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**LOAN AGREEMENT**

**Dated as of February 17, 2016**

**By and Between**

**CITY OF FORT PIERCE, FLORIDA**  
**(the “City”)**

**and**

**CAPITAL ONE PUBLIC FUNDING, LLC**  
**(the “Lender”)**

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (this “Agreement”), made and entered into this 17<sup>th</sup> day of February, 2016, by and between the **CITY OF FORT PIERCE, FLORIDA** (the “City”), a municipal corporation of the State of Florida, and **CAPITAL ONE PUBLIC FUNDING, LLC**, a New York limited liability company authorized to do business in the State of Florida, including making the Loan described herein (the “Lender”).

### WITNESSETH:

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

WHEREAS, the City, pursuant to the provisions of the Florida Constitution, Chapter 166, *Florida Statutes* and other applicable provisions of Florida law (all of the foregoing, collectively, the “Act”), and Resolution No. 16R-\_\_ duly adopted by the City on February 16, 2016, is authorized to borrow money, and more particularly issue the Note described below for the City’s public purpose; and

WHEREAS, in response to a request for proposal by the City regarding an intended borrowing to (i) currently refund all of the City’s outstanding Stormwater Utility System Revenue Bonds, Series 2002, and Stormwater Utility System Revenue Bonds, Series 2006 (collectively, the Refunded Bonds), and to pay related costs of issuance, the Lender submitted its Term Sheet, dated January 7, 2016 to the City (the “Commitment”); and

WHEREAS, the City has accepted the Commitment and the Lender is willing to purchase the Note, but only upon the terms and conditions of this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITION OF TERMS**

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

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

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

“Bond Counsel” shall mean, Akerman LLP, Orlando, 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 hired by the City to render an opinion on such matters with regard to the Note.

“Bond Service Requirement” shall mean, for any Fiscal Year, the amount of principal of or amortization installments and interest due on the Note and any debt payable from Stormwater Revenues on parity with the Note for such Fiscal Year, except to the extent that any such Bond Service Requirement shall have been provided for out of debt proceeds. With respect to any Parity Debt (as defined in Section 4.04 hereof) bearing a variable interest rate in calculating the Bond Service Requirement such obligations shall be deemed to bear interest at the higher of 6.00% per annum or the actual interest rate borne during the month immediately preceding the date of calculation. The foregoing notwithstanding, for purposes of calculating Bond Service Requirement, any variable rate debt with respect to which the City has entered into an interest rate swap or interest rate cap for a notional amount equal to the principal amount of such variable rate debt shall be treated for purposes of this definition as bearing interest at a fixed rate equal to the fixed rate payable by the City under the interest rate swap, or the capped rate provided by the interest rate cap. For purposes of any rate covenant measuring actual debt service coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period.

"Bond Year" shall mean the Fiscal Year of the City.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which the office of the Lender at which payments on the Note are due is lawfully closed.

“City” shall mean the City of Fort Pierce, Florida, a municipal corporation.

“City Clerk” shall mean the City Clerk of the City and such other person as may be duly authorized to act on his or her behalf.

“City Manager” shall mean the City Manager of the City and such other person as may be duly authorized to act on his or her behalf.

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

“Debt Service” means principal and interest, and other debt-related costs, due in connection with the Note.

“Default Rate” shall mean five percent (5%) per annum calculated on the basis of a 360-day year of 12, 30 day months provided such rate shall not exceed the highest rate of interest allowed by applicable law.

“Determination of Taxability” shall mean, with respect to the Note, any determination, decision or decree by the Commissioner or any District Director of the Internal Revenue Service, as such officers are identified by the Code, or any court of competent jurisdiction that the interest payable under the Note is includable in the gross income (as defined in Section 61 of the Code) of the Holder.

"Escrow Deposit Agreement" shall mean that certain agreement between the City and TD Bank, N.A. as escrow agent pursuant to which amounts shall be deposited and held uninvested in trust to provide for the payment of the Refunded Bonds as provided therein.

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

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

“Fiscal Year” shall mean the 12-month period commencing October 1 of each year and ending on the succeeding April 30, or such other 12-month period as the City may designate as its “fiscal year” as permitted by law.

“Lender” shall mean Capital One Public Funding, LLC, a New York limited liability company and its successors and assigns.

“Loan” shall refer to an amount equal to the outstanding principal of the Note, together with unpaid interest which has accrued.

