan.

In reviewing the information submitted to the City Council in 2013 regarding this loan, the information highlighted above was not specifically pointed out to the councilmembers prior to making their decision on the loan.

In November 2019, as a result to changes in federal tax law, the interest rate for the note was increased to 3.294% in accordance to note highlight number four listed above.

The City requested the note rate be continued in accordance to note highlight number three listed above. The new reset rate for the loan will be 2.53%. This decrease in the interest rate represents a total interest cost decrease of \$85,837. The current amount due to Wells Fargo for obligation #109 is \$2,449,384.41 and the maturity date is 11/01/2028.

The City will have to pay for bank note counsel in addition to the City's own note counsel. The total cost to the City to reset the rate will be approximately \$30,000. Due to the decrease in interest rate, City staff has calculated that the City will save \$10,000 in interest during this fiscal year making the net cost to reset the note at \$20,000. These funds will come from either fund balance or from the operating contingency budgeted in the general fund.

The City intends to make additional principal payments or set aside those additional payments in escrow to retire the debt before the maturity date. Our goal is to get the City debt free by 2024. The amended loan agreement contains a prepayment penalty if the interest rate at the time of the additional payment is lower than the reset rate. If the interest rate at the time of prepayment results in a prepayment penalty, staff will set aside the prepayment funds in an escrow account to avoid any such penalties.

The amended loan agreement does not have a reset rate; the interest rate is locked in until the loan expires in 2028.

RESOLUTION NO. 2020 - 42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA AUTHORIZING AND APPROVING AN AMENDED AND RESTATED LOAN AGREEMENT WITH WELLS FARGO BANK, NATIONAL ASSOCIATION RELATED TO THE RESET OF THE INTEREST RATE ON ITS CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2013; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; 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 previously entered into a Loan Agreement (the "Original Agreement") with Wells Fargo Bank, National Association (the "Lender") to refinance certain indebtedness of the City the proceeds of which were used to reimbursement the City of the costs incurred in connection with the proposed acquisition of the electric transmission and distribution facilities in the City and the costs of transportation and drainage improvements (collectively, the "Project").

B. The City's obligation under the Original Agreement are evidenced by its Capital Improvement Revenue Note Series 2013 (the "Series 2013 Note"). The Series 2013 Note is payable from and secured by a lien on the Pledged Funds, consisting of the City's receipts from the proceeds of the "local government half-cent sales tax," as defined and described in, and distributed to the City under Chapter 218, Part VI, Florida Statutes as amended (including emergency and supplement distributions deposited into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to Section 218.65, Florida Statutes, as amended) (the "Sales Tax Revenues") and amounts derived therefrom on deposit in the funds and accounts created under the Original Agreement. The Original Agreement provides that the interest rate on the Series 2013 Note is subject to being reset on November 13, 2020.

C. The Bank has submitted its proposal to reset the interest rate on the Series 2013 Note at 2.53% per annum through the maturity date of November 1, 2028 subject to certain adjustments as provided in the Series 2013 Note. In order to provide the terms of the interest rate reset on the Series 2013 Note the City and the Lender have agreed to amend and restate the terms and provisions of the Original Agreement in the Amended and Restated Loan

Agreement dated November 13, 2020 in substantially the form attached hereto as Exhibit A (the "Agreement").

SECTION 3. AUTHORIZING OF SERIES 2013 NOTE. Subject and pursuant to the provisions of this Resolution, the reset of the interest rate on the Series 2013 Note is hereby approved.

SECTION 4. SECURITY FOR THE SERIES 2013 NOTE. The Series 2013 Note will continue to be secured by a pledge of and lien on the Pledged Funds as provided in this Resolution and the Agreement.

The Series 2013 Note shall not be or constitute general obligations or an indebtedness of the City as "bonds" within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of the Pledged Funds as provided in this Resolution and the Agreement. No Holder of the Series 2013 Note shall ever have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any form of any property of or in the City, other than the Pledged Funds in the manner provided in this Resolution and the Agreement, or any property of or located within the boundaries of the City, for payment of the Series 2013 Note or for the making of any payments under this Resolution or the Series 2013 Note.

SECTION 5. ACCEPTANCE OF PROPOSAL. The Mayor and City Manager are hereby authorized to accept the proposal from Wells Fargo Bank, National Association.

SECTION 6. APPROVAL OF FORM OF LOAN AGREEMENT AND SERIES 2013 NOTE. The form of the Agreement and the Series 2013 Note attached thereto as an exhibit are hereby approved and the Mayor and City Manager / City Clerk are hereby authorized to execute and deliver such instruments, with such corrections, insertions and deletions as may be approved by such officers, such approval to be evidenced conclusively by his or her execution thereof, and to take such other actions as shall be consistent with this resolution. The provisions of the Agreement, as so executed and delivered, are hereby incorporated into and made a part of this Resolution.

SECTION 7. RESOLUTION TO CONSTITUTE CONTRACT. This Resolution and the Agreement shall be deemed to be and shall constitute a contract between the City and the Lender. The covenants and agreements in the Resolution and the Agreement set forth to be performed by the City shall be for the equal benefit, protection and security of the Lender.

SECTION 8. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

SECTION 9. 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 shall remain in full force and effect.

SECTION 10. 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 ON THE CITY OF SOUTH DAYTONA HELD IN THE CITY OF SOUTH DAYTONA, FLORIDA ON THE 10TH DAY OF NOVEMBER, 2020.

CITY OF SOUTH DAYTONA, FLORIDA

(SEAL)

William C. Hall
Mayor

ATTEST:

James L. Gillis, Jr.
City Manager

EXHIBIT A

AMENDED AND RESTATED LOAN AGREEMENT

KUTAK ROCK LLP
DRAFT 11/03/2020

AMENDED AND RESTATED LOAN AGREEMENT

between

CITY OF SOUTH DAYTONA, FLORIDA

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

City of South Daytona
Capital Improvement Revenue Note, Series 2013

Dated November 13, 2020

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EXHIBIT A Form of Series 2013 Note
EXHIBIT B Form of Investor Letter

This AMENDED AND RESTATED LOAN AGREEMENT made and entered as of November 13, 2020 , by and between the CITY OF SOUTH DAYTONA, FLORIDA (the "City") and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Bank").

WITNESSETH

WHEREAS, the City and the Bank have previously entered into that Loan Agreement dated as November 27, 2013 (the "Original Agreement") to refinance certain indebtedness the proceeds of which were used to fund certain expenditures related to the Project as herein described, which Project serves the essential public purposes of the City.

WHEREAS, the City and the Bank wish to establish the Reset Rate for the Series 2013 Note and make certain other changes to the Original Agreement by amending and restating the Original Agreement in its entirety pursuant to the terms of this Amended and Restated Loan Agreement.

WHEREAS, the City currently receives the Sales Tax Revenues, as herein defined, and the Sales Tax Revenues are not pledged or encumbered to pay any obligations of the City other than those owed to the Bank under the Original Agreement.

WHEREAS, the City has determined that it is in the best interest of the health, safety, and welfare of the City and the inhabitants thereof that the City pledge its Sales Tax Revenues together with the amounts derived therefrom in the funds and accounts created under the Original Agreement (collectively, the "Pledged Funds") to the repayment of the Series 2013 Note.

