

5-C)

MEMORANDUM

TO: Mayor and Council

FROM: James R. O'Connor, City Manager
Cynthia D. Lawson, Finance Director 

DATE: March 8, 2016

SUBJECT: Resolution Approving Series 2016 Capital Improvement Revenue Note

BACKGROUND:

The adopted budget for Fiscal Year 2015-2016 includes a capital project for the reconstruction of Airport Drive (34th Avenue) between Atlantic Boulevard and Cherokee Drive at the Airport Terminal building. The primary funding for this project is being provided by an Aviation Development grant from the Florida Department of Transportation in the amount of \$3,345,000. Per the adopted budget, the City's matching funds for this project are to be provided by a bank loan. This project is on the March 15, 2016 City Council agenda for approval under a separate item.

On January 22, 2016 the City's Financial Advisor, Craig Dunlap of Dunlap & Associates, issued a Request for Proposals (RFP) for this bank loan for a not to exceed amount of \$1,400,000 and a term of 15 years. On February 4, 2016 in response to the RFP, the City of Vero Beach received one proposal from BB&T. After review of this proposal, Dunlap & Associates recommended that the City accept the proposal from BB&T, which provided a fixed interest rate of 2.47% that is valid until March 20, 2016. The City Council approved the award of the loan to BB&T on February 16, 2016.

RECOMMENDATION:

The staff and Financial Advisor recommend Council approval of the attached Resolution (Attachment A) authorizing the Series 2016 Capital Improvement Revenue Note in the not to exceed amount of \$1,400,000. This amount will provide sufficient funds to construct the capital project (including a 10% contingency) and pay the costs of issuance (estimated at \$ 45,000). The Series 2016 note will have an annual principal and interest payment of \$115,000 and a maturity date of September 30, 2031. If there are borrowed funds remaining that are not needed for project costs, they can be expended on other capital projects or repayment of the loan itself. Attachment B is a copy of the loan agreement which will be approved by the City and bank in substantially the form attached, with a closing date prior to March 20, 2016.

ANALYSIS:

Strengths: Borrowing funds for this project will allow the City to match the grant funding and complete the project.

Weaknesses: The cost of the project will be increased by the total interest on the loan (estimated at \$283,000), and the issuance costs for the loan (estimated at \$45,000).

Opportunities: Amortizing the loan over 15 years will more closely match the expenditure to the life of the capital improvement.

Threats: None identified.

RESOLUTION NO. 2016-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF A CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2016 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) TO FINANCE CERTAIN CAPITAL IMPROVEMENTS OF THE CITY; AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH RESPECT TO THE ISSUANCE OF THE SERIES 2016 NOTE, TO BE ISSUED IN ANY SERIES OR SUBSERIES AS THE AUTHORIZED OFFICER DEEMS NECESSARY AND APPROPRIATE FOR THE CITY, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES AS PLEDGED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; DESIGNATING THE SERIES 2016 NOTE AS A "QUALIFIED TAX EXEMPT OBLIGATION" PURSUANT TO SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; MAKING CERTAIN COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE PURCHASER OF THE NOTE; AND PROVIDING FOR AN EFFECTIVE DATE.

IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA AS FOLLOWS:

SECTION 1. AUTHORIZATION. This Resolution is adopted pursuant to the provisions of Chapter 166, Part II, Florida Statutes, the City of Vero Beach Charter, and other applicable provisions of law (the "Act").

SECTION 2. DEFINITIONS. Unless otherwise defined herein, capitalized terms shall have the meanings set forth below.

"Act" means Chapter 166, Part II, Florida Statutes, the Charter and other applicable provisions of law.

"Authorized Officer" means the Mayor, City Manager, Finance Director or City Clerk.

"Business Day" means any day except any Saturday or Sunday or any day on which the principal office of the Owner is closed.

"Charter" means the charter of the City of Vero Beach, Florida.

“City” means the City of Vero Beach, Florida, a municipal corporation of the State of Florida.

“City Manager” means the City Manager of the City or his or her designee.

“Clerk” means the City Clerk or assistant or deputy City Clerk of the City, or such other person as may be duly authorized by the City Council of the City 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.

“Council” means the City Council of the City.

“Loan Agreement” means the loan agreement authorized by Section 6 hereof.

“Mayor” means the Mayor of the City or his or her designee.

“Non-Ad Valorem Revenues” means amounts budgeted and appropriated by the City in its annual budget from revenues of the City not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under the Loan Agreement as the same shall become due, all as more particularly set forth in Section 7 hereof.

“Owner” or “Purchaser” means the Person or Persons in whose name or names the Series 2016 Note shall be registered on the books of the City kept for that purpose in accordance with the provisions of this Resolution.

“Person” mean natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

“Pledged Revenues” means the legally available Non-Ad Valorem Revenues of the City.