"Maximum Bond Service Requirement" shall mean, as of any particular date of calculation, the greatest amount of aggregate Bond Service Requirement for the then current or any future Bond Year.

“Note” shall mean the City of Fort Pierce, Florida Stormwater Revenue Refunding Note, Series 2016 issued by the City under this Agreement and the Resolution.

“Note Rate” shall mean the rate of interest to be borne by the Note which shall be a fixed rate equal to 2.90% per annum calculated on the basis of a 360-day year of 12, 30-day months, subject to adjustment as provided herein.

“Noteholder” or “Holder” or any similar term shall mean the Lender as the holder of the Note and any subsequent registered holder of the Note.

“Payment Date” shall mean each April 1 and October 1, commencing April 1, 2016 until the Note has been paid in full.

“Pledged Revenues” shall mean Stormwater Revenues.

"Qualified Independent Consultant" shall mean one or more qualified and recognized independent consultants, having favorable reputes, skill and experience with respect to the acts and duties of the Qualified Independent Consultant hereunder, as shall from time to time retained by the City to perform the acts and carry out the duties herein provided for such consultants.

“Refunded Bonds” shall have the meaning set forth in the third “Whereas” clause to this Agreement.

“Resolution” shall mean Resolution No. 16R-\_\_, duly adopted at a meeting of the City Commission on February 16, 2016, which, among other things, authorized the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

"Stormwater Revenues" means all revenues and moneys received by the City from its ownership and operation of the System.

"System" shall mean the complete system owned and operated by the City for the collection and drainage of stormwater within and without the corporate limits of the City together with all facilities and equipment, lands and interests in land, and other property, tangible and intangible, constituting a part of said System, whether now or hereafter existing.

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

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

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

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

(c) No Financial Material Adverse Change. No material adverse change in the financial condition of the City has occurred since the audited financial statements of the City for its Fiscal Year ended September 30, 2014.

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

(e) Authorizations, etc. No authorization, consent, approval, license, exemption of or registration or filing with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, has been or will be necessary for the valid execution, delivery and performance by the City of this Agreement, the Note and the related documents, except such as have been obtained, given or accomplished.

(f) No New Debt. Since September 30, 2015, the City has not entered into any direct or contingent bond, debt, lease, instalment purchase or loan obligations.

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

The Lender (i) has the power to enter into this Agreement and has duly authorized the execution and delivery hereof (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note, (iii) has received and reviewed such financial information concerning the Stormwater Revenues as it has needed in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; and (iv) is purchasing the Note as an investment for its own loan account and not with a current view toward resale to the public.

## ARTICLE III

### THE NOTE

**Section 3.01. Purpose and Use.** On the date of this Agreement, the Lender shall make available to the City the Loan in the principal amount of Thirteen Million Seven Hundred and Forty-Five Thousand Dollars (\$13,745,000). The proceeds available under the Note and this Agreement shall be used solely to refund the Refunded Bonds and to pay costs of issuing the Note.

**Section 3.02. The Note.** The Note shall be substantially in the form set forth as Exhibit A to this Agreement. The general terms of the Note shall be as follows:

(a) Amount of Note. The aggregate principal amount of the Note shall be Thirteen Million Seven Hundred Forty-Five Thousand Dollars (\$13,745,000).

(b) Interest. The Note shall bear interest at the Note Rate. Interest on the Note shall be computed on the basis of a 360 day year of 12, 30 day months.

(c) Prepayments. The Note shall be subject to prepayment at the option of the City, in whole but not in part on any Payment Date on or after October 1, 2024, from any legally available monies at a prepayment price of 100% of the principal amount to be prepaid, plus accrued interest to the prepayment date. Any prepayment shall be made on such date as shall be specified by the City in a written notice delivered to the Noteholder not less than thirty (30) days

prior to the specified prepayment date. Any prepayment shall be applied first to accrued interest, then to other amounts owed the Lender, and finally to principal.

Interest on the Note is payable on each Payment Date commencing April 1, 2016 as set forth in the Note. Principal on the Note is payable on each October 1 commencing October 1, 2016.

**Section 3.03. Adjustments to Note Rate.** The Note Rate shall be subject to adjustment as hereinafter described and as provided in the Note.

