

RESOLUTION 2018-103

A RESOLUTION OF THE CITY OF FERNANDINA BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF ITS CITY OF FERNANDINA BEACH, FLORIDA LINE OF CREDIT NOTE, SERIES 2018, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$6,600,000 TO REIMBURSE AND FUND CAPITAL IMPROVEMENTS INCLUDING CERTAIN IMPROVEMENTS TO THE CITY OWNED MARINA; PROVIDING THAT THE NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM NON-AD VALOREM REVENUES BUDGETED AND APPROPRIATED AND FROM CERTAIN FEMA REIMBURSEMENTS AS PROVIDED HEREIN; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD SUCH NOTE "BANK QUALIFIED" STATUS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA:

**SECTION 1: AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and other applicable provisions of law (collectively, the "Act").

**SECTION 2: DEFINITIONS.** The following words and phrases shall have the following meanings when used herein:

*"Ad Valorem Revenues"* means all revenues of the Issuer derived from the levy and collection of ad valorem taxes that are allocated to and accounted for in the General Fund.

*"Business Day"* means any day except any Saturday or Sunday or day on which the Principal Office of the Owner is lawfully closed.

*"City Attorney"* means the City Attorney or assistant City Attorney of the Issuer, or any special counsel appointed by the City Commission of the Issuer.

*"City Manager"* means the City Manager of the Issuer, or deputy, interim or acting City Manager of the Issuer.

*"Clerk"* means the City Clerk or assistant City Clerk of the Issuer, or such other person as may be duly authorized by the City Commission of the Issuer to act on his or her behalf.

*"Code"* means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

*"Comptroller"* means the Comptroller of the Issuer or any assistant or deputy Comptroller of the Issuer.

*"General Fund"* means the "General Fund" of the Issuer as described and identified in the Comprehensive Annual Financial Report of the Issuer.

*"FEMA Reimbursements"* means the funds received by the Issuer from Federal Emergency Management Agency Public Assistance Grant Program and the State of Florida, Division of Emergency Management for up to 87.5% of the cost of the covered repairs to the Issuer's marina damaged by Hurricane Matthew.

*"Issuer"* means the City of Fernandina Beach, Florida.

*"Lender"* means Branch Banking and Trust Company and its successors and assigns.

*"Maturity Date"* means the date so defined in the delivered Note which date is not later than July 1, 2021.

*"Maximum Principal Amount"* shall mean Six Million Six Hundred Thousand Dollars (\$6,600,000).

*"Mayor"* means the Mayor of the Issuer, or in his or her absence or inability to act, the Vice Mayor of the Issuer or such other person as may be duly authorized by the City Commission to act on his or her behalf.

*"Non-Ad Valorem Revenues"* means all revenues of the Issuer other than Ad Valorem Revenues, and which are lawfully available to be used to pay debt service on the Note.

*"Note"* means the Note of the Issuer authorized by Section 4 hereof.

*"Owner"* or *"Owners"* means the Person or Persons in whose name or names the Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

*"Person"* means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

*“Pledged Revenues”* means the Non-Ad Valorem Revenues budgeted and appropriated for the payment of the Note and the FEMA Reimbursements, as provided herein.

*“Principal Office”* means, with respect to the Lender, the office located at 200 West Forsyth Street, Suite 500, Jacksonville, Florida 32202, or such other office as the Lender or future Owners may designate to the Issuer in writing.

*“Project”* means certain capital improvement projects, including the repair and replacement of the Issuer owned Marina, as may be on file with the Clerk from time to time.

*“Requisition”* means a written request for disbursement from the Maximum Principal Amount of the Note signed by the Comptroller in the form attached hereto as Exhibit D.

*“Resolution”* means this Resolution, pursuant to which the Note is authorized to be issued, including any supplemental resolution(s).

*“State”* means the State of Florida.

### **SECTION 3: FINDINGS.**

(A) For the benefit of its citizens, the Issuer finds, determines, and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its citizens to undertake the Project. Issuance of the Note to finance the Project satisfies a paramount public purpose.

(B) Debt service on the Note will be secured by the Issuer's covenant to budget and appropriate Non-Ad Valorem Revenues and by a pledge of the Pledged Revenues as provided herein.

