

RESOLUTION 2020 - 186

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA ACCEPTING THE PROPOSAL OF BANK OF AMERICA, N.A. TO PROVIDE THE COUNTY WITH A TERM LOAN IN ORDER TO FINANCE COSTS OF THE BEACH AND DUNE RENOURISHMENT PROJECTS FOR VILANO BEACH AND THE SOUTH PONTE VEDRA BEACHES; APPROVING THE FORM OF A LOAN AGREEMENT; AUTHORIZING THE ISSUANCE OF THE ST. JOHNS COUNTY, FLORIDA TAXABLE SPECIAL OBLIGATION REVENUE NOTE, SERIES 2020A AND ST. JOHNS COUNTY, FLORIDA TAXABLE SPECIAL OBLIGATION REVENUE NOTE, SERIES 2020B, PURSUANT TO SUCH LOAN AGREEMENT IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,000,000 IN ORDER TO EVIDENCE SUCH LOAN; AUTHORIZING THE REPAYMENT OF SUCH NOTES FROM A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES; DELEGATING CERTAIN AUTHORITY TO THE CHAIRMAN, THE COUNTY ADMINISTRATOR, CLERK AND OTHER OFFICERS OF THE COUNTY FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE LOAN AGREEMENT, THE NOTES AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:**

**SECTION 1. DEFINITIONS.** When used in this Resolution, capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement (as defined herein), unless the context clearly indicates a different meaning.

"**Act**" shall mean the Florida Constitution, Chapter 125, Florida Statutes, and other applicable provisions of law.

"**Board**" shall mean the Board of County Commissioners of St. Johns County, Florida.

"**Chairman**" shall mean the Chairman of the Board or, in his or her absence or unavailability, the Vice Chairman of the Board.

"**Clerk**" shall mean the Clerk of the Circuit Court of St. Johns County, Florida and Ex-Officio Clerk of the Board of County Commissioners of the St. Johns County,

Florida and such other person as may be duly authorized to act on her or his behalf, including any Deputy Clerk.

**"County"** shall mean St. Johns County, Florida.

**"County Administrator"** shall mean the County Administrator of the County or, in his or her absence or unavailability, any Assistant County Administrator or a designee of the County Administrator.

**"Financial Advisor"** shall mean PFM Financial Advisors LLC, and its successors and assigns.

**"Loan Agreement"** shall mean the Loan Agreement to be executed between the initial Noteholder and the County, which shall be substantially in the form attached hereto as Exhibit B.

**"Non-Ad Valorem Revenues"** shall have the meaning assigned such term in the Loan Agreement.

**"Noteholder"** or **"Holder"** or **"holder"** or any similar term, when used with reference to a Note, shall mean Bank of America, N.A. and its successors and assigns.

**"Notes"** shall mean the Series 2020A Note and the Series 2020B Note.

**"Project"** shall mean the dune and beach renourishment projects within Vilano Beach and the South Ponte Vedra Beaches to be completed by the United States Army Corp of Engineers, as more particularly described in the plans and specifications on file with the County, as the same may be amended and supplemented from time to time.

**"Resolution"** shall mean this Resolution, as the same may from time to time be amended, modified or supplemented by a supplemental resolution.

**"Series 2020A Note"** shall mean St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020A, as such Note is more particularly described in the Loan Agreement.

**"Series 2020B Note"** shall mean St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020B, as such Note is more particularly described in the Loan Agreement.

The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Resolution; the term "heretofore" shall mean before the date of adoption of this Resolution; and the term "hereafter" shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

**SECTION 2. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Act. The County has ascertained and hereby determined that adoption of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the County in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the County herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the County.

**SECTION 3. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Notes by the Noteholder, the provisions of this Resolution shall be a part of the contract of the County with the Noteholder, and shall be deemed to be and shall constitute a contract between the County and the Noteholder. The provisions, covenants and agreements in this Resolution set forth to be performed by or on behalf of the County shall be for the benefit, protection and security of the Noteholder.

**SECTION 4. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) Beach erosion control and restoration projects are an effective tool for preventing and offsetting some of the negative impacts of beach erosion, including loss of habitat, loss of recreational opportunities and endangerment of public and private property.

(B) The Board has previously approved the Project and has received commitments from both State of Florida and federal governmental entities to provide funding for the Project; all findings of the Board with respect to the foregoing are incorporated herein by reference and made a part of this Resolution.

(C) The County finds that the Project will promote and preserve tourism within the County, provide and preserve recreational opportunities for the public, enhance and preserve property values, protect wildlife and natural resources, protect public and private properties, and provide other public benefits and, accordingly, will be in the best interest of the County and its residents and serves a paramount public purpose.

(D) The County has been advised by its Financial Advisor that the most efficient and cost-effective method of financing a portion of the costs of the Project is through a taxable term loan.

(E) The County's Financial Advisor solicited proposals from various financial institutions to provide a taxable term loan to finance a portion of the costs of the Project.

(F) The Noteholder submitted its proposal to provide the County with a taxable term loan to finance a portion of the costs of the Project, which proposal was the most favorable proposal received by the County and is attached hereto as Exhibit A.

(G) The Notes shall evidence such term loan and shall be repaid solely from the Non-Ad Valorem Revenues in the manner and to the extent set forth herein and in the Loan Agreement and the ad valorem taxing power of the County will never be necessary or authorized to pay said amounts.

(H) Due to the potential volatility of the market for municipal obligations such as the Notes and the complexity of the transactions relating to such Notes, it is in the best interest of the County to issue the Notes by a negotiated sale to the Noteholder, allowing the County to sell and issue the Notes at the most advantageous time, rather than at a specified advertised date, thereby permitting the County to obtain the best possible price, terms and interest rate for the Notes.

**SECTION 5. AUTHORIZATION OF THE FINANCING OF COSTS OF THE PROJECT.** The financing of a portion of the costs of the Project with proceeds of the Notes is hereby authorized.

**SECTION 6. ACCEPTANCE OF PROPOSAL.** The County hereby accepts the proposal of the Noteholder to provide the County with a term loan to finance a portion of the costs of the Project, a copy of which proposal is attached hereto as Exhibit A. The County Administrator is hereby authorized to execute and deliver any documents required to formally accept such proposal and the terms thereof. All actions taken by such officers or their designees and the Financial Advisor with respect to such proposal prior to the date hereof are hereby authorized and ratified. To the extent of any conflict between the provisions of this Resolution or the Loan Agreement and the proposal, the provisions of this Resolution and the Loan Agreement shall prevail.

**SECTION 7. APPROVAL OF FORM OF LOAN AGREEMENT AND NOTES.** The County hereby approves a term loan from the Noteholder in the principal amount of not to exceed \$22,000,000. The terms and provisions of the Loan Agreement in substantially the form attached hereto as Exhibit B are hereby approved, with such changes, insertions and additions as the Chairman may approve. The County hereby authorizes the Chairman to execute and deliver, and the Clerk to attest and affix the County seal to, the Loan Agreement substantially in the form attached hereto as Exhibit B, with such changes, insertions and additions as the Chairman may approve, his execution thereof being conclusive evidence of such approval. In order to evidence the loan under the Loan Agreement, it is necessary to provide for the execution of the Notes.