“Project” mean the capital improvements financed by the principal amount received by the City under the Series 2016 Note, including, but not limited to: the reconstruction of Airport Drive (34th Avenue) between Atlantic Boulevard and Cherokee Drive at the Airport Terminal building. The Project includes complete replacement of the existing bridge over the Indian River Farms Water Control District (IRFWCD) Main Canal. The Project also includes a new traffic signal at the intersection of Airport Drive and Aviation Boulevard as well as utility relocations, on-site and off-site drainage improvements, sidewalks, street lighting and landscape enhancements. The Series 2016 Note includes sufficient funding for unanticipated changes in scope during the Project construction and may be used for any other lawful purposes.

“Resolution” means this Resolution, pursuant to which the Series 2016 Note is authorized to be issued, including any supplemental resolution(s).

“Series 2016 Note” means the City’s proposed Capital Improvement Revenue Note, Series 2016 which is anticipated to be issued in the aggregate principal amount not to exceed \$1,400,000.

“State” means the State of Florida.

SECTION 3. FINDINGS. The Council hereby finds and determines that:

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

(b) The Council hereby finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the City and its citizens to issue its not to exceed \$1,400,000 Capital Improvement Revenue Note, Series 2016 (the “Series 2016 Note”) to finance the Project and cost of issuance related thereto. Issuance of the Series 2016 Note to finance the Project and cost of issuance satisfies a paramount public purpose.

(c) The City is without adequate, currently available funds to pay the costs of the Project, and it is necessary and desirable and in the best interests of the City that it borrow the moneys necessary to accomplish the financings.

(d) Debt service on the Series 2016 Note will be paid from Pledged Revenues. The Pledged Revenues are expected to be sufficient to pay the principal and interest on the Series 2016 Note, as same become due.

(e) The Series 2016 Note to be issued under this Resolution does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and is not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. The Series 2016 Note to be issued under the provisions of this Resolution is declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, is exempted from all taxes, except those taxes imposed by Chapter 220, Florida statutes, on interest, income, or profits on debt obligations owned by corporations.

(f) The City has issued a request for proposals for the financing of the Project pursuant to which the Authorized Officer, in conjunction with its financial advisor, received a response from a financial institution containing the terms most favorable to the City (the “Purchaser”). Due to the immediate need for funds, prevailing market conditions, the fixed rate of interest and the nature of the contemplated financing, it is hereby determined that it is in the best interests of the public and the City to negotiate the terms of a loan agreement with the bidder that provides the best overall terms of finance for the City.

(g) The principal of and interest on the Series 2016 Note shall be payable solely from the Pledged Revenues. Neither the City, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the Series 2016 Note or any amounts due under the Loan Agreement and neither the Series 2016 Note nor the Loan Agreement shall constitute a lien upon the City, or upon any properties owned by or situated within the City except as provided herein with respect to the Pledged Revenues.

(h) Including the proposed Series 2016 Note, the City and any subordinate entities of the City and any issuer of "tax-exempt" debt that issues "on behalf of" the City has not issued more than \$10,000,000 of tax-exempt obligations under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), in calendar year 2016 nor does it reasonably expect to do so.

SECTION 4. DELEGATION OF AUTHORITY TO SELECT PURCHASER. The City hereby delegates the authority to select the Purchaser of the Series 2016 Note to the Authorized Officer of the City upon consultation with the City's financial advisor, and after receipt of responses to a request for proposals issued by the City or financial advisor. The Authorized Officer, in consultation with the financial advisor to the City, shall select the response from a financial institution containing the terms most favorable to the City as determined by the Authorized Officer and in consultation with the City's financial advisor; provided that such proposal shall provide for a term not to exceed Fifteen (15) years and an all-end interest rate not exceeding 3.25% per annum.

SECTION 5. AUTHORIZATION OF THE SERIES 2016 NOTE. Subject and pursuant to the provisions of this Resolution, an obligation of the City to be known as the "City of Vero Beach, Florida Capital Improvement Revenue Note, Series 2016" is hereby authorized to be issued under and secured by this Resolution, in any series or subseries as the Authorized Officer may deem necessary and beneficial to the City, in the principal amount of not to exceed \$1,400,000, for the purpose of providing funds to pay the costs of financing the Project and to pay the costs of issuing the Series 2016 Note. The Authorized Officer, in conjunction with the financial advisor to the City, shall negotiate the form of the Series 2016 Note and Loan Agreement.

The financing of the Project is hereby authorized. Because of the characteristics of the Series 2016 Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2016 Note, it was in the best interest of the City to delegate to the Authorized Officer, upon the advice of its financial advisor, to issue a request for proposals for the financing of the Project and to select the proposal containing the terms most favorable to the City.