(C) Debt service on the Note and all other payments hereunder shall be payable solely from Pledged Revenues in the manner and to the extent provided herein. The Issuer shall never be required to levy ad valorem taxes or use the proceeds thereof to pay debt service on the Note or to make any other payments to be made hereunder or to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any other Non-Ad Valorem Revenues. The Note shall not constitute a lien on any property owned by or situated within the limits of the Issuer, except the Pledged Revenues.

(D) It is estimated that Non-Ad Valorem Revenues will be available after satisfying funding requirements for obligations having an express lien on or pledge thereof and after satisfying funding requirements for essential governmental services of the Issuer, in amounts sufficient to provide for the payment of the principal of and interest on Note and all other payment obligations hereunder.

(E) The Issuer, after soliciting proposals in response to a request for loan proposals distributed by the Issuer on May 25, 2018 and receiving multiple responses complying with the structure described in such request, has selected the Lender to purchase the Note.

(F) The Issuer desires to make such determinations as are required to afford the Note "bank qualified" status for purposes of Section 265(b)(3) of the Code.

**SECTION 4: AUTHORIZATION OF NOTE.** Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as City of Fernandina Beach, Florida Line of Credit Note, Series 2018 is hereby authorized to be issued under and secured by this Resolution, in the principal amount of not to exceed \$6,600,000 for the purpose of providing funds to finance the Project and pay the costs of issuing the Note.

Because of the draw-down and variable interest rate characteristics of the Note and prevailing market conditions, it is in the best interest of the Issuer to accept the offer of the Lender to purchase the Note at a private negotiated sale. Prior to the issuance of the Note, the Issuer shall receive from the Lender a Lender's Certificate, substantially in the form attached hereto as Exhibit B and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, substantially in the form attached hereto as Exhibit C.

In consideration of the purchase and acceptance of the Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Lender and any subsequent Owner.

**SECTION 5: DESCRIPTION OF THE NOTE.** The Lender is making a loan to the Issuer that is evidenced by the Note. The Note shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Lender, subject to the following terms:

(A) **Form of the Note.** The Note is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor.

(B) **Interest Rate.** The Note shall bear interest at a variable rate as described in the Form of the Note attached hereto as Exhibit A, subject to adjustment as described therein. Interest shall be calculated on an actual/360 day basis.

(C) **Interest and Principal Payment Dates.** Interest on the Note shall be paid semi-annually on the first day of each January and July, commencing January 1, 2019. A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest on the Note, shall be due and payable in full on the Maturity Date.

(D) **Prepayment of the Note.** The Note shall be subject to prepayment as described in the Note. No presentment or delivery shall be required for prepayment, interest or principal installment payments on the Note.

(E) **Amount of the Note.** The outstanding principal of the Note shall be increased by the amount advanced by the Owner upon each Requisition, provided, however, the principal amount available to be drawn on the Note shall not exceed the Maximum Principal Amount. Unless an Event of Default has occurred and not been cured, amounts advanced (each an "Advance") under the Note shall be made upon receipt of a Requisition no more often than once per month, unless the Owner in its sole discretion agrees to more advances, and in minimum amounts of \$50,000 and any increment of \$0.01 in excess thereof, unless the Owner in its sole discretion agrees to a different amount, and provided that the initial advance and the final advance hereunder may be for any amount. The Owner shall make each Advance to the Issuer in immediately available funds by deposit into such account or accounts as shall be specified in the Requisition. An amount that has been advanced under the Note and then repaid shall not be again advanced under the Note. Amounts must be drawn prior to July 1, 2021.

**SECTION 6: EXECUTION; REGISTRATION AND EXCHANGE OF NOTE; PERSONS TREATED AS OWNERS.** The Note shall be executed in the name of the Issuer by its Mayor and attested by its Clerk, subject to the approval of the City Attorney as to form and correctness, and the corporate seal of the Issuer or a facsimile thereof shall be affixed thereto or reproduced thereon. In case any one or more of the officers of the Issuer who shall have signed or sealed the Note shall cease to be such officer or officers of the Issuer before the Note so signed and sealed shall have been actually sold and delivered, such Note may nevertheless be sold and delivered as if the persons who signed or sealed such Note had not ceased to hold such offices. The Note may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Note shall hold the proper office, although at the date of such execution of the Note such person may not have held such office or may not have been so authorized.

The Note is initially registered to the Lender. So long as the Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Note. The Note is issued in a single denomination equal to the principal amount due under the Note and may not be transferred except in whole.