WHEREAS, the Series 2013 Note shall not constitute a general obligation or indebtedness of the City as a "bond" within the meaning of any provision of the Constitution of the State, but shall be and are hereby declared to be special, limited obligations of the City, the principal of and interest on which are payable solely from the Pledged Funds in the manner provided herein, and the principal of and interest on the Series 2013 Note and all other payments provided for herein, will be paid solely from the Pledged Funds, and the City will never be necessary or authorized to levy taxes on any real property of or in the City to pay the principal of or interest on the Series 2013 Note or other payments provided for herein. Furthermore, neither the Series 2013 Note nor the interest thereon, shall be or constitute a lien upon the Project or upon any other property of or in the City other than the Pledged Funds in the manner provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties do hereby agree to amend and restate the Original Agreement in its entirety as follows:

SECTION 1. DEFINITIONS. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

"Act" means Chapter 166, Florida Statutes, and other applicable provisions of law.

"Agreement" means the Original Agreement as amended and restated by this Amended and Restated Loan Agreement between the City and the Bank, as the same may be hereafter amended, modified or supplemented from time to time in accordance with the terms hereof.

"Amendment Effective Date" means November 13, 2020.

“Authorized Investments” means any obligations, deposit certificates, or other evidences of indebtedness legal for investment pursuant to law, to the extent not inconsistent with the terms of the investment policy of the City and applicable law.

“Bank” means Wells Fargo Bank, National Association, which has made the loan to the City pursuant to the terms of the Original Agreement and this Agreement, together with its successors and assigns.

“Base Rate” means, for any date of determination, a fluctuating rate of interest per annum equal to the highest of (a) the Fed Funds Rate plus 2.00%, (b) the Prime Rate plus 1.00%, or (c) 7.00%.

“Business Day” means any day of the year on which banks located in the City or in the City of New York, New York are not required or authorized by law to remain closed and on which the Bank and any Paying Agent and the New York Stock Exchange, Inc. are open for business.

“City” means City of South Daytona, Florida, together with its permitted successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended, and any rules and regulations promulgated thereunder.

“City Council” means the City Council of the City.

“Clerk” means the City Clerk of the City.

“Closing Date” means November 27, 2013.

“Default” means the occurrence of any event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

“Default Rate” means a variable per annum rate of interest equal to the sum of the Base Rate plus 3.00%.

“Determination of Taxability” has the meaning assigned in the Series 2013 Note.

“Event of Default” has the meaning assigned in Section 17 hereof.

“Fed Funds Rate” means, for any date of determination, a fluctuating rate of interest per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by Wells Fargo Bank, National Association from three federal funds brokers of recognized standing selected by Wells Fargo Bank, National Association. Each determination of the Fed Funds Rate by Wells Fargo Bank, National Association shall be conclusive and binding on the City.

“Fiscal Year” means the fiscal year of the City which is the period from each October 1 to the succeeding September 30.

“Maturity Date” means November 27, 2028.

“Maximum Annual Debt Service” means, as of any particular date of calculation, the greatest amount of aggregate annual debt service for the outstanding Series 2013 Note, any outstanding Parity

Obligations and any Parity Obligations then proposed to be issued by the City, which, in each case, will come due in the then current or any future Fiscal Year.

“Original Agreement” means the Loan Agreement between the City and the Bank dated the Closing Date, which is hereby amended and restated in its entirety.

“Original Note” means the Series 2013 Note, as defined in the Original Agreement.

“Parity Obligations” means any debt of the City payable from or secured by a pledge of or lien upon all or any portion of the Sales Tax Revenues, excluding any such debt which is expressly stated to be junior and subordinate to the Series 2013 Note.

“Paying Agent” means the Clerk.

“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, limited liability companies, other legal entities and natural persons.

“Pledged Funds” shall mean and include (a) the Sales Tax Revenues, and (b) the amounts and investments on deposit in the Sinking Fund created herein.

“Prime Rate” means, for any date of determination, the rate of interest per annum most recently established by Wells Fargo Bank, National Association in its sole discretion as its “prime rate.” The parties hereto acknowledge that the rate announced by Wells Fargo Bank, National Association as its prime rate is an index or base rate and shall not necessarily be publicly announced or be its lowest or best rate charged to its customers or other banks. If at any time (a) Wells Fargo Bank, National Association ceases to exist or (b) Wells Fargo Bank, National Association ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported). Each change in the Prime Rate shall be effective without notice as of the opening of business on the day such change in the prime rate occurs.

“Project” means (a) expenditures incurred by the City in connection with the acquisition of electric transmission and distribution facilities serving the City and its residents; (b) the cost of transportation improvements including but not limited to the U.S. 1 Corridor Phase 1, the Oak Lea Subdivision Bridge Replacement, Big Tree Road/Magnolia Avenue Intersection Improvements, Lantern Park Subdivision Bridge Replacement; and (c) the cost of drainage improvements, including but not limited to the Green Street Drainage Improvements.

“Project Costs” means all or a portion of the costs of the Project; engineering, legal, accounting, and financial expenses; expenses for estimates of costs and of revenues; expenses for plans, specifications and surveys; fees of fiscal agents, financial advisors or consultants; administrative expenses relating solely to the acquisition and construction of the Project; reimbursement to the City for any sums heretofore expended for the foregoing purposes; and such other costs and expenses as may be necessary or incidental to the financing or refinancing of the Project.

“Register” means the books maintained by the City in which are recorded the names, and addresses of the holder of the Series 2013 Note.

“Regulations” means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 in effect from time to time.

“Sales Tax Revenues” means the proceeds of the “local government half-cent sales tax,” as defined and described in, and distributed to the City under Chapter 218, Part VI, Florida Statutes as amended (including emergency and supplement distributions deposited into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to Section 218.65, Florida Statutes, as amended).

“Series 2013 Note” means the promissory note of the City to the Bank in substantially the form attached hereto as Exhibit A with such modifications thereto as may be approved by the Mayor, upon the advice of the City Attorney and bond counsel, such approval to be presumed by the Mayor’s execution thereof, as the same may amended, modified or supplemented from time to time in accordance with its terms and the terms hereof.

“Sinking Fund” means the fund created and established pursuant to Section 10 hereof.

“State” means the State of Florida.

“Taxable Rate” has the meaning assigned in the Series 2013 Note.

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 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 3. THE LOAN. The Bank made a loan to the City hereby in the principal amount of \$4,200,000 (the “Loan”) pursuant to the Original Agreement which is currently outstanding in the principal amount of \$2,449,384.41 evidenced by the Original Note. From and after the Amendment Effective Date the City’s obligation to repay the Loan shall be evidenced by this Agreement and the Series 2013 Note. On the Amendment Effective Date the Original Note shall be exchanged by the Bank for the Series 2013 Note plus accrued interest to Amendment Exchange Date.

SECTION 4. DESCRIPTION OF SERIES 2013 NOTE. The Loan shall be evidenced by the Series 2013 Note. The Series 2013 Note shall be issued on the Amendment Effective Date in fully registered form, without coupons; shall be dated as of the date of its delivery; shall be in the denomination equal to the outstanding principal amount of the Loan; shall bear interest on the outstanding amount thereof at the interest rate determined as set forth below, calculated on a 30-day month and 360-day year basis and subject to adjustment as set forth in Schedule B to the Series 2013 Note. Interest on the Series 2013 Note shall be payable semiannually on each May 1 and November 1 commencing on May 1, 2021, and at maturity. The Series 2013 Note shall mature on the Maturity Date. Following the Amendment Effective Date, the Loan shall be repaid in annual principal installments on November 1 of each year as follows:

Year	Principal Installment
2021	\$278,115.37
2022	\$285,703.37
2023	\$293,498.39
2024	\$301,506.08
2025	\$309,732.25

2026	\$318,182.86
2027	\$326,864.04
2028 (Maturity Date)	\$335,782.05

The Series 2013 Note shall bear interest at a rate per annum equal to ___% per annum; provided, however, during the continuance of an Event of Default the Note shall bear interest at the Default Rate; and provided further, upon a Determination of Taxability, the Series 2013 Note shall bear interest at the Taxable Rate, all as more particularly provide in the Series 2013 Note.

