



City of North Port

ORDINANCE NO. 2020-41

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA SUPPLEMENTING ORDINANCE NO. 92-30, AS PREVIOUSLY AMENDED AND SUPPLEMENTED, WHICH ORDINANCE NO. 92-30, AMONG OTHER THINGS, AUTHORIZES THE ISSUANCE FROM TIME TO TIME OF CITY OF NORTH PORT, FLORIDA UTILITY SYSTEM REVENUE BONDS; AUTHORIZING THE ISSUANCE BY THE CITY OF NOT EXCEEDING \$16,500,000 PRINCIPAL AMOUNT OF A CITY OF NORTH PORT, FLORIDA UTILITY SYSTEM REVENUE BOND, SERIES 2020 IN ORDER TO REFINANCE ALL THE CITY'S OUTSTANDING LOANS WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION IN ORDER TO ACHIEVE DEBT SERVICE SAVINGS; PROVIDING PARAMETERS FOR CERTAIN TERMS AND DETAILS OF SUCH BOND AND AUTHORIZING THE NEGOTIATED SALE OF SAID BOND TO TD BANK, N.A. PURSUANT TO ITS PROPOSAL AND IN ACCORDANCE WITH SUCH PARAMETERS; DELEGATING CERTAIN AUTHORITY TO THE CITY MANAGER AND OTHER OFFICERS OF THE CITY FOR THE AUTHORIZATION, EXECUTION, AND DELIVERY OF THE SERIES 2020 BOND AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; PROVIDING CERTAIN OTHER PROVISIONS WITH RESPECT TO SUCH SERIES 2020 BOND; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 16, 1992, the City Commission (the "City Commission") of the City of North Port, Florida (the "Issuer") duly adopted Ordinance No. 92-30 (as amended and supplemented, the "Ordinance"), which, among other things, authorized the issuance of the City of North Port, Florida Utility System Revenue Bonds, Series 1992, none of which are currently outstanding; and

WHEREAS, there is currently outstanding pursuant to the Ordinance, the Issuer's City of North Port, Florida Utility System Refunding Revenue Bond, Series 2005, City of North Port, Florida Utility System Refunding Revenue Note, Series 2014A and City of North Port, Florida Utility System Refunding Revenue Note, Series 2014B (collectively the "Parity Bonds"); and

WHEREAS, the Issuer has previously received three loans from the Florida Department of Environmental Protection ("DEP") to finance various capital improvements to the System (as defined in the Ordinance), which loans are evidenced by Clean Water State Revolving Fund Loan Agreement WW668010, dated as of March 17, 2009, as amended; Clean Water State Revolving Fund Loan Agreement WW580700, dated as of February 11, 2011, as amended; and Clean Water State Revolving Fund Loan Agreement WW580701, dated as of October 5, 2015, as amended (collectively the "SRF Loans"); and

WHEREAS, in order to achieve debt service savings, the Issuer deems it to be in its best interest to refinance all of the SRF Loans; and

WHEREAS, on behalf of the Issuer, the Issuer's financial advisor, PFM Financial Advisors LLC (the "Financial Advisor"), solicited proposals from various financial institutions pursuant to a request for proposals to provide the Issuer with a fixed rate, term loan in order to refinance the SRF Loans, which term loan would be evidenced by a Bond (as defined in the Ordinance) to be issued pursuant to the Ordinance on parity with the Parity Bonds; and

WHEREAS, TD Bank, N.A. (the "Series 2020 Bondholder") submitted the most beneficial proposal to provide such a term loan to the Issuer (the "Loan"), which proposal is attached hereto as Exhibit A (the "Proposal"); and

WHEREAS, it is in the best interest of the Issuer to accept the Proposal of the Series 2020 Bondholder to provide the Loan to refinance the SRF Loans in order to achieve debt service savings for the Issuer; and

WHEREAS, the Ordinance provides for the issuance of Additional Bonds (as defined in the Ordinance) for the purpose of refinancing the SRF Loans, payable on a parity with the Parity Bonds, upon meeting certain requirements set forth in the Ordinance; and

WHEREAS, the most efficient and cost-effective method of refinancing the SRF Loans is through the issuance of the City of North Port, Florida Utility System Revenue Bond, Series 2020 (the "Series 2020 Bond") to the Series 2020 Bondholder in order to evidence the Loan, all in accordance with the provisions hereof and of the Ordinance and the terms of the Proposal; and