The Person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

**SECTION 7: PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.**

The Issuer promises that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Note shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable from and secured solely by the Pledged Revenues in accordance with the terms hereof. No holder of the Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay the Note or be entitled to payment of the Note from any funds of the Issuer except from the Pledged Revenues as described herein.

**SECTION 8: COVENANT TO BUDGET AND APPROPRIATE.** (A) Subject to the next paragraph, the Issuer covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay principal of and interest on the Note and all other payments due hereunder not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until appropriated for payment on the Note. The Issuer further acknowledges and agrees that the obligations of the Issuer to include such amounts in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holder of the Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments); provided the Issuer hereby covenants not to hereafter pledge such Non-Ad Valorem Revenues to the payment of obligations if such pledge will result in insufficient Non-Ad Valorem Revenues being available to meet the Issuer's obligations under this Resolution and the Note. Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as provided for herein and nothing herein shall be deemed to pledge ad valorem tax power or ad valorem taxing revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer, other than the Pledged

Revenues, and no holder of the Note nor any other Person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder. The obligation of the Issuer to budget, appropriate and make payments hereunder from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer. Notwithstanding any provisions of this Resolution or the Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer and is further subject to the provisions of Section 166.241, Florida Statutes insofar as there are not sufficient Non-Ad Valorem Revenues in the General Fund to comply with such covenant after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer.

**SECTION 9: AMENDMENT.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Note except with the written consent of the Owner of the Note.

**SECTION 10: LIMITATION OF RIGHTS.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**SECTION 11: NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for the mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

**SECTION 12: IMPAIRMENT OF CONTRACT.** The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, enact any

ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder.

**SECTION 13: BUDGET AND FINANCIAL INFORMATION; OTHER COVENANTS.**

At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner such information it may reasonably request. At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner of the Note with a copy of its annual budget within 30 days of the commencement of each fiscal year of the Issuer. At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner of the Note with annual financial statements for each fiscal year of the Issuer when available and in no event later than 270 days after the close of such fiscal year, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant and accompanied by an audit opinion of such accountant without qualification. All accounting terms not specifically defined or specified herein shall have the meanings attributed to such terms under generally accepted accounting principles as in effect from time to time, consistently applied.

While the Note remains outstanding, the Issuer agrees that (i) any and all records of the Issuer shall be open to inspection by the Owner or its representatives at all reasonable times at the office of the Issuer, (ii) the Issuer shall maintain such liability, casualty, and other insurance as is reasonable and prudent for a similarly situated city and shall upon request of the Owner provide evidence of such coverage to the Owner, (iii) the Issuer is in compliance and shall comply with all applicable federal, state, and local laws and regulatory requirements, (iv) books and records of the Issuer shall be kept in which complete and correct entries shall be made in accordance with generally accepted accounting principles, (v) the Issuer will take all reasonable legal action within its control in order to maintain its existence as a municipality of the State, and will not voluntarily dissolve, and (vi) the Issuer shall promptly inform the Owner in writing of any actual or potential contingent liabilities or pending or threatened litigation that could reasonably be expected to have a material adverse effect upon the financial condition of the Issuer or upon the ability of the Issuer to perform its obligations hereunder or under the Note.

**SECTION 14: EVENTS OF DEFAULT; REMEDIES OF OWNER OF THE NOTE.** The following shall constitute Events of Default:

(i) if the Issuer fails to pay any payment of principal of or interest on the Note as the same becomes due and payable, whether by maturity or otherwise; or

(ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Note (other than set forth in (i) above) and fails to cure the same within thirty (30) days after notice thereof to the Issuer by the Owner or; or



(iii) any representation or warranty made in writing by or on behalf of the Issuer in this Resolution or the Note shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(iv) the Issuer admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

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

(vi) the Issuer shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State; or

(vii) failure by the Issuer promptly to remove any execution, garnishment or attachment of such consequence as will materially impair the Issuer's ability to carry out its obligations hereunder.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Note may, in addition to any other remedies set forth in this Resolution or the Note, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof; provided, however, that acceleration of amounts due under the Note shall never be permitted as a remedy.

In addition, any amount due hereunder not paid when due shall bear interest at a default rate equal to the interest rate on the Note plus 2% per annum from and after five (5) days after the date due.

**SECTION 15: TAX COVENANT; BANK QUALIFIED.** The Issuer covenants to the Owners of the Note provided for in this Resolution that the Issuer will not make any use of the proceeds of the Note at any time during the term of the Note which would cause the Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

The Issuer hereby designates the Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. The Issuer does not reasonably expect during the calendar year 2018 to issue more than \$10,000,000 of “tax-exempt” obligations including the Note, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code).

