

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-117**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, AUTHORIZING THE CITY TO ENTER INTO A LOAN AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM TO OBTAIN PRE-CONSTRUCTION LOANS FOR WASTEWATER INFRASTRUCTURE PROJECTS; ESTABLISHING PLEDGED REVENUES; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) is engaged in a capital improvement project to construct and install wastewater management infrastructure in the City (the “Project”);

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the construction of water pollution control facilities; and

WHEREAS, Florida Administrative Code rules require authorization to apply for loans; 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 Florida Department of Environmental Protection State Revolving Fund loan priority list designates Project No. WW63702P – Marathon Collection, Treatment & Reuse Facilities (Service Area 4) and Project No. WW63705P – Marathon Collection, Treatment & Disposal (Service Areas 6 & 7) as eligible for available funding; and

WHEREAS, the City wishes to enter into loan agreements with the Florida Department of Environmental Protection under the State Revolving Fund for pre-construction loans for the Project.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, AS FOLLOWS:

Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. The City of Marathon, Florida is authorized to apply for loans from the Florida Department of Environmental Protection Revolving Fund program for pre-construction loans on the Project.

Section 3. The revenues pledged for repayment of the loans are wastewater non-ad valorem assessments to be adopted in accordance with City of Marathon, Florida Ordinance 2002-07-13, and the City's notice of intent to levy wastewater non-ad valorem assessments set forth in City of Marathon, Florida Resolution No. 2005-168.

Section 4. The City Manager is hereby designated as the authorized representative to provide the assurances and commitments required by the loan applications.

Section 5. The City Manager is hereby designated as the authorized representative to execute the loan agreement which will become a binding obligation in accordance with its terms when signed by both parties. The loan agreement must be reviewed by the City Attorney as to form and legality. The City Manager is authorized to represent the City in carrying out the City's responsibilities under the loan agreement. The City Manager is authorized to delegate responsibility to appropriate City staff to carry out technical, financial, and administrative activities associated with the loan agreement.

Section 6. The legal authority for borrowing moneys to construct this Project is pursuant to the City Charter, Code, Ordinances and the laws of the State of Florida.

Section 7. All resolutions or part of resolutions in conflict with any of the provisions of this Resolution are hereby repealed including, but not limited to, City of Marathon Resolution No. 2006-068.

Section 8. 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 9. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 25th day of July, 2006.

THE CITY OF MARATHON, FLORIDA


Christopher Bull, Mayor

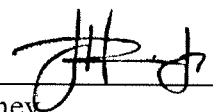
AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**


City Attorney

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

AND

CITY OF MARATHON, FLORIDA

CLEAN WATER STATE REVOLVING FUND

LOAN AGREEMENT

WW63705P

Florida Water Pollution Control Financing Corporation
1801 Hermitage Boulevard
Tallahassee, Florida 32308

CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT

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CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT
WW63705P

THIS AGREEMENT is executed by the FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION (the "Corporation") and the CITY OF MARATHON, FLORIDA (the "Local Borrower"), existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Sections 403.1835 and 403.1837, Florida Statutes (the "State Act"), the Corporation is authorized to make loans to local government agencies to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the State of Florida Department of Environmental Protection (the "Department"); and

WHEREAS, in accordance with the provisions of the State Act and a Service Contract dated as of June 1, 2001 (as amended from time to time, the "Service Contract") between the Corporation and the Department, the Department has responsibility for the performance of various activities in connection with such loans; and

WHEREAS, the Local Borrower has made application for the financing of Preconstruction Activities, and the Corporation and the Department have determined that such Project meets all requirements for a loan and have agreed to make a loan to the Local Borrower as set forth in this Agreement (the "Loan"); and

WHEREAS, in accordance with the provisions of a Master Trust Indenture dated as of June 1, 2001 (as supplemented and amended from time to time, the "Indenture") between the Corporation and U.S. Bank Trust National Association, as trustee (together with any successor trustee, the "Trustee"), the Corporation is authorized to issue bonds (the "Bonds") from time to time to fund loans pursuant to the State Act and to refund bonds issued by the Corporation; and

WHEREAS, the Loan and all payments of principal and interest thereon, including prepayments, and all proceeds thereof, but excluding the Loan Service Fee and the Grant Allocation Assessment (as such terms are hereinafter defined), have been pledged and assigned to the Trustee under the Indenture as security for the payment of principal of, premium, if any, and interest on the Bonds; and

WHEREAS, pursuant to the provisions of the State Act, the Service Contract and the Indenture, and as provided herein, the Corporation and the Department will cooperate to assure continuing compliance with the various requirements and separate duties and responsibilities arising from the issuance of the Bonds and the loans made by the Corporation.

NOW, THEREFORE, in consideration of the Corporation loaning money to the Local Borrower, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this loan agreement.
- (2) "Authorized Representative" shall mean the official or officials of the Local Borrower authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) "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.
- (4) "Code" means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable.
- (5) "Construction Related Costs" shall mean costs for Project construction, equipment, materials, demolition, contingency, legal and technical services incurred after construction bid opening, and Capitalized Interest associated with the foregoing costs.
- (6) "Defeasance Obligations" means:
 - (a) Direct obligations of, or obligations the prompt payment of principal and interest on which are fully guaranteed by, the United States of America which are not callable prior to maturity (except at the option of the holder thereof);
 - (b) Bonds, debentures, notes or other evidences of indebtedness issued or fully insured or guaranteed by any agency or instrumentality of the United States of America which are backed by the full faith and credit of the United States of America and which are not callable prior to maturity (except at the option of the holder thereof);
 - (c) Resolution Funding Corp. (REFCORP) obligations which are not callable prior to maturity (except at the option of the holder thereof); and
 - (d) Obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable prior to maturity or as to which irrevocable determination to call such obligations prior to maturity shall have been made by the issuer thereof, and for the payment of the principal of, premium, if any, and interest on which provision shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for owners of such obligations of securities described in clauses (a), (b) or (c), the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or to whom the trustee or escrow agent may be obligated.