The Series 2013 Note may be prepaid in whole or in part prior to maturity as provided in the Series 2013 Note. Notice of such prepayment shall, be mailed, postage prepaid, at least 10 days prior to the redemption date by the City to the Bank at its address as it appears of record on the books of the City as of 15 days prior to the date fixed for redemption. Under such circumstances the privilege of transfer or exchange of the Series 2013 Note shall be suspended.

SECTION 5. EXECUTION OF SERIES 2013 NOTE. The Series 2013 Note shall be executed in the name of the City by the Mayor, and attested and countersigned by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2013 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 2013 Note shall hold such office in the City, although at the date of such Series 2013 Note such person may not have been so authorized. The Series 2013 Note may be executed by the facsimile signatures of the Mayor or Clerk.

SECTION 6. REGISTRATION AND TRANSFER OF SERIES 2013 NOTE. The Series 2013 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 the Series 2013 Note, shall be conclusively deemed to have agreed that such Series 2013 Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

The person in whose name ownership of any Series 2013 Note is shown on the Register to be maintained by the City shall be deemed the owner thereof by the City , and any notice to the contrary shall not be binding upon the City . The City may treat the registered owner as the absolute owner of the Series 2013 Note for all purposes, whether or not such Series 2013 Note shall be overdue, and shall not be bound by any notice to the contrary.

Ownership of the Agreement and the Series 2013 Note may be transferred in whole, but not in part, only upon the Register. Upon surrender to the City for transfer or exchange of the Series 2013 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 City shall deliver in the name of the registered owner or the transferee or transferees, as the case may be, a new fully registered Series 2013 Note in the outstanding principal amount of the Loan and of the same maturity and interest rate and for the aggregate principal amount as the Series 2013 Note surrendered.

The City 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 the Series 2013 Note. 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 Series 2013 Note shall be delivered.

The new Series 2013 Note delivered upon any transfer or exchange shall be a valid obligation of the City, evidencing the same debt as the Series 2013 Note surrendered, shall be secured under this Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2013 Note surrendered.

Whenever the Series 2013 Note shall be delivered to the City for cancellation, upon payment of the principal amount thereof together with all accrued interest, or for replacement, transfer or exchange, such Series 2013 Note shall be canceled and destroyed by the City, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the City.

Notwithstanding the foregoing, the Agreement and the Series 2013 Note may only be transferred in whole, and not in part, to (x) an affiliate of the Bank, (y) a trust or custodial arrangement established by the Bank or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), or (z) to a Person that is a qualified institutional buyer that is a commercial bank having a combined capital and surplus, determined as of the date of any transfer, of \$5,000,000,000 or more that has executed and delivered to the City an Investor Letter in the form of Exhibit B hereto.

SECTION 7. SERIES 2013 NOTE MUTILATED, DESTROYED, STOLEN OR LOST. In case the Series 2013 Note shall be mutilated, or be destroyed, stolen or lost, upon the registered owner furnishing the City proof of its ownership thereof and satisfactory indemnity (provided that if the owner of Series 2013 Note has a minimum net worth of at least \$25,000,000, such person's own unsecured agreement of indemnity shall be deemed to be satisfactory), and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur, the City shall issue and deliver a new Series 2013 Note of like tenor as the Series 2013 Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2013 Note, if any destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2013 Note, upon surrender of such mutilated Series 2013 Note, if any, to the City and the cancellation thereof; provided however, if the Series 2013 Note shall have matured or be about to mature, instead of issuing a substitute Series 2013 Note, the City may pay the same, upon being indemnified as aforesaid, and if such Series 2013 Note be lost, stolen or destroyed, without surrender thereof. Any Series 2013 Note surrendered under the terms of this Section 7 shall be canceled by the City.

Any such duplicate Series 2013 Note issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the City whether or not, as to duplicate Series 2013 Note, the lost, stolen or destroyed Series 2013 Note be at any time found by anyone, and such duplicate Series 2013 Note shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the special funds, as hereinafter pledged, to the same extent as the other Series 2013 Note issued hereunder.

SECTION 8. FORM OF SERIES 2013 NOTE. The Series 2013 Note shall be in substantially the form of Exhibit A hereto with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Agreement.

SECTION 9. SECURITY FOR SERIES 2013 NOTE, SERIES 2013 NOTE NOT DEBT OF THE CITY. The payment of the principal of and interest on the Series 2013 Note shall be secured forthwith, by a lien upon and a pledge of the Pledged Funds. The City hereby irrevocably pledges the Pledged Funds to the repayment of the principal of and interest on the Series 2013 Note other amounts owing hereunder and

under the Series 2013 Note. The Series 2013 Note shall not constitute a general obligation or indebtedness of the City and the Bank shall never have the right to require or 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 2013 Note. The City does hereby irrevocably pledge the Pledged Funds to the payment of the principal of and interest on the Series 2013 Note.

The City covenants to do all things necessary on its part to maintain its eligibility to receive distributions of the Sales Tax Revenues pursuant to Chapter 218, Part VI, Florida Statutes.

The City does further covenant and represent that it has power under the Act to irrevocably pledge the Pledged Funds to the payment of the principal of and interest on the Series 2013 Note and that the pledge of the Pledged Funds in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent resolution, ordinance or other proceeding of the City Council, or by any subsequent act of the Legislature of the State of Florida.

SECTION 10. COVENANTS OF THE CITY. So long as any of the principal of or interest on the Series 2013 Note shall be outstanding and unpaid and until all other amounts owing hereunder and under the Series 2013 Note have been repaid in full, the City covenants with the Bank as follows:

(A) Maintenance of Existence. The City will take all reasonable legal action within its control in order to maintain its existence until all amounts due and owing from the City to the Bank under this Agreement and the Series 2013 Note has been paid in full.

(B) Compliance with Laws. The City shall comply with all applicable federal, state and local laws and regulatory requirements, the violation of which could reasonably be expected to have a material and adverse effect upon the financial condition of the City or upon the ability of the City to perform its obligation hereunder and under the Series 2013 Note.

(C) Tax Compliance. The City will take all actions necessary to maintain the exclusion from gross income of interest on the Series 2013 Note.

(D) Financial Statements. Not later than 270 days following the end of each Fiscal Year, the City shall provide the Bank the annual audited financial statement of the City audited by the City's certified public accountants together with the report of such accountant's containing only such qualifications as are reasonably acceptable to the Bank.

(E) Annual Budget and Other Information. The City shall prepare its annual budget in accordance with Florida law, and shall provide the Bank a copy of its final annual budget for each Fiscal Year within 30 days of adoption thereof by the City Council. The City will provide such other public information as the Bank may reasonably request. Information and financial statements provided pursuant to this Subsection 10(E) and Subsection 10(D) shall be provided in written (not-electronic) form at no cost to the Bank.

(F) Payment From Pledged Funds. The City will duly and punctually pay or cause to be paid from the Pledged Funds, as provided herein, the principal of, and interest and premium, if any, on the Series 2013 Note.

(G) Sinking Fund. The City hereby creates and establishes a special separate fund to be called the "City of South Daytona, Florida Series 2013 Note Sinking Fund" (hereinafter called

the "Sinking Fund"). The City shall deposit monthly, as received, Sales Tax Revenues in the Sinking Fund each month equal to one sixth of interest coming due on the Loan on the next semi-annual interest payment date described in Section 4 hereof and one twelfth of the principal coming due on the Loan on the next annual principal payment date described in Section 4 hereof, plus the amount necessary to satisfy any deficiencies in prior monthly deposits.