**SECTION 16: APPLICABLE LAW AND VENUE.** The Note shall be governed by applicable federal law and the internal laws of the state of Florida. The Issuer agrees that certain material events and occurrences relating to the Note bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of the Note shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to the Note, the Issuer consents to the jurisdiction and venue of any court located in the state of Florida.

**SECTION 17: SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**SECTION 18: BUSINESS DAYS.** In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall be given on the next Business Day with the same effect as if made on the nominal due date.

**SECTION 19: WAIVER OF JURY TRIAL.**

THE OWNER AND THE ISSUER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS RESOLUTION, THE NOTE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

**SECTION 20: RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**SECTION 21: CAPTIONS.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**SECTION 22: CITY COMMISSION MEMBERS OF THE ISSUER EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any members of the City Commission of the Issuer, as such, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the City Commission of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the City Commission of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Note, on the part of the Issuer.

**SECTION 23: AUTHORIZATIONS.** The Mayor and any member of the City Commission, the City Manager, the City Attorney, the Clerk, the Comptroller and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 24: REPEALER.** All resolutions or parts thereof in conflict with the provisions hereof are to the extent of such conflict superseded and repealed.

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**SECTION 25: EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 7th day of August, 2018.

CITY OF FERNANDINA BEACH, FLORIDA

(SEAL)

ATTEST:

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

John A. Miller  
Mayor

\_\_\_\_\_  
Caroline Best  
City Clerk

APPROVED AS TO FORM AND LEGALITY:



\_\_\_\_\_  
Tammi E. Bach  
City Attorney

**EXHIBIT A**

**[FORM OF NOTE]**

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

August 9, 2018

Not to exceed \$6,600,000

Interest Rate: variable and subject to adjustment as described herein

CITY OF FERNANDINA BEACH, FLORIDA  
LINE OF CREDIT NOTE, SERIES 2018

Maturity Date: July 1, 2021

KNOW ALL MEN BY THESE PRESENTS that the City of Fernandina Beach, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of Branch Banking and Trust Company or its successor or registered assigns (hereinafter, the "Owner"), the principal amount drawn hereunder of not to exceed \$6,600,000 together with interest at the Interest Rate (hereinafter defined). The Issuer shall pay interest upon the drawn but unpaid principal balance of this Note at the Interest Rate, subject to adjustment as provided herein. Interest shall be payable semi-annually on each January 1 and July 1, commencing January 1, 2019, and calculated on an actual/360 day basis. The principal of this Note shall be due only on the maturity date of July 1, 2021.

The outstanding principal of this Note shall be increased by the amount advanced by the Owner upon each Requisition, provided, however, the principal amount available to be drawn on the Note shall not exceed the Maximum Principal Amount (as defined in the Resolution) and the final draw must occur prior to July 1, 2021. Amounts that have been advanced under this Note and then repaid may not be advanced again.

**INTEREST RATE**

On the date hereof and on each succeeding Interest Rate Determination Date (hereinafter defined) the interest rate on the Note shall be established by the Lender (as defined in the Resolution) at a rate equal to the Interest Rate.

For purposes hereof, the following terms have the following meanings:

**“Interest Rate”** means a per annum rate equal to the 79% of the LIBOR Rate; plus the Applicable Spread.

**“Applicable Spread”** shall mean 0.623%.

**“Interest Period”** shall mean a period of one (1) month, provided that (i) the initial Interest Period may be less than one month, depending on the initial funding date and (ii) no Interest Period shall extend beyond the maturity date of the Note.

**“Interest Rate Determination Date”** shall mean the date the Note is initially funded and the first day of each calendar month thereafter.

**“LIBOR Rate”** means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Lender, on the determination date for deposits in U. S. Dollars offered in the London interbank market for one month determined at approximately 11:00 am London time two (2) Business Days (as defined in the Resolution) prior to the next Interest Rate Determination Date; provided that if the LIBOR Rate determined as provided above would be less than zero percent (0%), then the LIBOR Rate shall be deemed to be zero percent (0%).

