

RESOLUTION 2020-36

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY, RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING THE LOAN APPLICATION; AUTHORIZING THE LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; DESIGNATING AUTHORIZED REPRESENTATIVES; PROVIDING ASSURANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the acquisition of wastewater treatment facilities; and

WHEREAS, Florida Administrative Code rules require the borrower to adopt a resolution to authorize its loan application, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS, the State Revolving Fund loan priority list designates the Flagler County Utility Wastewater Treatment Facilities Acquisition Project, FDEP Project No. WW18082 (the "Project") as eligible for available funding; and

WHEREAS, the Florida Governmental Utility Authority ("FGUA") intends to enter into a loan agreement with the Department of Environmental Protection under the State Revolving Fund for project financing; and

WHEREAS, the FGUA will enter into an Indenture of Trust to be executed simultaneously with the acquisition of the Flagler Utility System, as supplemented from time to time (the "Indenture"), between the FGUA and Wells Fargo Bank, National Association, as trustee, to provide for the pledge of net revenues of the Flagler Utility System and provide for the future issuance of senior debt.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY AS FOLLOWS:

SECTION I. This Resolution is adopted pursuant to the provisions of the Amended and Restated Interlocal Agreement Relating To The Establishment of the Florida Governmental Utility Authority, dated as of December 1, 2000, as it may be amended (the "Interlocal Agreement"), and Section 163.01(7), Florida Statutes.

SECTION II. The foregoing findings are incorporated herein by reference and made a part hereof.

SECTION III. The FGUA is authorized by Section 163.01(7)(g), Florida Statutes, and the Interlocal Agreement to apply for a loan to finance the construction phase of the Project.

SECTION IV. The revenues pledged for the repayment of the loan are the net water and sewer system revenues (the "Pledged Funds") as such term is defined in the Indenture after payment of debt service on certain other obligations that may be issued in the future pursuant to the Indenture.

SECTION V. The Board Chairman is hereby designated as the authorized representative to execute the loan agreement substantially in the form attached as Exhibit A hereto, which will become a binding obligation of the FGUA in accordance with its terms when signed by both parties. The Board Chair is authorized to represent the FGUA in carrying out the FGUA's responsibilities under the loan agreement. The Board Chairman is hereby designated as the authorized representative to provide the assurances and commitments required by the loan application. The Board Chair is authorized to delegate responsibility to appropriate FGUA staff to carry out technical, financial, and administrative activities associated with the loan agreement.

SECTION VI. The legal authority for borrowing moneys to construct this Project is Section 163.01(7)(g), Florida Statutes, and the Interlocal Agreement.

SECTION VII. All resolutions or part of resolutions regarding the Project in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION VIII. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION IX. This Resolution shall become effective immediately upon its passage and adoption by the FGUA Board of Directors.

PASSED and ADOPTED this 20 Day of August [month], 2020.

ATTEST

DocuSigned by:
Lauren Duckworth
FEAF00B5A85D4D3...

Board Clerk

**BOARD OF DIRECTORS OF THE
FLORIDA GOVERNMENTAL UTILITY
AUTHORITY**
DocuSigned by:
Ken Cheek
551AF3D140DC4F6...

Chair/Vice Chair
APPROVED AS TO FORM

DocuSigned by:
Howard E. Adams
1BEF0CB9354453...

FGUA Counsel

EXHIBIT A

SAMPLE LOAN AGREEMENT

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

(*1), FLORIDA

**CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT**

WW(*2)

Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, MS 3505
Tallahassee, Florida 32399-3000

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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**CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
WW(*2)**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and **the (*1)**, FLORIDA, (Local Government) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Local Government shall be referred to as “Parties” or individually as “Party”.

RECITALS

Pursuant to Section 403.1835, Florida Statutes **and Chapter 62-503, Laws of Florida**, the Department is authorized to make loans to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the Department; and

The Local Government applied for the financing of the Project, and the Department has determined that such Project meets all requirements for a loan.

AGREEMENT

In consideration of the Department loaning money to the Local Government, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

Words and terms used herein shall have the meanings set forth below:

- (1) “Agreement” or “Loan Agreement” shall mean this construction loan agreement.
- (2) **IF APPLICABLE** “Asset Management Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. The requirements for asset management plans are in Subsection 62-503.700(7), Florida Administrative Code.
- (3) “Authorized Representative” shall mean the official of the Local Government authorized by ordinance or resolution to sign documents associated with the Loan.
- (4) “Capitalized Interest” shall mean a finance charge that accrues at the Financing Rate on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.