(7) "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 and insured by the Federal Deposit Insurance Corporation.

(8) "Fiscal Year" shall mean the period commencing on October 1 of each year and ending on September 30 of the succeeding year.

(9) "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.

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

(12) "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 Borrower for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(13) "Loan Service Fee" shall mean an origination fee which shall be paid by the Local Borrower.

(14) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Local Borrower to the Loan Debt Service Account.

(15) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the Sewer System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Pledged Revenues, depreciation, and any other items not requiring the expenditure of cash.

(16) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Wastewater Non-ad Valorem Assessments derived yearly after the satisfaction of all yearly payment obligations on account of any senior obligations issued pursuant to Section 7.02 of this Agreement.

(17) "Preconstruction Activities" shall mean the planning, administrative, and engineering work necessary for the Local Borrower to qualify for Clean Water State Revolving Fund financing for construction of wastewater transmission, collection, reuse, and treatment facilities.

(18) "Project" shall mean the construction of facilities planned and designed through the Preconstruction Activities.

(19) "Semiannual Loan Payment" shall mean the payment due from the Local Borrower at six-month intervals.

(20) "Sewer System" shall mean all facilities owned by the Local Borrower for collection, transmission, treatment and reuse of wastewater and its residuals.

(21) "State" means the State of Florida.

(22) "Tax-Exempt Bonds" means Bonds the interest on which is intended on their date of issuance to be excludable from gross income of the holders thereof for federal income tax purposes.

(23) "Wastewater Non-ad Valorem Assessments" shall mean an assessment levied by the City, in accordance with the uniform method of collecting non-ad valorem assessments authorized in Section 197.3632, Florida Statutes, as amended, for the purposes of funding the cost of wastewater treatment services and facilities within the incorporated area of the City, in accordance with Ordinance No. 02-07-13 and Resolution No. 2005-168.

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 bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Borrower warrants, represents and covenants that:

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

(2) The Local Borrower 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 Borrower's knowledge, threatened, which seeks to restrain or enjoin the Local Borrower 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 Borrower knows of no reason why any future required permits or approvals are not obtainable.

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

(6) To the extent permitted by law, the Local Borrower shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Local

Borrower's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or in its operation of Project facilities.

(7) All Local Borrower 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 Borrower to the Department was current and correct as of the date such information was delivered. The Local Borrower 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 Borrower shall take such action as is necessary for compliance.

(8) The Local Borrower shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Local Borrower shall keep accounts of the Pledged Revenues separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Project, 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 Borrower's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Local Borrower shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the Local Borrower shall collect such funds for application as provided herein. The Local Borrower shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Local Borrower to levy or appropriate ad valorem tax revenues; or preventing the Local Borrower from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(10) Each year, beginning three months before the first Semiannual Loan Payment and ending with the year during which the final Loan repayment is made, the Local Borrower's Authorized Representative or its chief financial officer shall submit, no later than the date established in Section 10.07, a certification that: (a) Pledged Revenue collections satisfy, on a pro rata basis, the rate coverage requirement; (b) the Loan Debt Service Account contains the funds required; and (c) insurance, including that issued through the National Flood Insurance Program authorized under 42 U.S.C. secs. 4001-4128 when applicable, is in effect for the facilities generating the Pledged Revenues, and adequately covers the customary risks to the extent that such insurance is available.

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

(12) The Local Borrower agrees to complete the Preconstruction Activities and, if included by an amendment to this Agreement, the Project, in accordance with the Preconstruction Activities schedule set forth in Section 10.07 and a Project schedule added by amendment to this Agreement. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Borrower are excepted. However, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(13) The Local Borrower covenants that this Agreement is entered into for the purpose of completing planning, engineering, and administrative activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Local Borrower'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 Borrower and shall constitute a valid and legal obligation of the Local Borrower enforceable in accordance with its terms upon execution by both parties; and

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

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Local Borrower 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
CS120001-050	EPA	66.458	Capitalization Grants for State Revolving Funds	\$848,654	140131

(2) Audits.

(a) In the event that the Local Borrower expends \$500,000 or more in Federal awards in its fiscal year, the Local Borrower must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Borrower 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 OMB Circular A-133, as revised. An audit of the Local Borrower conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Borrower shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Borrower expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Local Borrower expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised,

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 Borrower resources obtained from other than Federal entities).

(d) The Local Borrower may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://aspe.os.dhhs.gov/cfda>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Borrower directly to each of the following:

(i) The Department at each of the following addresses:

Don W. Berryhill, P.E., Chief
Bureau of Water Facilities Funding
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Borrower shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the two addresses listed under Subsection 2.03(3)(a) 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 OMB Circular A-133, 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 Borrowers, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, 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 Borrower in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs the Local Borrower shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Local Borrower shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

However, notwithstanding the preceding paragraph, a Project-specific audit shall not be required if the only disbursements of Loan proceeds under this Agreement, including amendments thereto, are for allowance costs.