The Sinking Fund shall constitute a trust fund for the purposes provided herein, and shall be kept separate and distinct from all other funds of the City and used only for the purposes and in the manner provided by this Agreement. Amounts on deposit in the Sinking 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 and, if not so invested, shall be continuously secured in the same manner as municipal deposits are authorized to be secured by the laws of the State. All income from the investment of moneys in the fund and accounts established by this Agreement shall, upon receipt thereof, be deposited to the credit of the Sinking Fund, credited against the deposits required to be made thereto, and used for the purposes thereof.

The designation of a special fund by this Agreement shall not be construed to require the establishment of any completely independent, self-balancing funds, 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 the foregoing fund established herein may be deposited 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 into the fund established hereunder and to control the restricted uses of such moneys and investments for the various purposes as herein provided.

The City shall not be required to make any further payments into the Sinking Fund when the aggregate amount of money and Authorized Investments in said funds and accounts is at least equal to the total principal of the Series 2013 Note then outstanding and all interest to come due thereon to the Maturity Date plus all other amounts owing hereunder and under the Series 2013 Note.

(H) Enforcement of Collections. The City will diligently enforce and collect, or cause to be enforced and collected, as applicable, the Sales Tax Revenues; will take, or cause to be taken, all reasonable steps, actions and proceedings for the enforcement and collection thereof as shall become delinquent, to the full extent permitted or authorized by law, and will maintain accurate records with respect thereof. All Sales Tax Revenues shall, as collected, be held in trust to be applied as herein provided and not otherwise.

(I) Issuance of Additional Obligations. The City will not issue any other obligations, payable from the Pledged Funds or any part thereof, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority to or being on a parity with the lien created herein in favor of the Series 2013 Note upon the Pledged Funds, or any part thereof except upon the conditions and in the manner set forth below in this Section 10(I) Any other obligations issued by the City, in addition to the Series 2013 Note and the Parity Obligations, payable from the Pledged Funds or any portion thereof, shall contain an express statement that such obligations are junior and subordinate in all respects to the payment of the

principal and interest on the Series 2013 Note as to lien on and source and security for payment from the Pledged Funds.

No additional Parity Obligations shall be issued, except under the following conditions and in the manner herein provided:

(1) There shall have been filed with the City and the Bank a certificate of an independent certified public accountant or of the Finance Director of the City (a) setting forth the amount of Sales Tax Revenues received by the City for each of the two Fiscal Years immediately preceding the proposed date of issuance of such additional Parity Obligations; and (b) stating that the amount of such Sales Tax Revenues so received in each of such Fiscal Years is equal to at least 1.5 times the Maximum Annual Debt Service.

(2) The foregoing provision notwithstanding, additional Parity Obligations may be issued to refund any portion of the outstanding Parity Obligations (including any maturity or portion of a maturity) without compliance with the above paragraph so long as the Maximum Annual Debt Service is not increased as a result of such refunding.

(3) For purposes of determining the Maximum Annual Debt Service, the rate of interest on any outstanding Parity Obligations or additional Parity Obligations bearing a variable interest rate shall be deemed greater of (i) 7.00 percent per annum (or, if less, the maximum rate applicable thereto) or (ii) the highest rate interest borne by any outstanding Parity Obligations during the month preceding the date of calculation.

(4) No Default or Event of Default shall have occurred and be continuing and the Sinking Fund shall be fully funded as required in Subsection 10(G) hereof.

(5) Each resolution authorizing the issuance of additional Parity Obligations will recite that all of the covenants herein contained will be applicable to such additional Parity Obligations.

(J) Margin Stock. The City did not use or permit any part of the proceeds of the Series 2013 Note to be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended from time to time) or other leveraged investments or to extend credit to others for the purpose of purchasing or carrying any margin stock or other leveraged investments.

(K) Derivative Transactions. The City will not enter into any interest rate swap, cap or collar agreement or similar derivative arrangement providing for the transfer or mitigation of interest rate risks either generally or under specific contingencies without the prior written consent of the Bank.

SECTION 11. APPLICATION OF PROCEEDS. The proceeds of the Series 2013 Note were applied for the purposes provided in the Original Agreement. The Bank shall have no responsibility for the use of the proceeds of the Series 2013 Note, and the use of proceeds by the City shall in no way affect the rights of the Bank.

SECTION 12. CONDITIONS PRECEDENT. The obligation of the Bank to exchange the Original Note for the Series 2013 Note is subject to the satisfaction of each of the following conditions precedent on or before the Amendment Effective Date:

(A) Action. The Bank shall have received copies of all action taken by the City approving the execution and delivery by the City of this Agreement and the financing documents to which the City is a party, in each case certified as complete and correct as of the closing date.

(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 Agreement and the financing documents to which it is a party on behalf of the City.

(C) Opinion of Counsel to the City. The Bank shall have received a written opinion of counsel to the City covering matters relating to the transactions contemplated by this Agreement and the financing documents, in form and substance satisfactory to the Bank.

(D) Opinion of Bond Counsel. The Bank shall have received a legal opinion of bond counsel as to the validity of the Series 2013 Note and the exclusion of the interest on the Series 2013 Note from gross income for federal income tax purposes in form and substance satisfactory to the Bank.

(E) No Default, Etc. No Default or Event of Default shall have occurred and be continuing as of the Amendment Effective Date; the representations and warranties made by the City shall be true and correct in all material respects on and as of the closing date, as if made on and as of such date; and the Bank shall have received a certificate from the City to the foregoing effect.

(F) No Change in Law. There shall have been no change in law, rule, regulation (or the interpretation of administration thereof) that, in each case, may adversely affect the consummation of the transactions set forth herein, as determined by the Bank in its sole discretion.

(G) Disclosure of Litigation. The City shall have disclosed to the Bank any pending or threatened litigation which if adversely determined may have a material adverse effect upon the City's right to collect and receive Pledged Funds.

(H) 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. REPRESENTATIONS AND WARRANTIES. The City represents and warrants to the Bank that:

(A) Organization. The City is a municipal corporation organized under the laws of the State of Florida.

(B) Authorization of Agreement and Related Documents. The City has the power and has taken all necessary action to authorize the execution, delivery and performance of the City's obligations under this Agreement and the Series 2013 Note in accordance with their respective terms. The City has obtained all necessary governmental and regulatory approvals required to be obtained prior to the execution and delivery of this Agreement and the Series 2013 Note. This

Agreement and the Series 2013 Note have been duly executed and delivered by the City and each is, and each of the financing documents to which it is a party when executed and delivered will be, legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization or moratorium applicable to the City and general equitable principles regarding the availability of specific performance.

(C) Pledged Funds. The City currently receives the Sales Tax Revenues, and is legally entitled to pledge the Pledged Funds to pay the principal of and interest on the Series 2013 Note, when due. The Pledged Funds are estimated to be sufficient to pay the principal of and interest on the Series 2013 Note as the same becomes due and to make all other payments required to be made from such Pledged Funds by the terms of this Agreement or pursuant to which all or any portion of the Pledged Funds may be obligated. The Pledged Funds are not now pledged or encumbered in any manner except in favor of the Bank pursuant to the Original Agreement.

(D) Financial Statements. The financial statements of the City for the year ending September 30, 2019, copies of which have been furnished to the Bank, have been prepared in accordance with generally accepted accounting principles and present fairly the financial condition of the City as of such date and the results of its operations for the period then ended. Since such date, there has been no material adverse change in the financial condition, revenues (including, without limitation, the Sales Tax Revenues), properties or operations of the City.

