



American Beach Water and Sewer District Advisory Board Meeting

4:00 PM, January 13, 2022

James S. Page Governmental Complex, 96135 Nassau Place  
Yulee, FL 32097

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

AUDIENCE INPUT – NON-AGENDA ITEMS

A. How to Provide Input

AUDIENCE INPUT – AGENDA ITEMS

B. How to Provide Input

ACTION ITEMS

C. Approve Minutes from regular meetings held on November 4, 2021 and December 9, 2021.

INFORMATIONAL ITEMS

D. Construction Bid Update – Teresa Irby Butler, Capital Project Manager

E. Status update on SRF Loan Agreements, and WINN Grant – Marshall Eyerman, Assistant County Manager

ADJOURNMENT

AUDIENCE INPUT – AGENDA AND NON-AGENDA ITEMS

TAB A AND B

You are invited to a Zoom webinar.

When: This is a recurring webinar

Topic: American Beach Water and Sewer Advisory Board

Please click the link below to join the webinar:

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**American Beach Water and Sewer District Advisory Board  
November 4, 2021, 4:00 p.m.  
Commission Chambers, 96135 Nassau Place, Yulee, Florida**

**211104ABAB - 4:02:26** Chair Gilyard announced that the meeting would commence at 4:15 p.m. The meeting reconvened at 4:17 p.m.

Call to Order, Invocation, and Pledge of Allegiance to the American Flag

**Board Members:**

**Present: Chair Erving Gilyard; Colleen Hicks, Ruth Waters, and Eugene Emory**

**Present via "Zoom": Board Member Tony Brown (arrived in person at 4:44 p.m.)**

**Other Officials Present:** Michael S. Mullin, County Attorney; Taco Pope, County Manager; and Marshall Eyerman, Assistant County Manager.

**Staff Present:** Katie Brock, County Administrative Specialist; and representing the Clerk's Office was Melissa Lucey, Deputy Clerk.

**Official Agenda Summary:**

**AUDIENCE INPUT - NON-AGENDA AND AGENDA ITEMS:**

**211104ABAB - 4:19:34 (Tabs A and B)**

None.

**211104ABAB - 4:19:45** Ms. Hicks inquired whether the minutes from the October 14, 2021 meeting would be approved during this meeting. Mr. Pope advised that this is a special meeting, and the October 14, 2021 minutes would be presented for approval at the December meeting. Dr. Emory requested a verbatim of his statement from the last meeting to be included in the minutes. Mr. Pope advised that the Board could entertain a motion to include his statement as an attachment to the minutes; however, no further action was taken.

**PRESENTATION(S) :**

**211104ABAB - 4:21:02 (Tab C)** Marshall Eyerman, Assistant County Manager, regarding American Beach Water and Sewer District funding.

**Discussion:** Mr. Eyerman informed the Board that he worked directly with third-party consultants and internal staff to review and address the board members' questions and concerns regarding the loan agreement for the American Beach Water and Sewer District projects. He noted that the final loan documents were included in the agenda packet. Mr. Eyerman provided a general timeline of significant water and sewer events, discussed the following steps, reviewed the State Revolving Fund (SRF) loan process, prioritization of projects, prepayment options, and the annual assessments. He summarized the total project cost, approximately \$10.6 million. The main components include the clean water design and construction, and drinking water design and construction; each of these components is further divided into three funding categories of grants (forgiveable portion of the SRF loan), loan principle (repaid through the assessment district), and loan servicing fees and capitalized interest.

Mr. Eyerman reviewed the SRF loan agreement application process, noting that the final principal balance would be finalized once construction is complete, which is anticipated by May 2023. He presented the loan summary, explaining that approximately \$7.8 million would be covered by grants and the remaining \$2.8 million would be covered by the annual assessments. Mr. Eyerman reviewed the terms of the SRF loan, stating that it is a 20-year term with 40 equal semi-annual payments. He briefly discussed the SRF financing rate formula calculated using the Bond Buyer 20-Bond General Obligation Index. The current interest rate for drinking water is 1.33 percent and 0.02 percent for clean water.

Mr. Eyerman reviewed the prepayments options, advising that the initial assessment prepayment period was before the assessment on their tax collector bill and ended on October 20, 2021; however, a second prepayment period will occur from March 2022 through April 2023. He clarified that the prepayment option would be unavailable until the construction has been completed and the principal balance is finalized. He also noted that prepayments that resulted in overpayment would receive a refund check from the Tax Collector.

Mr. Eyerman provided a summary of the annual assessments, including the statutory amount required from the Tax Collector, two percent fee for the Property Appraiser, and the administrative and legal fees, which equals \$749.00. Steve Spratt, System Manager with Florida Governmental Utility Authority (FGUA), appeared via "Zoom" to respond to

an inquiry regarding hardship assistance. He stated that a portion of the draft grant agreement would allocate funding for various scenarios, such as reducing the annual assessment, administration and providing the hardship assistance program.

**Public input:** Pam McCorkle-Buncum appeared via "Zoom" to inquire if any of the U.S. Department of Treasury Coronavirus Local Fiscal Recovery Fund for the American Rescue Plan (ARP) Act of 2021 that was awarded to Nassau County could be utilized to help fund the American Beach Water and Sewer District. Mr. Eyerman confirmed that the funds from the American Rescue Plan Act of 2021 had been delayed from the United States Treasury; however, he noted that the County is in the process of selecting a firm to manage these funds based on the potential priorities, obligations, and impacts specified within the grant. A lengthy discussion ensued regarding the GAI Master Plan for water/sewer conversion, financing issues, past community meetings held in 2016, and bond financing.