The Chairman and the Clerk are authorized to execute and deliver the Notes substantially in the form attached to the Loan Agreement as Exhibit A with such changes, insertion and additions as they may approve, their execution thereof being evidence of such approval. The Notes shall each have a final maturity of October 1, 2031 and the interest rates on each shall be determined in accordance with the Noteholder's proposal; provided, however, the interest rate on the Series 2020A Note shall not exceed 3.00% and the interest rate on the Series 2020B Note shall not exceed 3.50%. The Chairman shall determine, with the advice of the Financial Advisor, the principal amount of each Note, the interest rates thereon and the principal repayment schedule for each Note and all of such terms shall be set forth in the Loan Agreement and the Notes.

**SECTION 8. LIMITED OBLIGATION.** The obligation of the County to repay the Notes is a limited and special obligation payable from Non-Ad Valorem Revenues solely in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the County and such obligation shall not create a lien on any property whatsoever of or in the County. The Non-Ad Valorem Revenues shall consist of legally available Non-Ad Valorem Revenues budgeted and appropriated by the Board to pay debt service on the Notes, all in the manner and to the extent described in the Loan Agreement.

**SECTION 9. GENERAL AUTHORIZATION.** The Chairman, the County Administrator and the Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby; and the County Attorney and other employees or agents of the County are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

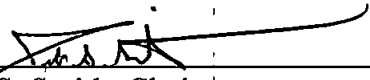
**SECTION 10. REPEAL OF INCONSISTENT DOCUMENTS.** All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

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**SECTION 11. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** this 19th day of May 2020.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By:   
Jeb S. Smith, Chairman

ATTESTED: Brandon Patty, Clerk

By:   
Deputy Clerk

RENDITION DATE 5/21/20

(SEAL)



**EXHIBIT A**

Bank of America, N.A. Proposal

**EXHIBIT B**

Form of Loan Agreement

**ST. JOHNS COUNTY, FLORIDA**  
Proposal for a Fixed Rate Term Loan

April 3, 2020

**BANK OF AMERICA** 

## SUMMARY OF TERMS AND CONDITIONS

Submission date: April 3, 2020

### Parties to the Transaction

**Issuer / Borrower:** St. Johns County, Florida (the "Issuer" or "Borrower").

**Lender:** Bank of America, N.A. or an affiliate of Bank of America Corporation (the "Lender" or "Bank").

### General Terms

**Description:** Taxable Special Obligation Revenue Note, Series 2020 (the "Series 2020 Bond" or the "Loan").

**Amount:** Not to exceed \$22,000,000.00

**Expected Closing:** Week of June 8, 2020

**Maturity:** 10/01/2031

**Amortization:** As provided in Exhibit A in the RFP.

**Interest Rate:** The Indicative Interest Rate as of April 3, 2020, is 2.19%.

The actual Interest Rate will be determined two business days prior to Closing.

**Default Rate:** 12%. Downgrade of any parity or GO debt of the Issuer below investment grade shall not be an event of default but shall cause the default rate to apply.

**Use of Proceeds:** The Loan is being issued by the County for the purpose of (i) financing the non-federal portion of the cost of beach and dune re-nourishment within the Vilano Beach and South Ponte Vedra Beach Reaches and (ii) paying the related costs of issuance.

**Security:** The payment of the principal of and interest on the Loan shall be secured by a covenant to budget and appropriate from all non-ad valorem revenues of the County which are lawfully available to be used to pay debt service on amounts due under the Loan. Any limitation in the covenant to budget and appropriate to the effect that the obligation of the City is subject to the prior payment of "essential government services" (or words of similar import), shall be qualified so that such limitation is only applicable to the extent required in order to avoid a violation of Article VII, Section 12 of the Florida Constitution or other applicable law.

**Prepayment:** The Loan may be prepaid in whole, or in part, on any date, with five days prior written notice to the Bank by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus a Make Whole Prepayment Fee as provided in Exhibit A.

A par call option is available on or after October 1, 2021 for an additional 55 basis points. The par call premium is subject to change based on market conditions at the time the rate is locked.

**Closing Fees and Expenses**

<b>Expenses:</b>	The Borrower will be responsible for all costs and expenses relating to the Loan, including fees and disbursements of Bank's counsel, Borrower's counsel, and the Borrower's financial advisor and any other expenses incidental to the transaction contemplated by the Loan or this term sheet.
<b>Bank Counsel:</b>	\$7,500.
<b>Administrative Fees:</b>	Amendments, transfers, standard waivers or consents: \$2,500 plus attorney's fees and expenses.
<b>Fees and Expenses Valid for 90 days:</b>	All fees and expenses, including those of the Bank's Counsel, are subject to increase if the transaction is not closed within 60 days from the date the Bank receives the mandate from the Issuer.

**Calculation and Payment of Interest**

<b>Day Count:</b>	Interest on the Loan shall be calculated on the basis of twelve 30 day months and a 360 day year.
<b>Interest Payments:</b>	Interest on the Loan will be payable semiannually, accruing from the Closing and initially payable on October 1, 2020.

**The Loan Agreement**

<b>Documentation:</b>	<p>Documentation will include the Resolution and Bond (the "Loan Documents") prepared by Bond Counsel. The Loan Documents will include, but not be limited to, the terms and conditions outlined herein, as well as provisions that are customary and standard with respect to conditions precedent, representations and warranties, covenants, events of default and remedies (including acceleration of the Issuer's obligations under the Loan Documents, if applicable), and compliance with law including the U.S. QFC Resolution Stay Regulation. The Loan Documents, particularly the Supplemental Resolution, must be in form and substance acceptable to the Bank.</p> <p>The Loan would not be rated by a rating agency, would not be DTC eligible, would not be assigned a CUSIP number, and would not be marketed pursuant to an official statement.</p>
<b>Investment Representations:</b>	In connection with its purchase of the Series 2020 Bonds, the Bank will make usual and customary representations to the Borrower, including (a) its knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of making the Loan; (b) its receipt of, or access to, all information from the Borrower or otherwise that it deems necessary to make such Loan; and (c) making the Loan for its own account or for resale to an affiliated entity in which Bank of America Corporation will retain an interest, and not with a view to, or for resale in connection with, any distribution of the Loan.
<b>Transfers:</b>	While the Bank is making the Loan for its own account without a current intent to transfer or assign the same, the bank reserves the right in its sole discretion, to assign, sell, pledge or participate interests in the Loan without the consent of the Borrower.
<b>Conditions Precedent to Closing:</b>	The Loan Documents will contain conditions to closing, including: (i) the negotiation, execution and delivery of definitive documentation in form and substance satisfactory to the Bank, (ii) delivery to the Bank in form and substance satisfactory to the Bank of a standard approving opinion of Bond Counsel regarding legality of and security for the Loan,

an opinion of the Issuer's counsel in customary form and certificates of the Issuer's officials as to certain factual matters regarding the Loan, (iii) receipt of satisfactory financial information, budgets, projections, etc. as requested by the Bank, (iv) a bring down of representations and warranties, receipt of statement as to compliance with covenants and of no Event of Default and any other event that, with the passage of time, the giving of notice, or both, would result in an Event of Default, (v) there being no event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect and (vi) such other conditions precedent as are customary for a financing of the type contemplated.