SECTION 14. TAX COMPLIANCE. Neither the City nor any third party over whom the City has control, has or will make any use of the proceeds of the Series 2013 Note at any time during the term thereof which would cause the Series 2013 Note to be "private activity bonds" within the meaning of Section 103(b)(1) of the Code or "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code. The City Council covenants throughout the term of the Series 2013 Note to comply with the requirements of the Code and the Regulations, as amended from time to time.

The City has caused the Original Note to be deemed a "qualified obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended. Should subsequent but currently unforeseen actions by the City cause the obligation to be classified as a "non-qualified obligation" pursuant to Section 265(b)(3)(B), Internal Revenue Code of 1986, as amended, the rate shall be adjusted to that level necessary to ensure that the anticipated after tax yield contemplated by the Bank at the time of closing is received.

In the event that the interest on the Series 2013 Note is ever determined to be taxable for purposes of federal or state income taxation, or in the event that any or all of the interest on the Series 2013 Note is deemed to be included in the gross income of the Bank for federal or state income taxation, the interest on the Series 2013 Note shall be subject to modification as set forth on Schedule B to the Series 2013 Note. In no event, however, shall the interest rate on the Series 2013 Note exceed the maximum rate permitted by law.

SECTION 15. DESIGNATION PURSUANT TO INTERNAL REVENUE CODE. The City hereby designated the Series 2013 Note as qualified tax-exempt obligations of the City pursuant to the provisions of Section 265(b)(3)(B) of the Internal Revenue Code of 1986.

SECTION 16. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

City: City of South Daytona, Florida
P.O. Box 214960
South Daytona, Florida 32809
ATTENTION: City Manager
Telephone:
Email:

Bank: Wells Fargo Bank, National Association
1 Independent Drive, 8th Floor
Jacksonville, Florida 32202
ATTENTION: Brian T. Gibson, Vice President
Telephone: (904) 351-7752
Email: brian.t.gibson@wellsfargo.com

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 to the Bank via email shall be confirmed by delivery of a hard copy thereof to the Bank not later than two (2) Business Days after such communication by email.

SECTION 17. EVENTS OF DEFAULT DEFINED. The following shall be "Events of Default under this Agreement and the term "Events of Default" shall mean (except where the context clearly indicates otherwise), when whenever such term is used in this Agreement, any one or more of the following events:

(A) Failure by the City to timely pay any principal or interest payable on the Series 2013 Note on the date on which such payments are due and payable;

(B) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice of such failure is given to the City by the Bank, specifying such failure and requesting that it be remedied, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

(C) Any warranty, representation or other statement by the City or by an officer or agent of the City contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect when made;

(D) A petition is filed 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, and an order for relief is entered or such petition is not dismissed within sixty (60) days of such filing;

(E) The City files a voluntary petition in bankruptcy or seeks 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 consents to the filing of any petition against it under such law;

(F) The City admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator or trustee) of the City or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 60 days;

(G) Any debt incurred or assumed by the City which is secured by all or any portion of the Pledged Funds (i) is not paid when due nor within any applicable grace period in any agreement or instrument relating to such debt, (ii) becomes due and payable before its scheduled maturity by reason of a default or event of default, however described, or (iii) becomes subject to a moratorium; or

(H) This Agreement or the Series 2013 Note or any material provision of this Agreement or of the Series 2013 Note shall at any time, for any reason, cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be unenforceable, invalid or void, or the validity or enforceability thereof shall be contested by the City, or the City shall renounce the same or deny that it has any further liability hereunder or thereunder.

SECTION 18. REMEDIES. Upon the occurrence of an Event of Default the Bank may sue to protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, of the United States of America, or granted and contained in this Agreement, and to enforce and compel the performance of all duties required by this Agreement or by any applicable laws to be performed by the City or by any officer thereof, and may take all steps to enforce this Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America.

In addition, upon the occurrence of an Event of Default described in Sections 17(D), 17(E) or 17(F) above, and upon the occurrence of any other Event of Default and 30 days' notice to the City by the Bank, the principal of and interest on the Series 2013 Note shall immediately become due and payable.

Any amount due hereunder not paid when due shall bear interest at the default rate equal to the Default Rate.

SECTION 19. NO RECOURSE. No recourse shall be had for the payment of the principal of and interest on the Series 2013 Note or for any claim based on the Series 2013 Note or on this Agreement, against any present or former member or officer of the City or any person executing the Series 2013 Note.

SECTION 20. 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 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 Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

SECTION 21. INCREASED COSTS AND CAPITAL ADEQUACY; TAXES.

(A) Increased Costs.

(1) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant;

(ii) subject to the Bank or any Participant to any Tax of any kind whatsoever with respect to this Agreement, or change the basis of taxation of payments to the Bank or such Participant in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 21(B) hereof and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank or any Participant); or

(iii) impose on the Bank or any Participant any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to the Bank or such Participant related to issuing or maintaining this Agreement, or to reduce the amount of any sum received or receivable by the Bank or such Participant hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank or such Participant, the City shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant, as the case may be, for such additional costs incurred or reduction suffered.

(2) *Capital Requirements.* If the Bank or any Participant determines that any Change in Law affecting the Bank or such Participant or the Bank's or such Participant's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's or such Participant's or the Bank's or such Participant's parent or holding company holding, if any, as a consequence of this Agreement, or for maintaining this Agreement, to a level below that which the Bank or such Participant or the Bank's or such Participant's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Participant's policies and the policies of the Bank's or such Participant's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank or such Participant the City shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant or the Bank's or such Participant's parent or holding company for any such reduction suffered.

(3) *Certificates for Reimbursement.* A certificate of the Bank or a Participant setting forth the amount or amounts necessary to compensate the Bank or any such Participant or the Bank's or any such Participant's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the City, shall be conclusive absent manifest error. The City shall pay the Bank or any such Participant,

as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(4) *Delay in Requests.* Failure or delay on the part of the Bank or any such Participant to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's or any such Participant's right to demand such compensation.

(5) *Limitation.* Notwithstanding the foregoing, the City shall not be required to compensate the Bank or any such Participant pursuant to this Section 21(A) for any increased costs incurred or reductions suffered prior to the date ninety (90) days after the date that the Bank or any such Participant, as the case may be, notifies the City of the Change in Law giving rise to such increased costs or reductions, and of the Bank's or any such Participant's intention to claim compensation therefor.

(B) Taxes.

(1) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the City hereunder or under the Series 2013 Note shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the City shall be required by Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank or any Participant receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions and (iii) the City shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(2) *Payment of Other Taxes by the City.* Without limiting the provisions of paragraph (a) above, the City shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(3) *Indemnification by the City.* The City shall indemnify the Bank and each Participant, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank or any Participant and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, however, that the City shall not be obligated to reimburse the Bank or any Participant for any penalties, interest or expenses relating to Indemnified Taxes or Other Taxes arising from such indemnified party's own gross negligence or willful misconduct. A certificate stating in reasonable detail the amount of such payment or liability delivered to the City by the Bank or any Participant shall be conclusive absent manifest error. In addition, the City shall indemnify the Bank and each Participant, within ten (10) days after demand therefor, for any incremental Taxes that may become payable by the Bank or any Participant as a result of any failure of the City to pay any Taxes when due to the appropriate Governmental

Authority or to deliver to the Bank or any Participant pursuant to clause (d), documentation evidencing the payment of Taxes.

(4) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the City to a Governmental Authority, the City shall deliver to the Bank or such Participant the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank or such Participant, as applicable.

(5) *Treatment of Certain Refunds.* If the Bank or any Participant determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the City pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable indemnifying party, upon the request of the Bank, or such Participant, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank or such Participant in the event the Bank or such Participant is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank or any Participant be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank or any Participant to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the City or any other Person.