### **Adjustments to Interest Rate**

(a) In the event of a Determination of Taxability (as hereinafter defined), the Interest Rate shall be adjusted to cause the after-tax yield on this Note to the Owner after such Determination of Taxability to equal what the yield would have been to the Owner in the absence of such Determination of Taxability (the "Taxable Rate"), effective retroactively to the date on which such Determination of Taxability was made. Immediately upon a Determination of Taxability, the Issuer agrees to pay to the Owner (i) the difference between (a) interest on this Note at the Taxable Rate for the period commencing on the date on which the interest on this Note ceases to be excludable from gross income for federal income tax purposes and ending on the earlier of the date this Note ceased to be outstanding or such adjustment is no longer applicable to this Note (the "Taxable Period"), and (b) the aggregate amount of interest paid on this Note for the Taxable Period under the provisions of this Note without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by the Owner to the Internal Revenue Service by reason of such Determination of Taxability. As used herein, "Determination of Taxability" means a final decree or judgment of any federal court or a final action of the Internal Revenue Service or of the United States Treasury Department determining that any interest payable on this Note is includable in the gross income of the Owner for federal income tax purposes. No such decree or action shall be considered final for the purposes of this paragraph unless the Issuer has been given written notice thereof and, if it is so desired by the Issuer and is legally permissible, the Issuer has been afforded the opportunity to contest the

same, at its own expense, either directly or in the name of the Owner and until the conclusion of any appellate review, if sought.

(b) Should subsequent but currently unforeseen actions by the Issuer cause this Note to not be classified as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code, the Interest Rate on this Note shall be adjusted to that level necessary to ensure that the anticipated after tax yield contemplated by the Owner at the time of issuance of this Note is received.

(c) Any amount due hereunder not paid when due shall bear interest at a default rate equal to the Interest Rate on this Note plus 2% per annum from and after five (5) days after the date due.

### **Adjusted LIBOR Based Rate Protections.**

#### **For purpose hereof, the following terms have the following meanings:**

**"Prime Rate"** means the rate of interest per annum announced by the Lender from time to time and adopted as its Prime Rate at its executive offices in Winston-Salem, North Carolina. The Prime Rate is one of several rate indexes employed by the Lender when extending credit, and not necessarily the lowest rate. Any change in the interest rate resulting from a change in the Lender's Prime Rate shall become effective as of the opening of business on the effective date of the change.

**"Standard Rate"** means, for any day, a rate per annum equal to (a) 79% of (i) the Lender's announced Prime Rate minus (ii) 2.15%, plus (b) .07%, per annum, and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

(a) Inability to Determine Rate. In the event that the Lender shall have determined, which determination shall be final, conclusive and binding, that (i) by reason of circumstances occurring after the date of this Note affecting the London interbank market, adequate and fair means do not exist for ascertaining the LIBOR Rate on the basis provided for in this Note or (ii) the LIBOR Scheduled Unavailability Date (as defined below) has occurred, the Lender shall give notice (by telephone confirmed in writing or by electronic mail) to the Issuer of such determination, whereupon (x) no advance of principal under this Note (an "Advance") shall be made until the Lender notifies the Issuer that the circumstances giving rise to such notice no longer exist, and (y) the outstanding principal balance of all Advances shall bear interest at the Standard Rate.

(b) Illegality; Impracticability. In the event that the Lender shall determine, which determination shall be final, conclusive and binding, that the making, maintaining or continuance of any portion of an Advance (i) has become unlawful as a result of compliance by the Lender with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any of the same not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause the Lender

material hardship, as a result of contingencies occurring after the date of this Note materially and adversely affecting the London interbank market or the Lender's ability to make Advances generally, then, and in any such event, the Lender shall give notice (by telephone confirmed in writing or by electronic mail) to the Issuer of such determination. Thereafter, (x) the obligation of the Lender to make any Advance subject to the LIBOR Rate shall be suspended until such notice shall be withdrawn by the Lender, and (y) the outstanding principal balance of all Advances shall bear interest at the Standard Rate.

(c) LIBOR Replacement Rate. Notwithstanding anything to the contrary in the Resolution or herein, but without limiting paragraph (a) and (b) above, in the event the Lender shall have determined that (i) the circumstances described in paragraph (a)(i) above have arisen and such circumstances are unlikely to be temporary or (ii) the relevant administrator of LIBOR Rate or a governmental authority having or purporting to have jurisdiction over the Lender has made a public statement identifying a specific date after which LIBOR Rate shall no longer be available, or used for determining interest rates for loans in US Dollars (such date, the "Scheduled LIBOR Unavailability Date" ), then, the Lender and the Issuer may amend this Note to replace LIBOR with an alternate rate of interest, giving due consideration to the then prevailing market convention for determining a rate of interest for comparable bank-originated commercial loans in the United States at such time (the "LIBOR Replacement Rate"), and make such other related changes to this Note and the Resolution as may be necessary or appropriate, in the opinion of the Lender, to effect the provisions of this paragraph (c). For the avoidance of doubt, the Issuer agrees that unless and until a LIBOR Replacement Rate is determined and an amendment to this Note is entered into to effect the provisions of this paragraph (c), if the circumstances under clauses (i) or (ii) of this paragraph (c) exist, the provisions of paragraph (a) Inability to Determine Rate apply.