**Representations and Warranties:**

Usual and customary for transactions of this type including, without limitation, the following: (i) legal existence, qualification and power; (ii) due authorization and no contravention of law, contracts or organizational documents; (iii) governmental and third party approvals and consents; (iv) enforceability; (v) accuracy and completeness of specified financial statements and no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; (vi) no material litigation; (vii) no default; (viii) ownership of property; (ix) insurance matters; (x) environmental matters; (xi) tax matters; (xii) ERISA compliance (if applicable); (xiii) use of proceeds and not engaging in business of purchasing/carrying margin stock; (xiv) status under Investment Company Act; (xv) accuracy of disclosure; (xvi) compliance with laws; (xvii) bankruptcy and insolvency; and (xviii) no proposed legal changes which may adversely affect the Facility, the obligations of the Issuer thereunder or the transaction.

**Covenants:**

Usual and customary for transactions of this type, including, without limitation, the following: (i) timely delivery of audited financial statements, forecasts, regulatory filings, compliance certificates and other information, (ii) notices of default, material litigation, material governmental proceedings or investigations, ERISA and environmental proceedings and material changes in accounting or financial reporting practices; (iii) payment of obligations; (iv) preservation of existence; (v) maintenance of properties and insurance; (vi) compliance with laws; (vii) maintenance of books and records; (viii) inspection rights; (ix) use of proceeds; (x) more restrictive covenants in other existing or future credit facilities deemed incorporated in the Agreement; and (xi) limitations on (A) liens, investments (including loans and advances), and indebtedness, (B) mergers and other fundamental changes, (C) sales and other dispositions of property or assets, (D) changes in the nature of business, (E) transactions with affiliates, (F) burdensome agreements, and (G) use of proceeds.

**Financial Covenants:**

Anti-dilution test substantially similar to the one provided in Exhibit B of the RFP.

**Reporting Requirements:**

The Borrower shall provide the following financial information and statements in form and content acceptable to the Bank:

- (a) Within 270 days after the close of each fiscal year of the Borrower, the complete audited financial statements of the Issuer;
- (b) Such other information respecting the affairs, condition and/or operations, financial or otherwise, of the Issuer as the Bank may from time to time reasonably request.

**Events of Default:**

To be substantially similar to those in the existing Master Resolution.

**Remedies:**

The Bank may cause the Default Rate to apply to all outstanding obligations of the Borrower to the Bank and pursue any other remedies to which it is entitled under the Resolutions, at law or in equity.

Choice of Law / Jury Trial / Venue

**Governing Law:** This Proposed Term Sheet and any other documents to which the Bank shall become a party will be governed by the laws of the State of Florida.

**Jury Trial:** The Borrower agrees, to the extent permitted under applicable law, to waive any right to a trial by jury in any action or proceeding with respect to any dispute or controversy under the Bond Documents.

**Venue:** Any disputes or legal actions arising out of this transaction shall be brought in the courts of Florida, and each party, to the fullest extent permitted by law, shall consent to the jurisdiction of such courts. In any litigation the prevailing party shall be entitled to recover attorney's fees.

#### Contacts

##### **Bank of America, N.A. (The Bank):**

Name: Joe Miller  
Title: Senior Vice President  
Address: 601 Creighton Street  
Pensacola, FL 32504  
Phone: 850-934-5946  
E-mail: j.r.miller@bofa.com

##### **Purchaser's Counsel:**

Name: Mark Raymond  
Address: 8416 Man O War Road  
Palm Beach Gardens, FL 33418  
Phone: (561) 775-8440  
E-mail: Mark.raymond@mraymondlaw.com

#### Proposed Terms and Conditions Subject to Certain Events

*The Bank has received preliminary credit approval to complete transactions described herein; however, this Summary of Terms is intended only as an outline of certain of the material terms of the Facility and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that will be contained in definitive documentation for the Refunding Bond. It represents a general indication of the Banks willingness to consummate a transaction based upon the terms and conditions outlined in this term sheet and is subject to*

Absence of any material adverse change in the financial condition, operations or prospects of the Borrower, or in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined in the sole discretion of the Bank,

Agreement as to all final terms and conditions and satisfactory documentation thereof (including satisfactory legal opinions).

##### **Expiration of Terms and Conditions:**

Consideration of a financing based on the terms and conditions presented in this term sheet shall automatically expire 7 calendar days from the date hereof if not accepted by the Borrower. The Bank reserves the right to terminate, reduce or otherwise amend its commitment if the subject transaction is not closed by June 12, 2020.

##### **Future Modifications:**

The terms, conditions, pricing levels and fees (including legal fees and expenses) cited herein reference the financing and the Facility Amount as described in this Summary of Terms and

Conditions and are subject to revision in the event that (i) the Facility Amount changes, (ii) the security or transaction structure is modified, (iii) the transaction deviates materially from what was initially described, or (iv) the proposed financing does not close within 60 days of the receipt by the Bank of a signed term sheet.

**No Advisory or Fiduciary Role**

The Issuer acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between the Issuer and the Bank in which the Bank is acting solely as a principal and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Issuer; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Issuer on other matters); (iv) the only obligations the Bank has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (v) the Bank is not recommending that the Issuer take an action with respect to the transaction contemplated by this Summary of Terms and Conditions, and before taking any action with respect to the contemplated transaction, Issuer should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If Issuer would like a municipal advisor in this transaction that has legal fiduciary duties to Issuer, Issuer is free to engage a municipal advisor to serve in that capacity. This Summary of Terms and Conditions is provided to Issuer pursuant to and in reliance upon the "bank exemption" and the "RFP exemption" provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq.*

**Agreement by the Borrower**

The Borrower hereby agrees to engage the Bank as Purchaser pursuant to the terms and conditions stated herein.  
Please evidence your agreement with the foregoing by signing and returning a copy of this document to the Bank.

ST. JOHNS COUNTY, FLORIDA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A

The Borrower may prepay the credit in full or in part at any time.

The prepayment will be applied to the most remote payment of principal due under this Agreement. Each prepayment, whether voluntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and a prepayment fee calculated by the Bank.

The prepayment fee will be equal to the present value (discounted by the Reinvestment Rate) of the difference, if positive, between:

(a) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to X\*\* plus 25 basis points, as if the prepayment had not been made, less

(b) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made.

The following definitions will apply to the calculation of the prepayment fee:

(i) "Reinvestment Rate" means with respect to each prepaid installment of principal, the Swap Rate on the date the prepayment fee is calculated by the Bank for a term corresponding to the period of time remaining until such principal installment was scheduled to be paid, interpolated on a linear basis, if necessary, and

(ii) "Swap Rate" means, as of any date, the offered U.S. Dollar interest rate swap rate that a fixed rate receiver would receive in return for paying a floating rate equal to the three month Libor (or a comparable or successor rate that is approved by the Bank) determined by the Bank on such date by reference to the Bloomberg service or such other similar data source then used by the Bank for determining such rate.