WHEREAS, due to the potential volatility of the market for tax-exempt obligations such as the Series 2020 Bond and the complexity of the transactions relating to such Series 2020 Bond, it is in the best interest of the Issuer to sell the Series 2020 Bond by a negotiated sale to the Series 2020 Bondholder pursuant to the terms of the Proposal and the final terms approved by the City Manager, in accordance with the parameters set forth herein and with the provisions of the Ordinance and hereof, rather than at a specified advertised date, thereby permitting the Issuer to obtain the best possible price and interest rate for the Series 2020 Bond; and

WHEREAS, the Ordinance provides that the Series 2020 Bond shall mature on such dates and in such amounts, shall bear such rates of interest, shall be payable in such places and shall be subject to such redemption provisions as shall be determined by Supplemental Ordinance adopted by the Issuer; and it is now appropriate that the Issuer determine certain of such provisions, terms and details and establish the mechanisms for determining the remaining provisions, terms and details; and

WHEREAS, the Series 2020 Bond shall not constitute a general obligation, or a pledge of the faith, credit or taxing power of the Issuer, the State of Florida, or any political subdivision thereof, within the meaning of any constitutional or statutory provisions; neither the State of Florida, nor any political subdivision thereof, nor the Issuer shall be obligated to exercise its ad valorem taxing power in any form on any real or personal property of or in the Issuer to pay the principal of the Series 2020 Bond, the interest thereon, or other costs incidental thereto or to pay the same from any other funds of the Issuer except from the Pledged Funds, in the manner provided herein and in the Ordinance; and

WHEREAS, the Issuer is, and will be at the time of the issuance of the Series 2020 Bond, current in all deposits into the various funds and accounts established by the Ordinance and all payments theretofore required to have been deposited or made by it under the provisions of the Ordinance and has complied with, and will be in compliance with at the time of the issuance of the Series 2020 Bond, all of the covenants and agreements of the Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:

SECTION 1 -- FINDINGS AND EXHIBIT

- 1.01 The above recitals are incorporated by reference as findings of fact.
- 1.02 The referenced exhibit is attached and incorporated into this resolution.

SECTION 2 -- AUTHORITY FOR THIS SUPPLEMENTAL ORDINANCE

- 2.01 This Supplemental Ordinance is adopted pursuant to the provisions of the Act (as defined in the Ordinance) and the Ordinance.

SECTION 3 -- DEFINITIONS

- 3.01 When used in this Supplemental Ordinance, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Ordinance, except as such definitions may be hereinafter amended.

SECTION 4 -- ORDINANCE TO CONSTITUTE CONTRACT

- 4.01 In consideration of the purchase and acceptance of the Series 2020 Bond by the Series 2020 Bondholder, the provisions of the Ordinance and this Supplemental Ordinance shall be a part of the contract of the Issuer with the Series 2020 Bondholder, and shall be deemed to be and shall constitute a contract between the Issuer and the Series 2020 Bondholder. The provisions, covenants and agreements in the Ordinance and this Supplemental Ordinance set forth to be performed by or on behalf of the Issuer shall be for the benefit, protection and security of the Series 2020 Bondholder.

SECTION 5 -- AUTHORIZATION OF REFINANCING; ACCEPTANCE OF PROPOSAL.

- 5.01 In order to achieve debt service savings, the Issuer hereby authorizes the refinancing of the SRF Loans.
- 5.02 The Issuer hereby accepts the Proposal of the Series 2020 Bondholder to provide the Issuer with the Loan, a copy of which Proposal is attached hereto as Exhibit A. All actions previously taken by officials, staff and employees of the Issuer and professionals to the Issuer with respect to the Proposal are hereby ratified and approved.

SECTION 6 -- DESCRIPTION OF THE SERIES 2020 BOND

6.01 The Issuer hereby authorizes the issuance of the Series 2020 Bond in the principal amount of not exceeding \$16,500,000 to be known as the "City of North Port, Florida Utility System Revenue Bond, Series 2020," for the principal purpose of refinancing the SRF Loans. The actual principal amount of the Series 2020 Bond to be issued pursuant to this Supplemental Ordinance shall be determined by the City Manager, upon the advice of the Financial Advisor, provided such principal amount does not exceed \$16,500,000. Except as otherwise provided herein, the Series 2020 Bond shall be on a parity in all respects and shall rank equally as to lien on and source and security for payment from the Pledged Funds with the Parity Bonds.