Ms. Hicks raised concerns regarding the term limit, annual payments, and the interest rate. Mr. Spratt explained that the loan term is determined by the useful life of the loan purpose, stating that construction loans typically endure a longer useful life. Also, the community's income helps determine the forgivable portion of the SRF loan, not necessarily the interest rate. Mickey Joseph, Assistant Finance Director with FGUA appeared via "Zoom" to expound on the typical term limit of the SRF loan. Ms. Hicks requested clarification regarding prepayment options. Mr. Eyerman explained that the prepayment amount would include accumulated interest and service fees once the principal balance is finalized. Ms. Hicks indicated that these terms could be detrimental to the American Beach community by obligating property owners into a 20-year term, prohibiting the ability to pay off the principal balance before the term ends. She inquired whether the terms could be negotiated in the best interest of American Beach property owners. Mr. Eyerman advised that the County further analyze alternative prepayment methods before the principal balance is set in May 2023. A lengthy discussion ensued regarding the loan agreement, interest rates, prepayment options, and the design and construction portions of the project.

Mr. Joseph briefly addressed the general terms of an SRF loan. He clarified that property owners would no longer receive an annual assessment bill if they choose the prepayment option after the principal balance is set; however, the debt service ratio with the Florida Department

of Environmental Protection (FDEP) would not be reduced and would present the risk of not requiring the debt service coverage. He indicated that the principal balance could be paid off in full at any time, which could take up to 17 or 18 years. Mr. Eyerman referred to the repayment schedule outlined in the loan documents, stating that the prepayment amount includes fees from when the loan was issued.

Mr. Brown questioned whether an accounting system would be in place that would allow individual property owners to prepay during the loan term to adjust their special assessment for the following tax year. Mr. Mullin advised that these questions could not be thoroughly answered until the loan is finalized and recommended that the Tax Collector attend one of the American Beach Water and Sewer District Advisory Board meetings in the future. Mr. Joseph concurred and stated that analyzing the potential impacts of prepayments on debt service coverage would be vital before moving forward. A lengthy discussion ensued regarding the debt service coverage ratio, second prepayment window, and the adjusted prepayment amounts.

Mr. Brown raised concerns regarding the mandatory water connection, requesting this matter be brought back for further review before recommending approval to the Board of County Commissioners. Mr. Pope stated that an Ordinance had been drafted, including mandatory water connection for new construction; however, it does not require a mandatory sewer connection for existing homeowners with a functioning septic tank. A lengthy discussion ensued regarding the auditing process, legislative funding, and funds received from the American Rescue Plan Act.

**211104ABAB - 6:03:00** Ms. Waters requested that the American Beach Water and Sewer District Advisory Board entertained a motion for recommendation to the Nassau County Board of County Commissioners to consider utilizing the funds received from the American Rescue Plan Act and the Federal Infrastructure Fund (pending approval) to help cover the costs of the American Beach Water and Sewer District project.

**Motion:** Recommend the Board of County Commissioners to consider utilizing the funds received from the American Rescue Plan Act and the Federal Infrastructure Bill (pending approval) to help cover the costs of the American Beach Water and Sewer projects.

**Maker:** Board Member Waters

**Second:** Board Member Brown

**Action: Aye: Board Members Hicks, Emory, Waters, Brown, and Gilyard.**

Dr. Emory voiced his concerns regarding the potential impacts of these negotiations on the future of American Beach, including the burden imposed on property owners and preserving the cultural characteristics of the American Beach community. A brief discussion ensued regarding the opportunity to extend the second prepayment period to a date beyond April 2023 and the Equivalent Residential Connection (ERC) Calculations.

There being no further business, the regular session of the American Beach Water and Sewer District Advisory Board adjourned at 6:12 p.m.

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Ervin Gilyard, Chairperson

**American Beach Water and Sewer District Advisory Board  
December 9, 2021, 4:00 p.m.  
Commission Chambers, 96135 Nassau Place, Yulee, Florida**

Call to Order, Invocation, and Pledge of Allegiance to the American Flag

**Board Members:**

**Present:** Chair Erving Gilyard; Ruth Waters, Eugene Emory, and Tony Brown (arrived at 4:12 p.m.).

**Present via "Zoom":** Board Members Colleen Hicks.

**Other Officials Present:** Michael S. Mullin, County Attorney; and Marshall Eyerman, Assistant County Manager.

**Staff Present:** Representing the Clerk's office was Heather Nazworth, Deputy Clerk.

**Official Agenda Summary:**

**AUDIENCE INPUT - NON-AGENDA AND AGENDA ITEMS:**

**211209ABAB - 4:02:44 (Tabs A and B)**

None.

**ACTIONS ITEM(S) :**

**211209ABAB - 4:03:50 (Tab C)** Approve minutes from the regular meeting held on October 14, 2021. **(Tab D)** Consider approval of including Dr. Emory's typed statement into the October 14, 2021 official minutes.

**Motion:** Approve minutes from October 14, 2021, including Dr. Emory's typed statement as an attachment.

**Maker:** Board Member Waters

**Second:** Board Member Emory

**Action:** Aye: Board Members Emory, Waters, and Gilyard.

**Absent:** Board Members Brown and Hicks.

**211209ABAB - 4:07:42**

**Discussion:** Ms. Water discussed a motion made at the last meeting that was not included in the minutes approved. The group further discussed and clarified that the motion was made at the meeting in November, which will be considered for approval at the January 2022 meeting.