(6) *Survival.* Without prejudice to the survival of any other agreement of the City hereunder, the agreements and obligations of the City contained in this Section shall survive the termination of this Agreement and the payment in full of the Series 2013 Note and the obligations of the City thereunder and hereunder.

(C) Definitions. For purposes of this Section 21, the following definitions shall apply:

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Change in Law” means the occurrence, after the Date of Issuance, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any

Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Excluded Taxes" means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the City is located.

"Governmental Approvals" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

"Participant(s)" means any bank(s) or other financial institution(s) that may purchase from the Bank a participation interest in this Agreement and certain of the Related Documents pursuant to a participation agreement between the Bank and the Participant(s).

"Related Documents" this Loan Agreement, the Series 2013 Note and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the Effective Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

SECTION 22. USURY. The Bank shall not be entitled to receive payment of interest hereunder or under the Series 2013 Note in excess of the maximum rate permitted by applicable law. If the Bank receives less interest during any period than it would be entitled to receive hereunder and under the Series 2013 Note by reason of the limitation to the maximum legal rate of interest, during any subsequent period in which the rate of interest to which the Bank is otherwise entitled hereunder and under the Series 2013 Note is less than such maximum legal rate of interest, the Bank shall instead receive interest at a rate equal to the maximum legal rate of interest until the Bank has received, in the aggregate, the amount of interest due the Bank hereunder and under Series 2013 Note without regard to the limitation to the maximum lawful rate. In addition, to the extent permitted by applicable law, if the principal amount of the Series 2013 Note comes due or is prepaid and the Bank has not received, in the aggregate, the amount of interest due the Bank hereunder and under the Series 2013 Note, the City shall pay the Bank, upon the coming due or prepayment of such principal amount, the amount of interest due the Bank hereunder and under the Series 2013 Note, without regard to the limitation of the maximum lawful rate, and not otherwise paid hereunder or thereunder.

SECTION 23. BINDING EFFECT; TRANSFER AND ASSIGNMENT LIMITATIONS. (A) To the extent provided herein, this 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. The City shall not assign its obligations, rights and interest hereunder without the prior written consent of Bank, and any attempt by the City to assign without Bank’s prior written consent is null and void. Any assignment shall not release the City from its obligations hereunder.

(B) Without limitation of the foregoing generality, the Bank may at any time sell or otherwise transfer this Agreement and the Series 2013 Note to the extent permitted under Section 6 hereof. Any transferee of this Agreement and the Series 2013 Note shall succeed to the rights of the Bank hereunder.

(C) In addition, the Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Series 2013 Note and this Agreement to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

(D) In addition, the Bank shall have the right to grant participations in this Agreement and the Series 2013 Note to one or more other banking institutions, and such participants shall be entitled to the benefits of this Agreement to the same extent as if they were a direct party hereto; provided, however, the City may deal exclusively with the Bank for all purposes of this Agreement notwithstanding such participation. The Bank may disclose to any participants or prospective participants any information or other data or material in the Bank’s possession relating to this Agreement and the City, without the consent of or notice to the City.

SECTION 24. OTHER CREDIT FACILITIES. In the event that the City shall, directly or indirectly, enter into or otherwise consent to any credit agreement, bond purchase agreement, liquidity agreement or other agreement or instrument, or any amendment, supplement or modification thereto (each

an "Other Credit Facility" and collectively the "Other Credit Facilities") secured or payable from Pledged Funds, under which, directly or indirectly, any person or persons undertake to make loans or extend credit or liquidity to the City, which Other Credit Facility provides such person or persons with more restrictive covenants and or greater rights and remedies than are provided to the Bank in this Agreement, such more restrictive covenants and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such more restrictive covenants and/or such greater rights and remedies as if specifically set forth herein. The City shall provide the Bank with a copy of each such agreement (or amendment thereto) which provides such more restrictive covenants and/or greater rights and remedies and, if requested by the Bank, the City shall promptly enter into an amendment to this Agreement to include such more restrictive covenants and/or greater rights or remedies (provided that the Bank shall maintain the benefit of such more restrictive covenants and/or greater rights and remedies even if the City fails to provide such amendment). This section shall not apply to the amount of the interest rate on any Other Credit Facilities or adjustments thereto.

SECTION 25. WAIVER OF JURY TRIAL. To the extent permitted by applicable law, each of the City and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement or any related document, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

SECTION 26. PATRIOT ACT NOTICE. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts and includes the making of Advances under the Series 2013 Note.

SECTION 27. AMENDMENTS, CHANGES AND MODIFICATIONS. This Agreement and the Series 2013 Note may be amended only with the written consent of the Bank.

SECTION 28. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 29. EXECUTION IN COUNTERPARTS. This 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 30. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 31. ADVISORY OR FIDUCIARY RESPONSIBILITY. In connection with all aspects of the transactions contemplated by this Agreement and the Series 2013 Note (including in connection with any amendment, waiver or other modification of this Agreement or the Series 2013 Note), the City acknowledges and agrees that: (A)(1) any arranging, structuring and other services regarding this Agreement and the Series 2013 Note provided by the Bank or any affiliate of the Bank are arm's length commercial transactions between the City on the one hand, and the Bank and any affiliate of the Bank on the other hand, (2) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (3) the City is capable of evaluating, and understands and accepts, the terms,

risks and conditions of the transactions contemplated by this Agreement and the Series 2013 Note; (B)(1) the Bank and each affiliate of the Bank is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the City or any other Person and (ii) neither the Bank nor any affiliate of the Bank has any obligation to the City with respect to the transactions contemplated by this Agreement and the Series 2013 Note, except those obligations expressly set forth herein; and (C) the Bank and each affiliate of the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Bank nor any affiliate of the Bank has any obligation to disclose any of such interests to the City. To the fullest extent permitted by applicable law, the City hereby waives and releases any claims that it may have against the Bank and each affiliate of the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of the transactions contemplated by this Agreement and the Series 2013 Note.

SECTION 32. ELECTRONIC SIGNATURES. The parties agree that the electronic signature of a party to this Agreement and the Series 2013 Note shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and the Series 2013 Note. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

SECTION 33. AMENDMENT AND RESTATEMENT. This Agreement shall become effective on the Amendment Effective Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. Such amendment and restatement shall not constitute or result in a novation of the indebtedness owed under the Original Agreement. From and after the Amendment Effective Date, all references made to the Original Agreement in any instrument or document shall, without more, be deemed to refer to this Agreement. .

[Signatures continued on following page]

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

CITY OF SOUTH DAYTONA, FLORIDA

(SEAL)
ATTEST:

By: _____
William C. Hall
Mayor

By: _____
James L. Gillis, Jr.
City Manager / City Clerk

APPROVED AS TO LEGAL FORM:

Scott E. Simpson
City Attorney

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Brian T. Gibson
Vice President

EXHIBIT A

FORM OF SERIES 2013 NOTE

This Note is subject to the restrictions on transfer set forth in Section 6 of Loan Agreement referenced below and may only be transferred to a Person that is (A) an affiliate of the Bank, (B) a trust or other custodial arrangement established by the Bank or an affiliate of the Bank, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or (C) a commercial bank that is a qualified institutional buyer having capital and surplus of \$5,000,000.00 or more that executes an Investor Letter in the form of Exhibit B to the Loan Agreement, referenced below.