(5) Record Retention.

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

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, 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 OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Borrower 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 Borrower is appropriate, the Local Borrower agrees to comply with any additional instructions provided by the Department to the Local Borrower regarding such audit. The Local Borrower further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Borrower shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth in Section 10.07 unless the date is revised by amendment of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Local Borrower 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 Borrower fails to make a required Monthly Loan Deposit, the Local Borrower's chief financial officer shall notify the Department of such failure. In addition, the Local Borrower agrees to budget, by amendment if necessary, payment to the Department from other legally available 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 Borrower, nor shall it be construed to give the Department the power to require the Local Borrower 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 Borrower'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 - PROGRAM INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Local Borrower shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

4.02. TITLE TO PROJECT SITE.

No later than the date established by Section 10.07, the Local Borrower shall have an interest in real property sufficient for the construction and location of any facility planned and designed through Preconstruction Activities free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use. If a limited site title certification is accepted at that date, the Department

shall establish a date for submittal of a clear site title certification in an amendment or new agreement which provides financing for construction of affected facilities.

4.03. RESERVED.

4.04. RESERVED.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Local Borrower is prohibited from selling, leasing, or disposing of any part of the Sewer System which would materially reduce operational integrity or Pledged 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 or subsequent loans, the Local Borrower covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete the Preconstruction Activities. The Local Borrower also covenants that if additional Loan financing is provided for Construction Related Costs by amendment of this Agreement, it will obtain sufficient moneys from other sources as necessary to complete the Project.

4.07. CLOSE-OUT.

The Department may conduct a final inspection of the Preconstruction Activities records, or if this Agreement is amended to fund Construction Related Costs, the Department shall conduct a final inspection of the 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. After the Department establishes the final allowance to be financed by the Loan, the amount may be adjusted by amendment. The Loan principal shall be reduced by any excess over the amount required to pay the approved allowance 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 only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Local Borrower for an allowance based on planning, engineering, and administration costs.

Requests by the Local Borrower for disbursements of the preconstruction funds shall be made using the Department's disbursement request form but shall not require documentation of actual costs incurred. Up to twenty percent of the allowance shall be disbursed after a Loan Agreement is signed. Up to fifty percent of the allowance shall be disbursed after the planning documentation has been completed and accepted. The remainder of the allowance shall be disbursed after all procurement contracts are executed and shall be adjusted to reflect as-bid costs. The Department may disburse the entire estimated allowance amount after acceptance of the plans and specifications or completion of the request for proposals, if the Local Borrower agrees to an allowance adjustment once all contracts have been bid.

Disbursements for Construction Related Costs shall occur only as a result of an amendment to this Agreement. The following allowance amount will be disbursed after the specified milestone events unless the allowance is reduced pursuant to Section 10.06:

Milestone Event	Amount
Loan Agreement executed	\$ 169,731
Department acceptance of planning documents	424,327
Department acceptance of executed procurement contracts	254,596
Total	\$ <u>848,654</u>

ARTICLE V - RATES AND USE OF THE SEWER SYSTEM

5.01. RATE COVERAGE.

The Local Borrower shall maintain rates and charges for the services furnished by the Sewer System which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.20 times the sum of the Semiannual Loan Payments due in such Fiscal Year. In addition, the Local Borrower shall satisfy the coverage requirements of all senior and parity debt obligations.

5.02. NO FREE SERVICE.

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

5.03. MANDATORY CONNECTIONS.

The Local Borrower 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 Borrower shall not allow any person to provide any services which would compete with the Sewer System so as to materially and adversely affect Pledged Revenues.

5.05. MAINTENANCE OF THE SEWER SYSTEM.

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

5.06. ADDITIONS AND MODIFICATIONS.

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

5.07. COLLECTION OF REVENUES.

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

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

- (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 30 days.
- (2) Except as provided in Subsections 6.01(1) and (7), failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Local Borrower by the Department.
- (3) Any warranty, representation or other statement by, or on behalf of, the Local Borrower contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading.
- (4) An order or decree entered, with the acquiescence of the Local Borrower, appointing a receiver of any part of the Sewer System or Pledged Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Local Borrower, 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 Borrower, for the purpose of effecting a composition between the Local Borrower 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 Pledged Revenues of the Sewer System.
- (6) Any bankruptcy, insolvency or other similar proceeding instituted by or against, the Local Borrower under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Local Borrower, is not dismissed within 60 days after filing.
- (7) Failure of the Local Borrower to give immediate written notice of default to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

Upon an event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by 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 Sewer System, and to require the Local Borrower to fulfill this Agreement.

(2) By action or suit in equity, require the Local Borrower to account for all moneys received from the Department or from the ownership of the Sewer System 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 Sewer System, 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 Borrower 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 for a default under Subsection 6.01(1).