SECTION 6. AUTHORIZATION OF LOAN AGREEMENT. In order to provide for the security of the Series 2016 Note, and to express the contract between the City and the owners thereof, subject to the provisions of this Resolution, the City does hereby authorize the negotiation, execution and delivery on behalf of the City by an Authorized Officer and note counsel to the City under the seal of the City, attested by the City Clerk, of a Loan Agreement (the "Loan Agreement") with the Purchaser.

SECTION 7. COVENANT TO BUDGET AND APPROPRIATE. Subject to the next paragraph, the City covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues and to deposit into the City's Debt Service Fund, amounts sufficient to pay principal of premium, if any, and interest on amounts due under the Loan Agreement and the Series 2016 Note as the same shall become due. Such covenant and agreement on the part of the City to budget, appropriate and deposit such amounts

of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues, in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted, appropriated and deposited as provided herein. The City further acknowledges and agrees that the obligations of the City to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Until such monies are budgeted, appropriated and deposited as provided 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 City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holder of the Series 2016 Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. 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). Until such monies are budgeted, appropriated and deposited as provided herein, neither this Resolution, nor the obligations of the City hereunder shall be construed as a pledge of or a lien on all or any Non-Ad Valorem Revenues of the City, but shall be payable solely as provided herein subject to the availability of Non-Ad Valorem Revenues after satisfaction of funding requirements for obligations having an express lien on or pledge of such revenues, payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City, and the provisions of Section 166.241, Florida Statutes, insofar as there are not sufficient Non-Ad Valorem Revenues to comply with such covenant after the satisfaction of the funding requirements for obligations having an express lien on or pledge of any Non-Ad Valorem Revenues and the funding requirements for essential governmental services of the City. Notwithstanding any provisions of this Resolution or the Series 2016 Note to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City, which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues.

SECTION 8. SECURITY FOR SERIES 2016 NOTE. The payment of principal of and interest on the Series 2016 Note shall be secured equally and ratably by a pledge of and lien upon the Pledged Revenues. The City hereby irrevocably pledges the Pledged Revenues to the payment of the principal of and interest on the Series 2016 Note in accordance with this Resolution. The Pledged Revenues shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City.

SECTION 9. DESIGNATION OF THE SERIES 2016 NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION. The City hereby designates the Series 2016 Note as a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code. This designation is based upon the findings of the City set forth in Section 2(i) of this Resolution. The Mayor, the City Manager, a Council Member or the Clerk are authorized to certify such finding upon the

issuance of the Series 2016 Note. The City acknowledges that any action which adversely impacts the status of the Series 2016 Note as a “qualified tax-exempt obligation” will result in an upward adjustment to the interest rate on such Series 2016 Note.

SECTION 10. PURCHASER'S CERTIFICATE AND DISCLOSURE LETTER.

Prior to the issuance of the Series 2016 Note, the City shall receive from the Bank a Purchaser's Certificate, the form of which is attached hereto as Exhibit “A” and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit “B.”

SECTION 11. AUTHORIZATION OF EXECUTION OF TAX EXEMPTION CERTIFICATE, OTHER CERTIFICATES AND OTHER INSTRUMENTS.

The Mayor or other member of the Council or Authorized Officer is hereby authorized and directed to execute and deliver certificates of the City certifying such facts as Marchena and Graham, P.A., as note counsel, shall require, in connection with the issuance, sale and delivery of the Series 2016 Note and to execute and deliver such other instruments, including but not limited to, a tax exemption certificate relating to certain requirements set forth in Section 148 of the Code, as shall be necessary or desirable to perform the City's obligations under any agreement securing such Series 2016 Note.

SECTION 12. REMEDIES OF NOTEHOLDER. The holder of a Series 2016 Note may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by the Loan Agreement which secures such Series 2016 Note, to be performed by the City.

SECTION 13. GENERAL AUTHORITY. The Authorized Officers are hereby authorized to do all acts and things required of them consistent with the requirements of this Resolution, the Loan Agreement and any other document relating to the issuance of the Series 2016 Note for the full punctual and complete performance of all the terms, covenants and agreements contained in the Note, this Resolution, the Loan Agreement and such other documents. The Vice Mayor and any other member of the Council is authorized to do all things required or permitted by this Resolution of the Mayor in his or her absence or unavailability.

SECTION 14. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions contained herein shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this Resolution.

SECTION 15. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

This Resolution was heard on the ___ day of _____ 2016, after which hearing it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote of the City Council:

Mayor Jay Kramer _____
Vice-Mayor Randolph B. Old _____
Councilmember Pilar E. Turner _____
Councilmember Richard G. Winger _____
Councilmember Harry Howle III _____

(SEAL)

**CITY COUNCIL
CITY OF VERO BEACH, FLORIDA**

ATTEST:

By: _____
Tammy K. Vock, Clerk of the City of
Vero Beach, Florida

By: _____
Jay Kramer,
Mayor



Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

By: Wayne R. Coment
Wayne R. Coment
City Attorney

By: James R. O'Connor
James R. O'Connor
City Manager

Approved as to technical
requirements:

By: Cynthia D. Lawson
Cynthia D. Lawson
Finance Director

EXHIBIT "A"

FORM OF PURCHASER'S CERTIFICATE

This is to certify that _____ (the "Purchaser") has not required the City of Vero 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 a promissory note (the "Note") securing an amount of not to exceed \$1,400,000 as to Series 2016, and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on Marchena and Graham, P.A. ("Note Counsel") or Wayne R. Coment ("City Attorney") as to any such matters other than the legal opinions rendered by Note Counsel and by the City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the loan agreement dated _____, 2016 by and between the Issuer and the Purchaser (the "Loan Agreement").