\*\* X will approximate the Swap Rate for a swap with a scheduled notional amount at all times equal to the scheduled principal of the Loan determined on the date the taxable interest rate was fixed by Bank. **This rate is provided by the Bank prior to closing of the transaction and is not subject to future modification.**

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**LOAN AGREEMENT**

**BETWEEN**

**ST. JOHNS COUNTY, FLORIDA**

**AND**

**BANK OF AMERICA, N.A.**

**Dated as of June \_\_, 2020**

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## TABLE OF CONTENTS

Page

### ARTICLE I DEFINITION OF TERMS

SECTION 1.01.	DEFINITIONS .....	1
SECTION 1.02.	INTERPRETATION .....	5
SECTION 1.03.	TITLES AND HEADINGS .....	5

### ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS; SECURITY FOR NOTE; PROJECT FUND; ANTI-DILUTION

SECTION 2.01.	REPRESENTATIONS BY THE COUNTY .....	6
SECTION 2.02.	GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE NOTEHOLDER .....	6
SECTION 2.03.	NOTES NOT TO BE INDEBTEDNESS OF COUNTY .....	7
SECTION 2.04.	COVENANT TO BUDGET AND APPROPRIATE; PAYMENT OF NOTES .....	7
SECTION 2.05.	CREATION OF PROJECT FUND .....	8
SECTION 2.06.	ANTI-DILUTION .....	8

### ARTICLE III DESCRIPTION OF NOTE; PAYMENT TERMS; OPTIONAL PREPAYMENT; TRANSFER

SECTION 3.01.	DESCRIPTION OF THE NOTES .....	10
SECTION 3.02.	OPTIONAL PREPAYMENT .....	11

### ARTICLE IV CONDITIONS FOR ISSUANCE OF THE NOTES

SECTION 4.01.	CONDITIONS FOR ISSUANCE .....	14
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### ARTICLE V EVENTS OF DEFAULT; REMEDIES

SECTION 5.01.	EVENTS OF DEFAULT .....	15
SECTION 5.02.	REMEDIES .....	15

ARTICLE VI  
MISCELLANEOUS

SECTION 6.01.	AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT .....	17
SECTION 6.02.	COUNTERPARTS.....	17
SECTION 6.03.	SEVERABILITY .....	17
SECTION 6.04.	TERM OF AGREEMENT .....	17
SECTION 6.05.	NOTICE OF CHANGES IN FACT.....	17
SECTION 6.06.	NOTICES.....	17
SECTION 6.07.	NO THIRD-PARTY BENEFICIARIES.....	18
SECTION 6.08.	WAIVER OF JURY TRIAL.....	18
SECTION 6.09.	APPLICABLE LAW; VENUE; ATTORNEY'S FEES.....	18
SECTION 6.10.	ASSIGNMENT; PARTICIPATIONS.....	18
SECTION 6.11.	ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS. ....	18
SECTION 6.12.	INCORPORATION BY REFERENCE.....	21
EXHIBIT A -	FORM OF NOTE	

This **LOAN AGREEMENT** (the "Agreement") is made and entered into as of June \_\_\_, 2020, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, and its successors and assigns (the "County"), and **BANK OF AMERICA, N.A.**, a national banking association and its successors and assigns (the "Noteholder");

**WITNESSETH:**

**WHEREAS**, the County is authorized by provisions of applicable law to, among other things, acquire, construct, equip, own, sell, lease, operate and maintain various capital improvements and public facilities to promote the health, welfare and economic prosperity of the residents of the County and to borrow money to finance and refinance the acquisition, construction, equipping and maintenance of such capital improvements and public facilities; and

**WHEREAS**, the County has determined that it is in its best interest to finance a portion of the costs of the Project (as defined herein) in order to improve and maintain the health, safety and welfare of the residents of the County; and

**WHEREAS**, pursuant to a competitive solicitation process, the County's Financial Advisor (as defined herein) solicited proposals from financial institutions to provide a term loan to finance a portion of the costs of the Project; and

**WHEREAS**, the Noteholder provided the most beneficial proposal to the County to provide such term loan and is now willing to make the term loan to the County, and the County is willing to incur such term loan, pursuant to the terms and provisions of this Agreement in an aggregate principal amount of \$\_\_\_\_\_ to finance a portion of the costs of the Project and pay costs relating to the issuance of the hereinafter described Notes.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:

**ARTICLE I**

**DEFINITION OF TERMS**

**SECTION 1.01. DEFINITIONS.** The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

"Act" shall mean the State of Florida Constitution, Chapter 125, Florida Statutes, and other applicable provisions of law.

**"Agreement"** shall mean this Loan Agreement, dated as of June \_\_, 2020, between the County and the Noteholder and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

**"Board"** shall mean the Board of County Commissioners of St. Johns County, Florida.

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

**"Chairman"** shall mean the Chairman or Vice Chairman of the Board or such other person as may be duly authorized by the County to act on his or her behalf.

**"Clerk"** shall mean Clerk of the Circuit Court and Ex-Officio Clerk to the Board or such other person as may be authorized to act on his or her behalf.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations.

**"Counterparty"** shall mean the entity entering into a Hedge Agreement with the County. Counterparty would also include any guarantor of such entity's obligations under such Hedge Agreement.

**"County"** shall mean the St. Johns County, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

**"County Administrator"** shall mean the County Administrator of the County, or such other person as may be authorized to act on his or her behalf.

**"Debt"** means at any date (without duplication) all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues: (A) all obligations of the County for borrowed money, or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the County to pay the deferred purchase price of property or services, except trade accounts payable under normal-trade terms and which arise in the ordinary course of business; (C) all obligations of the County as lessee under capitalized leases; and (D) all indebtedness of other Persons to the extent guaranteed by, or secured by, Non-Ad Valorem Revenues of the County; provided, however, if with respect to any obligation contemplated in (A), (B), or (C) above, the County has covenanted to budget and appropriate sufficient Non-Ad Valorem Revenues to satisfy such obligation but has not secured such obligation with a lien on or pledge of any Non-Ad Valorem Revenues then, and with respect to any obligation contemplated in (D) above, such obligation shall not be considered "Debt" for purposes of this Resolution unless the County has actually used Non-Ad Valorem Revenues to satisfy such obligation during the immediately preceding Fiscal Year or reasonably expects to use Non-Ad Valorem Revenues to satisfy such obligation in the current or immediately

succeeding Fiscal Year. After an obligation is considered "Debt" as a result of the proviso set forth in the immediately preceding sentence, it shall continue to be considered "Debt" until the County has not used any Non-Ad Valorem Revenues to satisfy any portion of such obligation for two consecutive Fiscal Years.

**"Default Rate"** shall mean 12% per annum.

**"Financial Advisor"** shall mean County's financial advisor, PFM Financial Advisors LLC.

**"Fiscal Year"** shall mean the 12-month period commencing on October 1 of any year and ending on September 30 of the immediately succeeding year.

**"Fitch"** shall mean Fitch Ratings, and any assigns and successors thereto.

**"Governmental Funds"** shall mean all of the "governmental funds" of the County as described and identified in the annual audited financial statements of the County.

**"Governmental Funds Revenues"** shall mean total revenues of the County derived from any source whatsoever and that are allocated to and accounted for in the Governmental Funds as shown in the annual audited financial statements of the County.

**"Hedge Agreement"** shall mean an agreement in writing between the County and the Counterparty pursuant to which (1) the County agrees to pay to the Counterparty an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement and (2) the Counterparty agrees to pay to the County an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement.