The Series 2020 Bond shall be dated as of its date of issuance, or such other date as the City Manager may determine, and shall be issued in the form of a fully registered Bond in the denomination of its outstanding principal amount. The Series 2020 Bond shall bear interest from its date of issuance at a fixed interest rate equal to 1.16% per annum (the "Interest Rate") The Interest Rate shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Interest Rate is subject to adjustment pursuant to Section 8 herein. Interest on the Series 2020 Bond shall be payable semi-annually, on April 1 and October 1 of each year (the "Interest Payment Dates"), commencing on April 1, 2021. The Series 2020 Bond shall be issued as a Term Bond with a final maturity of October 1, 2031 and shall be subject to mandatory sinking fund redemption in such Sinking Fund Installments commencing on October 1, 2021 and on each October 1 thereafter through the final maturity date of the Series 2020 Bond, determined prior to the issuance of the Series 2020 Bond by the City Manager, upon the advice of the Issuer's Financial Advisor, and approved by the Series 2020 Bondholder and set forth in the Series 2020 Bond. The Series 2020 Bond shall be sold on a negotiated basis to the Series 2020 Bondholder at a purchase price equal to 100% of the principal amount thereof. The Series 2020 Bondholder shall provide the Issuer with the Disclosure Letter and Truth-in-Bonding Statement as required by Section 218.385, Florida Statutes. The Interest Rate on the Series 2020 Bond shall comply in all respects with Section 215.84, Florida Statutes.

The Series 2020 Bond shall be payable as to principal and interest by check, draft, bank wire transfer or in such other manner as is agreed to between the Issuer and the Series 2020 Bondholder. Upon full payment of all amounts due with respect to the Series 2020 Bond, the Series 2020 Bondholder shall surrender the Series 2020 Bond to the Issuer or shall otherwise provide evidence that such Series 2020 Bond has been canceled. Principal of and interest on the Series 2020 Bond shall be payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

The City Manager is authorized to execute and deliver, and the Clerk is authorized to attest and affix the Issuer seal to, the Series 2020 Bond substantially in the form set forth in Section 2.09 of the Ordinance with such changes, insertions, and additions as the City Manager may approve, his execution thereof being conclusive evidence of such approval.

The Series 2020 Bond shall evidence the Loan made by the Series 2020 Bondholder to the Issuer for the purposes described herein.

SECTION 7 -- REDEMPTION PROVISIONS

7.01 The Series 2020 Bond shall be subject to optional redemption, in whole or in part, on any Business Day (as defined below) at the option of the Issuer, at a price equal to the principal amount to be redeemed, plus interest accrued on the principal amount being redeemed to the date of redemption, plus payment of the Fixed Rate Redemption Charge as determined by the Series 2020 Bondholder. The Fixed Rate Redemption Charge shall equal the greater of (a) 1.00% of the principal amount being redeemed multiplied by the Remaining Term (as defined below) or (b) a "Yield Maintenance Fee" in an amount computed as follows:

The Yield Maintenance Fee shall be based on the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the Remaining Term ("Cost of Funds") subtracted from the stated Interest Rate on the Series 2020 Bond ("Stated Interest Rate"). If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the principal amount being redeemed times the number of days in the Remaining Term and divided by 360. The resulting amount is the "Yield Maintenance Fee" due to the Series 2020 Bondholder upon redemption of all or a portion of the principal of the Series 2020 Bond, plus any accrued interest due as of the redemption date and is expressed in the following calculation:

"Yield Maintenance Fee" = Principal Amount Being Redeemed times (Stated Interest Rate - Cost of Funds) times days in the Remaining Term/360 days.

"Remaining Term" as used herein shall mean the remaining term of the Series 2020 Bond.

Any redemption of the Series 2020 Bond shall be made on such Business Day as shall be specified by the Issuer in a notice delivered to the Series 2020 Bondholder not less than thirty (30) days prior thereto specifying the principal amount of the Series 2020 Bond to be redeemed and the date that shall be the date of such redemption. Notice having been given as aforesaid, the amount of the outstanding principal of the Series 2020 Bond to be redeemed shall become due and payable on the date of redemption stated in such notice, together with interest accrued and unpaid to the date of redemption on the principal amount then being paid, plus the Fixed Rate Redemption Charge. If on the date of redemption moneys for the payment of the principal amount to be redeemed on such Series 2020 Bond, together with interest to the date of redemption on such principal amount, plus the Fixed Rate Redemption Charge shall have been paid to the Series 2020 Bondholder as above provided, then from and after the date of redemption, interest on such redeemed principal amount of the Series 2020 Bond shall cease to accrue. If said money shall not have been so paid on the date of redemption, such principal amount of the Series 2020 Bond to be redeemed shall continue to bear interest until payment thereof at the then applicable Interest Rate. Any redemption in part shall be applied to the remaining Sinking Fund Installments in inverse order unless otherwise agreed to between the Issuer and the Series 2020 Bondholder.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which the Series 2020 Bondholder is authorized or required to be closed.