(5) “Depository” shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than \$50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(6) “Final Amendment” shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount, the interest rate, Loan Service Fee, amortization schedule and Semiannual Loan Payment amount.

(7) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(8) “Financing Rate” shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan. The Financing Rate shall consist of an interest rate component and a Grant Allocation Assessment rate component.

(9) **IF APPLICABLE** “Fiscal Sustainability Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan shall include the inventory and evaluation of assets, the certification of water and energy conservation implementation efforts, as well as a plan for the maintenance, repair and, if necessary, the replacement of assets, as well as the schedule to do so.

(10) “Grant Allocation Assessment” shall mean an assessment, expressed as a percent per annum, accruing on the unpaid balance of the Loan. It is computed similarly to the way interest charged on the Loan is computed and is included in the Semiannual Loan Payment. The Department will use Grant Allocation Assessment moneys for making grants to financially disadvantaged small communities pursuant to Section 403.1835 of the Florida Statutes.

(11) “Gross Revenues” shall mean all income or earnings received by the Local Government from the ownership or operation of its **Water and Sewer Systems**, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the **Water or Sewer System**, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the **Water or Sewer System**.

(12) “Loan” shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(13) “Loan Application” shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.

(14) “Loan Debt Service Account” shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the Local Government for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(15) “Loan Service Fee” shall mean an origination fee which shall be paid to the Department by the Local Government.

(16) “Local Governmental Entity” means a county, municipality, or special district.

(17) “Monthly Loan Deposit” shall mean the monthly deposit to be made by the Local Government to the Loan Debt Service Account.

(18) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the **Water and Sewer Systems** determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(19) **IF APPLICABLE** “Parity Debt” shall mean any debt obligations issued that are on an equal commercial lien position with this Loan.

(20) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the **Gross Revenues** derived yearly from the operation of the **Water and Sewer Systems** after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of **IF APPLICABLE the Senior Revenue Debt and** any senior or parity obligations issued pursuant to Section 7.02 of this Agreement.

(21) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the **[brief description or name of project]** in accordance with the plans and specifications accepted by the Department for the following contracts:

(a) (* title).

(b) (* title). **IF APPLICABLE This** contract includes installation of [equipment], which will be furnished by the contract listed under (c), below.

(c) (* title). **IF APPLICABLE This** contract is for purchasing [equipment], which will be installed by the contract listed under (b), above.

(d) (* title).

IF APPLICABLE The Project also includes the purchase of land.

The Project is in agreement with the planning documentation accepted by the Department effective [month date, year]. A **Florida Finding of No Significant Impact** was published on [month date, year] and no adverse comments were received.

(22) “Semiannual Loan Payment” shall mean the payment due from the Local Government to the Department at six-month intervals.

(23) **IF APPLICABLE** “Senior Revenue Debt” shall mean the following debt obligations:

(a) (* Name), Florida, **Water and Sewer System** Revenue Refunding Bonds, Series 19_____, issued in the amount of \$_____, pursuant to **Ordinance Resolution** No. _____; and

(b) (* Name), Florida, **Water and Sewer System** Revenue Bonds, Series 19_____, issued in the amount of \$_____, pursuant to **Ordinance Resolution** No. _____; and

(c) Additional bonds issued on a parity with the **bonds** identified above pursuant to Section _____ of **Ordinance Resolution** No. _____; and

(d) Any refunding bonds issued to refund the obligations identified above provided such bonds shall not increase annual debt service during the repayment period of this Loan.

(24) “Sewer System” shall mean all facilities owned by the Local Government for collection, transmission, treatment and reuse of wastewater and its residuals.

(25) “Water System” shall mean all facilities owned by the Local Government for supplying and distributing water for residential, commercial, industrial, and governmental use.

1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word “person” shall include corporations and associations, including public entities, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Government warrants, represents and covenants that:

(1) The Local Government has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Local Government currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Local Government's knowledge, threatened, which seeks to restrain or enjoin the Local Government from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. The Local Government knows of no reason why any future required permits or approvals are not obtainable.

(5) The Local Government shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the Local Government shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Local Government's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Local Government representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Local Government to the Department was current and correct as of the date such information was delivered. The Local Government shall comply with Chapter 62-503, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Local Government shall take such action to comply with this agreement.