**"Hedge Payments"** shall mean any amounts payable by the County on the debt or the related notional amount under a Qualified Hedge Agreement; excluding, however, any payments due as a penalty or by virtue of termination of a Qualified Hedge Agreement or any obligation of the County to provide collateral.

**"Interest Payment Date"** shall have the meaning ascribed thereto in Section 3.01(c) hereof.

**"Interest Rate"** shall mean, with respect to the Series 2020A Note, a fixed interest rate equal to \_\_\_\_% per annum, and with respect to the Series 2020B Note, a fixed interest rate equal to \_\_\_\_% per annum. The Interest Rate for each Note is subject to adjustment pursuant to Section 5.02 hereof.

**"Maturity Date"** shall mean October 1, 2031.

**"Maximum Annual Debt Service"** shall mean the largest aggregate amount of the annual debt service on the Notes and Debt scheduled to come due in any Fiscal Year in which either of the Notes is outstanding under this Agreement; provided, however, in determining Maximum Annual Debt Service with respect to Debt the provisions of Section 2.06 shall apply.

**"Moody's"** shall mean Moody's Investors Service, and any assigns and successors thereto.

**"Non-Ad Valorem Revenues"** shall mean all Governmental Funds Revenues other than revenues generated from ad valorem taxation on real or personal property, and which are legally available to make the payments required herein.

**"Note Counsel"** shall mean Nabors, Giblin & Nickerson, P.A., Tampa, Florida or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions and duly admitted to practice law before the highest court of any state of the United States of America.

**"Noteholder"** shall mean Bank of America, N.A., and its successors and assigns.

**"Notes"** shall mean the Series 2020A Note and the Series 2020B Note.

**"Principal Payment Date"** shall have the meaning ascribed thereto in Section 3.01(c) hereof.

**"Project"** shall mean shall mean the dune and beach renourishment projects within Vilano Beach and the South Ponte Vedra Beaches to be completed by the United States Army Corp of Engineers, as more particularly described in the plans and specifications on file with the County, as the same may be amended and supplemented from time to time.

**"Project Fund"** shall mean the St. Johns County, Florida Taxable Special Obligation Revenue Notes, Series 2020 Project Fund established under Section 2.05 hereof.

**"Qualified Hedge Agreement"** shall mean a Hedge Agreement with respect to which the County has received written notice from at least two of the Rating Agencies that the rating of the Counterparty is not less than "A."

**"Rating Agencies"** means Fitch, Moody's and S&P.

**"Resolution"** shall mean Resolution No. \_\_\_\_\_ adopted by the Board on May 19, 2020, which, among other things, authorized the execution and delivery of this Agreement and the issuance of the Notes.

**"S&P"** shall mean S&P Global Ratings, and any assigns and successors thereto.

**"Series 2020A Note"** shall mean St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020A, as more particularly described in Section 3.01 hereof.

**"Series 2020B Note"** shall mean St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020B, as more particularly described in Section 3.01 hereof.

**"State"** shall mean the State of Florida.

**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.

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## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS; SECURITY FOR NOTE; PROJECT FUND; ANTI-DILUTION

**SECTION 2.01. REPRESENTATIONS BY THE COUNTY.** The County represents, warrants and covenants that:

(a) The County is a political subdivision of the State. Pursuant to the Resolution, the County has duly authorized the execution and delivery of this Agreement, the performance by the County of all of its obligations hereunder, and the issuance of the Notes in the aggregate principal amount of \$\_\_\_\_\_.

(b) The County has complied with all of the provisions of the Constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement or under the Notes, and to perform all of its obligations hereunder and under the Notes and, to the best knowledge of the County, the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the County is a party or by which the County is bound.

(c) The County is duly authorized and entitled to issue the Notes and enter the Agreement and, when issued in accordance with the terms of this Agreement, the Notes and the Agreement will each constitute legal, valid and binding obligations of the County enforceable in accordance with their respective terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(d) There are no actions, suits or proceedings pending or, to the best knowledge of the County, threatened against or affecting the County, at law or in equity, or before or by any governmental authority, that, if adversely determined, would materially impair the ability of the County to perform the County's obligations under this Agreement or under the Notes.

(e) The County will furnish to the Noteholder within 275 days after the close of each Fiscal Year a copy of the annual audited financial statements of the County, including all standard statements for a Comprehensive Annual Financial Report, prepared by a certified public accountant. With reasonable promptness the County shall provide such other data and information as may be reasonably requested by the Noteholder from time to time, including but not limited to any authorized budget of the County.

**SECTION 2.02. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE NOTEHOLDER.** The Noteholder hereby represents, warrants

and agrees that it is a national banking association authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of association or bylaws. Pursuant to the terms and provisions of this Agreement, the Noteholder agrees to provide a term loan to the County as evidenced hereby and by the Notes for the purpose of financing costs of a portion of the Project and paying costs relating to the issuance of the Notes.

**SECTION 2.03. NOTES NOT TO BE INDEBTEDNESS OF COUNTY.**

The Notes shall not be or constitute general obligations or indebtedness of the County as "bonds" within the meaning of any constitutional or statutory provision, but shall be special obligations of the County, payable solely from amounts budgeted and appropriated by the County from Non-Ad Valorem Revenues in accordance with Section 2.04 hereof. The Noteholder shall never have the right to compel the exercise of any ad valorem taxing power to pay the Notes, or be entitled to payment of the Notes from any moneys of the County except from the Non-Ad Valorem Revenues in the manner and to the extent provided herein.

**SECTION 2.04. COVENANT TO BUDGET AND APPROPRIATE; PAYMENT OF NOTES.** The County covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues amounts sufficient to pay principal of and interest on the Notes when due. Such covenant and agreement on the part of the County to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the County, the County does not covenant to maintain any services or programs, now provided or maintained by the County, which generate Non-Ad Valorem Revenues.

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 County from pledging in the future its Non-Ad Valorem Revenues, nor does it require the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Noteholder a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the County. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the 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). However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Notes, in the manner described herein, Non-Ad Valorem Revenues and placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 129.07, Florida Statutes, which generally provide

that the governing body of each county may only make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, but only to the extent necessary to avoid a violation of Article VII, Section 12, of the Florida Constitution, to the payment of services and programs which are for essential public purposes affecting the health, safety and welfare of the inhabitants of the County or which are legally mandated by applicable law.

**SECTION 2.05. CREATION OF PROJECT FUND.** There is hereby created the "St. Johns County, Florida Taxable Special Obligation Revenue Notes, Series 2020 Project Fund" which shall be used to pay costs of that portion of the Project to be funded with proceeds of the Notes. Moneys in the Project Fund shall be held in trust by the County and, pending the expenditure of moneys therein to pay the United States Army Corp of Engineers for costs of the Project, shall be subject to a lien and charge in favor of the Noteholder and for the further security of such Noteholder.

There shall be paid into the Project Fund the amounts required to be so paid by the provisions of this Agreement, and there may be paid into the Project Fund, at the option of the County, any moneys received for or in connection with the Project by the County from any other source.

Any moneys received by the County from the State or from the United States of America or any agencies thereof for the purpose of financing or reimbursing part of the costs of the Project may be deposited into the Project Fund pending their application to pay costs of the Project or prepay the Notes as provided herein.