We have been afforded access to all information we have requested in making our decision to purchase the Note and have had sufficient opportunity to discuss the business of the City with its officers, employees and others. We do not require any further information or data incident to our purchase of the Note. In purchasing the Note, we have relied solely upon our own investigation, examination, and evaluation of the City, and other relevant matters.

We acknowledge and understand that Resolution No. _____ enacted by the City Council of the Issuer on _____, 2016 is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Note Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Note may not be transferred except to an "accredited investor" as described below in accordance with the restrictions set forth in the Note.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an “accredited investor” as such term is defined in the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this ___ day of March, 2016.

[Name of Purchaser]

By: _____

Name: _____

Title: _____

EXHIBIT "B"

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of Vero Beach, Florida (the "Issuer") for the private purchase of a promissory note (the "Note") securing an amount of not to exceed \$1,400,000. 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 "Bank") in connection with the issuance of the Note (such fees and expenses to be paid by the Issuer):

Bank Counsel Fees -- \$3,500
[Bank will pay \$1,500]

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

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, 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 Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Note.

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

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

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance the Project (as defined in the Resolution) of the City of Vero Beach, Florida. Unless earlier redeemed, the Note is expected to be repaid by October 1, 2030, at a fixed interest rate of 2.47% per annum, total interest paid over the life of the Note is estimated to equal \$_____.

The Note will be payable solely from Non-Ad Valorem Revenues of the City (the "Pledged Revenues"), as described in Resolution No. ___ of the Issuer adopted on _____, 2016 (the "Resolution"). Issuance of the Note is estimated to result in a maximum of approximately \$_____ of revenues of the Issuer not being available to finance the services of the Issuer in any one year during the life of the Note.

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

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this ____ day of _____, 2016.

[Name of Purchaser]

By: _____

Name: _____

Title: _____

LOAN AGREEMENT

As to

Capital Improvement Revenue Note, Series 2016

Dated as of March 16, 2016

By and Between

CITY OF VERO BEACH, FLORIDA

(the "City")

AND

BRANCH BANKING AND TRUST COMPANY

(the "Lender")

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(The Table of Contents for this Loan Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Loan Agreement.)

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EXHIBIT “A” – Form of Series 2016 Note

LOAN AGREEMENT

This **LOAN AGREEMENT AS TO CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2016** (the "Agreement"), made and entered into this ____ day of _____, 2016, by and between **CITY OF VERO BEACH, FLORIDA** (the "City"), a municipal corporation duly organized under the laws of the State of Florida and its successors and assigns, and **BRANCH BANKING AND TRUST COMPANY** ("BB&T") a North Carolina state banking corporation authorized to conduct business in Florida, and its successors (the "Lender").

WITNESSETH:

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

WHEREAS, the City, pursuant to Chapter 166, Part II, Florida Statutes, as amended and supplemented, the Charter of the City, and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. _____, adopted by the City on March 15, 2016, subject to certain limitations, is authorized to borrow money, issue bonds, notes or other obligations to finance certain capital improvements, including, but not limited to, the capital improvement project intended for this Series 2016 Note as described herein below (the "Project");

WHEREAS, The City has issued a request for proposals for the financing of the capital improvements and has determined that the proposal from the Lender contains the terms most favorable to the City and the Lender;

WHEREAS, the Lender has agreed to lend the City such funds pursuant to the Capital Improvement Revenue Note, Series 2016 in the aggregate principal amount of \$1,400,000 upon the terms and conditions of this Agreement; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITION OF TERMS

Section 1.01. Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings as follows:

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

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

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which the Payment Office of the Lender is lawfully closed.

"City" shall mean the City of Vero Beach, Florida, a municipal corporation.

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

"Default Rate" shall mean the Interest Rate plus 2% per annum.

"Determination of Taxability" shall mean, with respect to the Series 2016 Note, the interest paid or payable on the Series 2016 Note becomes includable, for federal income tax purposes in the gross income of the Noteholder. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or the Noteholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on the Series 2016 Note is includable in the gross income of the Noteholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2016 Note is includable in the gross income of the Noteholder; or (c) receipt by the City or the Noteholder of an opinion of Note Counsel to the effect that any interest on the Series 2016 Note has become includable in the gross income of the Noteholder for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Series 2016 Note is deemed includable in the gross income of the Noteholder. A Determination of Taxability shall not occur in the event such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum tax imposed on corporations.