NO. R-2

CITY OF SOUTH DAYTONA, FLORIDA
AMENDED AND RESTATED CAPITAL IMPROVEMENT NOTE, SERIES 2013

<u>RATE OF INTEREST</u>	<u>MATURITY DATE</u>	<u>DATE OF ISSUE</u>
2.53%	November 27, 2028	November 13, 2020
REGISTERED OWNER:	WELLS FARGO BANK, NATIONAL ASSOCIATION,	
PRINCIPAL AMOUNT:	\$2,449,384.41	

The City of South Daytona, Florida (the “City”), for value received, hereby promises to pay to the Registered Owner above or registered assigns, solely from the special funds mentioned below, the Principal Amount set forth above, in the amounts and on the dates set forth in Schedule A hereto without presentation and surrender hereof, and to pay solely from such special funds, interest on the principal amount, at the annual Rate of Interest set forth above (subject to adjustment as described herein), until payment of the entire Principal Amount above stated, payable by check or draft of the paying agent on May 1, 2021 and semi-annually thereafter on each November 1 and May 1, such interest to be calculated on a 360-day year consisting of twelve 30-day months. The Rate of Interest on this Series 2013 Note is subject to adjustment as set forth in Schedule B hereto. All amounts payable hereunder are payable in lawful money of the United States of America.

This Series 2013 Note is issued under the authority of Chapter 166, Florida Statutes, Chapter 212, Florida Statutes, and other applicable provisions of law, and pursuant and subject to the terms and conditions of a resolution duly adopted by the City on November 10, 2020 (the “Resolution”), and an Amended and Restated Loan Agreement dated November 13, 2020 (the “Loan Agreement”), to which reference should be made to ascertain those terms and conditions.

This Series 2013 Note may be prepaid in whole or in part prior to its stated date of maturity, at the option of the City, at any time, and such prepayments shall be applied to reduce the principal balance of this Series 2013 Note remaining outstanding an unpaid in inverse order of the scheduled payments set for the in Schedule A hereto. Any such prepayment is subject to the payment of a breakage fee calculated as provided in Schedule C hereto, provided, however, that no such breakage fee shall be payable in the event that such prepayment is made within ninety (90) days after the City has been notified by the Registered Owner that it is exercising its rights under Section 21 of the Loan Agreement to pass through increased costs or taxes to the City. Notice of such redemption shall be given in the manner and to the extent specified by the Loan Agreement.

This Series 2013 Note is payable from and secured by a lien upon and pledge of the Pledged Funds, which include (a) the Sales Tax Revenues and (b) the income and investments held in the funds and accounts created by the Loan Agreement, all in the manner and as more particularly described in the Loan Agreement.

This Series 2013 Note shall not constitute a general obligation or indebtedness of the City, and the Bank 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 Series 2013 Note. This Series 2013 Note shall not constitute a lien upon the Project, or upon any property of or in the City, but shall be payable solely from the Pledged Funds in the manner provided in the Agreement. Reference is made to the Agreement for the provisions relating to the security for payment of this Series 2013 Note and the duties and obligations of the City hereunder.

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

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.

This Note amends and restates and is issued in replacement of that certain Series 2013 Note dated November 27, 2013, executed by the City and payable to the Bank in the principal amount of Four Million Two Hundred Thousand Dollars (\$4,200,000) and is not intended to constitute a novation of the City's obligations thereunder.

IN WITNESS WHEREOF, the City of South Daytona, Florida, has caused this Series 2013 Note to be executed by the City Manager, and attested by the 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 Series 2013 Note to be dated as of November 13, 2020.

CITY OF SOUTH DAYTONA, FLORIDA

(SEAL)
ATTEST:

By: _____
William C. Hall
Mayor

By: _____
James L. Gillis, Jr.
City Manager / City Clerk

SCHEDULE A TO SERIES 2013 NOTE

PRINCIPAL AMORTIZATION SCHEDULE

Date	Principal Installment
11/1/2021	\$278,115.37
11/1/2022	\$285,703.37
11/1/2023	\$293,498.39
11/1/2024	\$301,506.08
11/1/2025	\$309,732.25
11/1/2026	\$318,182.86
11/1/2027	\$326,864.04
11/1/2028 (Maturity Date)	\$335,782.05

SCHEDULE B TO SERIES 2013 NOTE
ADJUSTMENT TO INTEREST RATE

The interest rate on this Series 2013 Note shall be subject to adjustment upon the occurrence of the events described below:

Determination of Taxability.

(a) In the event a Taxable Date occurs, in addition to (but not in duplication of) the amounts otherwise required to be paid pursuant to the Loan Agreement and the Series 2013 Note, the City hereby agrees to pay to the Bank and any other Registered Owner, as applicable, on demand therefor (i) an amount equal to the difference between (A) the amount of interest paid to the Bank and such other Registered Owner on the Series 2013 Note during the period in which interest on the Series 2013 Note is includable in the gross income of the Bank or such other Registered Owner beginning on the Taxable Date (the "Taxable Period") and (B) the amount of interest that would have been paid to the Bank and such other Registered Owner during such Taxable Period had the Series 2013 Note borne the Taxable Rate, and (ii) an amount equal to any interest, penalties or charges owed by the Bank and such other Registered Owner as a result of interest on the Series 2013 Note becoming includable in the gross income of the Bank or such other Registered Owner, together with any and all attorneys' fees, court costs, or other out of pocket costs incurred by the Bank or such other Registered Owner in connection therewith. On and after the Taxable Date the Series 2013 Note shall bear interest at the Taxable Rate.

(b) Subject to the provisions of subsections (c) and (d) below, the Bank or such other Registered Owner, as applicable, shall afford the City the opportunity, at the City's sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Series 2013 Note to be includable in the gross income of the Bank or such other Registered Owner or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Series 2013 Note, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) As a condition precedent to the exercise by the City of its right to contest set forth in subsection (b) above, the City shall, on demand, immediately reimburse the Bank and such other Registered Owner, as applicable, for (i) any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Bank and such other Registered Owner, as applicable, in their sole discretion) that may be incurred by the Bank and such other Registered Owner, as applicable, in connection with any such contest, and (ii) any and all penalties or other charges payable by the Bank and such other Registered Owner, as applicable, for failure to include such interest in its gross income.

(d) The obligations of the City under this Section shall survive the termination of this Agreement and the payment in full of the amounts owing under the Series 2013 Note.

Default Rate. Upon the occurrence and during the continuance of an Event of Default under the Loan Agreement the Series 2013 Note shall bear interest at the Default Rate.

Definitions. For purposes of this Schedule B the following terms shall have the following meanings. Any capitalized terms used in this Schedule B and not defined shall have the meaning assigned in the Loan Agreement.

"Determination of Taxability" means (a) any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction to the effect that Note Interest is Taxable, or (b) the delivery to the Bank, any Registered Owner or the City of a written opinion of nationally recognized bond counsel to the effect that Note Interest is

Taxable. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(i) the date when the City files any statement, supplemental statement, or other tax schedule, return or document, which discloses that Note Interest is Taxable;

(ii) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the Amendment Effective Date which has the effect that Note Interest is Taxable; or

(iii) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of a nationally recognized bond counsel to the effect that such action will not cause interest on the Series 2013 Note to become includable in the gross income of the recipient.

“Maximum Federal Corporate Tax Rate” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank. As of the Amendment Effective Date, the Maximum Federal Corporate Tax Rate is 21%.

“Note Interest is Taxable” means that interest paid or to be paid on the Series 2013 Note is or will be includable, for federal income tax purposes, in the gross income of the Bank or any other Registered Owner hereof.

“Taxable Date” means the date on which interest on the Series 2013 Note is first includable in gross income of the Bank or other Registered Owner (including, without limitation, any previous Registered Owner) thereof as a result of a Determination of Taxability.

“Taxable Rate” means an interest rate per annum equal to the product of the interest rate on the Series 2013 Note then in effect multiplied by the quotient of (a) one divided by (b) one minus the Maximum Federal Corporate Tax Rate in effect on the date of calculation.