6.03. DELAY AND WAIVER.

No delay or omission by the Department to exercise any right or power accruing upon an event 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 event 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, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Borrower under this Agreement shall be junior, inferior, and

subordinate in all respects in right of payment and security to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.20 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Borrower 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 shall be granted if the Local Borrower demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Sewer System 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 1.20 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Local Borrower 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 Borrower 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. RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Local Borrower has received a disbursement and until three years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

8.03. ACCESS TO WORK SITE.

The Local Borrower shall provide access to offices and other sites where Preconstruction Activities or Project work (if financed by this Loan) is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Local Borrower shall cause its engineers and contractors to provide copies of relevant records and statements for inspection.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Local Borrower. The Local Borrower 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, 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. A final amendment establishing the final allowance costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Local Borrower has not drawn any of the Loan proceeds within eighteen months after the effective date of this Agreement. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Local Borrower.

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.

ARTICLE IX - RESERVED

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The principal amount of the Loan is \$873,954, which includes \$848,654 to be disbursed to the Local Borrower and \$25,300 of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Borrower, 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 establishment of the schedule of actual disbursements.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$16,973 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$848,654. The fee shall be revised with any increase or decrease amendment. The Loan Service Fee shall be based on actual Project costs and will be assessed in the final Loan amendment.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 2.46 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 1.23 percent per annum and the Grant Allocation Assessment rate is 1.23 percent per annum. However, if this Agreement is not executed by the Local Borrower and returned to the Department before October 1, 2006, 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 shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan plus the estimated Loan Service Fee and Loan Service Fee capitalized interest, if any, and the principle of level debt service. The Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the final amendment. The Loan principal and Semiannual Loan Payment amounts may be revised by amendment of the Agreement. After the final disbursement of Loan proceeds, the Loan principal will be adjusted to reflect the actual dates and amounts of disbursements. Accordingly, the Semiannual Loan Payment amount shall be adjusted, taking into consideration any previous payments.

Until the principal amount of the Loan is amended, the Semiannual Loan Payment shall be in the amount of \$28,334. 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 principal includes Capitalized Interest. Interest (at the Financing Rate) shall also be computed on the unpaid balance of 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.

Unless repayment is deferred by an amendment to this Agreement, Semiannual Loan Payments shall be received by the Department beginning on July 15, 2009, and semiannually thereafter on January 15 and July 15 of each year until all amounts due 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 \$890,927, which consists of the Loan principal plus the estimated Loan Service Fee with its Capitalized Interest, if any.

10.06. PROJECT RELATED COSTS.

The Local Borrower and the Department acknowledge that actual Project costs and Preconstruction Activities allowance costs have not been determined as of the effective date of this Agreement. An adjustment to the Preconstruction Activities allowance may be made due to a reduction in the scope of work proposed for construction or based on construction contract bid prices. Failure to achieve Department acceptance of plans and specifications prior to the date specified in Section 10.07 may cause adjustment of the Preconstruction allowance. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final allowance amount, and Project costs if financed by this Loan, shall be established in the final amendment. Changes in the Preconstruction

Activities allowance or Project costs may also occur as a result of the Local Borrower's audit or the Department's audit.

The Local Borrower agrees to the following estimates of the Preconstruction Activities allowance and related costs:

Allowance (Disbursable Amount)	\$	848,654
Capitalized Interest	\$	<u>25,300</u>
TOTAL (Loan Principal Amount)	\$	873,954

The listed allowance is based on estimated construction costs of \$9,500,000, which excludes Capitalized Interest.

10.07. SCHEDULE.

All Preconstruction Activities shall be completed no later than the completion of all Preconstruction Activities date set forth below. Planning activities shall be completed in time to enable the Department to accept the planning documents as scheduled in Subsection (1) below.

- (1) Acceptance of the planning documents by the Department (Design Authorization) no later than December 15, 2006.
- (2) Design of all Project facilities proposed for loan funding no later than December 15, 2007.
- (3) Certification of availability of all sites for facilities proposed for loan funding no later than December 15, 2007.
- (4) Evidence that permitting requirements have been satisfied for all Project facilities proposed for construction loan funding no later than June 15, 2008.
- (5) Completion of all Preconstruction Activities for all Project facilities proposed for loan funding no later than July 15, 2008.
- (6) Unless deferred by amendment, establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than January 15, 2009.
- (7) Unless deferred by amendment, provide certifications under Subsection 2.01(10) beginning April 15, 2009, and annually thereafter no later than September 30 of each year until the final Semiannual Loan Payment is made.
- (8) Unless this Agreement is amended to provide construction financing, the first Semiannual Loan Payment in the amount of \$28,334 shall be due July 15, 2009.

10.08. SPECIAL CONDITION.

The Local Borrower shall submit a certified copy of the Resolution which authorizes the application, establishes the Pledged Revenues, and designates an Authorized Representative for signing the application and executing the loan agreement.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW63705P shall be executed in three 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 Corporation has caused this amendment to the Loan Agreement to be executed on its behalf by its Chief Executive Officer and the Local Borrower has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Chief Executive Officer of the Corporation.

for

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

Coleman A. Sparrow
Chief Executive Officer

08 02 - 06
Date

for

CITY OF MARATHON

Michael Heuts
City Manager

I attest to the opinion expressed in Section 2.03, entitled Legal Authorization, and as to form and correctness.

