

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-145**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO AMENDMENT 4 TO LOAN AGREEMENT WW63702P WITH THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM WHICH WILL COMBINE MARATHON SERVICE AREA 4 & 6 WASTEWATER AND STORMWATER PROJECTS AND LOANS AND AUTHORIZE ADDITIONAL BORROWING UNDER THIS AMENDED LOAN AGREEMENT; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AMENDMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AMENDMENT

WHEREAS, the City of Marathon (The City) entered into a Clean Water State Revolving Fund Loan Agreement WW63702P in the amount of \$8,746,211, excluding capitalized interest; and

WHEREAS, this amendment to loan agreement WW63702P consolidates these separate fundings into one loan agreement covering service areas 4 & 6 for both wastewater and stormwater.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

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

Section 2. The City Council hereby approves Amendment Four to the Florida Department of Environmental Protection Bureau of water facilities funding loan, a copy of which is attached hereto as Exhibit "A", to consolidate the funds into one loan agreement for service areas 4 & 6 for both wastewater and stormwater.

Section 3. The City Authorizes The City Manager And City Attorney To Finalize The Terms And Conditions Of The Agreement and Authorizes The Manager To Execute The Agreement

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22nd day of September, 2009.


THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

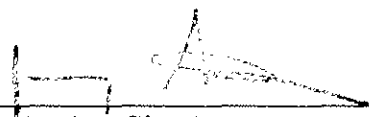
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



Jimmy Morales, City Attorney

**AMENDMENT 4 TO LOAN AGREEMENT WW63702P
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 WW63702P, as amended, authorizing a Loan amount of \$11,308,211, excluding Capitalized Interest; and

WHEREAS, certain definitions and revisions are required; and

WHEREAS, the Local Borrower is entitled to additional financing of \$10,000,000, excluding Capitalized Interest; and

WHEREAS, revised provisions for audit and monitoring are needed; and

WHEREAS, a Financing Rate must be established for the additional financing amount awarded in this amendment; and

WHEREAS, a Loan Service Fee must be estimated for the additional financing; and

WHEREAS, the Semiannual Loan Payment amount needs revision to reflect an adjustment in the Loan amount; and

WHEREAS, the Project costs need adjustment to reflect revised estimates.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsections 1.01(10), (15), (16), (18) and (20) of the Agreement are deleted and replaced as follows:

(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. After paying or providing for the payment of debt service on the Bonds, 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.

(15) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the 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 Stormwater Non-ad Valorem Assessments and 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.

(18) "Project" shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the collection, transmission, treatment, reuse and stormwater facilities in accordance with the plans and specifications accepted by the Department for the following contracts:

- (a) "Sombrero Beach Sewer Project"; and
- (b) "Marathon Service Areas 4 and 6 Wastewater Treatment Facilities" ; and
- (c) "Sewer and Stormwater Collection System" for Service Areas 4 and 6.

The Project is in agreement with the "City of Marathon-Planning Documents for the State Revolving Fund Loan, Marathon Regional Wastewater Project" Facilities Plan, dated July 2005 and revised January 2006 and "City of Marathon - Planning Documents for the State Revolving Fund Loan - Marathon Regional Stormwater Project" dated March 2007. A Florida Categorical Exclusion Notification was published on February 17, 2006 (wastewater) and on May 17, 2007 (stormwater) and no adverse comments were received. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code. This Project is being financed with Federal funds.

(20) "System" shall mean all devices and facilities owned by the Local Borrower for collection, transmission, detention, retention, treatment, and management of stormwater and wastewater including reuse and its residuals.

2. The following definition is added to Section 1.01:

"Stormwater Non-ad Valorem Assessments" or "Stormwater Utility Service Assessments" shall mean a special assessment lawfully imposed by the City against Assessable Property to fund all or any portion of the Stormwater Cost, providing a special benefit to property as a consequence of possessing a logical relationship to the value, use or characteristics of the Assessable Property in accordance with Resolution 2005-107, Ordinance 2005-10, and Ordinance 02-07-13. The Stormwater Non-ad Valorem Assessments shall be collected in accordance with the ad valorem tax bill in a manner authorized by the Uniform Assessment Collection Act.

3. Section 2.04 of the Agreement, as amended, is deleted and replaced as follows:

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
CS120001-090	EPA	66.458	Capitalization Grants for State Revolving Funds	\$21,308,211	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 of Environmental Protection. 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. The Local Borrower shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Borrower in which the \$500,000 threshold has not been met. 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://12.46.245.173/cfda.html>.

(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 the following address:

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
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

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/fac/>

- (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 address 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.

(5) Record Retention.

The Local Borrower shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five 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 five years from the date the audit report is issued, unless extended in writing by the Department.

The Local Borrower is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Local Borrower shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section _____.210 for determining whether the relationship represents that of a subrecipient or vendor.

The Local Borrower should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

In addition, the Local Borrower agrees to complete and submit the Certification of Applicability to Single Audit Act Reporting, Attachment A, attached hereto and made a part hereof, within four (4) months following the end of the Local Borrower's fiscal year. Attachment A should be submitted to the Department's Grants Development and Review Manager at 3900 Commonwealth Boulevard, Mail Station 93, Tallahassee, Florida 32399-3000. The Grants Development and Review Manager is available to answer any questions at (850) 245-2361.