(8) The Local Government shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Local Government shall keep accounts of the **Water and Sewer Systems** separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the **Water and Sewer Systems**, and of the Pledged Revenues, Loan disbursement receipts, **and** Loan Debt Service Account.

(9) In the event the anticipated Pledged Revenues are shown by the Local Government's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Local Government shall include in such budget other legally available non-ad valorem funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available non-ad valorem funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the Local Government shall collect such funds for application as provided herein. The Local Government shall notify the Department immediately in writing of any such budgeting of other legally available non-ad valorem funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available non-ad valorem funds; requiring the Local Government to levy or appropriate ad valorem tax revenues; or preventing the Local Government from pledging to the payment of any bonds or other obligations all or any part of such other legally available non-ad valorem funds.

(10) Pursuant to Section 216.347 of the Florida Statutes, the Local Government shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(11) The Local Government agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Government are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(12) The Local Government covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Local Government covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(13) The Local Government shall update the revenue generation system annually to assure that sufficient revenues are generated for debt service; operation and maintenance; replacement of equipment, accessories, and appurtenances necessary to maintain the system design capacity and performance during its design life; and to make the system financially self-sufficient.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Local Government’s legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Local Government and shall constitute a valid and legal obligation of the Local Government enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement identifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Local Government agrees to the following audit and monitoring requirements.

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
CS-12000119-0	EPA	66.458	Capitalization Grants for State Revolving Funds	\$_____	140131

(2) Audits.

(a) In the event that the Local Government expends \$750,000 or more in Federal awards in its fiscal year, the Local Government must have a **Federal single audit** conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. In determining the Federal awards expended in its fiscal year, the Local Government shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F. An audit of the Local Government conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Government shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR Part 200, Subpart F.

(c) If the Local Government expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, is not required. **The Local Government shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government.** In the event that the Local Government expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Local Government resources obtained from other than Federal entities).

(d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov/index?cck=1&au=&cck=.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by 2 CFR Part 200, Subpart F, by or on behalf of the Local Government directly to each of the following:

(i) The Department **at one of** the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-30000

or

Electronically:

FDEPSingleAudit@dep.state.fl.us

(ii) The Federal Audit Clearinghouse designated in 2 CFR Section 200.501(a) at the following address:

<https://harvester.census.gov/facweb/>

(iii) Other Federal agencies and pass-through entities in accordance with 2 CFR Section 200.512.

(b) Pursuant to 2 CFR Part 200, Subpart F, the Local Government shall submit a copy of the reporting package described in 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a)(i) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Local Governments, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Local Government in correspondence accompanying the reporting package.

(4) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date **of the Final Amendment**, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Local Government shall ensure that working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date **of the Final Amendment**, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR Part 200, Subpart F., and/or other procedures. By entering into this Agreement, the Local Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Local Government will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Government shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.07 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Local Government shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Local Government fails to make a required Monthly Loan Deposit, the Local Government's chief financial officer shall notify the Department of such failure. In addition, the Local Government agrees to budget, by amendment if necessary, payment to the Department from other legally available **non-ad valorem** funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Local Government, nor shall it be construed to give the Department the power to require the Local Government to levy and collect any revenues other than Pledged Revenues.

3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Local Government's obligations pursuant to Section 8.01.

3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

Project changes prior to bid opening shall be made by addendum to plans and specifications. Changes after bid opening shall be made by change order. The Local Government shall submit all addenda and all change orders to the Department for an eligibility determination. After execution of all construction, equipment and materials contracts, the Project contingency may be reduced.

4.02. TITLE TO PROJECT SITE.

The Local Government shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

4.03. PERMITS AND APPROVALS.

The Local Government shall have obtained, prior to the Department's authorization to award construction contracts, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

4.04. ENGINEERING SERVICES.

A professional engineer, registered in the State of Florida, shall be employed by, or under contract with, the Local Government to oversee construction.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Local Government is prohibited from selling, leasing, or disposing of any part of the **Water or Sewer** System which would materially reduce operational integrity or Gross Revenues so long as this Agreement, including any amendment thereto, is in effect unless the written consent of the Department is first secured.

4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Local Government covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Local Government's covenants to complete and place the Project in operation.

4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced

by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

4.08. LOAN DISBURSEMENTS.

Disbursements shall be made directly to the Local Government for reimbursement of the incurred construction costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work, **and proof of payment.**

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Local Government is required to make such payments.

(3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.

(4) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.