**ADVISORY ITEM(S) :**

**211209ABAB - 4:04:14 (Tab E)** State of Florida Department of Environmental Protection (FDEP) Clean Water State Revolving Fund (SRF) Construction Loan Agreement WW450501.

**Discussion:** Mr. Eyerman provided a brief update regarding the SRF Loan Agreement for Clean Water. He stated that the draft agreement has been received and is currently under legal review. He informed the Board that the loan term would be 20 years with the finance rate set at zero percent.

**211209ABAB - 4:11:02 (Tab F)** State of Florida Department of Environmental Protection (FDEP) Drinking Water State Revolving Fund (SRF) Construction Loan Agreement DWxxxxxx.

**Discussion:** Mr. Eyerman provided an update regarding the SRF Loan Agreement for Drinking Water. He stated that a draft agreement was received yesterday, and the structure for review is similar to the SRF Clean Water Loan Agreement. The draft agreement loan terms are similar to the Clean Water Loan Agreement.

**211209ABAB - 4:11:55 (Tab G)** The Water Infrastructure Improvements for the Nation Act (WIIN Act) Grant.

**Discussion:** Mr. Eyerman provided a brief overview of the WIIN Act Grant. The WIIN Act Grant was awarded to the State of Florida, and the State will provide information to the County's regarding the allocation of those funds. A brief discussion ensued regarding the associated costs with the SRF Loan Agreements for clean and drinking water.

**211209ABAB - 4:21:02 (Tab H)** American Beach Water & Sewer District Well & Septic Tank Phase Out Program NC21-029-ITB.

**Discussion:** Mr. Eyerman advised that the Invitation to Bid (ITB) was published on December 6, 2021, and bids would be due on January 12, 2022. After the bid opening, there will be an assessment of the bids received. Further discussion ensued regarding a contingency plan for increased material costs.

**211209ABAB - 4:21:02 (Tab I)** Florida Department of State African-American Cultural and Historical Grant Application.

**Discussion:** Mr. Eyerman advised that the County was able to submit the grant application to assist with Evan's Rendezvous Rehabilitation and provided a brief overview of the project.

Mr. Mullin responded to an inquiry regarding the evaluation criteria for the grant. He explained that this item is informational. The Planning Department will be holding community events in February 2022. Further discussion ensued regarding grant options.

**211209ABAB - 4:24:44**

Public input: Joyce Jefferson appeared via "Zoom" and expressed her concerns regarding Tab I being placed on the agenda. Mr. Mullin responded that the item was placed on the agenda as an informational item only, and there has been no expansion of the duties for the Advisory Board. A brief discussion ensued regarding information items being placed on the agenda.

**211202 ABAB - 4:29:02**

Ms. Hicks requested clarification on the gap between existing grants and project costs. Mr. Eyerman responded that the SRF loans have not been adjusted, and the principal amount is funded through the SRF loans and the remaining portion from the assessments. He provided the remaining amounts for the wastewater project to be funded as \$2.14 million and the drinking water project as \$458,000.00. Mr. Eyerman advised that the figures provided at the November 4, 2021 meeting do not reflect the WIIN Grant and will be addressed once the State provides the final figures.

Public input: Mark Dawkins appeared via "Zoom" and questioned if there has been a determination on the pre-paid assessment refund amount. Mr. Eyerman responded that the assessment amount had not been determined; however, in March 2022, there will be a new calculated assessment amount. Further discussion ensued regarding the timelines for the prepayments.

Ms. Hicks inquired regarding the notification process for the adjusted assessment amounts. Mr. Eyerman responded that the initial assessment prepayment period expired in October 2021. Once the new assessment amounts are provided, further discussion will be on implementing a second prepayment period. He reviewed the dates for the prepayment period and other funding sources considered.

Public input: Pamela McCorkle Buncum came forward and inquired regarding the American Rescue Plan Act (ARPA) and the Infrastructure Bill funds provided to the County and if any of the funds would be available to the American Beach Water and Sewer funds. She indicated that the County would be required to prioritize the funds, which would assist with funding the Water and Sewer Project.

Mr. Eyerman responded that the ARPA Funds were approved and allocations from the Federal Government. The County received the first half of the \$17.2 million, with the second half one year later. The Board of County Commissioners has been presented that Prosperity Plan is pending the Department of Treasury's final guidance on disbursing the funds. Mr. Eyerman explained that the Infrastructure funds are considered competitive funding opportunities. He stated that the County is reviewing what is available to apply for and receive. Further discussion regarding the allocation of the funds.

Public input: Carlton Jones came forward and reminded the County that the funds received would be high priority based on Amelia Island barrier islands. There was a discussion and motion regarding funding made at the meeting held on November 4, 2021.

**211209 ABAB - 4:49:42** Mr. Brown inquired if there could be a recommendation to use grant funds to provide closure to the Lewis Street Beach Access and relocate to Burney Park. Mr. Mullin explained that the relocation would involve the State of Florida, and the County does not have the authority to relocate beach accesses.