Notwithstanding any other provision of the Ordinance, the Issuer shall not be required to provide the Series 2020 Bondholder with any notice with respect to the payment of any scheduled Sinking Fund Installment.

SECTION 8 -- ADJUSTMENT TO INTEREST RATE; LATE FEE

- 8.01 In the event of a Determination of Taxability (as defined below), the Interest Rate on the Series 2020 Bond shall be immediately increased to such rate as shall provide the Series 2020 Bondholder with the same rate of return that the Series 2020 Bondholder would have otherwise received on the Series 2020 Bond taking into account the increased taxable income of the Series 2020 Bondholder as a result of such Determination of Taxability (the "Adjusted Rate"); provided, however, such Adjusted Rate shall never exceed the maximum rate allowable by law. Immediately upon a Determination of Taxability, the Issuer agrees to pay to the Series 2020 Bondholder, the Additional Amount. "Additional Amount" means (a) the difference between (i) interest on the Series 2020 Bond for the period commencing on the date on which the interest on the Series 2020 Bond (or portion thereof) is deemed to have lost its tax-exempt status and ending on the effective date of the adjustment of the Interest Rate to the Adjusted Rate (the "Prior Taxable Period") at a rate per annum equal to the Adjusted Rate and (ii) the aggregate amount of interest paid on the Series 2020 Bond during the Prior Taxable Period at the Interest Rate applicable to the Series 2020 Bond prior to the adjustment to the Adjusted Rate, plus (b) any penalties, fines, fees, costs and interest paid or payable by the Series 2020 Bondholder to the Internal Revenue Service by reason of such Determination of Taxability.
- 8.02 For purposes of this Section 8, the term "Determination of Taxability" shall mean the circumstance of interest paid or payable on the Series 2020 Bond becoming includable for federal income tax purposes in the gross income of the Series 2020 Bondholder as a consequence of any act or omission of the Issuer. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the Issuer or the Series 2020 Bondholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other official letter or correspondence from the Internal Revenue Service which holds that any interest payable on the Series 2020 Bond is includable in the gross income of the Series 2020 Bondholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2020 Bond is includable in the gross income of the Series 2020 Bondholder, or (c) receipt by the Issuer or the Series 2020 Bondholder of an opinion of a Bond Counsel that any interest on the Series 2020 Bond has become includable in the gross income of the Series 2020 Bondholder 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 2020 Bond is deemed includable in the gross income of the Series 2020 Bondholder.
- 8.03 Upon the occurrence and continuance of an Event of Default, the Series 2020 Bondholder may adjust the Interest Rate to the Default Rate (as defined below) which shall be effective until such Event of Default has been cured.

"Default Rate" shall mean the lesser of (a) the Prime Rate (as defined below), plus 600 basis points (6.00%) per annum, or (b) the maximum rate allowable under applicable law.

"Prime Rate" shall mean the rate quoted in the *Wall Street Journal* from time to time as the "prime rate," or, if the *Wall Street Journal* ceases publication or ceases to quote a "prime rate," such alternate interest rate as shall, in the reasonable opinion of the Series 2020 Bondholder, approximate such rate. In no event will the Prime Rate be deemed to be less than 3.00% for purposes of determining the Default Rate hereunder.

- 8.04 If any payment required to be made by the Issuer hereunder or under the Ordinance or the Series 2020 Bond is more than fifteen (15) days past due, the Issuer will pay to the Series 2020 Bondholder a late charge equal to six percent (6%) of the payment amount which is past due.

SECTION 9 -- APPLICATION OF SERIES 2020 BOND PROCEEDS

- 9.01 A sufficient amount of the proceeds derived from the sale of the Series 2020 Bond shall be distributed to the order of DEP to prepay the SRF Loans in full. The remainder of proceeds of the Series 2020 Bond shall be applied to pay costs of issuance relating to the Series 2020 Bond.