ARTICLE V - RATES AND USE OF THE **WATER AND SEWER SYSTEMS**

5.01. RATE COVERAGE.

The Local Government shall maintain rates and charges for the services furnished by the **Water and Sewer Systems** which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding **1.15** times the sum of the Semiannual Loan Payments due in such Fiscal Year. **IF APPLICABLE** In addition, the Local Government shall satisfy the coverage requirements of all Senior **Revenue Debt** and Parity Debt obligations.

5.02. NO FREE SERVICE.

The Local Government shall not permit connections to, or furnish any services afforded by, the **Water or Sewer System** without making a charge therefore based on the Local Government's uniform schedule of rates, fees, and charges.

5.03. MANDATORY CONNECTIONS.

The Local Government shall adopt, as necessary, and enforce requirements, consistent with applicable laws, for the owner, tenant or occupant of each building located on a lot or parcel of land which is served, or may reasonably be served, by the Sewer System to connect such building to the Sewer System.

5.04. NO COMPETING SERVICE.

The Local Government shall not allow any person to provide any services which would compete with the Water or Sewer System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE WATER AND SEWER SYSTEMS.

The Local Government shall operate and maintain the Water and Sewer Systems in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

The Local Government may make any additions, modifications or improvements to the Water and Sewer Systems which it deems desirable and which do not materially reduce the operational integrity of any part of the Water or Sewer System. All such renewals, replacements, additions, modifications and improvements shall become part of the Water and Sewer Systems.

5.07. COLLECTION OF REVENUES.

The Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government shall establish liens on premises served by the Water or Sewer System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Local Government shall, to the full extent permitted by law, cause to discontinue the services of the Water and Sewer Systems and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Water and Sewer System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Upon the occurrence of any of the following events (the Events of Default) all obligations on the part of Department to make any further disbursements hereunder shall, if Department elects, terminate. The Department may, at its option, exercise any of its remedies set forth in this Agreement, but Department may make any disbursements or parts of disbursements after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further disbursement:

(1) Failure to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 15 days.

(2) Except as provided in Subsection 6.01(1), failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.14 below, and such failure shall continue for a period of 30 days after written notice thereof to the Local Government by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Local Government contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading, or if Local Government shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, or any other document given in connection with the Loan (provided, that with respect to non-monetary defaults, Department shall give written notice to Local Government, which shall have 30 days to cure any such default), or is unable or unwilling to meet its obligations thereunder.

(4) An order or decree entered, with the acquiescence of the Local Government, appointing a receiver of any part of the **Water or Sewer** System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Local Government, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Local Government, for the purpose of effecting a composition between the Local Government and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the **Water or Sewer** System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Local Government under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Local Government, is not dismissed within 60 days after filing.

(7) Any charge is brought alleging violations of any criminal law in the implementation of the Project or the administration of the proceeds from this Loan against one or more officials of the Local Government by a State or Federal law enforcement authority, which charges are not withdrawn or dismissed within 60 days following the filing thereof.

(8) Failure of the Local Government to give immediate written notice of its knowledge of a potential default or an event of default, hereunder, to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of

Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, *inter alia*, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the **Water and Sewer Systems**, and to require the Local Government to fulfill this Agreement.

(2) By action or suit in equity, require the Local Government to account for all moneys received from the Department or from the ownership of the **Water and Sewer Systems** and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the **Water and Sewer Systems**, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus a penalty from any unobligated funds due to the Local Government under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. The Department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate.

6.03. DELAY AND WAIVER.

No course of dealing between Department and Local Government, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies of Department, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No delay or omission by the Department to exercise any right or power accruing upon Events of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VII - THE PLEDGED REVENUES

7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues, which along with any other Department State Revolving Fund liens on the Pledged Revenues, **of equal priority**, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Government under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to **IF APPLICABLE the Senior Revenue Debt defined in Section 1.01 of this Agreement and to** any additional senior obligations issued with the Department's consent pursuant to Section 7.02. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed **1.15** times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Government may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent may be granted if the Local Government demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the **Water and Sewer Systems** and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed **1.15** times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Local Government and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

ARTICLE VIII - GENERAL PROVISIONS

8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Local Government shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan, and as applicable, Loan Service Fee, interest, and Grant Allocation Assessment charges, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department for inspection at any reasonable time after the Local Government has received a disbursement and until **five** years after the **Final Amendment** date.

8.03. ACCESS TO PROJECT SITE.

The Local Government shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Local Government shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Local Government. The Local Government shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A Final Amendment establishing the final Project costs and the Loan Service Fee based on actual Project costs shall be completed after the Department's final inspection of the Project records.