Attest

Diane Clavier
City Clerk

[Signature]
City Attorney

SEAL

APPROVED AND ACCEPTED BY THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Anne Orr
Director

**AMENDMENT 1 TO LOAN AGREEMENT WW63705P
CITY OF MARATHON**

This amendment is executed by the FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION (the "Corporation") and the CITY OF MARATHON, FLORIDA, (the "Local Borrower") existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Corporation and the Local Borrower entered into a Clean Water State Revolving Fund Loan Agreement, Number WW63705P; and

WHEREAS, revised provisions for audit requirements are needed; and

WHEREAS, the Loan repayment date needs rescheduling to coincide with the construction loan repayment date.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsections 2.03(2)(d) and (3)(a)(i) of the Agreement are deleted and replaced as follows:
 - (2) Audits.
 - (d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://www.cfda.gov/>.
 - (3) Report Submission.
 - (a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Borrower directly to each of the following:
 - (i) The Department of Environmental Protection at each of the following addresses:

Robert E. Holmden, P.E., Chief
Bureau of Water Facilities Funding
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS41
Tallahassee, Florida 32399-3123
2. Unless repayment is further deferred by amendment of the Agreement, Semiannual Loan Payments as set forth in Section 10.05 shall be received by the Trustee beginning on December 15, 2010, and

semiannually thereafter on June 15 and December 15 of each year until all amounts due under the Agreement have been fully paid.

3. The items scheduled under Subsections 10.07 (6), (7) and (8) of the Agreement are rescheduled as follows:

(6) Establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than June 15, 2010.

(7) The date for the certification required under Subsection 2.01(10) of the Agreement is hereby revised. The initial annual certification shall be submitted no later than September 15, 2010. Thereafter, the annual certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Repayment is made.

(8) Unless this Agreement is amended to provide construction financing, the first Semiannual Loan Payment in the amount of \$28,334 shall be due December 15, 2010.

All other terms and provisions of the Loan Agreement shall remain in effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 1 to Loan Agreement WW63705P shall be executed in three 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 Corporation has caused this amendment to the Loan Agreement to be executed on its behalf by its Chief Executive Officer and the Local Borrower has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Chief Executive Officer of the Corporation.

for

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION



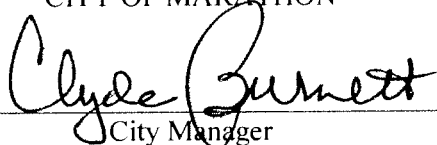
Chief Executive Officer

5/13/09

Date

for


CITY OF MARATHON



City Manager

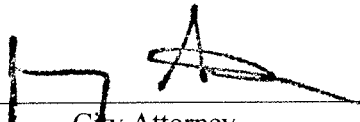
I attest that this amendment complies with Section 2.03 of the Agreement and as to form and correctness.

Attest



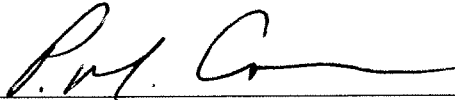
City Clerk

SEAL



City Attorney

APPROVED AND ACCEPTED BY THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.



Deputy Director
Division of Water Resource Management

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

AND

CITY OF MARATHON, FLORIDA

CLEAN WATER STATE REVOLVING FUND

LOAN AGREEMENT

WW63702P

Florida Water Pollution Control Financing Corporation
1801 Hermitage Boulevard
Tallahassee, Florida 32308

CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT

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CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT

WW63702P

THIS AGREEMENT is executed by the FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION (the "Corporation") and the CITY OF MARATHON, FLORIDA (the "Local Borrower"), existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Sections 403.1835 and 403.1837, Florida Statutes (the "State Act"), the Corporation is authorized to make loans to local government agencies to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the State of Florida Department of Environmental Protection (the "Department"); and

WHEREAS, in accordance with the provisions of the State Act and a Service Contract dated as of June 1, 2001 (as amended from time to time, the "Service Contract") between the Corporation and the Department, the Department has responsibility for the performance of various activities in connection with such loans; and

WHEREAS, the Local Borrower has made application for the financing of Preconstruction Activities, and the Corporation and the Department have determined that such Project meets all requirements for a loan and have agreed to make a loan to the Local Borrower as set forth in this Agreement (the "Loan"); and

WHEREAS, in accordance with the provisions of a Master Trust Indenture dated as of June 1, 2001 (as supplemented and amended from time to time, the "Indenture") between the Corporation and U.S. Bank Trust National Association, as trustee (together with any successor trustee, the "Trustee"), the Corporation is authorized to issue bonds (the "Bonds") from time to time to fund loans pursuant to the State Act and to refund bonds issued by the Corporation; and

WHEREAS, the Loan and all payments of principal and interest thereon, including prepayments, and all proceeds thereof, but excluding the Loan Service Fee and the Grant Allocation Assessment (as such terms are hereinafter defined), have been pledged and assigned to the Trustee under the Indenture as security for the payment of principal of, premium, if any, and interest on the Bonds; and

WHEREAS, pursuant to the provisions of the State Act, the Service Contract and the Indenture, and as provided herein, the Corporation and the Department will cooperate to assure continuing compliance with the various requirements and separate duties and responsibilities arising from the issuance of the Bonds and the loans made by the Corporation.