SECTION 10 -- APPOINTMENT OF PAYING AGENT AND REGISTRAR; TRANSFER AND ASSIGNMENT

- 10.01 The Issuer is hereby designated as the Registrar and Paying Agent for the Series 2020 Bond. The Issuer shall keep adequate books and records relating to the registered owner of the Series 2020 Bond and the payments made with respect to the Series 2020 Bond.
- 10.02 The Series 2020 Bondholder's right, title and interest in and to the Series 2020 Bond and any amounts payable by the Issuer thereunder may be assigned and reassigned in whole only by the Series 2020 Bondholder, without the necessity of obtaining the consent of the Issuer; provided, that any such assignment, transfer or conveyance shall be made only to (a) an affiliate of the Series 2020 Bondholder or (b) a bank, insurance company or their affiliate, provided that any such entity is purchasing the Series 2020 Bond for its own account with no present intention to resell or distribute the Series 2020 Bond, subject to each investor's right at any time to dispose of the Series 2020 Bond as it determines to be in its best interests or (c) a "qualified institutional buyer," as defined in Rule 144A of the Securities Act of 1933, or an "accredited investor," as defined in Rule 501 of Regulation D. Upon notification by the Series 2020 Bondholder to the Issuer of the Series 2020 Bondholder's intent to assign and sell its right, title and interest in and to the Series 2020 Bond as herein provided, the Issuer agrees that it shall execute and deliver to the assignee Series 2020 Bondholder, a Series 2020 Bond in the principal amount so assigned, registered in the name of the assignee Series 2020 Bondholder, executed and delivered by the Issuer in the same manner as provided herein and with an appendix attached thereto setting forth the Sinking Fund Installments to be paid on each payment date with respect to the Series 2020 Bond. In all cases of an assignment of the Series 2020 Bond, the Issuer shall at the earliest practical time enter the change of ownership in the registration books; provided, however, the written notice of assignment must be received by the Issuer no later than the close of business on the fifteenth (15th) day (whether or not a Business Day) of the calendar month next preceding an Interest Payment Date in order to have such transfer recorded on the books and records of the Issuer on such next succeeding Interest Payment Date.

SECTION 11 -- ANNUAL AUDIT AND BUDGET

11.01 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. No later than 270 days following the end of each Fiscal Year, the Issuer shall make its Annual Audit available to the Series 2020 Bondholder, either by posting such Annual Audit on the Issuer's public website or by providing it directly to the Series 2020 Bondholder. Such financial statements will be in sufficient detail to determine compliance with all applicable financial covenants contained in the Ordinance.

No later than 60 days after its adoption, the Issuer shall make its annual budget available to the Series 2020 Bondholder, either by posting such adopted budget on the Issuer's public website or by providing it directly to the Series 2020 Bondholder.

The Issuer shall provide the Series 2020 Bondholder with other information relating to the Series 2020 Bond or the security with respect thereto upon reasonable request.

SECTION 12 -- ESTABLISHMENT OF SERIES 2020 BOND RESERVE SUBACCOUNT

12.01 Pursuant to Section 4.05(B)(4) of the Ordinance, there is established within the Reserve Account a separate subaccount to be known as the "Series 2020 Subaccount" which shall secure only the Series 2020 Bond. The Reserve Account Requirement with respect to the Series 2020 Bond and the Series 2020 Subaccount shall be zero dollars (\$0.00). The Series 2020 Bond shall not be secured in any manner by any other subaccount of the Reserve Account or any other portion of the Reserve Account.

SECTION 13 -- EVENTS OF DEFAULT; NOTICE OF DEFAULT; ACCELERATION

13.01 All of the Events of Default set forth in Section 7.01 of the Ordinance shall apply with respect to the Series 2020 Bond. In addition, it shall constitute an Event of Default with respect to the Series 2020 Bond if there shall occur a default under the financing documents securing any Subordinated Indebtedness.

13.02 The Issuer shall within five (5) days after it acquires actual knowledge thereof, notify the Series 2020 Bondholder in writing upon the happening, occurrence, or existence of any Event of Default and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Series 2020 Bondholder with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto.

13.03 If the Issuer grants to any holder of Additional Bonds or Subordinated Indebtedness (other than DEP or any related entity holding indebtedness incurred pursuant to the State of Florida's revolving fund loan program) acceleration rights as a remedy to any related event of default, the Series 2020 Bondholder shall be granted the same acceleration rights with respect to the Series 2020 Bond. In such event, upon the request of the Series 2020 Bondholder, the Issuer shall amend this Supplemental Ordinance to provide for such right.

- 13.04 The Issuer shall pay to the Series 2020 Bondholder any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Series 2020 Bondholder in connection with the enforcement of its rights with respect to any default or Event of Default relating to the Series 2020 Bond.

SECTION 14 -- GENERAL AUTHORITY

- 14.01 The City Commission, the City Manager, the City Clerk, the Finance Director, the City Attorney and the officers, attorneys and other agents or employees of the Issuer are hereby authorized to do all acts and things required of them by this Supplemental Ordinance or the Ordinance, or desirable or consistent with the requirements hereof or the Ordinance for the full punctual and complete performance of all the terms, covenants and agreements contained herein or in the Series 2020 Bond or in the Ordinance, and each member, employee, attorney and officer of the Issuer or the City Commission, the City Manager, the City Clerk, the City Attorney and the Finance Director is hereby authorized and directed to execute and deliver any and all papers and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder.