Public input: Mark Dawkins inquired regarding assessments that were paid in October 2021, would there be a refund due to a re-assessment in March 2022. Mr. Eyerman responded that there is no new adjusted prepayment amount to send a refund at this time; however, after March, and if there is a reduced amount, there will be a credit. Mr. Mullin added that would create a legal issue with returning the money and would need to be established by the state guidelines.

Ms. Hicks suggested providing notifications to the property owners regarding future assessments and plans for the water and sewer project. Mr. Eyerman responded that as the loans and grants are processed, a final amount will be communicated via notice to the property owners. Further discussion ensued regarding the interest rates and loan services.

Public input: Cheryl Reese appeared via "Zoom" and inquired on the estimated timeframe for new homeowners to connect to well and septic. Mr. Eyerman advised that the preliminary construction schedule would start in April 2022 and be completed by May 2023.

**211209ABAB - (Tab J)** Next meeting is scheduled for January 13, 2022.

There being no further business, the regular session of the American Beach Water and Sewer District Advisory Board adjourned at 5:18 p.m.

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Ervin Gilyard, Chairperson

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**AMERICAN BEACH WATER AND SEWER DISTRICT**

**DRINKING WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT**

**DW450511**

Florida Department of Environmental Protection  
State Revolving Fund Program  
Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard, MS 3505  
Tallahassee, Florida 32399-3000

DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT  
DW450511**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and AMERICAN BEACH WATER AND SEWER DISTRICT, (Project Sponsor) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Project Sponsor shall be referred to as “Parties” or individually as “Party”.

**RECITALS**

Pursuant to Section 403.8532, Florida Statutes and Chapter 62-552, Florida Administrative Code, the Department is authorized to make loans to finance or refinance the construction of public water systems, the planning and design of which have been reviewed by the Department; and

The Department is authorized to allow Principal Forgiveness on Loans funded by the Federal Drinking Water Act; and

The Project Sponsor has applied for financing of the Project, and the Department has determined that such Project meets all requirements for a Loan and Principal Forgiveness.

**AGREEMENT**

In consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

**ARTICLE I - DEFINITIONS**

**1.01. WORDS AND TERMS.**

Words and terms used herein shall have the meanings set forth below:

(1) “Agreement” or “Loan Agreement” shall mean this construction loan agreement.

(2) “Asset Management Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. The requirements for asset management plans are in Subsection 62-552.700(7), Florida Administrative Code.

(3) “Authorized Representative” shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.

(4) “Capitalized Interest” shall mean a finance charge that accrues at the Financing Rate on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.

(5) “Depository” shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than \$50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(6) “Final Amendment” shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount, the Financing Rate, Loan Service Fee, amortization schedule and Semiannual Loan Payment amount.

(7) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(8) “Financing Rate” shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan.

(9) “Gross Revenues” shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its Utility System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Utility System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Utility System.

(10) “Loan” shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(11) “Loan Application” shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.

(12) “Loan Debt Service Account” shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the Project Sponsor for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(13) “Loan Service Fee” shall mean an origination fee which shall be paid to the Department by the Project Sponsor.

(14) “Local Governmental Entity” means a county, municipality, or special district.

(15) “Monthly Loan Deposit” shall mean the monthly deposit to be made by the Project Sponsor to the Loan Debt Service Account.

(16) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the Utility System determined pursuant to generally accepted accounting principles,

exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(17) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Special Assessments as defined by Resolution No. 2021-153 and amended by Resolution No. 2021-177.

(18) “Principal Forgiveness” shall mean the amount of money awarded pursuant to this Agreement and subsequent amendments that is not to be repaid.

(19) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the Collection and Transmission project in accordance with the plans and specifications accepted by the Department for the “American Beach Water and Sewer District – Well and Septic Tank Phase Out Program” contract.

The Project is in agreement with the planning documentation accepted by the Department effective February 10, 2021. A Florida Categorical Exclusion Notice was published on September 4, 2020 and no adverse comments were received. The Project is an Equivalency Project as defined in Chapter 62-552, Florida Administrative Code.

(20) “Semiannual Loan Payment” shall mean the payment due from the Project Sponsor to the Department at six-month intervals.

(21) “Sewer System” shall mean all facilities owned by the Project Sponsor for collection, transmission, treatment and reuse of wastewater and its residuals.

(22) “Special Assessments” shall mean the assessments lawfully levied by the Project Sponsor against the properties specially benefited by the construction of the Project.

(23) “Utility System” shall mean all devices and facilities of the Water System and Sewer System owned by the Project Sponsor.

(24) “Water System” shall mean all facilities owned by the Project Sponsor for supplying and distributing water for residential, commercial, industrial, and governmental use.

## 1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word “person” shall include corporations and associations, including public entities, as well as natural persons.

## ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

### 2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

(1) The Project Sponsor has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Project Sponsor currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Project Sponsor's knowledge, threatened, which seeks to restrain or enjoin the Project Sponsor from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. The Project Sponsor knows of no reason why any future required permits or approvals are not obtainable.

(5) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. Minority and Women's Business Enterprise goals as stated in the plans and specifications apply to this Project. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action to comply with this agreement.

(8) The Project Sponsor shall maintain records using Generally Accepted Accounting principles established by the Financial Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accounts of the Utility System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Utility System, and of the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

(9) In the event the anticipated Pledged Revenues are shown by the Project Sponsor's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Project Sponsor shall include in such budget other legally available non-ad valorem funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available non-ad valorem funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by

this Subsection, and the Project Sponsor shall collect such funds for application as provided herein. The Project Sponsor shall notify the Department immediately in writing of any such budgeting of other legally available non-ad valorem funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available non-ad valorem funds; requiring the Project Sponsor to levy or appropriate ad valorem tax revenues; or preventing the Project Sponsor from pledging to the payment of any bonds or other obligations all or any part of such other legally available non-ad valorem funds.