Notwithstanding any of the other provisions of this Section 2.05, to the extent that other moneys are not available therefor, amounts in the Project Fund shall be applied to the payment of principal and interest on the Notes.

Promptly after the date of the completion of the Project, and after paying or making provision for the payment of all unpaid items, the County shall apply any balance of moneys remaining in the Project Fund to prepay the Notes or scheduled interest on the Notes or for any other lawful purpose.

**SECTION 2.06. ANTI-DILUTION.** During such time as any Note is outstanding hereunder, the County agrees and covenants with the Noteholder that (a) Non-Ad Valorem Revenues shall cover projected Maximum Annual Debt Service on the Notes and other Debt by at least 1.5x; and (b) projected Maximum Annual Debt Service on the Notes and all other Debt will not exceed 20% of Governmental Funds Revenues, exclusive of (i) ad valorem tax revenues restricted to payment of debt service on any Debt and (ii) any proceeds of the Notes or Debt. The calculations required by clauses (a) and (b) above shall be determined using the average of actual receipts for the prior two Fiscal Years based on the County's annual audited financial statements. For purposes of the calculations required by clauses (a) and (b) above, Maximum Annual Debt Service on the

Notes and other Debt shall be done on an aggregate basis whereby the annual debt service for each is combined and the overall maximum is determined.

For the purposes of the covenants contained in this Section 2.06, Maximum Annual Debt Service on Debt means, with respect to Debt that bears interest at a fixed interest rate, the actual Maximum Annual Debt Service, and, with respect to Debt which bears interest at a variable interest rate, Maximum Annual Debt Service on such Debt shall be determined assuming that interest accrues on such Debt at the current "Bond Buyer Revenue Bond Index" as published in The Bond Buyer no more than two weeks prior to any such calculation; provided, however, if any Debt, whether bearing interest at a fixed or variable interest rate, constitutes Balloon Indebtedness, as defined in the immediately following sentence, Maximum Annual Debt Service on such Debt shall be determined assuming such Debt is amortized from its date of issuance over 25 years on an approximately level debt service basis. For purposes of the foregoing sentence, "Balloon Indebtedness" means Debt, 25% or more of the original principal of which matures during any one Fiscal Year. In addition, with respect to debt service on any Debt which is subject to a Qualified Hedge Agreement, interest on such Debt during the term of such Qualified Hedge Agreement shall be deemed to be the Hedge Payments coming due during such period of time. With respect to debt service on any Debt with respect to which the County elects to receive or is otherwise entitled to receive direct subsidy payments from the United States Department of Treasury, when determining the interest on such Debt for any particular interest payment date the amount of the corresponding subsidy payment shall be deducted from the amount of interest which is due and payable with respect to such Debt on the interest payment date, but only to the extent that the County reasonably believes that it will be in receipt of such subsidy payment on or prior to such interest payment date.

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### ARTICLE III

#### DESCRIPTION OF NOTE; PAYMENT TERMS; OPTIONAL PREPAYMENT; TRANSFER

**SECTION 3.01. DESCRIPTION OF THE NOTES.** (a) The County hereby authorizes the issuance and delivery of the Series 2020A Note to the Noteholder which Note shall be in an aggregate principal amount equal to \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_) and shall be designated as the "St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020A." The County hereby authorizes the issuance and delivery of the Series 2020B Note to the Noteholder which Note shall be in an aggregate principal amount equal to \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_) and shall be designated as the "St. Johns County, Florida Taxable Special Obligation Revenue Note, Series 2020B."

The text of each of the Notes shall be substantially in the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable to reflect the particular terms of the Notes. The provisions of the form of the Notes are hereby incorporated in this Agreement.

(b) Each Note shall be dated the date of its delivery. The Notes shall be executed in the name of the County by the manual signature of the Chairman and the official seal of the County shall be affixed thereto and attested by the manual signature of the Clerk. In case any one or more of the officers, who shall have signed or sealed the Notes, shall cease to be such officer of the County before the Notes so signed and sealed shall have been actually delivered, such Notes may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Notes had not ceased to hold such office.

(c) Each Note shall bear interest from its date of issuance at the applicable Interest Rate (calculated on the basis of twelve 30-day calendar months and a 360 day year) as the same may be adjusted pursuant to Section 5.02 hereof. Interest on the Notes shall be payable semi-annually on October 1 and April 1 of each year, commencing October 1, 2020 (each an "Interest Payment Date") so long as any amount under the Notes remains outstanding. Principal of the Notes shall be payable annually on October 1 of each year, commencing October 1, 2020 for the Series 2020A Note and October 1, 2022 for the Series 2020B Note (each a "Principal Payment Date"), through and including the Maturity Date. The principal payments shall be set forth in Appendix I attached to each Note.

(d) All payments of principal of and interest on the Notes shall be payable in any coin or currency of the United States which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Noteholder by bank wire transfer or direct debit of a deposit account of the County or in such other manner as is

agreed to between the County and the Noteholder; provided, however, that promptly following the final payment of the Notes, the Noteholder shall surrender the canceled Note to the County. The County shall maintain books and records with respect to the identity of the holder of the Notes.

(e) Other than the fees referred to in Sections 3.02 and 4.01(b) hereof, there will be no Noteholder fees for the term loan made hereunder. Except as otherwise provided herein, the Noteholder shall pay for all of its costs relating to routine servicing of the term loan.

**SECTION 3.02. OPTIONAL PREPAYMENT.** (a) The Series 2020A Note may be prepaid at any time, at the option of the County, from any moneys legally available therefor, upon notice as provided herein, in whole or in part at any time or from time to time, only by paying to the Noteholder all or a part of the principal amount of the Series 2020A Note to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, plus the applicable Prepayment Fee, as described below.

Any prepayment of the Series 2020A Note shall be made on such date and in such principal amount as shall be specified by the County in a written notice provided to the Noteholder not less than five (5) days prior thereto. Notice having been given as aforesaid, the amount of principal of the Series 2020A Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the date of prepayment stated in such notice, together with interest accrued and unpaid to the date of prepayment on the principal amount then being paid, plus the applicable Prepayment Fee. If on the date of prepayment moneys for the payment of the principal amount to be prepaid on the Series 2020A Note, together with interest to the date of prepayment on such principal amount and the applicable Prepayment Fee shall have been paid to the Noteholder as above provided, then from and after the date of prepayment, interest on such prepaid principal amount of the Series 2020A Note shall cease to accrue. If said money shall not have been so paid on the date of prepayment, such principal amount of the Series 2020A Note shall continue to bear interest until payment thereof at the applicable Interest Rate.

All prepayments of the Series 2020A Note shall be applied in inverse order of scheduled principal payments unless otherwise agreed by the County and the Noteholder in writing. The Noteholder shall make appropriate notations in its records indicating the amount and date of any such prepayment and shall upon request of the County promptly transmit an acknowledgment to the County indicating the amount and date of such prepayment.

The Prepayment Fee will be equal to the present value (discounted by the hereinafter defined Reinvestment Rate) of the difference, if positive, between:

(i) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to \_\_\_\_%, as if the prepayment had not been made, less

(ii) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made.

