

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-76**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AMENDMENT NO. 5 TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WATER FACILITIES FUNDING – FLORIDA WATER POLLUTION CONTROL, FINANCING CORPORATION LOAN WW63702P TO INCREASE LOAN AMOUNT BY \$10,000,000.00, AND ADJUST SEMIANNUAL LOAN PAYMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (“City”) entered into a Clean Water State Revolving Fund Loan Agreement WW63702P with the Florida Department of Environmental Protection (“FDEP”) to help pay for the construction of wastewater collection and treatment facilities in Service Area 4 (“Loan”); and

WHEREAS, amendment five to the Loan authorizes an additional \$10,000,000.00 (ten million) dollars for disbursement to the City to be used to obtain commercial bank loans to achieve long term financing of the wastewater collection and treatment facilities in Service Area 4; and

WHEREAS, the City and FDEP desire to amend the Loan accordingly (Loan Amendment No. 5”).

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. Loan Amendment No. 5, a copy of which is attached hereto as Exhibit “A,” is hereby approved. The City Manager is authorized to execute Loan Amendment No. 5 on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 27th DAY OF JULY, 2010.

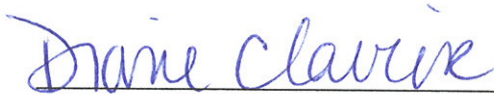
THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Ramsasy, Worthington, Keating, Snead
NOES: None
ABSENT: None
ABSTAIN: None

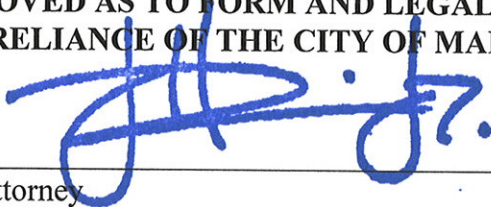
ATTEST:



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

**AMENDMENT 5 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 \$21,308,211, excluding Capitalized Interest; 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 2.04(1) and (2)(d) of the Agreement are 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	\$31,308,211	140131

(2) Audits.

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

2. Section 8.02 is deleted and replaced as follows:

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 five years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

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

4. A Financing Rate of 2.33 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 2.33 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, 2010, the Financing Rate may be adjusted.

5. The estimated principal amount of the Loan is hereby revised to \$31,448,936, which consists of \$31,308,211 authorized for disbursement to the Local Borrower and \$140,725 of Capitalized Interest. This total consists of the following:

(a) Original Agreement of \$1,249,920, including \$1,188,811 authorized for disbursement to the Local Borrower and \$61,109 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 \$2,588,229, including \$2,557,400 authorized for disbursement to the Local Borrower and \$30,829 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 \$5,048,629, including \$5,000,000 authorized for disbursement to the Local Borrower and \$48,629 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 \$2,562,158, including \$2,562,000 authorized for disbursement to the Local Borrower and \$158 of Capitalized Interest, 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); and

(e) Amendment 4 of \$10,000,000 authorized for disbursement to the Local Borrower, 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

(f) Amendment 5 of \$10,000,000 authorized for disbursement to the Local Borrower, at a Financing Rate of 2.33 percent per annum (the interest rate is 2.33 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum).

The estimated principal does not reflect payments received to date.

6. An additional Loan Service Fee in the amount of \$200,000, for a total of \$626,164, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$31,308,211.

7. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of \$1,014,626. Such payments shall be paid to, and must be received by, the Trustee beginning on February 15, 2011 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.

8. 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.

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The estimated Project costs are revised as follows:

CATEGORY	COST(\$)	AUTHORIZED LOAN AMOUNT(\$) TO DATE
Allowance costs	1,780,262	
Construction and Demolition	44,344,079	<i>Line items may vary</i>
Contingencies	2,217,204	<i>based on Actual</i>
Technical Services After Bid Opening	1,062,713	<i>Disbursements</i>
Less Grant Funding Available	(8,800,534)	
SUBTOTAL (Disbursable Amount)	40,603,724	31,308,211
Capitalized Interest	140,725	140,725
TOTAL (Loan Principal Amount)	40,744,449	31,448,936

9. Section 10.08 of the Agreement, as amended, is deleted and replaced as follows:

Prior to any funds being released, the Local Borrower shall submit a certified copy of the Resolution which authorizes the amendment.

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

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This Amendment 5 to 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

[Signature] 8/23/10
Chief Executive Officer Date

[Signature]
Reviewed and approved by the Corporate Secretary

for
CITY OF MARATHON

[Signature]
City Manager

I attest to the opinion expressed in Section 2.03
of the Agreement, entitled Legal
Authorization.

Attest
[Signature]
City Clerk

[Signature]
City Attorney

SEAL

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

[Signature]
Deputy Director
Division of Water Resource Management