(10) Pursuant to Section 216.347 of the Florida Statutes, the Project Sponsor shall not use this Loan for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(11) The Project Sponsor agrees to construct the Project in accordance with the Project schedule set forth in Section 10.07. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(12) The Project Sponsor covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Project Sponsor covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(13) The Project Sponsor shall update the revenue generation system annually to assure that sufficient revenues are generated for debt service; operation and maintenance; replacement of equipment, accessories, and appurtenances necessary to maintain the system design capacity and performance during its design life; and to make the system financially self-sufficient.

## 2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor's legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement identifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

## 2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor agrees to the following audit and monitoring requirements.

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(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
FS98452220-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	\$2,523,500	140129

(2) Audits.

(a) In the event that the Project Sponsor expends \$750,000 or more in Federal awards in its fiscal year, the Project Sponsor must have a Federal single audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. In determining the Federal awards expended in its fiscal year, the Project Sponsor shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F. An audit of the Project Sponsor conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Project Sponsor shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR Part 200, Subpart F.

(c) If the Project Sponsor expends less than \$750,000, in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, is not required. The Project Sponsor shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Project Sponsor. In the event that the Project Sponsor expends less than \$750,000, in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Project Sponsor resources obtained from other than Federal entities).

(d) The Project Sponsor may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://beta.sam.gov/>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by 2 CFR Part 200, Subpart F, by or on behalf of the Project Sponsor directly to each of the following:

- (i) The Department at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of the Inspector General, MS40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-30000

or

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

- (ii) The Federal Audit Clearinghouse designated in 2 CFR Section 200.501(a) at the following address:

<https://harvester.census.gov/facweb/>

- (iii) Other Federal agencies and pass-through entities in accordance with 2 CFR Section 200.512.

(b) Pursuant to 2 CFR Part 200, Subpart F, the Project Sponsor shall submit a copy of the reporting package described in 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a)(i) 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 2 CFR Part 200, Subpart F, 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) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F, 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 Project Sponsor in correspondence accompanying the reporting package.

(4) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date of the Final Amendment, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor 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 of the Final Amendment, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F, 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 2 CFR Part 200, Subpart F., and/or other procedures. By entering into this Agreement, the Project Sponsor 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 Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

### ARTICLE III - LOAN REPAYMENT ACCOUNT

#### 3.01. LOAN DEBT SERVICE ACCOUNT.

The Project Sponsor shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.07 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit, the Project Sponsor's chief financial officer shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues.

#### 3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

### 3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Project Sponsor's obligations pursuant to Section 8.01.

### 3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.

## ARTICLE IV - PROJECT INFORMATION

### 4.01. PROJECT CHANGES.

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 Project Sponsor 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.

### 4.02. TITLE TO PROJECT SITE.

The Project Sponsor shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

### 4.03. PERMITS AND APPROVALS.

The Project Sponsor 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 Project Sponsor to oversee construction.

### 4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Project Sponsor is prohibited from selling, leasing, or disposing of any part of the Utility System which would materially reduce operational integrity or Gross Revenues so long as this Agreement, including any amendment thereto, is in effect unless the written consent of the Department is first secured. The Project Sponsor may be required to reimburse the Department for the Principal Forgiveness funded cost of any such part, taking into consideration any increase or decrease in value.

#### 4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Project Sponsor covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Project Sponsor's covenants to complete and place the Project in operation.

#### 4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan or Principal Forgiveness requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

#### 4.08. DISBURSEMENTS.

This Agreement allows for funds to be advanced to the Project Sponsor for allowable invoiced costs, under the provisions of 216.181, Florida Statutes. Disbursements shall be made directly to the Project Sponsor only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. In addition to the invoices for costs incurred, proof of payment will be required with the following disbursement request.

Disbursements shall be made directly to the Project Sponsor 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 Project Sponsor 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.

#### 4.09. ADVANCE PAYMENT.

The Department may provide an advance to the Project Sponsor, in accordance with Section 216.181(16)(b), Florida Statutes. Such advance will require written request from the Project Sponsor, the Advance Payment Justification Form and approval from the State's Chief Financial Officer. The Project Sponsor must temporarily invest the advanced funds, and return any interest income to the Department, within thirty (30) days of each calendar quarter. Interest earned must be returned to the Department within the timeframe identified above or invoices must be received within the same timeframe that shows the offset of the interest earned.

Unused funds, and interest accrued on any unused portion of advanced funds that have not been remitted to the Department, shall be returned to the Department within sixty (60) days of Agreement completion.

The parties hereto acknowledge that the State's Chief Financial Officer may identify additional requirements, which must be met in order for advance payment to be authorized. If the State's Chief Financial Officer imposes additional requirements, the Project Sponsor shall be notified, in writing, by the Department regarding the additional requirements. Prior to releasing any advanced funds, the Project Sponsor shall be required to provide a written acknowledgement to the Department of the Project Sponsor's acceptance of the terms imposed by the State's Chief Financial Officer for release of the funds.