8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Local Government to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the Local Government, suspend or terminate this Agreement.

(1) Failure of the Local Government to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07 to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the Local Government, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in

Section 4.07) and provide written notification of Final Unilateral Amendment to the Local Government.

In the event that following the execution of this Agreement, the Local Government decides not to proceed with this Loan, this Agreement can be cancelled by the Local Government, without penalty, if no funds have been disbursed.

8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

8.08. SIGNAGE.

The Local Government agrees to comply with signage guidance in order to enhance public awareness of EPA assistance agreements nationwide. A copy of this guidance is listed as on the Department's webpage at <https://floridadep.gov/wra/srf/content/state-revolving-fund-resources-and-documents> as "Guidance for Meeting EPA's Signage Requirements".

8.09. DAVIS-BACON ACT REQUIREMENT.

(1) The Local Government shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. Local Governments shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5) all interviews must be conducted in confidence. The Local Government must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Local Government shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Local Government shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. Local Governments must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Local Government shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(3) The Local Government shall periodically review contractors' and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate

numbers of laborers, trainees, and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (1) and (2) above.

(4) Local Governments must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact Sheryl Parsons at Parsons.Sheryl@epamail.epa.gov and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

8.10. AMERICAN IRON AND STEEL REQUIREMENT.

The Local Government's subcontracts must contain requirements that all of the iron and steel products used in the Project are in compliance with the American Iron and Steel requirement as described in Section 608 of the Federal Water Pollution Control Act unless the Local Government has obtained a waiver pertaining to the Project or the Department has advised the Local Government that the requirement is not applicable to the Project.

[IF APPLICABLE - CHECK W/ENGINEER AND GET WRITTEN RESPONSE ON WHETHER NEEDED OR NOT] CHOOSE ONLY ONE OPTION OR DELETE ALL THREE BASED ON ENGINEERS RESPONSE 8.11. OPTION A FISCAL SUSTAINABILITY PLAN.

The Federal Water Pollution Control Act (FWPCA), under Section 603(d)(1)(E)(i) of that act, requires a recipient of a Loan for a project that involves the repair, replacement, or expansion of a treatment works to develop and implement a Fiscal Sustainability Plan or certify that it has developed and implemented such a plan.

The Local Government shall either develop and implement a Fiscal Sustainability Plan or certify that it has been developed and implemented a Fiscal Sustainability Plan, that includes the following: An inventory of critical assets that are a part of the treatment works; an evaluation of the condition and performance of inventoried assets or asset groupings; a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

At a minimum, the Fiscal Sustainability Plan shall include: an inventory of critical assets that are part of the Project funded by this Agreement; an evaluation of the condition and performance of these assets; a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

A Fiscal Sustainability Plan certification is a certification by the Local Government that the Fiscal Sustainability Plan has been developed and is being implemented. For systems that self-certify under Section 603(d)(1)(E)(ii), certification is due at the time of loan closing. For systems developing a Fiscal Sustainability Plan under Section 603(d)(1)(E)(i), the requirement to develop and implement a Fiscal Sustainability Plan is a condition of the Loan Agreement and is due before the final disbursement is approved.

OPTION B ASSET MANAGEMENT PLAN.

Subsection 62-503.700(7), Florida Administrative Code encourages Loan recipients to implement an Asset Management Plan to promote long term sustainability of the system. To be eligible for a 0.10% Financing Rate reduction, an Asset Management Plan must be adopted by ordinance or resolution and written procedures must be in place to implement the plan.

The plan must include each of the following elements: i) identification of all assets within the Local Government's system; ii) an evaluation of the current age, condition, and anticipated useful life of each asset; iii) the current value of the assets; iv) the cost to operate and maintain all assets; v) a capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life; vi) an analysis of funding needs; vii) an analysis of population growth and wastewater or stormwater flow projections, as applicable, for the Local Government's planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures; and industrial pretreatment fees and parameters; viii) the establishment of an adequate funding rate structure; ix) a threshold rate set to ensure the proper operation of the utility, if the Local Government transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and x) a plan to preserve the assets, as well as the renewal, replacement, and repair of the assets as necessary, and a risk-benefit analysis to determine the optimum renewal or replacement time.