The following definitions will apply to the calculation of the Prepayment Fee:

(A) "Reinvestment Rate" means, with respect to each repaid installment of principal, the Swap Rate on the date the Prepayment Fee is calculated by the Noteholder for a term corresponding to the period of time remaining until such principal installment was scheduled to be paid, interpolated on a linear basis, if necessary, and

(B) "Swap Rate" means, as of any date, the offered U.S. Dollar interest rate swap rate that a fixed rate receiver would receive in return for paying a floating rate equal to the three month LIBOR determined by the Noteholder on such date by reference to the *Bloomberg* service or such other similar data source then used by the Noteholder for determining such rate.

In the event that the Noteholder shall have reasonably determined (which determination shall be conclusive absent manifest error) that, by reason of circumstances beyond the Noteholder's reasonable control affecting LIBOR, LIBOR is unavailable or cannot be determined, then Noteholder, in its sole discretion, will designate a comparable substitute index and provide notice to the County of such substitute index. Thereafter, such alternate index shall be deemed to be and shall become LIBOR as that term is used herein.

(b) The Series 2020B Note may only be prepaid at any time on or after October 1, 2021, at the option of the County, from any moneys legally available therefor, upon notice as provided herein, in whole or in part at any time or from time to time, by paying to the Noteholder all or a part of the principal amount of the Series 2020B Note to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, without penalty, premium or prepayment fee.

Any prepayment of the Series 2020B Note shall be made on such date and in such principal amount as shall be specified by the County in a written notice provided to the Noteholder not less than five (5) days prior thereto. Notice having been given as aforesaid, the amount of principal of the Series 2020B Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the date of prepayment stated in such notice, together with interest accrued and unpaid to the date of prepayment on the principal amount then being paid, without penalty, premium or a prepayment fee. If on the date of prepayment moneys for the payment of the principal

amount to be prepaid on the Series 2020B Note, together with interest to the date of prepayment on such principal amount shall have been paid to the Noteholder as above provided, then from and after the date of prepayment, interest on such prepaid principal amount of the Series 2020B Note shall cease to accrue. If said money shall not have been so paid on the date of prepayment, such principal amount of the Series 2020B Note shall continue to bear interest until payment thereof at the applicable Interest Rate.

All prepayments of the Series 2020B Note shall be applied in inverse order of scheduled principal payments unless otherwise agreed by the County and the Noteholder in writing. The Noteholder shall make appropriate notations in its records indicating the amount and date of any such prepayment and shall upon request of the County promptly transmit an acknowledgment to the County indicating the amount and date of such prepayment.

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## ARTICLE IV

### CONDITIONS FOR ISSUANCE OF THE NOTES

**SECTION 4.01. CONDITIONS FOR ISSUANCE.** (a) In connection with the issuance of the Notes, the Noteholder shall not be obligated to purchase the Notes pursuant to this Agreement unless at or prior to the issuance thereof the County delivers to the Noteholder the following items in form and substance acceptable to the Noteholder:

(i) An opinion of Note Counsel in form and substance to the effect that the Notes has been duly authorized by the County and are enforceable obligations in accordance with their terms (enforceability of it may be subject to standard bankruptcy exceptions and the like).

(ii) An opinion of counsel of the County Attorney in form and substance acceptable to the Noteholder; and

(iii) Such additional certificates, instruments and other documents as the Noteholder, Note Counsel, or the County Attorney may deem necessary or appropriate.

(b) The County shall deposit an amount of the proceeds of the Notes equal to \$\_\_\_\_\_ to the Project Fund to pay the United States Corp of Army Engineers for a portion of the costs of the Project. The remaining proceeds of the Notes shall be applied to pay costs of issuing the Notes, including, but not limited to, \$7,500 to legal counsel for the Noteholder.

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## ARTICLE V

### EVENTS OF DEFAULT; REMEDIES

**SECTION 5.01. EVENTS OF DEFAULT.** An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The County shall fail to make timely payment of principal or interest then due with respect to the Notes;

(b) Any representation or warranty of the County contained in Article II of this Agreement shall prove to be untrue in any material respect;

(c) Any covenant of the County contained in this Agreement shall be breached or violated for a period of thirty (30) days after the County's notice of such breach or violation, unless the Noteholder shall agree in writing, in its sole discretion, to an extension of such time prior to its expiration;

(d) There shall occur the dissolution or liquidation of the County, or the filing by the County of a voluntary petition in bankruptcy, or the Board by the County of any act of bankruptcy, or adjudication of the County as a bankrupt, or assignment by the County for the benefit of its creditors, or appointment of a receiver for the County, or the entry by the County into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the County in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter amended.

**SECTION 5.02. REMEDIES.** If any Event of Default shall have occurred and be continuing, the Noteholder or any trustee or receiver acting for the Noteholder may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the Laws of the State of Florida, or granted and contained in this Agreement, and may enforce and compel the performance of all duties required by this Agreement or by any applicable statutes to be performed by the County or by any officer thereof, including, but not limited to, specific performance. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Notwithstanding any other provision herein, the Noteholder shall never have the right to declare either of the Notes immediately due and payable.

After the occurrence of an Event of Default or a Credit Event (as described below), notwithstanding any other terms hereof, the Notes shall bear interest at the Default Rate

until such Event of Default is cured or such Credit Event is no longer applicable, as the case may be. The County shall promptly notify the Noteholder of the occurrence of any Event of Default or Credit Event.

It shall also be considered a Credit Event if any of the County's general obligation bonds or bonds that are secured by a covenant to budget and appropriate Non-Ad Valorem Revenues are downgraded below Baa3/BBB-/BBB- (or the equivalent) by any of Moody's, S&P or Fitch, respectively, or if any such rating is withdrawn or suspended for credit-related reasons.

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## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT.** This Agreement shall not be amended, changed or modified without the prior written consent of the Noteholder and the County.

**SECTION 6.02. 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 6.03. SEVERABILITY.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

**SECTION 6.04. TERM OF AGREEMENT.** This Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Notes is outstanding.

**SECTION 6.05. NOTICE OF CHANGES IN FACT.** Promptly after the County becomes aware of the same, the County will notify the Noteholder of (a) any change in any material fact or circumstance represented or warranted by the County in this Agreement or in connection with the issuance of the Notes, and (b) any default or event which, with notice or lapse of time or both, could become a default under the Agreement, specifying in each case the nature thereof and what action the County has taken, is taking and/or proposed to take with respect thereto.

**SECTION 6.06. NOTICES.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to St. Johns County, Florida, 500 San Sebastian View, St. Augustine, FL 32084, Attention: County Administrator (with a copy to the Clerk), and to the Noteholder, Bank of America, N.A., 601 Creighton Street, Pensacola, FL 32504, Attention: Joe Miller, Senior Vice President, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

**SECTION 6.07. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the benefit of the County and the Noteholder and their respective successors and assigns, and there shall be no third-party beneficiary with respect thereto.

**SECTION 6.08. WAIVER OF JURY TRIAL.** To the extent permitted by applicable law, the County knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement, the Notes or any agreement contemplated to be executed in connection therewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of the County or the Noteholder.