In the event of a Determination of Taxability, the Note Rate shall be adjusted to cause the yield on the Note to equal what the yield on the Note would have been absent such Determination of Taxability (the "Taxable Rate") effective retroactively to the date on which such Determination of Taxability was made. Within thirty (30) days of a Determination of Taxability, the City agrees to pay to the Noteholder subject to such Determination of Taxability the Additional Amount (as defined herein). "Additional Amount" means (i) the difference between (a) interest on the Note for the period commencing on the date on which the interest on the Note (or portion thereof) loses its "tax-exempt" status and ending on the earlier of the date the Note ceased to be outstanding or such adjustment is no longer applicable to the Note (the "Taxable Period") at a rate equal to the Taxable Rate and (b) the aggregate amount of interest payable on the Note for the Taxable Period under the provisions of the Note without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by the Noteholder to the Internal Revenue Service by reason of such Determination of Taxability.

The Noteholder shall promptly notify the City in writing of any adjustments pursuant hereto. Such adjustments shall become effective as of the effective date of the event causing such adjustment. Adjustments pursuant hereto may be retroactive. The Noteholder shall certify to the City in writing the additional amount, if any, due to the Noteholder as a result of an adjustment pursuant hereto. Notwithstanding any provision hereto the contrary, in no event shall the interest rate on the Note exceed the maximum rate permitted by law.

**Section 3.04. Conditions Precedent to Issuance of Note.** Prior to or simultaneously with the delivery of the Note, there shall be filed with the Lender the following, each in form and substance reasonably acceptable to the Lender:

(a) an opinion of counsel to the City substantially to the effect that (i) the Resolution has been duly adopted and this Agreement, the Escrow Deposit Agreement and the Note have been duly authorized, executed and delivered by the City and each constitutes a valid, binding and enforceable agreement of the City in accordance with their respective terms, except to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and the Escrow Deposit Agreement and the execution and issuance of the Note are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not heretofore obtained or effected; (iii) the execution and delivery of the Note has been duly and validly authorized by the City and the Note has been duly executed; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the

State of Florida, and (B) has power and authority to adopt the Resolution, to execute and deliver this Agreement, the Escrow Deposit Agreement and the Note and to consummate the transactions contemplated by such instruments; (v) the execution, delivery and performance of the Note, this Agreement and the Escrow Deposit Agreement and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) there is no claim, action, suit, proceeding, inquiry, investigation, litigation or other proceeding, at law or in equity, pending or, to the best of such counsel's knowledge, threatened in any court or other tribunal, state or federal (A) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Note, (B) in any way questioning or affecting the validity or enforceability of any provision of this Agreement, the Escrow Deposit Agreement, the Note, or the Resolution, (C) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Note, or of any provision made or authorized for the payment thereof, or (D) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City has the legal power to (1) refund the Refunded Bonds and to pay associated costs of issuance, and (2) grant a lien on the Pledged Revenues as described herein and in the Resolution; (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Note have been complied with; and (ix) all authorizations, approvals, consents, waivers or other orders of governmental authorities or agencies that are required in connection with the authorization, execution and delivery by the City of the Resolution, the Escrow Deposit Agreement, the Note and this Agreement and all other agreements or documents provided for or contemplated by this Agreement, and the execution, issuance, sale and delivery of the Note have been obtained and are in full force and effect and no additional or further approvals, consents, waivers or authorizations of any governmental or public agency or authority not already obtained or currently able to be obtained are required by law or by the City in the performance by the City of its obligations under the Note, this Agreement, the Resolution or the contracts and agreements provided for therein or contemplated thereby;

(b) an opinion of Bond Counsel (who may rely on opinion of counsel to the City), substantially to such effect that such counsel is of the opinion that: (i) this Loan Agreement constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms; (ii) the Note is a valid and binding special obligation of the City enforceable in accordance with its terms, payable solely from the sources provided for therein and in this Loan Agreement; (iii) assuming compliance by the City with certain covenants relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation; and (iv) the Note is exempt from registration under the Securities Act of 1933, as amended, and the Resolution and this Agreement are exempt from qualification under the Trust Indenture Act of 1939, as amended;

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

(d) the original executed Resolution, Note, Agreement and Escrow Deposit Agreement;

(e) evidence of the payment in full or defeasance of the Refunded Bonds, in form and substance satisfactory to the Lender; and

(f) such other documents as the Lender reasonably may request.

When the documents and items mentioned in clauses (a) through (f), inclusive, of this Section shall have been filed with the Lender, and when the Note shall have been executed as required by this Agreement, and all conditions of the Resolution have been met, the City shall deliver the Note to or upon the order of the Lender upon receipt of the purchase price therefor. Payment of the purchase price of the Note by the Lender shall be conclusive evidence that all conditions pursuant to the delivery of the Note have been met.