NOW, THEREFORE, in consideration of the Corporation loaning money to the Local Borrower, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this loan agreement.
- (2) "Authorized Representative" shall mean the official or officials of the Local Borrower authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) "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.
- (4) "Code" means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable.
- (5) "Construction Related Costs" shall mean costs for Project construction, equipment, materials, demolition, contingency, legal and technical services incurred after construction bid opening, and Capitalized Interest associated with the foregoing costs.
- (6) "Defeasance Obligations" means:
 - (a) Direct obligations of, or obligations the prompt payment of principal and interest on which are fully guaranteed by, the United States of America which are not callable prior to maturity (except at the option of the holder thereof);
 - (b) Bonds, debentures, notes or other evidences of indebtedness issued or fully insured or guaranteed by any agency or instrumentality of the United States of America which are backed by the full faith and credit of the United States of America and which are not callable prior to maturity (except at the option of the holder thereof);
 - (c) Resolution Funding Corp. (REFCORP) obligations which are not callable prior to maturity (except at the option of the holder thereof); and
 - (d) Obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable prior to maturity or as to which irrevocable determination to call such obligations prior to maturity shall have been made by the issuer thereof, and for the payment of the principal of, premium, if any, and interest on which provision shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for owners of such obligations of securities described in clauses (a), (b) or (c), the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or to whom the trustee or escrow agent may be obligated.

(7) "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 and insured by the Federal Deposit Insurance Corporation.

(8) "Fiscal Year" shall mean the period commencing on October 1 of each year and ending on September 30 of the succeeding year.

(9) "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.

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

(12) "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 Borrower for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(13) "Loan Service Fee" shall mean an origination fee which shall be paid by the Local Borrower.

(14) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Local Borrower to the Loan Debt Service Account.

(15) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the Sewer System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Pledged Revenues, depreciation, and any other items not requiring the expenditure of cash.

(16) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Wastewater Non-ad Valorem Assessments derived yearly, after the satisfaction of all yearly payment obligations on account of any senior obligations issued pursuant to Section 7.02 of this Agreement.

(17) "Preconstruction Activities" shall mean the planning, administrative, and engineering work necessary for the Local Borrower to qualify for Clean Water State Revolving Fund financing for construction of wastewater transmission, collection, reuse, and treatment facilities.

(18) "Project" shall mean the construction of facilities planned and designed through the Preconstruction Activities.

(19) "Semiannual Loan Payment" shall mean the payment due from the Local Borrower at six-month intervals.

(20) "Sewer System" shall mean all facilities owned by the Local Borrower for collection, transmission, treatment and reuse of wastewater and its residuals.

(21) "State" means the State of Florida.

(22) "Tax-Exempt Bonds" means Bonds the interest on which is intended on their date of issuance to be excludable from gross income of the holders thereof for federal income tax purposes.

(23) "Wastewater Non-ad Valorem Assessments" shall mean an assessment levied by the City, in accordance with the uniform method of collecting non-ad valorem assessments authorized in Section 197.3632, Florida Statutes, as amended, for the purposes of funding the cost of wastewater treatment services and facilities within the incorporated area of the City, in accordance with Ordinance No. 02-07-13 and Resolution No. 2005-168.

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 bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Borrower warrants, represents and covenants that:

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

(2) The Local Borrower 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 Borrower's knowledge, threatened, which seeks to restrain or enjoin the Local Borrower 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 Borrower knows of no reason why any future required permits or approvals are not obtainable.

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

(6) To the extent permitted by law, the Local Borrower shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Local

Borrower's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or in its operation of Project facilities.

(7) All Local Borrower 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 Borrower to the Department was current and correct as of the date such information was delivered. The Local Borrower 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 Borrower shall take such action as is necessary for compliance.

(8) The Local Borrower shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Local Borrower shall keep accounts of the Pledged Revenues separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Project, 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 Borrower's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Local Borrower shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the Local Borrower shall collect such funds for application as provided herein. The Local Borrower shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Local Borrower to levy or appropriate ad valorem tax revenues; or preventing the Local Borrower from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(10) Each year, beginning three months before the first Semiannual Loan Payment and ending with the year during which the final Loan repayment is made, the Local Borrower's Authorized Representative or its chief financial officer shall submit, no later than the date established in Section 10.07, a certification that: (a) Pledged Revenue collections satisfy, on a pro rata basis, the rate coverage requirement; (b) the Loan Debt Service Account contains the funds required; and (c) insurance, including that issued through the National Flood Insurance Program authorized under 42 U.S.C. secs. 4001-4128 when applicable, is in effect for the facilities generating the Pledged Revenues, and adequately covers the customary risks to the extent that such insurance is available.

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

(12) The Local Borrower agrees to complete the Preconstruction Activities and, if included by an amendment to this Agreement, the Project, in accordance with the Preconstruction Activities schedule set forth in Section 10.07 and a Project schedule added by amendment to this Agreement. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Borrower are excepted. However, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(13) The Local Borrower covenants that this Agreement is entered into for the purpose of completing planning, engineering, and administrative activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Local Borrower’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 Borrower and shall constitute a valid and legal obligation of the Local Borrower enforceable in accordance with its terms upon execution by both parties; and

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

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Local Borrower 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
CS120001-050	EPA	66.458	Capitalization Grants for State Revolving Funds	\$1,188,811	140131

(2) Audits.

(a) In the event that the Local Borrower expends \$500,000 or more in Federal awards in its fiscal year, the Local Borrower must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Borrower 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 OMB Circular A-133, as revised. An audit of the Local Borrower conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Borrower shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Borrower expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Local Borrower expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised,

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 Borrower resources obtained from other than Federal entities).