In the case of (a) and (b) above, no Determination of Taxability shall be deemed to occur unless the City has been given timely written notice that such a determination has been made by the Internal Revenue Service and an opportunity to participate in and seek, at its own expense, a final administrative determination or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the existence of such event of taxability; provided that the City, at its own expense, delivers to the Lender an opinion of Note Counsel acceptable to the Lender to the effect that such appeal or action for judicial or administrative review is not without merit and there is a reasonable possibility that the judgment, order, ruling or decision from which such appeal or action for judicial or administrative review is taken will be reversed, vacated or otherwise set aside.

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

"Final Maturity Date" shall mean the date on which all principal and all unpaid interest accrued on the Series 2016 Note shall be due and payable in full, which date shall be, if not sooner due to acceleration or prepayment, October 1, 2030.

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

"Lender" shall mean BB&T and its successors.

"Non-Ad Valorem Revenues" shall mean amounts budgeted and appropriated by the City in its annual budget from revenues of the City not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under this Agreement and the Series 2016 Note as the same shall become due, all as more particularly set forth in the Resolution.

"Non-Bank Qualified Rate" shall mean a rate equal to 3.50% per annum.

"Note Counsel" shall mean, initially, Marchena and Graham, P.A., Orlando, Florida, and shall include Burr & Forman, LLP acting as "Special Tax Counsel" or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions as approved by the City.

"Note Rate" shall mean 2.47% per annum which may only be adjusted as provided in the Series 2016 Note.

"Noteholder" shall mean the Lender as the holder of the Series 2016 Note and any subsequent registered holder of the Series 2016 Note.

"Note Year" means the year beginning on October 1 of every year in which the Note is outstanding and ending on the next succeeding November 30.

"Pledged Revenues" shall mean the Non-Ad Valorem Revenues of the City.

"Project" shall mean the capital improvements financed by the principle amount received by the City under the Series 2016 Note, including, but not limited to: the reconstruction of Airport Drive (34th Avenue) between Atlantic Boulevard and Cherokee Road at the Airport Terminal building. The Project includes complete replacement of the existing bridge over the Indian River Farms Water Control District (IRFWCD) Main Canal. The Project also includes a new traffic signal at the intersection of Airport Drive and Aviation Boulevard as well as utility relocations, on-site and off-site drainage improvements, sidewalks, street lighting and landscape enhancements. The Series 2016 Note includes sufficient funding for unanticipated changes in scope during the Project construction. If unexpended, any remaining funds will be used for other budgeted public works and transportation projects or other lawful municipal purposes, as well as any future projects allowable by law, and pay cost of issuance. Additional funding for this Project is being provided by an Aviation Development grant from the Florida Department of Transportation in the amount of \$3,345,000.

"Resolution" shall mean Resolution No. 16-___ adopted by the City on March 15, 2016 which, among other things, authorized the execution and delivery of this Agreement and the issuance of the Series 2016 Note.

"Series 2016 Note" shall mean the City's proposed Capital Improvement Revenue Note, Series 2016, to be issued in an aggregate principal amount of \$1,400,000 and secured by the Pledged Revenues.

"Taxable Rate" shall mean a rate equal to 3.75% per annum.

Section 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

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

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

(a) **Existence.** The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Resolution, to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Series 2016 Note to the Lender. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Series 2016 Note have been duly authorized by all necessary action on the part of the City and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the City or any of its material properties is bound.

(b) **Validity, Etc.** This Agreement, the Series 2016 Note and the Resolution are valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) **No Financial Material Adverse Change.** Except as noted in the financial statements, letters to the City's auditors, or as disclosed separately by the City to Lender, there are no actions, proceedings or investigations pending against the City or affecting the City (or any basis therefor known to the City) which, either in any case or in the aggregate, are likely to result in any material adverse change in the financial condition, business, prospects, affairs or operations of the City, or in any material impairment of the right or ability of the City to carry on its operations as now conducted or proposed to be conducted, or in any material liability on the part of the City and none which questions the validity of this Agreement, the Series 2016 Note or the Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Powers of City. The City has the legal power and authority to pledge the Pledged Revenues to the repayment of the Series 2016 Note as described herein.

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

(a) Existence. The Lender is a North Carolina state banking corporation, authorized to do business in the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to purchase the Series 2016 Note.

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

ARTICLE III THE SERIES 2016 NOTE

Section 3.01. The Series 2016 Note. The Series 2016 Note shall be in the form set forth as **Exhibit "A"** to this Agreement.