If advance payment is authorized, the Project Sponsor shall be responsible for submitting the information requested in the Interest Earned Memorandum to the Department quarterly.

### ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM

#### 5.01. RATE COVERAGE.

The Project Sponsor shall establish, maintain, and collect Special Assessments which will be sufficient to pay the costs of collecting such assessments and to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year.

#### 5.02. NO FREE SERVICE.

The Project Sponsor shall not permit connections to, or furnish any services afforded by, the Utility System without making a charge therefore based on the Project Sponsor's uniform schedule of rates, fees, and charges.

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The Project Sponsor shall not allow any person to provide any services which would compete with the Utility System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE UTILITY SYSTEM.

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

5.06. ADDITIONS AND MODIFICATIONS.

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

5.07. COLLECTION OF REVENUES.

The Project Sponsor shall use its best efforts to collect all rates, fees and other charges due to it. The Project Sponsor shall establish liens on premises served by the Utility System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Project Sponsor shall, to the full extent permitted by law, cause to discontinue the services of the Utility System and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Utility System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Upon the occurrence of any of the following events (the Events of Default) all obligations on the part of Department to make any further disbursements hereunder shall, if Department elects, terminate. The Department may, at its option, exercise any of its remedies set forth in this Agreement, but Department may make any disbursements or parts of disbursements after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further disbursement:

(1) Failure to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsection 6.01(1), failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.14, below, and such failure shall continue for a period of 30 days after written notice thereof to the Project Sponsor by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Project Sponsor contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading, or if Project Sponsor shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, or any other document given in connection with the Loan (provided, that with respect to non-monetary defaults, Department shall give written notice to Project Sponsor, which shall have 30 days to cure any such default), or is unable or unwilling to meet its obligations thereunder.

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, 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 Project Sponsor, for the purpose of effecting a composition between the Project Sponsor 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 Gross Revenues of the Utility System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Project Sponsor under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Project Sponsor, is not dismissed within 60 days after filing.

(7) Any charge is brought alleging violations of any criminal law in the implementation of the Project or the administration of the proceeds from this Loan against one or more officials of the Project Sponsor by a State or Federal law enforcement authority, which charges are not withdrawn or dismissed within 60 days following the filing thereof.

(8) Failure of the Project Sponsor to give immediate written notice of its knowledge of a potential default or an event of default, hereunder, to the Department and such failure shall continue for a period of 30 days.

## 6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, *inter alia*, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

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

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus a penalty from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. The Department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate.

### 6.03. DELAY AND WAIVER.

No course of dealing between Department and Project Sponsor, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies of Department, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No delay or omission by the Department to exercise any right or power accruing upon Events of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

## 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, of equal priority, will be prior and superior to any other lien, pledge or

assignment with the following exception. All obligations of the Project Sponsor under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

#### 7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor 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 may be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Utility 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 1.15 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Project Sponsor and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

### ARTICLE VIII - GENERAL PROVISIONS

#### 8.01. DISCHARGE OF OBLIGATIONS.

All Semiannual Loan payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

#### 8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department for inspection at any reasonable time after the Project Sponsor has received a disbursement and until five years after the Final Amendment date.

### 8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

### 8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Project Sponsor. The Project Sponsor shall not assign rights created by this Agreement without the written consent of the Department.

### 8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A Final Amendment establishing the final Project and the Loan Service Fee based on actual Project costs shall be completed after the Department's final inspection of the Project records.

### 8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Project Sponsor to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the Project Sponsor, suspend or terminate this Agreement.

(1) Failure of the Project Sponsor to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07 to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the Project Sponsor, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.07) and provide written notification of Final Unilateral Amendment to the Project Sponsor.

In the event that following the execution of this Agreement, the Project Sponsor decides not to proceed with this Loan, this Agreement can be cancelled by the Project Sponsor, without penalty, if no funds have been disbursed.

#### 8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

#### 8.08. SIGNAGE.

The Project Sponsor agrees to comply with signage guidance in order to enhance public awareness of EPA assistance agreements nationwide. A copy of this guidance is listed on the Department's webpage at <https://floridadep.gov/wra/srf/content/state-revolving-fund-resources-and-documents> as "Guidance for Meeting EPA's Signage Requirements".

#### 8.09. DAVIS-BACON ACT REQUIREMENTS.

(1) The Project Sponsor shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. Project Sponsors shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5) all interviews must be conducted in confidence. The Project Sponsor must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from the EPA on request.

(2) The Project Sponsor 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 Project Sponsor 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, if practicable, the subrecipient should 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. Project Sponsors 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 Project Sponsor shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(3) The Project Sponsor 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 (1) and (2) above.

(4) Project Sponsors must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm> and to the EPA Region 4 Water Division/Grants and Infrastructure Section by calling 404-562-9345. Additional information on Davis-Bacon

guidance is located on the EPA website at: <https://www.epa.gov/grants/guidance-implementation-davis-bacon-epa-funded-construction-grants>.

#### 8.10. AMERICAN IRON AND STEEL REQUIREMENT.

The Project Sponsor's subcontracts must contain requirements that all of the iron and steel products used in the Project are in compliance with the American Iron and Steel requirement as described in Section 608 of the Federal Water Pollution Control Act unless the Project Sponsor has obtained a waiver pertaining to the Project or the Department has advised the Project Sponsor that the requirement is not applicable to the Project.