Principal of and interest on this Note is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing. No presentment or delivery shall be required for prepayment, interest or principal installment payments on the Note.

The principal of this Note may be prepaid in whole or in part at the option of the Issuer on any Business Day without penalty, provided that the Issuer pays the principal amount of the Note to be repaid together with all accrued interest which shall have accrued to the date of prepayment. No less than five (5) Business Days prior to the date of prepayment selected by the Issuer, the Issuer shall provide written notice of such prepayment to the Owner of the Note which notice may be conditional.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day the payment due on such date shall be due on the next succeeding day which is a Business Day.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest and the balance thereof shall apply to principal.



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

This Note is issued pursuant to Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Chapter II, Florida Statutes, the municipal charter of the Issuer and a resolution duly adopted by the Issuer on August 7, 2018, as from time to time amended and supplemented (herein referred to as the "Resolution") and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution are by this reference thereto incorporated herein as a part of this Note. The Note is payable from a covenant to budget and appropriate Non-Ad Valorem Revenues of the Issuer and FEMA Reimbursements, all in the manner and to the extent described in the Resolution. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

The Issuer has designated the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Issuer does not reasonably expect during the calendar year 2018 to issue more than \$10,000,000 of "tax-exempt" obligations including the Note, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code).

This Note may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution; provided, however, this Note may only be transferred in whole.

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

The Issuer shall not be required to exchange or register any transfer of this Note after this Note has been selected for prepayment.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the City of Fernandina Beach, Florida, has issued this Note and has caused the same to be executed by its Mayor, attested by its City Clerk, approved as to form and correctness by its City Attorney, and the corporate seal of the Issuer, to be impressed, imprinted, or otherwise reproduced hereon, all as of the dated date set forth above.

CITY OF FERNANDINA BEACH,  
FLORIDA

(SEAL)

ATTEST:

By: \_\_\_\_\_  
John A. Miller  
Mayor

\_\_\_\_\_  
Caroline Best  
City Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Tammi E. Bach  
City Attorney

## EXHIBIT B

### FORM OF LENDER'S CERTIFICATE

This is to certify that Branch Banking and Trust Company (the "Lender") has not required the City of Fernandina Beach, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of the not to exceed \$6,600,000 City of Fernandina Beach, Florida Line of Credit Note, Series 2018, dated August 9, 2018 (the "Note"), and no inference should be drawn that the Lender, in the acceptance of the Note, is relying on Note Counsel or Issuer's Counsel as to any such matters other than the legal opinions rendered by Note Counsel, Bryant Miller Olive P.A. and by Issuer's Counsel, Tammi E. Bach, Esq., respectively. Any capitalized undefined terms used herein not otherwise defined shall have the meanings set forth in the resolution adopted by the City Commission of the Issuer on August 7, 2018, relating to the Note (the "Resolution").

We are aware that investment in the Note involves various risks, that the Note is not a general obligation of the Issuer or payable from ad valorem tax revenues, and that the payment of the Note is secured solely from the sources described in the Resolution (the "Note Security").

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

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

We understand that the Note is issued in a single denomination equal to the principal amount due under the Note and may not be transferred except as provided in the Note.

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

We are making a loan that is evidenced by the Note. The loan may only be transferred in whole to a bank, trust company, savings institution or insurance company that is engaged as a regular part of its business in making loans authorized to do business in the State of Florida.

We are making the loan for our own account, do not currently intend to syndicate the loan, will take no action to cause the loan to be characterized as a security, and will not treat the loan as a municipal security for purposes of the securities law. We understand that there will be no CUSIPs obtained with respect to the loan or evidencing the loan and that there will be no credit rating obtained on the loan. We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public.