Section 3.02. Compliance with Section 215.84. The City represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.03. Conditions Precedent to Purchase of Series 2016 Note. Prior to or simultaneously with the delivery of the Series 2016 Note by the City there shall be filed with the Lender the following, each in form and substance reasonably acceptable to the Lender:

(a) an opinion of the City's counsel, relying on representations from the City and its officials, employees and agents without independent review by the City's counsel, to the City and the Lender for the exclusive reliance by the addressees, to the effect that (i) the Resolution has been duly adopted and this Agreement has been duly authorized, executed and delivered by the City and constitutes a valid, binding and enforceable agreement of the City in accordance with its terms, except to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and execution and issuance of the Series 2016 Note are not subject to any authorization, consent, approval or review of any other governmental body, public officer or regulatory authority not heretofore obtained or effected; (iii) the execution, issuance and delivery of the Series 2016 Note have been duly and validly authorized by the City, and the Series 2016 Note constitutes a valid and binding special obligation of the City enforceable in accordance with their terms; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, and (B) has power and authority to execute and deliver this

Agreement to consummate the transactions contemplated hereby; (v) the execution, delivery and performance of the Series 2016 Note and this Agreement, and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) to the best of such counsel's knowledge, there is no claim, action, suit, proceeding, inquiry, investigation, litigation or other proceeding, at law or in equity, pending or threatened in any court or other tribunal, state or federal (A) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Series 2016 Note, (B) in any way questioning or affecting the validity or enforceability of any provision of this Agreement, the Series 2016 Note, or the Resolution, (C) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Series 2016 Note, or of any provision made or authorized for the payment thereof, or (D) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City has the legal power to pledge the Pledged Revenues to the repayment of the Series 2016 Note as described in the Resolution; and (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Series 2016 Note have been complied with.

City counsel will not render an opinion concerning the Determination of Taxability of the Loan Agreement or the Series 2016 Note; the Federal and State of Florida tax-exempt status of the interest income and documentary taxes arising from the Loan Agreement, the Series 2016 Note and this transaction; and any matters assigned to Note Counsel pursuant to the Loan Agreement. The opinion of the City counsel will be based on the facts in existence and laws in effect on the date of the opinion letter and will disclaim any obligation to update the opinion regardless of whether changes in such facts or laws come to the counsel's attention after the delivery hereof. The opinion will be limited to the law of the State of Florida and will not express an opinion with respect to the laws of any other state or jurisdiction and will not render an opinion concerning securities laws of State of Florida and Federal government. The opinion of the City counsel will assume that the execution, delivery and performance of the loan documents are within the power of the Lender, and will not violate or result in a breach of any term or provision of any agreement, judgment, non-Florida Statute, decree or administrative order to which Lender is subject and will assume that the loan documents, in the exact form as reviewed by City counsel, will be duly authorized, completed, executed and delivered by the City and Lender.

(b) an opinion of Burr & Forman, LLP, Special Tax Counsel stating that such counsel are of the opinion that: (i) assuming compliance by the City with certain covenants relating to requirements contained in the Code (a) interest on the Series 2016 Note is excluded from gross income for purposes of federal income taxation, and (b) interest on the Series 2016 Note is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations, and (ii)

if so designated by the City, that the Series 2016 Note is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

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

(d) such other documents as the Lender reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (d), inclusive, of this Section shall have been filed with the Lender, and when the Series 2016 Note shall have been executed as required by this Agreement, and all conditions of the Resolution have been met, the City shall deliver the Series 2016 Note to or upon the order of the Lender, but only against and upon the City's receipt of the purchase price of the Series 2016 Note, in cash or by wire transfer in the City's discretion.

Section 3.04. Registration of Transfer; Assignment of Rights of Lender. The City shall keep at the office of the City Clerk in the City's records the registration of the Series 2016 Note and the registration of transfers of the Series 2016 Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Series 2016 Note may be registered only upon the books kept for the registration of the Series 2016 Note and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Lender or its attorney or legal representative in the form of the assignment set forth on the form of the Series 2016 Note attached as **Exhibit "A"** to this Agreement; provided, however, that the Series 2016 Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the applicable Series 2016 Note a new Series 2016 Note registered in the name of the transferee. In all cases in which the Series 2016 Note shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Series 2016 Note in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of the Series 2016 Note sufficient to reimburse it for any tax or other governmental charges required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Series 2016 Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Series 2016 Note on the registration books of the City shall be deemed to effect a transfer of the rights and obligations of the Lender under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Lender under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Lender. The City and the transferor shall execute and record such instruments and take such other actions as the City and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Lender under this Agreement and the Series 2016 Note.

In the event any Series 2016 Note is mutilated, lost, stolen, or destroyed, the City shall execute a new Series 2016 Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Series 2016 Note, such mutilated Series

2016 Note shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Series 2016 Note, there first shall be furnished to the City evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

Nothing in this Agreement or in the Series 2016 Note shall be construed to prohibit the Lender from granting a participation or participations in the Series 2016 Note to any other bank or banks affiliated with the Lender or any subsidiary thereof. No such bank participant shall, however, be a registered holder of any Series 2016 Note or any portion thereof.