**SECTION 6.09. APPLICABLE LAW; VENUE; ATTORNEY'S FEES.** The substantive laws of the State of Florida shall govern this Agreement, the Notes or any agreement contemplated to be executed in connection with this Agreement. The County submits to the jurisdiction of Florida courts and federal courts and agrees that venue for any suit concerning this Agreement shall be in St. Johns County, Florida and the Middle District of Florida. In the event of any litigation arising out of this Agreement or the Notes, including any appeal, the prevailing party shall be entitled to recover its documented attorney's fees.

**SECTION 6.10. ASSIGNMENT; PARTICIPATIONS.** (a) The County shall not assign any of its rights or interest in this Agreement or the Notes without the prior written consent of the Noteholder.

(b) The Noteholder may sell, transfer or assign the Notes in whole only to an entity that: (i) is an affiliate of the Noteholder; (B) is a trust or other custodial arrangement established by the Noteholder or one of its affiliates, the owners of any beneficial interest in which are limited to "qualified institutional buyers" (as described under Rule 144A promulgated under the Securities Act of 1933, as amended) or "accredited investors" (as described under Regulation D promulgated under the Securities Act of 1933, as amended); (C) is a secured party, custodian or other entity in connection with a pledge by the Noteholder to secure public deposits or other obligations of the Noteholder or one of its affiliates to state or local governmental entities; or (D) the Noteholder reasonably believes to be a "qualified institutional buyer" (as described under Rule 144A promulgated under the Securities Act of 1933, as amended) or "accredited investor" (as described under Regulation D promulgated under the Securities Act of 1933, as amended). The Noteholder shall notify the County of any sale, transfer or assignment of the Notes.

Notwithstanding the foregoing, the Noteholder may sell participations in the Notes to any number of participants as long as the Noteholder complies with all applicable securities laws.

**SECTION 6.11. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS.** To the extent that this Agreement and any document executed in

connection with this Agreement (collectively, "Loan Documents") provide support, through a guarantee or otherwise, for any Swap Contract (as defined below) or any other agreement or instrument that is a QFC, as defined below (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity (as defined below) that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined below) under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 6.11, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"Swap Contract" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

[Remainder of this page intentionally left blank]

**SECTION 6.12. INCORPORATION BY REFERENCE.** All of the terms and obligations of the Resolution are hereby incorporated herein by reference as if said Resolution was fully set forth in this Agreement and the Notes.

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

**ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

ATTESTED:

By: \_\_\_\_\_  
Clerk of the Board of County  
Commissioners

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Senior Vice President

EXHIBIT A

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
ST. JOHNS COUNTY, FLORIDA  
TAXABLE SPECIAL OBLIGATION REVENUE NOTE  
SERIES 2020[A][B]

Interest Rate	Date of Issuance	Final Maturity Date
_____ %	June __, 2020	October 1, 2031

**KNOW ALL MEN BY THESE PRESENTS**, that St. Johns County, Florida (the "County"), for value received, hereby promises to pay to the order of Bank of America, N.A., or its successors or assigns (the "Noteholder"), the principal sum of \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_) pursuant to that certain Loan Agreement by and between the Noteholder and the County, dated as of June \_\_, 2020 (the "Agreement"), and to pay interest on the outstanding principal amount hereof from the Date of Issuance set forth above, or from the most recent date to which interest has been paid, at the Interest Rate per annum (calculated on the basis of twelve 30-day calendar months and a 360 day year) identified above (subject to adjustment as provided in the Agreement) on October 1 and April 1 of each year (each an "Interest Payment Date"), commencing on October 1, 2020, so long as any amount under this Note remains outstanding. Principal of this Note shall be payable on October 1 of each year, commencing on [October 1, 2020][October 1, 2022], through and including the Maturity Date identified above. The principal payment schedule for this Note is set forth on Appendix I attached hereto. The principal and interest on this Note is 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. If any payment date is not a Business Day (as defined in the Agreement), the corresponding payment shall be due on the next succeeding Business Day provided that interest shall continue to accrue on principal until actually paid to the Bank and any additional interest shall be paid on the actual payment date.

This Note is issued under the authority of and in full compliance with the Florida Constitution, Chapter 125, Florida Statutes, and other applicable provisions of law, and pursuant to Resolution \_\_\_\_\_ duly adopted by the Board of County Commissioners of the County on May 19, 2020 (the "Resolution"), as such Resolution may be amended and supplemented from time to time, and is subject to all terms and conditions of the

Resolution and the Agreement. Any capitalized term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Agreement. This Note is being issued to finance a portion of costs of certain beach renourishment and dune restoration projects generally described in the Resolution and the Agreement.

This Note shall bear interest at the Interest Rate identified above calculated on the basis of twelve 30-day calendar months and a 360 day year. Such Interest Rate is subject to adjustment as provided in Section 5.02 of the Agreement. The Noteholder shall provide to the County upon request such documentation to evidence the amount of interest due with respect to the Notes upon any such adjustment.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of interest allowed under the State of Florida as presently in effect.

All payments made by the County hereon shall apply first to fees, costs, late charges and accrued interest, and then to the principal amount then due on this Note.

This Note shall not be or constitute a general obligation or indebtedness of the County as a "bond" within the meaning of any constitutional or statutory provision, but shall be special obligations of the County, payable solely from amounts budgeted and appropriated by the County from Non-Ad Valorem Revenues in accordance with Section 2.04 of the Agreement. The Noteholder shall never have the right to compel the exercise of any ad valorem taxing power to pay this Note, or be entitled to payment of this Note from any moneys of the County except from the Non-Ad Valorem Revenues in the manner and to the extent provided in the Agreement.

[This Note may be prepaid at any time, at the option of the County, from any moneys legally available therefor, upon notice as provided in the Agreement, in whole or in part at any time or from time to time, only by paying to the Noteholder all or a part of the principal amount of this Note to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, plus the applicable Prepayment Fee, as described in the Agreement.]

[This Note may only be prepaid at any time on or after October 1, 2021, at the option of the County, from any moneys legally available therefor, upon notice as provided in the Agreement, in whole or in part at any time or from time to time, by paying to the Noteholder all or a part of the principal amount of this Note to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, without penalty, premium or prepayment fee.]

All prepayments of this Note shall be applied in inverse order of scheduled principal payments unless otherwise agreed by the County, and the Noteholder in writing.]

This Note shall be and have all the qualities and incidents of a negotiable instrument under the commercial laws and the Uniform Commercial Code of the State of Florida, subject to any provisions for registration and transfer contained in the Agreement. So long as any of this Note shall remain outstanding, the County shall maintain and keep books for the registration and transfer of this Note.

**IN WITNESS WHEREOF**, the County caused this Note to be signed by the manual signature of the Chairman and the seal of the County to be affixed hereto or imprinted or reproduced hereon, and attested by the manual signature of the Clerk, and this Note to be dated the Date of Issuance set forth above.

**ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

ATTESTED:

By: \_\_\_\_\_  
Clerk of the Board of County  
Commissioners

**Principal Payment Schedule for the**  
**ST. JOHNS COUNTY, FLORIDA**  
**TAXABLE SPECIAL OBLIGATION REVENUE NOTE, SERIES 2020[A][B]**

<u>Date</u>	<u>Principal</u>
[10/01/20	
10/01/21]	
10/01/22	
10/01/23	
10/01/24	
10/01/25	
10/01/26	
10/01/27	
10/01/28	
10/01/29	
10/01/30	
10/01/31	