

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-46**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AMENDMENT NO. 2 TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WATER FACILITIES FUNDING – FLORIDA WATER POLLUTION CONTROL, FINANCING CORPORATION LOAN WW637060 TO INCREASE THE LOAN AMOUNT BY \$5,000,000.00 AND ADJUST SEMIANNUAL LOAN PAYMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon, Florida (the “City”) entered into a Clean Water State Revolving Fund Loan Agreement, Number WW637060 with the Florida Department of Environmental Protection in the amount of \$1,918,808.00 (the “Loan”), to help pay for the construction of the stormwater and wastewater collection and treatment systems for service area 5; and

WHEREAS, the City is entitled to additional financing for construction related costs in the amount of \$5,000,000.00, and the City and FDEP desire to amend the Loan to reflect the additional funding amount and revise the project costs, loan repayment schedule, project schedule, certain definitions, and other provisions of the Loan, as outlined in Amendment No.2 to the Loan (the "Loan Amendment No.2").

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. 2 attached hereto as Exhibit "A" is hereby approved. The City Manager is authorized to execute Loan Amendment No.2 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 14th DAY OF JUNE, 2011.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

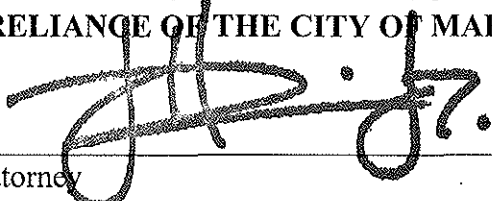
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

**CLEAN WATER STATE REVOLVING FUND
AMENDMENT 2 TO LOAN AGREEMENT WW637060
CITY OF MARATHON**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF MARATHON, FLORIDA, (Local Government) existing as a local government agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Local Government entered into a Clean Water State Revolving Fund Loan Agreement, Number WW637060, authorizing a Loan amount of \$1,918,808, excluding Capitalized Interest; and

WHEREAS, the Local Government is entitled to additional financing for Construction Related Costs in the amount of \$5,000,000, excluding Capitalized Interest; and

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

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

WHEREAS, the Project costs, Loan repayment schedule, Project schedule, certain definitions, and other provisions of the Agreement need revision and several provisions need to be added to address financing of Construction Related Costs.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsection 1.01(18) of the Agreement is revised as follows:

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

(a) Marathon Service Area 5 Vacuum Station Project.

(b) Marathon Service Area 5 Wastewater Treatment Facility Project

(c) Marathon Service Area 5 Sewer and Stormwater Project.

The Project is in agreement with the planning documentation accepted by the Department effective July 2005. A Florida Finding of No Significant Impact was published on November 6, 2006 and no adverse comments were received.

2. Section 2.03(1) of the Agreement is deleted and replaced as follows:

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

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

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
CS120001-100	EPA	66.458	Capitalization Grants for State Revolving Funds	\$6,918,808	140131

3. Section 4.01 PROJECT CHANGES is revised to add the following:

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

4. The following two sections are added to the Agreement:

4.03. PERMITS AND APPROVALS.

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

4.04. ENGINEERING SERVICES.

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

5. Section 4.08 LOAN DISBURSEMENTS is revised to amend and add the following:

Disbursements shall be made directly to the Local Government for allowance costs. Disbursement of the allowance costs shall be made upon the Department's receipt of a disbursement request form. Up to seventy percent of the estimated allowance shall be disbursed after the loan agreement is signed. The remainder of the allowance shall be disbursed after all procurement contracts are executed and shall be adjusted to reflect as-bid costs. The entire estimated allowance may be disbursed after the loan agreement is signed if the local government agrees to an allowance adjustment after all contracts have been bid. Disbursements shall be made directly to the Local Government for reimbursement of the incurred construction costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

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

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

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

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

6. Subsection 8.08 is added to the Agreement as follows:

8.08. EMPLOYMENT ELIGIBILITY VERIFICATION.

The Local Government agrees that it will enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program. The Local Government further agrees to provide to the Department, within thirty (30) days of the effective date of this Agreement/amendment, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

The Local Government further agrees that it will require each subcontractor that performs work under this Agreement to enroll and participate in the E-Verify Program within ninety days of the effective date of this Agreement/amendment or within ninety (90) days of the effective date of the contract between the Local Government and the subcontractor, whichever is later. The Local Government shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.