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

Neither the Lender nor any of its affiliates shall act as a fiduciary for the Issuer or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor with respect to the proposed issuance of the Note. Neither the Lender nor any of its affiliates has provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of the Issuer with respect to the proposed issuance of the Note. The Issuer has represented to the Lender that it has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the proposed issuance of the Note from its financial, legal and other advisors (and not the Lender or any of its affiliates) to the extent that the Issuer desired to obtain such advice.

DATED this 9th of August, 2018.

BRANCH BANKING AND TRUST  
COMPANY

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

Name: Jennifer Gardell

Title: Vice President

## EXHIBIT C

### FORM OF DISCLOSURE LETTER

The undersigned, as lender, proposes to negotiate with the City of Fernandina Beach, Florida (the "Issuer") for the private purchase of its not to exceed \$6,600,000 Line of Credit Note, Series 2018 (the "Note"). Prior to the award of the Note, the following information is hereby furnished to the Issuer:

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

Edwards Cohen  
Lender Counsel Fee -- \$6,000

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

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

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

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

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance the cost of the Project (as defined in the hereinafter defined Resolution) and pay the costs of issuing the Note.

Unless earlier prepaid, the Note is expected to be repaid on July 1, 2021. Assuming that the initial interest rate of \_\_\_\_% was in place until the maturity of the Note and assuming that the entire authorized draw amount of \$6,600,000 was drawn on the date hereof, total interest paid over the life of the Note would equal approximately \$\_\_\_\_\_.

The Note will be payable from certain FEMA Reimbursements and a covenant to budget and appropriate Non-Ad Valorem Revenues sufficient to make such payments, as described in the resolution of the Issuer adopted on August 7, 2018 relating to the Note (the "Resolution"). See the Resolution for a definition of Non-Ad Valorem Revenues and FEMA Reimbursements. Based on the above assumptions, issuance of the Note is estimated to result in an annual maximum of approximately \$\_\_\_\_\_ of revenues of the Issuer not being available to finance the other services of the Issuer during the life of the Note, not including the repayment of the principal drawn.

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

Branch Banking and Trust Company  
Commercial Lending  
200 West Forsyth Street, Suite 500  
Jacksonville, Florida 32202

This letter is for informational purposes only and shall not affect or control the actual terms and conditions of the Note.

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Lender as of the 9th day of August, 2018.

BRANCH BANKING AND TRUST  
COMPANY

By: \_\_\_\_\_  
Name: Jennifer Gardell  
Title: Vice President

**EXHIBIT D**

**FORM OF REQUISITION**

CITY OF FERNANDINA BEACH, FLORIDA  
LINE OF CREDIT NOTE, SERIES 2018

**REQUISITION FOR PAYMENT**

Requisition No. \_\_\_\_

Advance Requested: \$ \_\_\_\_\_

Pursuant to the terms and conditions of Resolution No. 2018-103 adopted by the City of Fernandina Beach, Florida (the "Issuer") on August 7, 2018 (the "Resolution"), relating to the above-referenced note (the "Note") held by Branch Banking and Trust Company (the "Lender"), the Issuer requests an advance of principal under the Note in the amount specified above for costs of the Project (as defined in the Resolution) and makes this requisition pursuant to the following representations:

1. The purpose of this disbursement is for partial payment on the Project provided for under the Resolution.
2. The requested disbursement has not been subject to any previous requisition.
3. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
4. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
5. No Event of Default (as defined in the Resolution) is continuing under the Resolution, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
6. The requested disbursement will be used to pay the Project costs listed on the Use of Funds Schedule attached hereto.

The Issuer hereby requests the Lender wire the disbursement to the Issuer pursuant to the following wire instructions:



Receiving Bank ABA Number:

Receiving Bank Name:

Beneficiary Account Number: (account number funds are being wired directly to)

Beneficiary Name: (owner of account number above)

Beneficiary Physical Address: (must be the address of the Beneficiary above)

Further Credit or Reference: (any additional information needed to assist the Beneficiary in identifying the wire)

Each amount requested for payment in this requisition either (a) represents reimbursement to the Issuer for a project cost expenditure previously made, or (b) will be used by the Issuer promptly upon the receipt of funds from the Lender to make the payments to third parties described in this requisition.

The amounts shown in this requisition are properly payable at this time.

Dated \_\_\_\_\_, 20\_\_

CITY OF FERNANDINA BEACH, FLORIDA

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

Patricia H. Clifford

Comptroller

USE OF FUNDS SCHEDULE

Project Costs

Amount