In order to retain the rate reduction included in this Loan, the implementation of the plan must be verified at least three months prior to the date of the first loan repayment scheduled in Article X

8.12. PUBLIC RECORDS ACCESS.

(1) The Local Government shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The Local Government shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the Local Government to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Local Government in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

(3) IF THE LOCAL GOVERNMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LOCAL GOVERNMENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-

2118, by email at public.services@dep.state.fl.us, or at the mailing address below:

**Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Blvd, MS 49
Tallahassee, FL 32399**

8.13. SCRUTINIZED COMPANIES.

(1) The Local Government certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Local Government or its subcontractors are found to have submitted a false certification; or if the Local Government, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the Local Government certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Local Government, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Local Government, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The Local Government agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

8.14. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the Local Government under this Agreement in the following events, as determined by the Department:

- (1) The Local Government abandons or discontinues the Project before its completion,
- (2) The commencement, prosecution, or timely completion of the Project by the Local Government is rendered improbable or the Department has reasonable grounds to be insecure in Local Government's ability to perform, or

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Local Government in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the Local Government of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has re-instated the Agreement.

Local Government shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from Local Government prior to re-instating the Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by Local Government, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this Agreement.

ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

The following documentation is required to receive the Department's authorization to award construction contracts:

- (1) Proof of advertising.
- (2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.
- (4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.
- (5) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.
- (6) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

(7) Certification that the Local Government and contractors are in compliance with labor standards, including prevailing wage rates established for its locality by the DOL under the Davis-Bacon Act for Project construction.

(8) Certification that all procurement is in compliance with Section 8.10 which states that all iron and steel products used in the Project must be produced in the United States unless (a) a waiver is provided to the Local Government by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

After the Department's authorization to award construction contracts has been received, the Local Government shall submit:

- (1) Contractor insurance certifications.
- (2) Executed Contract(s).
- (3) Notices to proceed with construction.

9.03. INSURANCE REQUIRED.

The Local Government shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the **Water and Sewer Systems** (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of Water and Sewer Systems of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Local Government shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The estimated principal amount of the Loan is \$_____, which consists of \$_____ to be disbursed to the Local Government and \$_____ of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Government, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing Rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first

Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$_____ for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest amount; that is, two percent of \$_____. The Loan Service Fee is estimated at the time of execution of the loan agreement and shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and assessed in the final loan amendment. The Local Government shall pay the Loan Service Fee from the first available repayment(s) following the Final Amendment.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is _____ percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is _____ percent per annum and the Grant Allocation Assessment rate is _____ [Use 0 for GAA if this is a Federal Loan]percent per annum. However, if this Agreement is not executed by the Local Government and returned to the Department before _____ 1, 2020 the Financing Rate may be adjusted. A new Financing Rate shall be established for any funds provided by amendment to this Agreement.

10.04. LOAN TERM.

The Loan term shall be 20 years.

10.05. REPAYMENT SCHEDULE.

Repayments shall be made semiannually (twice per year). The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan plus the estimated Loan Service Fee and the principle of level debt service. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs, the actual Loan Service Fee and Loan Service Fee capitalized interest, if any, and actual dates and amounts of disbursements, taking into consideration any previous payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records. The Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the Final Amendment.

Each Semiannual Loan Payment shall be in the amount of \$_____ until the payment amount is adjusted by amendment. The interest and Grant Allocation Assessment portions of each Semiannual Loan Payment shall be computed, using their respective rates, on the unpaid balance of the principal amount of the Loan, which includes Capitalized Interest. Interest (at the Financing Rate) also shall be computed on the estimated Loan Service Fee. The interest and Grant Allocation Assessment on the unpaid balance shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on _____ and semiannually thereafter on _____15 and _____15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount owed of \$_____, which consists of the Loan principal and the estimated Loan Service Fee.

10.06. PROJECT COSTS.

The Local Government and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of **construction bidding or** mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Local Government receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as **the result of an audit.**

The Local Government agrees to the following estimates of Project costs:

CATEGORY	PROJECT COSTS (\$)
Construction and Demolition	
Contingencies	
Technical Services After Bid Opening	0
SUBTOTAL (Disbursable Amount)	0
Capitalized Interest	0
TOTAL (Loan Principal Amount)	0

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

- (1) This Agreement shall be effective on _____. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.
- (2) Completion of Project construction is scheduled for _____.
- (3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than _____.
- (4) The first Semiannual Loan Payment in the amount of \$_____ shall be due _____.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW(*2) may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary or Designee and the Local Government has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

for
(*1)

(*) Mayor

Attest:

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization.

(*) City Clerk

(*) City Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date