

Sponsored by: Hernstadt

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2012-56**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AMENDMENT NO. 1 TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WATER FACILITIES FUNDING – FLORIDA WATER POLLUTION CONTROL, FINANCING CORPORATION LOAN WW637090, TO INCREASE THE LOAN AMOUNT BY \$373,801.00 AND ADJUST SEMIANNUAL LOAN PAYMENTS; AND INCLUDE ADDITIONAL SERVICE AREA FUNDING; 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 Loan Agreement, Number WW637090, with the Florida Department of Environmental Protection (the “Loan”), to help pay for the stormwater and wastewater infrastructure projects for service area 3; and

**WHEREAS**, Amendment No. 1 to the Loan (the “First Amendment”) authorizes an additional \$373,801.00 for disbursement to the City at a financing rate of 2.02 percent per annum; and

**WHEREAS**, the City may utilize this funding to satisfy outstanding borrowing with commercial banks in order to achieve long term fixed rate financing, or for direct constructions costs for Service Area 3 Collection System Project, Service Area 3 Treatment and Disposal System Project, Little Venice Phase II Stormwater & Paving Project, and Service Area 1 Sewer Force Main Project.

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

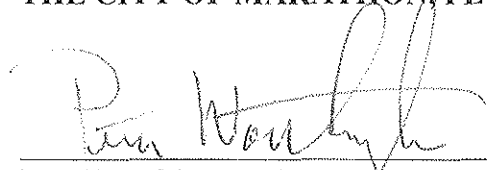
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The First Amendment to the Loan attached hereto as Exhibit "A" is hereby approved. The City Manager is authorized to execute the First Amendment to the Loan 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 22<sup>nd</sup> DAY OF MAY, 2012.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Pete Worthington, Mayor

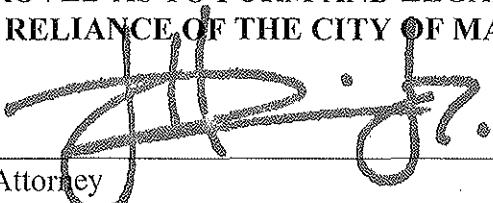
AYES: Cinque, Keating, Ramsay, Snead, Worthington  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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

STATE REVOLVING FUND  
AMENDMENT 1 TO LOAN AGREEMENT WW637090  
CITY OF MARATHON

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

WITNESSETH:

WHEREAS, the Department and the Local Government entered into a State Revolving Fund Loan Agreement, Number WW637090, authorizing a Loan amount of \$10,000,000, excluding Capitalized Interest; and

WHEREAS, the Local Government is entitled to additional financing of \$373,801, 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, 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; and

WHEREAS, the definition of Project needs revision to include additional contracts; and

WHEREAS, additional provisions are required to be added; and

WHEREAS, Section 8.02 of the Agreement requires revision.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsection 1.01(13) of the Agreement is deleted and replaced as follows:

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

- (a) “Sewer Project Area 3”; and
- (b) “Area 3 Treatment and Disposal”; and
- (c) “Little Venice Phase II Stormwater & Paving Project”; and

(d) "Service Area 1 Sewer Force Main Project."

The Project is in agreement with the planning documentation accepted by the Department effective April 11, 2006 and July 12, 2007. A Florida Finding of No Significant Impact was published on November 3, 2006 and a Florida Categorical Exclusion Notice was published on May 18, 2007 and no adverse comments were received. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code.

2. Subsection 1.01(14) of the Agreement is deleted and replaced as follows:

"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 2.03 of the Agreement is deleted and replaced as follows:

(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
95423009-0	EPA	66.458	Capitalization Grants for State Revolving Funds	\$10,373,801	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=&ck=](http://www.cfda.gov/index?cck=1&au=&ck=).

(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:

Valerie Peacock, 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 10<sup>th</sup> 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.

4. Section 8.02 of the Agreement 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 Government 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.

5. Section 8.10 COMPLIANCE VERIFICATION is added to the Agreement as follows:

(1) The Local Government shall periodically interview a sufficient number of employees entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence. The Local Government must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Local Government shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Local Government must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data

and two weeks prior to the estimated completion date for the contract or subcontract. Local Governments must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. Local Governments shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence. As an alternative, a minimum of 25% of the work force shall be interviewed over the life of the Project and all classifications represented on the payroll must be included.

(3) The Local Government shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Local Government shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Local Government must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Local Governments must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Local Government shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The Local Government shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (2) and (3) above.

(5) Local Governments must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact Sheryl Parsons at [Parsons.Sheryl@epamail.epa.gov](mailto:Parsons.Sheryl@epamail.epa.gov) and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

6. Section 9.01 of the Agreement is amended to add subsection (4) and renumber subsections (5) through (8):

(4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.

(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.



(7) Assurance that the Local Government and contractors are in compliance with Section 1606 with labor standards, including prevailing wage rates established for its locality by the U.S. Department of Labor under the Davis-Bacon Act for Project construction.

(8) Certification that all procurement is in compliance with Section 1605 of the ARRA, which states that all iron, steel, and manufactured goods used in the Project must be manufactured or assembled in the United States unless (a) a waiver is provided to the Local Government by the Environmental Protection Agency (EPA) or (b) compliance would be inconsistent with United States obligations under international agreements.

7. Additional financing in the amount of \$373,801, excluding Capitalized Interest, is hereby awarded to the Local Government.

8. A Financing Rate of 2.02 percent per annum is established for the additional financing amount awarded in this amendment. However, if this amendment is not executed by the Local Government and returned to the Department before July 1, 2012, the Financing Rate may be adjusted.