**Section 3.05. Registration of Transfer; Assignment of Rights of Lender.** The City shall keep at the office of the City Clerk in the City's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. The transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Holder or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit A to this Agreement. The Holder shall have the right at any time to assign, transfer or convey the Note or any interest therein or portion thereof, but no such assignment, transfer or conveyance shall be effective as against the City unless and until the Holder has delivered to the City written notice thereof that discloses the name and address of the assignee and such assignment, transfer or conveyance shall be made only to (i) an affiliate of the Holder or (ii) banks, insurance companies or other financial institutions or their affiliates. No such transfer limit shall limit the right of the Holder to sell or assign participation interests in the Note to one or more entities listed in (i) or (ii). In the case of any such registration of transfer, the City shall execute and deliver in exchange for the Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of a Note sufficient to reimburse it for any tax or other governmental charges required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any lawful coin or currency of the United States.

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

In the event any Note is mutilated, lost, stolen, or destroyed, the City shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Note, there first shall be furnished to the City evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

**Section 3.06. Ownership of the Note.** The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the Holder thereof or such Holder's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

**Section 3.07. Use of Proceeds of Note Permitted Under Applicable Law.** The City represents, warrants and covenants that the proceeds of the Note will be used solely to refund the Refunded Bonds and pay costs of issuance of the Note, and that such use is permitted by the Act and other applicable law.

**Section 3.08. Authentication.** Until the Note shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A, duly executed by the manual signature of the registrar as authenticating agent, it shall not be entitled to any benefit or security under this Agreement. The Note shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the registrar, and such certificate of the registrar upon the Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Agreement.

## ARTICLE IV

### COVENANTS OF THE CITY

**Section 4.01. Performance of Covenants.** The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the City relating to the Loan.

**Section 4.02. Payment of Note.**

(a) The City does hereby irrevocably pledge the Pledged Revenues as security for the repayment of the Note.

(b) The Note will be a special obligation of the City secured solely by the Pledged Revenues and the City hereby covenants to apply Pledge Revenues to pay Debt Service when due. The Note will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Note and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, or the use of any ad valorem tax revenues directly or indirectly to enforce such payment. The Note shall not constitute a lien upon any property of the City except upon the Pledged Revenues.

**Section 4.03. Tax Covenant.** The City covenants to the Holders of the Note that the City will not make any use of the proceeds of the Note at any time during the term of the Note which would cause the Note to be an “arbitrage bond” within the meaning of the Code. The City further covenants to comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to insure the exclusion of interest on the Note from the gross income of the Holders thereof for purposes of federal income taxation.

**Section 4.04. Future Debt Payable From Stormwater Revenues.** The City covenants that it will not issue any debt subsequent to the issuance of the Note payable on the parity with the Note from Stormwater Revenues ("Parity Debt") unless:

(1) There shall have been obtained and filed with the City a certificate of an independent certified public accountant stating; (a) that the books and records of the City relative to the Stormwater Revenues have been reviewed by him; (b) the amount of the Stormwater Revenues derived for any consecutive twelve (12) months out of the preceding twenty-four (24) months preceding the date of issuance of the proposed Parity Debt adjusted as provided below shall be at least equal to one hundred percent twenty (120%) of the Maximum Bond Service Requirement becoming due in any Bond Year thereafter on the Note and any Parity Debt, then outstanding and on the Parity Debt with respect to which such certificate is made.

(2) The Stormwater Revenues certified pursuant to paragraph 1(b) in this Section may be adjusted for purposes of Section by including: (a) one hundred percent (100%) of the additional Stormwater Revenues which in the opinion of the Qualified Independent Consultant would have been derived by the City from rate increases adopted before the Parity Debt is issued, if such rate increases had been implemented before the commencement of the Bond Year in which the Parity Debt will be issued and (b) one hundred percent (100%) of the additional Stormwater Revenues estimated by the Qualified Independent Consultant to be derived during the first full twelve (12) month period after the facilities of the System are extended, enlarged, improved or added to with the proceeds of the Parity Debt with respect to which such certificate is made.

(3) The City shall not be in default in the carrying out of any of the obligations assumed under this Agreement and no Event of Default shall have occurred under this Agreement and shall be continuing, and all payments required by this Agreement to be made shall have been made to the full extent required.