SCHEDULE C TO SERIES 2013 NOTE

PREPAYMENT PROVISIONS:

Upon the occurrence of a Prepayment Event, in addition to all other amounts payable by the City under the Agreement and the Series 2013 Note but subject to the limitation in the third paragraph of the Series 2013 Note, the Prepayment Fee shall be calculated and paid as follows (capitalized terms used but not defined in this Schedule C shall have the meaning assigned in the Amended and Restated Loan Agreement dated November 13, 2020 between Wells Fargo Bank, National Association and the City of South Daytona, Florida):

“Calculation Agent” will be Wells Fargo Bank, National Association. If for any reason Wells Fargo Bank, National Association is unable or unwilling to calculate the Prepayment Fee, the Calculation Agent shall be an independent financial advisor or investment banker appointed by the City with the consent of the Bank.

“Day Count Fraction” is the anticipated basis on which interest on the Series 2013 Note is to be computed. The Day Count Fraction utilizes a 360 day year and consisting of twelve 30 day months.

“Interest Rate” means the rate of interest borne by the Series 2013 Note.

“Prepayment Date” means any date on which the principal of the Series 2013 Note is prepaid in whole or in part for any reason prior to its scheduled due date, including optional repayment of the Loan pursuant to Section 4 of the Agreement or acceleration of the Loan pursuant to Section 18 of the Agreement.

“Prepayment Event” means any prepayment of the principal of the Loan, in whole or in part, prior to its scheduled due date, including any optional prepayment of the Loan pursuant to Section 4 of the Agreement or acceleration of the Loan pursuant to Section 18 of the Agreement.

“Schedule of Principal Amounts” means the anticipated principal amount of the Loan scheduled to be outstanding on the Amendment Effective Date and on each other Scheduled Due Date. The Schedule of Principal Amounts for the Scheduled Due Dates is provided Annex I to this Schedule C.

“Scheduled Due Date” means the Amendment Effective Date each other date specified in Annex I to this Schedule C.

1. Upon the occurrence of any Prepayment Event the Calculation Agent shall calculate the Prepayment Fee. If the Prepayment Fee so calculated is a positive number, the City shall pay such amount to the Bank. No Prepayment Fee shall be payable for a Prepayment Event if the Prepayment Fee as so calculated is a negative number. Prepayment Fees will be determined by the Calculation Agent, on the Business Day next preceding any Prepayment Date and will be calculated as follows:

“Prepayment Fee” for any Prepayment Event is the difference of:

(i) the sum of the present values of a series of amounts computed for each Scheduled Due Date after the Prepayment Date through the Maturity Date for the Loan, each of which amounts is equal to the product of (A) the Affected Principal Amount for the Affected Principal Period ending on the Scheduled Due Date, times (B) the Interest Rate, times (C) the Day Count Fraction for such Affected Principal Period,

minus

(ii) the sum of the present values of a series of amounts computed for each Scheduled Due Date after the Prepayment Date through the Maturity Date for the Loan, each of which amounts is equal to the product of (A) the Affected Principal Amount for the Affected Principal Period ending on the Scheduled Due Date, times (B) the Break Rate, times (C) the Day Count Fraction for such Affected Principal Period,

where:

(1) the Calculation Agent computes such present values by discounting each such series of amounts described in clause (i) and (ii) above from the Scheduled Due Date to the Prepayment Date using a series of discount factors corresponding to the Scheduled Due Date as determined by the Calculation Agent from the swap yield curve that the Calculation Agent would use as of the Prepayment Date in valuing a series of fixed rate interest rate swap payments similar to such series of amounts;

(2) the "Affected Principal Amount" for an Affected Principal Period is the principal amount of the Loan reflected in the Schedule of Principal Amounts scheduled to be outstanding during that Affected Principal Period determined as of the relevant Prepayment Date by the reference to such Schedule of Principal Amounts before giving effect to any Prepayment Event on that Prepayment Date, and for any Prepayment Event, multiplying each such principal amount times the Prepayment Fraction;

(3) "Affected Principal Period" is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date; provided, however, if the Prepayment Date is not a Scheduled Due Date, the initial Affected Principal Period shall be the period from and including the Prepayment Date to but excluding the next succeeding Scheduled Due Date and the Affected Principal Period for such initial Affected Principal Period shall be the amount stated in the Schedule of Principal Amounts outstanding for the Scheduled Due Date next preceding the Prepayment Date;

(4) "Prepayment Fraction" means, for each Scheduled Due Date, a fraction the numerator of which is the amount of the credit to be applied pursuant to the applicable provisions of the Agreement to reduce the amount of the prepayment otherwise due on such date and the denominator of which is the amount of the payment otherwise due on such date (without regard to such credit); and

(5) "Break Rate" means, for any Prepayment Date, and with respect to the Loan, the fixed rate the Calculation Agent determines is representative of what swap dealers would be willing to pay to the Calculation Agent (or, if required to be cleared under the Commodity Exchange Act or a Commodity Futures Trading Commission rule or regulation promulgated thereunder, to a swap clearinghouse) as fixed rate payors on a monthly basis in return for receiving one month LIBOR based payments monthly under interest rate swap transactions that would commence on such Prepayment Date, and mature on, or as close as commercially practicable to, the Maturity Date for the Loan.

2. The Calculation Agent shall determine the Prepayment Fee hereunder in good faith using such methodology as the Calculation Agent deems appropriate under the circumstance, and the Calculation Agent's determination shall be conclusive and binding in the absence of manifest error.

ANNEX I TO SCHEDULE C

SCHEDULE OF PRINCIPAL AMOUNTS

THE DAY AFTER THE November 1 PAYMENT DATE

Scheduled Due Date	Scheduled Principal Amount
November 13, 2020	\$2,449,384.41
November 2, 2021	\$2,171,269.04
November 2, 2022	\$1,885,565.67
November 2, 2023	\$1,592,067.28
November 2, 2024	\$1,290,561.20
November 2, 2025	\$980,828.95
November 2, 2026	\$662,646.09
November 2, 2027	\$335,782.05
November 2, 2028	0

EXHIBIT B
FORM OF INVESTOR LETTER

[DATE OF PURCHASE]

City of South Daytona, Florida
P.O. Box 214960
South Daytona, Florida 32809
ATTENTION: City Manager

City of South Daytona
Capital Improvement Revenue Note, Series 2013

Ladies and Gentlemen:

[PURCHASER] (“Purchaser”) is purchasing the above-referenced note (the “Note”) in the amount of [AMOUNT] which was issued by the City of South Daytona, Florida (the “City”) pursuant to the Amended and Restated Loan Agreement dated November 13, 2020 (the “Agreement”), currently outstanding in the principal amount of [AMOUNT]. All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Agreement. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Note.
2. The Purchaser has authority to purchase the Note and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Note.
3. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.
4. The Purchaser is a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”) and a commercial bank having capital and surplus of \$5,000,000,000 or more and is able to bear the economic risks of such investment.
5. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Note. The Purchaser has made its own inquiry and analysis with respect to the City, the Note and the security therefor, and other material factors affecting the security for and payment of the Note.
6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding

the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Note and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Note.

7. The Purchaser understands that the Note (i) is not registered under the 1933 Act and is not registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) is not listed on any stock or other securities exchange, and (iii) carries no rating from any credit rating agency.

8. The Note is being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Note, in whole but not in part, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

(a) that is an affiliate of the Purchaser;

(b) that is a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or

(c) that is a qualified institutional buyer that is a commercial bank having a combined capital and surplus, determined as of the date of such sale, transfer or distribution, of \$5,000,000,000 or more who executes an investor letter substantially in the form of this letter.

[PURCHASER]

By _____
Name _____
Title _____