SECTION 15 -- CONFLICTS

- 15.01 In the event of any conflict between the provisions of this Supplemental Ordinance and any other ordinance or provisions thereof, the provisions of this Supplemental Ordinance shall prevail to the extent of such conflict.

SECTION 16 -- SEVERABILITY

- 16.01 If any section, subsection, sentence, clause, phrase, or provision of this Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 17 -- EFFECTIVE DATE

- 17.01 This Supplemental Ordinance shall become effective immediately upon its adoption by the City Commission of the City of North Port, Florida.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session the 27th day of October, 2020.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida on the second and final reading in public session this 10th day of November 2020.

CITY OF NORTH PORT, FLORIDA

DEBBIE MCDOWELL
MAYOR

ATTEST:

HEATHER TAYLOR, CMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

AMBER L. SLAYTON
CITY ATTORNEY

EXHIBIT A

Proposal of the Series 2020 Bondholder



TD Bank, N.A.
301 East Pine Street, Suite 1000
Orlando, FL 32801
Tel: 407-622-3563
Fax: 407-423-0070
Sterling.Harrell@td.com

September 29, 2020

Ms. Kimberly Ferrell
Finance Director
City of North Port
4970 City Hall Boulevard
North Port, FL 34286

Mr. Jeremy Niedfeldt
Director
PFM Financial Advisors LLC
300 S. Orange Avenue, Suite 1170
Orlando, FL 32801

Ms. Mara Lugo
Senior Analyst
PFM Financial Advisors LLC
2222 Ponce De Leon Boulevard, Third Floor
Coral Gables, FL 33134

RE: Request for Proposal for Direct Bank Loan

Dear Ms. Ferrell, Mr. Niedfeldt, and Ms. Lugo,

In response to the Request for Proposal for the City of North Port, TD Bank, N.A. (the "Bank") is pleased to submit the following proposal to the City of North Port, Florida (the "City").

The structure of the proposed Credit Accommodation is outlined in the attached term sheet which provides a statement of suggested terms, but under no circumstance shall such statement be construed as a complete summarization of terms necessary for consummation of the proposed Credit Accommodation. PLEASE NOTE THIS PROPOSAL IS SUBJECT TO FORMAL CREDIT REVIEW AND UNDERWRITING IN ACCORDANCE WITH THE BANK'S INTERNAL POLICY AND NOTHING HEREIN SHALL CONSTITUTE A BINDING COMMITMENT TO LEND. Further, we expressly advise you that TD Bank, N.A. has not approved the Credit Accommodation. The Bank shall not be liable to the Borrower or any other person for any losses, damages or consequential damages which may result from the Borrower's reliance upon this proposal letter, the proposed Credit Accommodation, the proposed term sheet or any transaction contemplated hereby.

The Bank's Loan Proposal is subject to receipt by the City prior to 2:00 pm eastern standard time on September 30, 2020 and is contingent upon a Loan Closing with mutually acceptable documents between the City and Bank on or before November 12, 2020, unless otherwise negotiated between the Parties.

This letter, including the terms contained within the proposed Credit Accommodation, is delivered to you on the condition that its existence and its contents will not be disclosed without our prior written approval, except (i) as may be required to be disclosed in any legal proceeding or as may otherwise be required by law and on a confidential and "need to know" basis, to your directors, officers, employees, advisors and agents.

We appreciate this opportunity and are delighted to provide this Proposal. We look forward to working with you to successfully complete this transaction. My contact information is noted above.

Very truly yours,

TD BANK, N.A.

By: 
Sterling Harrell
Director

TD Bank, N.A.

TERMS AND CONDITIONS OF CREDIT ACCOMMODATION DATED September 29, 2020 (“Loan”)

THIS IS A STATEMENT OF TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND. ALL CREDIT ACCOMMODATIONS ARE SUBJECT TO FORMAL CREDIT UNDERWRITING AND APPROVAL.