(d) The Local Borrower may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://aspe.os.dhhs.gov/cfda>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Borrower directly to each of the following:

(i) The Department at each of the following addresses:

Don W. Berryhill, P.E., Chief
Bureau of Water Facilities Funding
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Borrower shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the two addresses listed under Subsection 2.03(3)(a) 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 OMB Circular A-133, 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 Borrowers, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, 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 Borrower in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs the Local Borrower shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Local Borrower shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

However, notwithstanding the preceding paragraph, a Project-specific audit shall not be required if the only disbursements of Loan proceeds under this Agreement, including amendments thereto, are for allowance costs.

(5) Record Retention.

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

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, 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 OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Borrower 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 Borrower is appropriate, the Local Borrower agrees to comply with any additional instructions provided by the Department to the Local Borrower regarding such audit. The Local Borrower further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Borrower shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth in Section 10.07 unless the date is revised by amendment of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Local Borrower 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 Borrower fails to make a required Monthly Loan Deposit, the Local Borrower's chief financial officer shall notify the Department of such failure. In addition, the Local Borrower agrees to budget, by amendment if necessary, payment to the Department from other legally available 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 Borrower, nor shall it be construed to give the Department the power to require the Local Borrower 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 Borrower'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 - PROGRAM INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Local Borrower shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

4.02. TITLE TO PROJECT SITE.

No later than the date established by Section 10.07, the Local Borrower shall have an interest in real property sufficient for the construction and location of any facility planned and designed through Preconstruction Activities free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use. If a limited site title certification is accepted at that date, the Department

shall establish a date for submittal of a clear site title certification in an amendment or new agreement which provides financing for construction of affected facilities.

4.03. RESERVED.

4.04. RESERVED.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Local Borrower is prohibited from selling, leasing, or disposing of any part of the Sewer System which would materially reduce operational integrity or Pledged 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 or subsequent loans, the Local Borrower covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete the Preconstruction Activities. The Local Borrower also covenants that if additional Loan financing is provided for Construction Related Costs by amendment of this Agreement, it will obtain sufficient moneys from other sources as necessary to complete the Project.

4.07. CLOSE-OUT.

The Department may conduct a final inspection of the Preconstruction Activities records, or if this Agreement is amended to fund Construction Related Costs, the Department shall conduct a final inspection of the 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. After the Department establishes the final allowance to be financed by the Loan, the amount may be adjusted by amendment. The Loan principal shall be reduced by any excess over the amount required to pay the approved allowance 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 only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Local Borrower for an allowance based on planning, engineering, and administration costs.

Requests by the Local Borrower for disbursements of the preconstruction funds shall be made using the Department's disbursement request form but shall not require documentation of actual costs incurred. Up to twenty percent of the allowance shall be disbursed after a Loan Agreement is signed. Up to fifty percent of the allowance shall be disbursed after the planning documentation has been completed and accepted. The remainder of the allowance shall be disbursed after all procurement contracts are executed and shall be adjusted to reflect as-bid costs. The Department may disburse the entire estimated allowance amount after acceptance of the plans and specifications or completion of the request for proposals, if the Local Borrower agrees to an allowance adjustment once all contracts have been bid.

Disbursements for Construction Related Costs shall occur only as a result of an amendment to this Agreement. The following allowance amount will be disbursed after the specified milestone events unless the allowance is reduced pursuant to Section 10.06:

Milestone Event	Amount
Loan Agreement executed	\$ 237,762
Department acceptance of planning documents	594,406
Department acceptance of executed procurement contracts	356,643
Total	\$ 1,188,811

ARTICLE V - RATES AND USE OF THE SEWER SYSTEM

5.01. RATE COVERAGE.

The Local Borrower shall maintain and collect Wastewater Non-ad Valorem Assessments which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.20 times the sum of the Semiannual Loan Payments due in such Fiscal Year. In addition, the Local Borrower shall satisfy the coverage requirements of all senior and parity debt obligations.

5.02. NO FREE SERVICE.

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

5.03. MANDATORY CONNECTIONS.

The Local Borrower 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 Borrower shall not allow any person to provide any services which would compete with the Sewer System so as to materially and adversely affect Pledged Revenues.

5.05. MAINTENANCE OF THE SEWER SYSTEM.

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

5.06. ADDITIONS AND MODIFICATIONS.

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

5.07. COLLECTION OF REVENUES.

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

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

- (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 30 days.
- (2) Except as provided in Subsections 6.01(1) and (7), failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Local Borrower by the Department.
- (3) Any warranty, representation or other statement by, or on behalf of, the Local Borrower contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading.
- (4) An order or decree entered, with the acquiescence of the Local Borrower, appointing a receiver of any part of the Sewer System or Pledged Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Local Borrower, 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 Borrower, for the purpose of effecting a composition between the Local Borrower 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 Pledged Revenues of the Sewer System.
- (6) Any bankruptcy, insolvency or other similar proceeding instituted by or against, the Local Borrower under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Local Borrower, is not dismissed within 60 days after filing.
- (7) Failure of the Local Borrower to give immediate written notice of default to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

Upon an event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by 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 Sewer System, and to require the Local Borrower to fulfill this Agreement.

(2) By action or suit in equity, require the Local Borrower to account for all moneys received from the Department or from the ownership of the Sewer System 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 Sewer System, 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 Borrower 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 for a default under Subsection 6.01(1).