Section 3.05. Ownership of the Series 2016 Note. The entity in whose name the Series 2016 Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of such Series 2016 Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Series 2016 Note, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Series 2016 Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of such Series 2016 Note; provided, however, that the Series 2016 Note may be transferred only in whole and not in part and provided further, that no transfer shall be permitted absent the City's (and the Lender's) receipt of a letter in form and substance similar to the one delivered by the Lender and attached to the Resolution as **Exhibit "A"** pursuant to Section 218.385, Florida Statutes from such proposed transferee. Every prior registered owner of the Series 2016 Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

Section 3.06. Use of Proceeds of Series 2016 Note Permitted Under Applicable Law. The City represents, warrants and covenants that the proceeds of the Series 2016 Note will be used solely to for the Project and cost of issuance of the Series 2016 Note.

ARTICLE IV COVENANTS OF THE CITY

Section 4.01. Performance of Covenants. The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in the Resolution, this Agreement and the Series 2016 Note. The City further covenants to keep accurate records with respect to the use of proceeds.

Section 4.02. Payment of the Series 2016 Note.

(a) The City covenants that it will promptly pay the principal of and interest on the Series 2016 Note at the place, on the dates and in the manner provided herein and in the Series 2016 Note, in accordance with the terms thereof. Pursuant to Section 4.03 hereof, the City hereby pledges the Pledged Revenues in sufficient amounts to pay principal and interest on the Series 2016 Note when due until the repayment in full of the Series 2016 Note.

(b) The Series 2016 Note will be a limited obligation of the City secured solely by the Pledged Revenues and are payable from the Pledged Revenues as provided in the Resolution. The Series 2016 Note will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Series 2016 Note and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment, nor require the City to levy and collect any particular amount of Pledged Revenues. The Series 2016 Note shall not constitute a lien upon any property of the City except upon the Pledged Revenues.

Section 4.03. Pledged Revenues. The payment of principal of and interest on the Series 2016 Note shall be secured equally and ratably by a covenant to budget and appropriate Non-Ad Valorem Revenues by the City. Pursuant to the Resolution, the City has irrevocably pledged the Pledged Revenues to the payment of principal of and interest on the Note; provided, however, that the City is authorized and retains the right to pledge Non-Ad Valorem Revenues to the payment of the principal of and interest on any other note authorized by the City.

Section 4.04. Limitation on Additional Debt Secured by Pledged Revenues. The City agrees not to issue additional obligations payable from Pledged Revenues with the Note, unless it provides a certificate to the Bank from the Finance Administrator of the City stating that (a) no Event of Default under the Agreement then exists or would exist with the passage of time or the giving of notice, and (b) for the twelve (12) months immediately preceding the issuance of the additional obligations for which audited financial statements are available, the maximum annual debt service coverage for the Note, any other obligations secured by the Pledged Revenues and the proposed debt exceeds 1.25:1.00. For purposes of this calculation, the numerator shall be calculated based upon the last full fiscal year of the City which has been audited by an independent certified public accountant, and the denominator shall be calculated based upon the maximum annual debt service of all City debt secured by the Pledged Revenues including the proposed debt service. For purposes of calculating maximum annual debt service, the interest rate on variable rate indebtedness shall be deemed to be the greatest of (i) for tax-exempt debt, 67% of the Prime Rate quoted in the Wall Street Journal five (5) Business Days before the issuance of such debt, (ii) for taxable debt, the Prime Rate quoted in the Wall Street Journal five (5) Business Days before the issuance of such debt, (iii) the actual interest rate borne by the variable rate debt on the date five (5) Business Days before the date of issuance.

Section 4.05. Tax Covenant. The City covenants to the lender of the Series 2016 Note provided for in this Agreement that the City will not make any use of the proceeds of the Series

2016 Note at any time during the respective terms of such Series 2016 Note which, if such use had been reasonably expected on the date the Series 2016 Note were issued, would have caused such Series 2016 Note to be an "arbitrage bond" within the meaning of the Code. The City will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Series 2016 Note from the gross income of the holders thereof for purposes of federal income taxation.

Section 4.06. Budget and Other Financial Information. The City shall:

(a) Within one hundred and eighty (180) days following the end of each Fiscal Year of the City, provide the Noteholder a paper copy of the City's audited financial statements for the preceding Fiscal Year; and

(b) Provide the Noteholder, with a copy of its resolution adopting its annual budget within thirty (30) days of the adoption of the same, a completed budget book upon the completion of the same, and such other financial information regarding the City as the Noteholder may reasonably request.