#### 8.11. ASSET MANAGEMENT PLAN.

Subsection 62-552.700(7), Florida Administrative Code encourages Project Sponsors to implement an Asset Management Plan to promote long term sustainability of the Water System. To be eligible for a 0.10% Financing Rate reduction, an Asset Management Plan must be adopted by ordinance or resolution and written procedures must be in place to implement the plan.

The plan must include each of the following elements: i) identification of all assets within the Project Sponsor's system; ii) an evaluation of the current age, condition, and anticipated useful life of each asset; iii) the current value of the assets; iv) the cost to operate and maintain all assets; v) a capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life; vi) an analysis of funding needs; vii) an analysis of population growth and drinking water use projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures; viii) the establishment of an adequate funding rate structure; ix) a threshold rate set to ensure the proper operation of the utility (if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility); and x) a plan to preserve the assets, renewal, replacement, and repair of the assets as necessary and a risk-benefit analysis to determine the optimum renewal or replacement time.

In order to retain the rate reduction included in this Loan, the implementation of the plan must be verified at least three months prior to the date of the first loan repayment scheduled in Article X.

The maximum Principal Forgiveness percentage for the Asset Management Plan is limited to 50% of invoiced costs.

#### 8.12. PUBLIC RECORDS ACCESS.

(1) The Project Sponsor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The Project Sponsor shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the Project Sponsor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Project Sponsor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

**(3) IF THE PROJECT SPONSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROJECT SPONSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-2118, by email at [public.services@dep.state.fl.us](mailto:public.services@dep.state.fl.us), or at the mailing address below:**

**Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Blvd, MS 49  
Tallahassee, FL 32399**

#### 8.13. SCRUTINIZED COMPANIES.

(1) The Project Sponsor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the Project Sponsor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The Project Sponsor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

#### 8.14. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the Project Sponsor under this Agreement in the following events, as determined by the Department:

- (1) The Project Sponsor abandons or discontinues the Project before its completion,
- (2) The commencement, prosecution, or timely completion of the Project by the Project Sponsor is rendered improbable or the Department has reasonable grounds to be insecure in Project Sponsor's ability to perform, or
- (3) The implementation of the Project is determined to be illegal, or one or more officials of the Project Sponsor in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the Project Sponsor of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has re-instated the Agreement.

Project Sponsor shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from Project Sponsor prior to re-instating the Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by Project Sponsor, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this 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.

(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) Certification that the Project Sponsor and contractors are in compliance with labor standards, including prevailing wage rates established for its locality by the DOL under the Davis-Bacon Act for Project construction.

(8) Certification that all procurement is in compliance with Section 8.10 which states that all iron and steel products used in the Project must be produced in the United States unless (a) a waiver is provided to the Project Sponsor by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements.

#### 9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

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

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

#### 9.03. INSURANCE REQUIRED.

The Project Sponsor shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Utility System (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 utility systems 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 Project Sponsor shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

## ARTICLE X - DETAILS OF FINANCING

### 10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is \$2,523,500. Of that, the estimated amount of Principal Forgiveness is \$2,064,825. The estimated principal amount of the Loan to be repaid is \$458,675, which consists of \$458,675 to be disbursed to the Project Sponsor and \$0 of Capitalized Interest.

Capitalized Interest is not disbursed to the Project Sponsor, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing Rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements.

### 10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$50,470 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$2,523,500. The Loan Service Fee is estimated at the time of execution of the loan agreement and shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and assessed in the final loan amendment. The Project Sponsor shall pay the Loan Service Fee from the first available repayment(s) following the Final Amendment.

### 10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 0 percent per annum. However, if this Agreement is not executed by the Project Sponsor and returned to the Department before January 1, 2022, the Financing Rate may be adjusted.

### 10.04. LOAN TERM.

The Loan term shall be 20 years.

### 10.05. REPAYMENT SCHEDULE.

Repayments shall be made semiannually (twice per year). The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan less the Principal Forgiveness plus the estimated Loan Service Fee and the principle of level debt service. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs, the actual Loan Service Fee and the Loan Service Fee capitalized interest, if any, and actual dates and amounts of disbursements, taking into consideration any previous payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records. The Department will

deduct the Loan Service Fee and any associated interest from the first available repayments following the Final Amendment.

Each Semiannual Loan Payment shall be in the amount of \$12,729 until the payment amount is adjusted by amendment. The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the Loan, including Capitalized Interest. Interest also shall be computed on the unpaid balance of the Loan Service Fee. Interest shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on October 15, 2023 and semiannually thereafter on April 15 and October 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount to be repaid of \$509,145, which consists of the Loan principal plus the Loan Service Fee with its capitalized interest.

#### 10.06. PROJECT COSTS.

The Project Sponsor 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 mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor 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 an audit.

The Project Sponsor agrees to the following estimates of Project costs:

CATEGORY	PROJECT COSTS (\$)
Construction and Demolition	1,995,000
Contingencies	199,500
Technical Services After Bid Opening	329,000
SUBTOTAL (Disbursable Amount)	2,523,500
Less Principal Forgiveness	(2,064,825)
SUBTOTAL (Loan Amount)	458,675
Capitalized Interest	0
TOTAL (Loan Principal Amount)	458,675

Technical services costs of up to 5% of the construction costs are eligible for Principal Forgiveness. Costs that exceed 5% of the construction costs are only eligible for Loan funds.

10.07. SCHEDULE.

The Project Sponsor agrees by execution hereof:

(1) This Agreement shall be effective on August 11, 2021. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.