9. The estimated principal amount of the Loan is hereby revised to \$10,401,106, which consists of \$10,373,801 authorized for disbursement to the Local Government and \$27,305 of Capitalized Interest. This total consists of the following:

(a) Original Agreement of \$10,027,305, including \$10,000,000 authorized for disbursement to the Local Government and \$27,305 of Capitalized Interest, at a Financing Rate of 2.66 percent per annum; and

(b) Amendment 1 of \$373,801 authorized for disbursement to the Local Government at a Financing Rate of 2.02 percent per annum.

The estimated principal does not reflect payments received to date.

10. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of \$336,280. Such payments shall be paid to, and must be received by the Department beginning on June 15, 2012 and semiannually thereafter on December 15 and June 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.

11. 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. The estimated Project costs are revised as follows:

**PROJECT COSTS**

CATEGORY	COST(\$)
Construction and Demolition	9,548,535
Technical Services After Bid Opening	825,266
SUBTOTAL (Disbursable Amount)	10,373,801
Capitalized Interest	27,305
TOTAL (Loan Principal Amount)	10,401,106

12. Section 10.08 of the Agreement is deleted and replaced as follows:

(1) Funding for Allowances and a portion of the balance of Construction, totaling \$2,111,299, will be made available in a Companion loan to this Loan Agreement. The remaining balance of costs will be made available as needed during the next fiscal year pending approval at a future priority list hearing.

13. 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 WW637090 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.

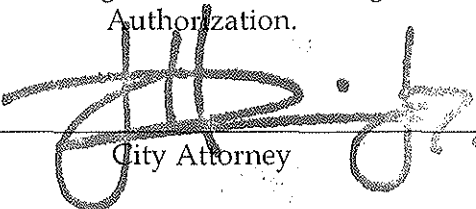
for  
**CITY OF MARATHON**

  
\_\_\_\_\_  
City Manager

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

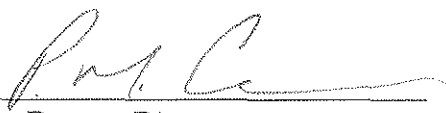
Attest

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney

SEAL

for  
**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

  
\_\_\_\_\_  
Deputy Director  
Division of Water Resource Management

MAY 25 2012  
\_\_\_\_\_  
Date

Attachment included as part of this Agreement:

Attachment A - Certification of Applicability to Single Audit Act Reporting

**ATTACHMENT A  
CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING**

Sponsor's Name:

Sponsor Fiscal Year Period: FROM: \_\_\_\_\_ TO: \_\_\_\_\_

Total State Financial Assistance Expended during Sponsor's most recently completed Fiscal Year:  
\$ \_\_\_\_\_

Total Federal Financial Assistance Expended during Sponsor's most recently completed Fiscal Year:  
\$ \_\_\_\_\_

INSTRUCTIONS FOR COMPLETING THE ATTACHMENT

Sponsor Fiscal Year Period: FROM: Month/Year TO: Month/Year

**NOTE: THIS SHOULD BE THE SPONSOR'S FISCAL YEAR FROM (MONTH/YEAR) TO (MONTH/YEAR).**

Total State Financial Assistance Expended during Sponsor's most recently completed Fiscal Year:

**NOTE: THIS AMOUNT SHOULD BE THE TOTAL STATE FINANCIAL ASSISTANCE EXPENDED FROM ALL STATE AGENCIES, NOT JUST DEP.**

\$ \_\_\_\_\_

Total Federal Financial Assistance Expended during Sponsor's most recently completed Fiscal Year:

**NOTE: THIS AMOUNT SHOULD BE THE TOTAL FEDERAL FINANCIAL ASSISTANCE EXPENDED FROM ALL FEDERAL AGENCIES, NOT JUST THROUGH DEP.**

\$ \_\_\_\_\_

The Certification should be signed by your Chief Financial Officer.  
Please print the name and include the title and date of the signature.

**CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING  
FREQUENTLY ASKED QUESTIONS**

1. **Question:** Do I complete and return this form when I return my signed Agreement/Amendment?

**Answer:** No, this form is to be completed and signed by your Chief Financial Officer and returned 4 months after the end of your fiscal year.

2. **Question:** Can I fax the form to you?

**Answer:** Yes, you can fax the Certification form, the fax number is 850/245-2411.

3. **Question:** How can I submit the form if our audit is not completed by the due date of this letter?

**Answer:** You should be able to complete the form from the information in your accounting system. This is just to let our Office of the Inspector General know which entities they should be getting an audit from. If you are under the threshold you do not have to submit a copy of your audit, only the Certification form.

4. **Question:** Do you only want what we received from DEP?

**Answer:** No, the Single Audit is the TOTAL AMOUNT of funds that you expended towards all state or federal grants that you receive. You should list those that are specific to DEP on the form.

5. **Question:** Do I have to submit the completed form and a copy of my audit?

**Answer:** No, you do not have to submit your audit unless you are over the threshold of \$500,000. If you would prefer to submit your audit (CAFR) instead of the form, that is fine. You must submit a paper copy of your audit, we cannot receive it electronically.

6. **Question:** Our CAFR will not be ready before your due date and we don't have the information necessary to complete the certification. Can we get an extension?

**Answer:** Yes, just send us an Email letting us know when you will have your CAFR completed and we will place the Email with your letter in our file so that you don't get a 2<sup>nd</sup> notice.

7. **Question:** Can I submit my Certification Form or CAFR electronically?

**Answer:** Yes, you can submit them by Email to [Debbie.skelton@dep.state.fl.us](mailto:Debbie.skelton@dep.state.fl.us)