**ARTICLE V
EVENTS OF DEFAULT AND REMEDIES**

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

(a) payment of the principal or interest of the Series 2016 Note is not made within five (5) days from when the same shall become due and payable; or

(b) the City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Series 2016 Note or in this Agreement and such default shall continue for thirty (30) days after written notice shall have been received by the City from the Noteholder specifying such default and requiring the same to be remedied; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action; or

(c) the filing of a petition by or against the City relating to bankruptcy, reorganization, arrangement or readjustment of debt of the City or for any other relief relating to the City under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the City, where such event continues for at least ninety (90) days undismissed or undischarged.

(d) The City shall default in the due and punctual payment or performance of covenants related to (i) any obligation for the payment of money to the Lender, and (ii) any obligation for the payment of money in any amount in excess of \$250,000 to any other obligee.

Section 5.02. Exercise of Remedies. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may, by **thirty (30) days** notice in writing to the City, declare the principal of the Series 2016 Note (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable, anything contained in the Series 2016 Note or this Agreement to the contrary notwithstanding. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Series 2016 Note then unpaid, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Series 2016 Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), but payable from the Pledged Revenues, without prejudice to any other right or remedy of the Noteholder, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in the Series 2016 Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect (but only from the Pledged Revenues) in any manner provided by law, the monies adjudged or decreed to be payable.

Any payments not made within five (5) days of its due date shall bear interest at the Default Rate.

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder; provided, however, notwithstanding anything to the contrary herein, the sole and exclusive source of the funds for payment of the Series 2016 Note and all costs, fees, expenses and other obligations of the City under this Agreement and the Series 2016 Note shall be the Pledged Revenues.

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

The Noteholder may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it

under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 5.05. Arbitration and Waiver of Jury Trial.

(a) This Section 5.05 concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) any Loan Document (collectively a "Claim"). For the purposes of this arbitration provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of the Lender involved in the servicing, management or administration of any obligation described or evidenced by this Agreement.

(b) At the request of any party to this Agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Arbitration Act"). The Arbitration Act will apply even though this Agreement provides that it is governed by the law of a specified state. The arbitration will take place on an individual basis without resort to any form of class action.

(c) Arbitration proceedings will be determined in accordance with the Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this Section. In the event of any inconsistency, the terms of this paragraph shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, any party to this Agreement may substitute another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted in Vero Beach, Florida. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed, judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s).

The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement.

(f) This Section does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This provision is a material inducement for the parties entering into this Agreement.

ARTICLE VI MISCELLANEOUS PROVISIONS

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

Section 6.02. Term of Agreement. This Agreement shall be in full force and effect from the date hereof until the Series 2016 Note and all other sums payable to the Lender hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Lender in relation to the tax exempt status of the Series 2016 Note.

Section 6.03. Notice of Changes in Fact. Promptly after the City becomes aware of the same, to the extent such materially and substantially impairs the City's ability to honor its obligations under this Agreement, the City will notify the Lender of (a) any changes in any material fact or circumstance represented or warranted by the City in this Agreement or in connection with the issuance of the Series 2016 Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

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

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

As to the City:
City of Vero Beach, Florida
Attention: Finance Director
1053 20th Place
P.O. Box 1389
Vero Beach, FL 32961

As to the Lender:
BB&T
5130 Parkway Plaza Boulevard
Building No. 9
Charlotte, NC 28217
Attn: Account Administration / Municipal

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

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

Section 6.07. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Series 2016 Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Series 2016 Note, but this Agreement, any amendment or supplement hereto and the Series 2016 Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Series 2016 Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

Section 6.08. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Series 2016 Note or the date fixed for prepayment of the Series 2016 Note shall be a day which is not a Business Day, then payment of such interest or principal shall be made on the next succeeding day which is a Business Day provided that interest on any such principal amount shall accrue until payment is received by the Lender.

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

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

Section 6.11. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Series 2016 Note, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Council, officer, attorney, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements, liability, debt, judgment or obligations, nor shall any recourse be had for the payment of the principal of or interest on any Series 2016 Note or for any claim based thereon or on any such stipulation, covenant, agreement, liability, debt, judgment or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

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

[SIGNATURE PAGES TO FOLLOW]
[SPACE LEFT INTENTIONALLY BLANK]

SIGNATURE PAGE FOR LOAN AGREEMENT FOR CITY OF VERO BEACH, FLORIDA
BANK QUALIFIED CAPITAL IMPROVEMENT REVENUE BOND, SERIES 2016

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

CITY OF VERO BEACH, FLORIDA

(SEAL)

By: _____
Jay Kramer,
Mayor

ATTEST:

By: _____
Tammy K. Vock, Clerk of the City of
Vero Beach, Florida

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

By: _____
Wayne R. Coment
City Attorney

By: _____
James R. O'Connor
City Manager

Approved as to technical
requirements:

By: _____
Cynthia D. Lawson
Finance Director

BRANCH BANKING AND TRUST
COMPANY

By: _____
Andrew G. Smith
Senior Vice President

EXHIBIT “A”

Form of Series 2016 Note