1. Loan

- a) **Borrower:** City of North Port, FL (the "Borrower")
- b) **Facility:** Series 2020: Non-Bank Qualified Tax-Exempt Bank Loan (the "2020 Note")
- c) **Purpose:** The 2020 Note will be issued to refund SRF Loan WW668010, SRF Loan WW580700, and SRF Loan WW580701 (collectively, the "SRF Loans"), and to pay costs of issuance associated with the 2020 Note.
- d) **Amount:** Not to exceed \$16,500,000.00 USD
- e) **Security:** The 2020 Note will be secured by the Net Revenues of the City's Water and Sewer System (the "System") on a parity basis with the City's Utility System Refunding Revenue Bond, Series 2005, Utility System Refunding Revenue Note, Series 2014A, and Utility System Refunding Revenue Note, Series 2014B.
- f) **Settlement Date:** Estimated November 12, 2020
- g) **Maturity:** October 1, 2031
- h) **Repayment Terms:** Interest on the 2020 Note will be paid semi-annually (April 1 and October 1), commencing on April 1, 2021, based upon a 30/360-day basis.

Principal on the 2020 Note will be paid annually (October 1), commencing on October 1, 2021, with final maturity of October 1, 2031 in accordance with the Amortization Schedule attached in Appendix A.
- i) **Interest Rate:** Tax Exempt Non-Bank Qualified (NBQ) Fixed Rate: 1.16%
- This rate will be held until a settlement date no later than November 12, 2020 so long as the Bank receives notification that it will be recommended Lender on or before 2:00PM EST on September 30, 2020.

In the event the selection or closing goes beyond the dates noted above, the fixed interest rate will be determined by mutual agreement between

the parties.

- j) **Prepayment Provision:** **Option A:** At the time of any full or partial prepayment, (i) A "Yield Maintenance Fee" in an amount computed as follows shall apply: This Note may be prepaid on any Business Day in whole or in part upon thirty (30) days prior written notice to the Bank. In the event of any prepayment of the 2020 Note, whether by voluntary prepayment, acceleration or otherwise, the Borrower shall, at the option of the Bank, pay a "fixed rate prepayment charge" equal to the greater of (i) 1.00% of the principal balance being prepaid multiplied by the "Remaining Term," as hereinafter defined, in years or (ii) a "Yield Maintenance Fee" in an amount computed as follows:

The current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the "Stated Interest Rate" in effect at the time of prepayment. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the amount being prepaid times the number of days in the "Remaining Term" and divided by 360. The resulting amount is the "fixed prepayment charge" due to the Bank upon prepayment of the principal of this Loan plus any accrued interest due as of the prepayment date and is expressed in the following calculation:

Yield Maintenance Fee = [Amount Being Prepaid x (Stated Interest Rate - Current Cost of Funds) x Days in the Remaining Term/360 days] + any accrued interest due "Remaining Term."

"Remaining Term" as used herein shall mean the remaining term of the 2020 Note.

Option B: Borrower can elect to have a "No Prepayment" penalty associated with 2020 Note by adding a premium of 7 basis points to the quoted proposed Loan Rates.

Partial prepayments shall be applied in inverse order of maturity, treating scheduled amortization installments as maturities.

- k) **Default Rate of Interest:** The "default rate of interest" shall be six (6) percentage points in excess of the Prime Rate as quoted in the Wall Street Journal. Prime Rate shall have a floor of 3%.

Events of Default: Will include, but not be limited to:

- (1) Violation of covenants.
- (2) Bankruptcy or insolvency
- (3) Payment default.

- l) **Late Charges:** If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be

assessed.

2. **Fees and Expenses:** The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in connection with the loan. The City's bond counsel will provide documentation associated with this transaction. Documentation will be subject to the review and approval of the Bank and the Bank's counsel. The City agrees to pay all legal fees and expenses of the Bank associated with the review and closing of this transaction, which costs may be paid with proceeds of the Loan with a maximum amount not to exceed \$5,000. Bank's counsel shall be the following:

Peter L. Dame
 Akerman LLP
 50 North Laura Street, Suite 3100
 Jacksonville, FL 32202
 (904) 598-8676

3. **Financial Reporting:**

a) ***Borrower(s) shall furnish the following financial reports:***

<u>Type of Report(s)</u>	<u>Frequency</u>	<u>Due Date</u>
<i>Audited Financial Statements</i>	Annually	Within 270 days after the end of the fiscal year
<i>Annual Budget</i>	Annually	Within 60 days after its adoption

The Bank reserves the right to request reasonable additional financial information to supplement or verify certain financial assumptions or verify the creditworthiness of the Borrower.