6.03. DELAY AND WAIVER.

No delay or omission by the Department to exercise any right or power accruing upon an event 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 event 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, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Borrower under this Agreement shall be junior, inferior, and

subordinate in all respects in right of payment and security to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.20 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Borrower 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 shall be granted if the Local Borrower demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Sewer System 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 1.20 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Local Borrower 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 Borrower 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. RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Local Borrower has received a disbursement and until three years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

8.03. ACCESS TO WORK SITE.

The Local Borrower shall provide access to offices and other sites where Preconstruction Activities or Project work (if financed by this Loan) is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Local Borrower shall cause its engineers and contractors to provide copies of relevant records and statements for inspection.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Local Borrower. The Local Borrower 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, 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. A final amendment establishing the final allowance costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Local Borrower has not drawn any of the Loan proceeds within eighteen months after the effective date of this Agreement. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Local Borrower.

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.

ARTICLE IX - RESERVED

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The principal amount of the Loan is \$1,224,211, which includes \$1,188,811 to be disbursed to the Local Borrower and \$35,400 of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Borrower, 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 establishment of the schedule of actual disbursements.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$23,776 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$1,188,811. The fee shall be revised with any increase or decrease amendment. The Loan Service Fee shall be based on actual Project costs and will be assessed in the final Loan amendment.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 2.46 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 1.23 percent per annum and the Grant Allocation Assessment rate is 1.23 percent per annum. However, if this Agreement is not executed by the Local Borrower and returned to the Department before October 1, 2006, 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 shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

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 Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the final amendment. The Loan principal and Semiannual Loan Payment amounts may be revised by amendment of the Agreement. After the final disbursement of Loan proceeds, the Loan principal will be adjusted to reflect the actual dates and amounts of disbursements. Accordingly, the Semiannual Loan Payment amount shall be adjusted, taking into consideration any previous payments.

Until the principal amount of the Loan is amended, the Semiannual Loan Payment shall be in the amount of \$39,689. 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 principal includes Capitalized Interest. Interest (at the Financing Rate) shall also be computed on the unpaid balance of 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.

Unless repayment is deferred by an amendment to this Agreement, Semiannual Loan Payments shall be received by the Department beginning on July 15, 2009, and semiannually thereafter on January 15 and July 15 of each year until all amounts due 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 \$1,247,987, which consists of the Loan principal plus the estimated Loan Service Fee with its Capitalized Interest, if any.

10.06. PROJECT RELATED COSTS.

The Local Borrower and the Department acknowledge that actual Project costs and Preconstruction Activities allowance costs have not been determined as of the effective date of this Agreement. An adjustment to the Preconstruction Activities allowance may be made due to a reduction in the scope of work proposed for construction or based on construction contract bid prices. Failure to achieve Department acceptance of plans and specifications prior to the date specified in Section 10.07 may cause adjustment of the Preconstruction allowance. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final allowance amount, and Project costs if financed by this Loan, shall be established in the final amendment. Changes in the Preconstruction

Activities allowance or Project costs may also occur as a result of the Local Borrower's audit or the Department's audit.

The Local Borrower agrees to the following estimates of the Preconstruction Activities allowance and related costs:

Allowance (Disbursable Amount)	\$	1,188,811
Capitalized Interest	\$	<u>35,400</u>
TOTAL (Loan Principal Amount)	\$	1,224,211

The listed allowance is based on estimated construction costs of \$13,900,000, which excludes Capitalized Interest.

10.07. SCHEDULE.

All Preconstruction Activities shall be completed no later than the completion of all Preconstruction Activities date set forth below. Planning activities shall be completed in time to enable the Department to accept the planning documents as scheduled in Subsection (1) below.

(1) Acceptance of the planning documents by the Department (Design Authorization) no later than December 15, 2006.

(2) Design of all Project facilities proposed for loan funding no later than December 15, 2007.

(3) Certification of availability of all sites for facilities proposed for loan funding no later than December 15, 2007.

(4) Evidence that permitting requirements have been satisfied for all Project facilities proposed for construction loan funding no later than June 15, 2008.

(5) Completion of all Preconstruction Activities for all Project facilities proposed for loan funding no later than July 15, 2008.

(6) Unless deferred by amendment, establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than January 15, 2009.

(7) Unless deferred by amendment, provide certifications under Subsection 2.01(10) beginning April 15, 2009, and annually thereafter no later than September 30 of each year until the final Semiannual Loan Payment is made.

(8) Unless this Agreement is amended to provide construction financing, the first Semiannual Loan Payment in the amount of \$39,689 shall be due July 15, 2009.

10.08. SPECIAL CONDITION.

The Local Borrower shall submit a certified copy of the Resolution which authorizes the application, establishes the Pledged Revenues, and designates an Authorized Representative for signing the application and executing the loan agreement.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW63702P shall be executed in three 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 Corporation has caused this amendment to the Loan Agreement to be executed on its behalf by its Chief Executive Officer and the Local Borrower has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Chief Executive Officer of the Corporation.

for

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

Coferran Abjannick

Chief Executive Officer

08-02-06

Date

for

CITY OF MARATHON

Michael Hutto

City Manager

I attest to the opinion expressed in Section 2.03, entitled Legal Authorization, and as to form and correctness.

Attest

Diane Clavier

City Clerk

J.H. Jr.

City Attorney

SEAL

APPROVED AND ACCEPTED BY THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Kenn Deen

Director