(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.

4. Section 4.05 is deleted and replaced as follows:

The Local Borrower is prohibited from selling, leasing, or disposing of any part of the 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.

5. Article V is deleted and replaced as follows:

5.01. RATE COVERAGE.

The Local Borrower shall maintain and collect Stormwater Non-ad Valorem and 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. MAINTENANCE OF THE SYSTEM.

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

5.03. ADDITIONS AND MODIFICATIONS.

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

5.04. 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 System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Local Borrower shall use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of System rates, fees and other charges.

6. Section 6.01 (4) and (5) are deleted and replaced as follows:

(4) An order or decree entered, with the acquiescence of the Local Borrower, appointing a receiver of any part of the 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 the Pledged Revenues of the System.

7. Section 6.02(1), (2) and (4) are deleted and replaced as follows:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the 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 System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

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

8. Section 7.02 is deleted and replaced as follows:

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 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

9. Section 9.01 is amended to include the following:

(4) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.

(5) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

10. Additional financing in the amount of \$10,000,000, excluding Capitalized Interest, is hereby awarded to the Local Borrower.

11. A Financing Rate of 2.52 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 2.52 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum. However, if this amendment is not executed by the Local Borrower and returned to the Department before October 1, 2009, the Financing Rate may be adjusted.

12. The estimated principal amount of the Loan is hereby revised to \$21,579,311, which consists of \$21,308,211 authorized for disbursement to the Local Borrower and \$271,100 of Capitalized Interest. This total consists of the following:

(a) Original Agreement of \$1,233,211, including \$1,188,811 authorized for disbursement to the Local Borrower and \$44,400 of Capitalized Interest, at a Financing Rate of 2.46 percent per annum (the interest rate is 2.46 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum); and

(b) Amendment 1 of \$2,639,800, including \$2,557,400 authorized for disbursement to the Local Borrower and \$82,400 of Capitalized Interest, at a Financing Rate of 2.36 percent per annum (the interest rate is 2.36 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum); and

(c) Amendment 2 of \$5,122,200, including \$5,000,000 authorized for disbursement to the Local Borrower and \$122,200 of Capitalized Interest, at a Financing Rate of 2.25 percent per annum (the interest rate is 2.25 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum); and

(d) Amendment 3 of \$2,584,100, including \$2,562,000 authorized for disbursement to the Local Borrower and \$22,100 of Capitalized Interest, at a Financing Rate of 2.52 percent per annum (the interest rate is 2.52 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum); and

(e) Amendment 4 of \$10,000,000, authorized for disbursement to the Local Borrower, at a Financing Rate of 2.54 percent per annum (the interest rate is 2.54 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum).

13. An additional Loan Service Fee in the amount of \$200,000, for a total of \$426,164, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest, that is, two percent of \$21,308,211.

14. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of \$698,248. Such payments shall be paid to, and must be received by, the Trustee beginning on February 15, 2010 and semiannually thereafter on August 15 and February 15 of each year until all amounts due hereunder have been fully paid. Until this Agreement is further amended, each Semiannual Loan Payment will be proportionally applied toward repayment of the amounts owed on each incremental Loan amount at the date such payment is due.

The Semiannual Loan Payment amount is based on the total amount owed of \$22,005,475, which consists of the Loan principal plus the estimated Loan Service Fee.

15. The Local Borrower, the Corporation and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this agreement. Project cost adjustments may be made as a result of Project changes agreed upon by the Department. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Local Borrower receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this

Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Local Borrower's Project audit or a Department audit.

Funds disbursed in accordance with Section 4.08 of this Agreement shall be disbursed in the order in which they have been obligated without respect to budgetary line item estimates. All disbursements shall be made from the original Loan amount until that amount has been disbursed; the Financing Rate established for the original Loan amount shall apply to such disbursements for the purpose of determining the associated Capitalized Interest and repayment amount. The Financing Rate established for any additional increment of Loan financing shall be used to determine the Capitalized Interest and repayment amount associated with the funds disbursed from that increment.

The estimated Project costs are revised as follows:

CATEGORY	COST(\$)	AUTHORIZED LOAN AMOUNT(\$) TO DATE
Allowance costs	1,780,262	<i>Line items</i>
Construction and Demolition	44,344,079	<i>may vary</i>
Contingencies	2,217,204	<i>based on</i>
Technical Services After Bid Opening	1,062,713	<i>Actual</i>
Less Grant Funding Available	(8,800,534)	<i>Disbursements</i>
SUBTOTAL (Disbursable Amount)	40,603,724	21,308,211
Capitalized Interest	271,100	271,100
TOTAL (Loan Principal Amount)	40,874,824	21,579,311

16. Section 10.08 SPECIAL CONDITION is amended to include the following:

Additional allowances have been provided for this Project under SW63703P, SW63704P and WW63705P.

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

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ATTACHMENT A

CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING

Local Government's Name:

Local Government's Fiscal Year Period: FROM:_____ TO:_____

Total State Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$_____

Total Federal Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$_____

Please identify grants to be included in the Single Audit that are provided by the Department of Environmental Protection

CSFA#CFDA# DEP LOAN AGREEMENT NUMBER

CERTIFICATION STATEMENT:

I hereby certify that the above information is correct:

Name

Date

Title