

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-83**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AMENDMENT NO.3 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 \$10,000,000.00 AND ADJUST SEMIANNUAL LOAN PAYMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY; 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; and

WHEREAS, the City is entitled to additional financing for construction related costs in the amount of \$10,000,000.00, and the City and FDEP desire to amend the Loan to reflect the additional contracts to the project description, as outlined in Amendment No.3 to the Loan (the "Loan Amendment No.3").

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

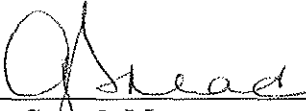
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Loan Amendment No. 3 attached hereto as Exhibit "A" is hereby approved. The City Manager is authorized to execute Loan Amendment No.3 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 13th DAY OF SEPTEMBER, 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

**AMENDMENT 3 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, (the "Local Government") existing as a local governmental 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, as amended, authorizing a Loan amount of \$6,918,808, excluding Capitalized Interest; and

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

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

WHEREAS, prior construction funding needs to be changed to reflect funding from federal funds; and

WHEREAS, the E-verify provision is no longer required; 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.

NOW, THEREFORE, the parties hereto agree as follows:

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

(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, the Capital Infrastructure Funds, and the Gross Revenues derived yearly from the operation of the Sewer System after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of the Senior Revenue Obligations and any senior obligations issued pursuant to Section 7.02 of this Agreement.

(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"; and
- (b) "Marathon Service Area 5 Wastewater Treatment Facility Project"; and

(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. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code.

2. Section 1.01 of the Agreement is amended to include the following words and terms:

"Senior Revenue Obligations" shall mean the following debt obligations:

(a) City of Marathon, Florida, Wastewater System Revenue Bonds, Series 2008, issued in the amount of \$10,000,000, pursuant to Resolution No. 2008-138; and

(b) City of Marathon, Florida, Utility System Revenue Bonds, Series 2009, issued in the amount of \$30,000,000, pursuant to Resolution No. 2009-73, as amended and supplemented by Resolution No. 2009-74; and

(c) Additional bonds issued on a parity with the bonds identified above pursuant to Section 6.02 of Resolution No. 2009-73; and

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

3. Section 2.01 of the Agreement is amended to include the following:

The proceeds of any indebtedness, which will be refunded or refinanced by this loan, were used for the construction of this Project. Refinancing shall be in the proportion of the ratio of completed allowable construction work to the total construction work originally financed and shall be limited to unretired debt principal, excluding any reserves such as for debt service.

4. Section 2.03 of the Agreement, as amended, is deleted in its entirety 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	\$16,918,808	140131

(2) Audits.

(a) In the event that the Local Government expends \$500,000 or more in Federal awards in its fiscal year, the Local Government 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 Government 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 Government 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 Government shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Government 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 Government shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government in which the \$500,000 threshold has not been met. In the event that the Local Government 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 Government resources obtained from other than Federal entities).

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

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with 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 Government 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 Government 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 Governments, 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 Government in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs, the Local Government 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 Government 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 Government 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 Government 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 Government 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 Government 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 Government 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 Government 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 Government'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 Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

5. Article VII of the Agreement is deleted and replaced as follows:

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, on equal priority, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Government under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. 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 1.2 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Government may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent shall be granted if the Local Government demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water and Sewer Systems and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed 1.2 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Local Government and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues. However, no such consent is required with respect to issuance of Senior Revenue Obligations as defined in Section 1.01.

6. Subsection 8.08 EMPLOYMENT ELIGIBILITY VERIFICATION added in Amendment 2 of the Agreement is deleted.

7. Section 9.01 of the Agreement, as amended, is amended to include the following:

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

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

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

9. A Financing Rate of 2.51 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 1.255 percent per annum and the Grant Allocation Assessment rate is 1.255 percent per annum. However, if this amendment is not executed by the Local Government and returned to the Department before October 1, 2011, the Financing Rate may be adjusted.

10. The estimated principal amount of the Loan is hereby revised to \$17,121,708, which consists of \$16,918,808 authorized for disbursement to the Local Government and \$202,900 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 \$5,049,000, including \$5,000,000 authorized for disbursement to the Local Government and \$49,000 of Capitalized Interest, at a Financing Rate of 2.73 percent per annum (the interest rate is 2.73 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum); and

(c) Amendment 3 of \$10,060,500, including \$10,000,000 authorized for disbursement to the Local Government and \$60,500 of Capitalized Interest, at a Financing Rate of 2.51 percent per annum (the interest rate is 2.51 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum).

11. An additional Loan Service Fee in the amount of \$200,000, for a total of \$338,376, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest, that is, two percent of \$16,918,808.

12. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of \$560,407. Such payments shall be paid to, and must be received by, the Trustee 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 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 \$17,460,084, which consists of the Loan principal plus the estimated Loan Service Fee.

13. The Local Government and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this agreement. Project cost adjustments may be made as a result of construction bidding or Project changes agreed upon by the Department. 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 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The estimated Project costs are revised as follows:

CATEGORY	COST(\$)	AUTHORIZED LOAN AMOUNT(\$) TO DATE
Allowance costs	2,148,710	
Construction and Demolition	27,272,729	<i>Line items may vary</i>
Contingencies	1,363,636	<i>based on Actual</i>
Less other funding	(10,958,702)	<i>Disbursements</i>
Technical Services After Bid Opening	1,715,147	
SUBTOTAL (Disbursable Amount)	21,541,520	16,918,808
Capitalized Interest	202,900	202,900
TOTAL (Loan Principal Amount)	21,744,420	17,121,708

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 3 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 Agreement to be executed on its behalf by the Deputy Director and the Local Government has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Deputy Director.

for

CITY OF MARATHON



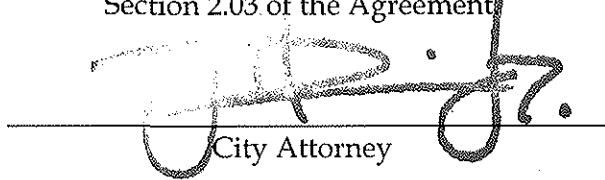
City Manager

I attest that this amendment complies with
Section 2.03 of the Agreement

Attest



City Clerk



City Attorney

SEAL

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



Deputy Director
Division of Water Resource Management

SEP 21 2011

Date