The Local Government further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Department or other authorized state entity consistent with the terms of the Memorandum of Understanding.

Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and the Department may treat a failure to comply as a material breach of the Agreement.

7. The following article is added to the Agreement:

ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

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

- (1) Proof of advertising.
- (2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.
- (4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

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

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

9.03. INSURANCE REQUIRED.

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

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

8. Additional financing in the amount of \$5,000,000, excluding Capitalized Interest, is hereby awarded to the Local Government.
9. A Financing Rate of 2.73 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 1.365 percent per annum and the Grant Allocation Assessment rate is 1.365 percent per annum.
10. The estimated principal amount of the Loan is hereby revised to \$7,060,608, which consists of \$6,918,808 authorized for disbursement to the Local Government and \$141,800 of Capitalized Interest. This total consists of the following:

(a) Original Agreement of \$2,012,208, including \$1,918,808 authorized for disbursement to the Local Government and \$93,400 of Capitalized Interest, at a Financing Rate of 2.37 percent per annum (the interest rate is 1.185 percent per annum and the Grant Allocation Assessment rate is 1.185 percent per annum); and

(b) Amendment 2 of \$5,048,400, including \$5,000,000 authorized for disbursement to the Local Government and \$48,400 of Capitalized Interest, at a Financing Rate of 2.73 percent per annum (the interest rate is 1.365 percent per annum and the Grant Allocation Assessment rate is 1.365 percent per annum).

11. An additional estimated Loan Service Fee in the amount of \$100,000, for a total of \$138,376, is hereby assessed. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$6,918,808.

12. Section 10.05 REPAYMENT SCHEDULE is revised as follows:

The Semiannual Loan Payment amount shall be \$232,553. Such payments shall be received by the Department beginning on September 15, 2012, and semiannually thereafter on March 15 and September 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, after deduction of the Loan Service Fee is complete, 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 \$7,198,984, which consists of the Loan principal plus the estimated Loan Service Fee with its Capitalized Interest, if any.

13. Section 10.06 PROJECT RELATED COSTS is revised as follows:

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

Funds disbursed in accordance with 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 first 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 amounts. The Financing Rate established for any additional increment of Loan funds shall be used to determine the Capitalized Interest and repayment amounts associated with the funds disbursed from that increment.

Estimated costs are as follows:

CATEGORY	COST(\$)	AUTHORIZED LOAN AMOUNT(\$) TO DATE
Allowance	2,148,710	<i>Line items may</i>
Construction and Demolition	27,272,729	<i>vary based on</i>
Contingencies	1,363,636	<i>Actual</i>
Technical Services After Bid Opening	1,715,147	<i>Disbursements</i>
Allowance from WW637070	-519,195	
Funding from Army Corp of Engineers	-10,439,507	
SUBTOTAL (Disbursable Amount)	21,541,520	6,918,808
Capitalized Interest	141,800	141,800
TOTAL (Loan Principal Amount)	21,683,320	7,060,608

14. Subsections 10.07 (5), (6), (7) and (8) of the schedule are deleted and replaced as follows:

(5) Completion of Project construction is scheduled for March 15, 2012.

(6) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than March 15, 2012.

(7) The initial annual certification required under Subsection 2.01(10) of the Agreement shall be due June 15, 2012. Thereafter the certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Payment is made.

(8) The first Semiannual Loan Payment in the amount of \$232,553 shall be due September 15, 2012.

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

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This Amendment 2 to Loan Agreement WW637060 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 Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Deputy Director and the Local Government 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 Deputy Director.

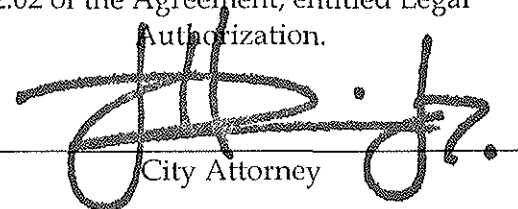
for
CITY OF MARATHON


City Manager


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

Attest


City Clerk
SEAL


City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION


Deputy Director
Division of Water Resource Management

JUN 27 2011
Date