4. **Legal Opinion:**

Prior to closing, there shall be delivered to the Bank: (A) an opinion of Bond Counsel acceptable to the Bank covering matters customary for a transaction of this type and nature and which shall, without limitation, opine that: (1) the Borrower is duly formed; (2) all loan documents have been validly authorized and executed by and on behalf of the Borrower, if any; (3) all loan documents are valid, binding, enforceable in accordance with their terms and do not violate any legal requirements, including without limitation, organizational documents, laws and material agreements; (4) the loan and loan documents are exempt from registration and qualification under the Securities Act of 1933 and Trust Indenture Act of 1939, and (5) the interest on the 2020 Note is not excludable from the gross income of the Bank. (B) An opinion of counsel to the Borrower in form and substance satisfactory to the Bank.

5. **Financial Covenants:**

All standard covenants and provisions shall be applicable to the Loans, including but not limited to:

Rate Covenant: As fully detailed in the Utility System Revenue Bond Ordinance, the Issuer shall fix, establish and maintain such rates, fees, charges and collect such fees, rates or other charges for the product, services and facilities of its System, and revise the same from time to time, whenever necessary, as always provide in each Fiscal Year, either:

- (A) Net Revenues adequate at all times to pay in each Fiscal Year (1) at least one hundred ten percent (110%) of the Annual Debt Service on all Outstanding Bonds becoming due in such Fiscal Year, plus one hundred percent (100%) of other obligations payable from Revenues, including subordinate indebtedness, or
- (B) Net Revenues, Impact Fees and Special Assessment Proceeds in such Fiscal Year adequate to pay at least one hundred fifteen percent (115%) of the Annual Debt Service on all Outstanding Bonds becoming due in such Fiscal Year plus one hundred percent (105%) of other obligations payable from Revenues, including subordinate indebtedness.

Additional Bonds Test:

The City may in the future issue one or more series of additional bonds pursuant to the Bond Ordinance on a parity basis, provided that net revenues generated from the System during any 12 consecutive months within the 24 months immediately preceding the date of delivery of such additional bonds are equal to at least 1.10 times the maximum annual debt service on an aggregate basis. A complete description of the Additional Bonds Test is found in Section 6.02 of the Bond Ordinance.

6. Other Conditions:

- a. The Borrower shall within five (5) days after it acquires knowledge thereof, notify the Bank in writing upon the happening, occurrence, or existence of any Event of Default, any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Owner, with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto.
- b. No Material Adverse Change to the Borrower.
- c. This Facility shall have parity to all Bonds without preference to any debt issuance. Acceleration as a remedy will be provided to this Series if granted to any other Lender (including any subordinate indebtedness, except State of Florida Revolving Fund subordinate debt that may be issued from time to time).
- d. Debt shall have a cross default provision to any future subordinate debt, including State of Florida Revolving Fund subordinate debt that may be issued from time to time.
- e. The implementation of certain terms, conditions, covenants or other non-material changes to the proposed Credit Accommodation required as part of the Bank's formal credit approval shall be deemed an approval in substantially the form outlined in this proposed Credit Accommodation.
- f. All standard representations, warranties, rights and remedies in the event of default that are acceptable to the Bank.
- g. Documents for the 2020 Note will include determination of taxability language (including retroactive interest, penalties and other fees and costs associated therewith) allowing for a higher taxable loan rate should the IRS deem the Loan to be a taxable facility due to events associated with action or inaction of Borrower.
- h. All legal matters and documentation to be executed in connection with the contemplated proposed Credit Accommodation shall be satisfactory in form and substance to the Bank and counsel to the Bank.
- i. The Bank shall not be required to enter into the proposed Credit Accommodation until the completion of all due diligence inquiries, receipt of approvals from all requisite parties and the execution and receipt of all necessary documentation reasonably acceptable to the Bank and its counsel. Furthermore, certain assumptions are made for this proposal which, if altered, could affect the overall credit approval and or terms of the proposed Credit Accommodation.

Patriot Act Notice. Lender is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001)) (the "Act") and hereby notifies the Borrower and Guarantor that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the name and address of the Borrower and Guarantor and other information that will allow Lender to identify the Borrower and Guarantor in accordance with the Act.

THIS PROPOSAL IS NOT AND SHOULD NOT BE CONSTRUED AS A COMMITMENT BY THE BANK OR ANY AFFILIATE TO ENTER INTO ANY CREDIT ACCOMMODATION.

Appendix A: Amortization Schedule

10/1/2021	\$1,403,320
10/1/2022	\$1,401,749
10/1/2023	\$1,427,682
10/1/2024	\$1,454,094
10/1/2025	\$1,480,994
10/10/2026	\$1,508,393
10/1/2027	\$1,536,298
10/1/2028	\$1,564,720
10/1/2029	\$1,593,667
10/1/2030	\$1,623,150
10/10/2031	\$1,152,161