The City need not comply with the provisions of paragraph 1 of this Section if and to the extent the debt to be issued is refunding debt and if the Issuer shall cause to be delivered a certificate of the City Director of Finance setting forth the annual debt service (i) for the debt then Outstanding and (ii) for all debt to be immediately Outstanding thereafter and stating that annual debt service in any particular year pursuant to (ii) above is not greater than annual debt service in the corresponding year set forth pursuant to (i) above.

**Section 4.05. Rate Covenant.** The City will fix, establish, revise from time to time whenever the necessary, maintain and collect always such fees, rates, rentals and other charges for the use of the products, services and facilities of the System which will always provide

Stormwater Revenues in each Fiscal Year at least equal to one hundred twenty percent (120%) of the Bond Service Requirement becoming due in such year on the Note and any Parity Debt.

**Section 4.06. Enforcement of Collections.** The City will diligently enforce and collect the rates, fees and other charges for the services and facilities of the System and will take all steps, actions and proceedings for the enforcement and collection of such rates, charges and fees as shall become delinquent to the full extent permitted or authorized by law; and will maintain accurate records with respect thereof.

**Section 4.07. Books and Accounts; Audit.** The City shall keep proper books, records and accounts, separate and apart from all other records and accounts, showing correct and complete entries of all transactions of the System, and the Holder of the Note or any duly authorized agent or agents of such Holder shall have the right at any and all reasonable times to inspect such books, records and accounts. The City shall, within two hundred seventy (270) days following the close of each Fiscal Year of the City cause an audit of the Stormwater Revenues to be made by an independent firm or certified accountants.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**Section 5.01. Events of Default.** Each of the following is hereby declared an “Event of Default:”

(a) payment of the principal of the Note shall not be made when the same shall become due and payable; or

(b) payment of any installment of interest on the Note shall not be made when the same shall become due and payable; or

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

(d) any representation or warranty of the City contained in this Agreement or in any certificate or other closing document executed and delivered by the City in connection with the closing of the Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note; or

(e) any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a compromise between the City and its creditors or for the purpose of

adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted; or

(f) the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

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

(h) if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property and such custody or control shall not be terminated within 90 days from the date of assumption of such custody or control.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Note shall bear interest at the Default Rate and all payments made on the Note during any such period shall be applied first to interest and then to principal. Acceleration of the payments due on the Note and any other payments due hereunder shall not be a remedy. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under this Agreement, provided, the Holder shall never have the right to compel the exercise of the ad valorem taxing power of the City or the taxation in any form of any property to pay the Note or the interest thereon.

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

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to a Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

A Noteholder may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

**Section 6.02. Term of Agreement.** This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Holder hereunder have been paid in full.

**Section 6.03. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by each of the City and the Noteholder.

**Section 6.04. Notices.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Lender, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

(a) As to the City:

City of Fort Pierce, Florida  
100 North U.S. 1

Fort Pierce, FL 34950  
Attention: City Manager

With a copy to:

Office of the City Attorney  
100 North U.S. 1  
Fort Pierce, FL 34950

(b) As to the Lender:

Capital One Public Funding, LLC  
275 Broadhollow Road  
Melville, NY 11747  
Attention: 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.

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

**Section 6.05. Benefits Exclusive.** Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the Noteholder.

**Section 6.06. Severability.** In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

**Section 6.07. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall be other than a Business Day, then payment of such interest or principal shall be made on the next succeeding day on which the Lender is open for business with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, and no interest on any such principal amount shall accrue for the period after such date of maturity or such date fixed for prepayment.

**Section 6.08. 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 6.09. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.10. No Personal Liability.** Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Commission, officer, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

**Section 6.11. Arbitration.** IN THE EVENT ANY DISPUTE SHOULD ARISE UNDER THIS AGREEMENT OR ANY OTHER ASPECT OF THE TRANSACTION REFLECTED IN THIS AGREEMENT BETWEEN THE HOLDER AND THE CITY, WHETHER OR NOT SPECIFICALLY RELATING TO THIS AGREEMENT, SAID DISPUTE WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ST. LUCIE COUNTY, FLORIDA, IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

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

*[SIGNATURES ON FOLLOWING PAGE]*

*[Signature Page for LOAN AGREEMENT  
dated as of February 17, 2016 between  
the City of Fort Pierce, Florida and Capital One Public Funding, LLC]*

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

**CITY OF FORT PIERCE, FLORIDA**

[SEAL]

ATTEST:

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

\_\_\_\_\_  
City Clerk

Approved As To Form and Correctness:

**CAPITAL ONE PUBLIC FUNDING,  
LLC**

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Title: Vice President

**EXHIBIT A**

**FORM OF NOTE**

**CITY OF FORT PIERCE, FLORIDA  
STORMWATER REVENUE REFUNDING NOTE,  
SERIES 2016**

<u>Principal Sum</u>	<u>Maturity Date</u>	<u>Note Rate</u>	<u>Date of Issuance</u>
\$13,745,000	October 1, 2030	2.90%	February 17, 2016

The CITY OF FORT PIERCE, FLORIDA (the “City”), for value received, hereby promises to pay, solely from the sources described in the within mentioned Agreement, to the order of CAPITAL ONE PUBLIC FUNDING, LLC, a New York limited liability company or its assigns (the “Holder”), at 275 Broadhollow Road, Melville, NY 11747, Attention: President or at such other place as the Holder may from time to time designate in writing, the Principal Sum stated above and to pay (but only out of the sources hereinafter mentioned) interest on the outstanding principal amount hereof on the dates all as set forth on **Schedule I** attached hereto, commencing on April 1, 2016, until payment of said principal sum has been made or provided for, at the Note Rate shown above calculated on the basis of a 360-day year of 12, 30-day months. Payments due hereunder 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, which payments shall be made to the Holder hereof by check mailed to the Holder at the address designated in writing by the Holder for purposes of payment or by bank wire or bank transfer as the Holder may specify in writing to the City or otherwise as the City and the Holder may agree.

The Note Rate may be adjusted in accordance with Sections 3.03 and 5.02 of that certain Loan Agreement by and between the Holder and the City, dated as of February 17, 2016 (the “Agreement”). Such adjustments may be retroactive.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note may be prepaid by the City in whole, but not in part, on any Payment Date on or after October 1, 2024, as provided in the Agreement from any legally available monies at a prepayment price of 100% of the principal amount to be prepaid, plus accrued interest to the prepayment date. Prepayment shall be made on such date as shall be specified by the City in a written notice delivered to the Holder not less than thirty (30) days prior to the specified prepayment date. Any prepayments shall be applied as provided in Section 3.02(c) of the Agreement.

This Note is authorized to be issued in the original principal amount under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 166, Florida Statutes and other applicable provisions of Florida law and the

City's Resolution No. 16R-\_\_ duly adopted on February 16, 2016 (the "Resolution"), and is subject to all terms and conditions of the Agreement and the Resolution.

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 nonsurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the City greater than the amount contracted for herein. This Note may be transferred only as provided in the Agreement.

The Holder of this Note shall have the right at any time to assign, transfer or convey the Note or any interest therein or portion thereof, but no such assignment, transfer or conveyance shall be effective as against the City unless and until the Holder has delivered to the City written notice thereof that discloses the name and address of the assignee and such assignment, transfer or conveyance shall be made only to (i) an affiliate of the Holder or (ii) banks, insurance companies or similar financial institutions or their affiliates.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES, AS PROVIDED IN THE AGREEMENT AND THE RESOLUTION. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY, OR TAXATION IN ANY FORM OF ANY PROPERTY TO PAY THIS NOTE OR THE INTEREST THEREON.

The City hereby waives presentment, demand, protest and notice of dishonor. This Note is governed and controlled by the Agreement and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the City has caused this Note to be signed by its Mayor, either manually or with facsimile signature, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by City Clerk of the City, either manually or with facsimile signature, and this Note is to be dated the Date of Issuance set forth above.

**CITY OF FORT PIERCE, FLORIDA**

[SEAL]

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This Note is being delivered pursuant to the within mentioned Agreement.

**CITY OF FORT PIERCE, FLORIDA,**  
as Registrar

By: \_\_\_\_\_  
City Clerk

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto \_\_\_\_\_ (please print or typewrite name, address and tax identification number of assignee) \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: \_\_\_\_\_

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

## SCHEDULE I

<u>DATE</u>	<u>PRINCIPAL</u>
October 1, 2016	\$ 950,000
October 1, 2017	825,000
October 1, 2018	855,000
October 1, 2019	875,000
October 1, 2020	900,000
October 1, 2021	920,000
October 1, 2022	950,000
October 1, 2023	980,000
October 1, 2024	1,000,000
October 1, 2025	1,035,000
October 1, 2026	1,070,000
October 1, 2027	1,095,000
October 1, 2028	740,000
October 1, 2029	760,000
October 1, 2030	780,000