(2) Completion of Project construction is scheduled for April 15, 2023.

(3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than April 15, 2023.

(4) The first Semiannual Loan Payment in the amount of \$12,729 shall be due October 15, 2023.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW450511 may be executed in two 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 Secretary or Designee and the Project Sponsor 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 Department.

for  
**AMERICAN BEACH WATER AND SEWER DISTRICT**

\_\_\_\_\_

Board Chair

Attest:

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

\_\_\_\_\_

District Clerk

\_\_\_\_\_

District Attorney

SEAL

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

\_\_\_\_\_

Secretary or Designee

\_\_\_\_\_

Date

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**AMERICAN BEACH WATER AND SEWER DISTRICT**

**CLEAN WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT  
WW450501**

Florida Department of Environmental Protection  
State Revolving Fund Program  
Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard, MS 3505  
Tallahassee, Florida 32399-3000

# CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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**CLEAN WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT  
WW450501**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and AMERICAN BEACH WATER AND SEWER DISTRICT, (District) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the District shall be referred to as “Parties” or individually as “Party”.

**RECITALS**

Pursuant to Section 403.1835, Florida Statutes and Chapter 62-503, Florida Administrative Code, the Department is authorized to make loans to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the Department; and

The Department is authorized to allow Principal Forgiveness on Loans funded by the Federal Clean Water Act; and

The District applied for the financing of the Project, and the Department has determined that such Project meets all requirements for a loan and Principal Forgiveness.

**AGREEMENT**

In consideration of the Department loaning money to the District, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

**ARTICLE I - DEFINITIONS**

**1.01. WORDS AND TERMS.**

Words and terms used herein shall have the meanings set forth below:

- (1) “Agreement” or “Loan Agreement” shall mean this construction loan agreement.
- (2) “Asset Management Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. The requirements for asset management plans are in Subsection 62-503.700(7), Florida Administrative Code.
- (3) “Authorized Representative” shall mean the official of the District authorized by ordinance or resolution to sign documents associated with the Loan.

(4) “Capitalized Interest” shall mean a finance charge that accrues at the Financing Rate on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.

(5) “Depository” shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than \$50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(6) “Final Amendment” shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount, the interest rate, Loan Service Fee, amortization schedule and Semiannual Loan Payment amount.

(7) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(8) “Financing Rate” shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan. The Financing Rate shall consist of an interest rate component and a Grant Allocation Assessment rate component.

(9) “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. 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.

(10) “Gross Revenues” shall mean all income or earnings received by the District from the ownership or operation of its Utility System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Utility System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Utility System.

(11) “Loan” shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(12) “Loan Application” shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.

(13) “Loan Debt Service Account” shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the District for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(14) “Loan Service Fee” shall mean an origination fee which shall be paid to the Department by the District.

(15) “Local Governmental Entity” means a county, municipality, or special district.

(16) “Monthly Loan Deposit” shall mean the monthly deposit to be made by the District to the Loan Debt Service Account.

(17) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the Utility System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(18) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Special Assessments, as defined by Resolution No. 2021-153 and amended by Resolution No. 2021-177.

(19) “Principal Forgiveness” shall mean the amount of money awarded pursuant to this Agreement and subsequent amendments that is not to be repaid.

(20) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the Collection and Transmission project in accordance with the plans and specifications accepted by the Department for the “American Beach Water and Sewer District – Well and Septic Tank Phase Out Program” contract.

The Project is in agreement with the planning documentation accepted by the Department effective October 14, 2020. A Florida Categorical Exclusion Notification was published on September 4, 2020 and no adverse comments were received.

(21) “Semiannual Loan Payment” shall mean the payment due from the District to the Department at six-month intervals.

(22) “Sewer System” shall mean all facilities owned by the District for collection, transmission, treatment and reuse of wastewater and its residuals.

(23) “Special Assessments” shall mean the assessments lawfully levied by the District against the properties specially benefited by the construction of the Project.

(24) “Utility System” shall mean all devices and facilities of the Water System and Sewer System owned by the District.

(25) “Water System” shall mean all facilities owned by the District for supplying and distributing water for residential, commercial, industrial, and governmental use.

#### 1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word “person” shall include corporations and associations, including public entities, as well as natural persons.

## ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

### 2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The District warrants, represents and covenants that:

(1) The District has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The District currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the District's knowledge, threatened, which seeks to restrain or enjoin the District from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. The District knows of no reason why any future required permits or approvals are not obtainable.

(5) The District shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the District shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the District's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All District representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the District to the Department was current and correct as of the date such information was delivered. The District shall comply with Chapter 62-503, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the District shall take such action to comply with this agreement.

(8) The District shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the District shall keep accounts of the Utility System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Utility System, and of the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

(9) In the event the anticipated Pledged Revenues are shown by the District's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due,

the District shall include in such budget other legally available non-ad valorem funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available non-ad valorem funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the District shall collect such funds for application as provided herein. The District shall notify the Department immediately in writing of any such budgeting of other legally available non-ad valorem funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available non-ad valorem funds; requiring the District to levy or appropriate ad valorem tax revenues; or preventing the District from pledging to the payment of any bonds or other obligations all or any part of such other legally available non-ad valorem funds.

(10) Pursuant to Section 216.347 of the Florida Statutes, the District shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(11) The District agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the District are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(12) The District covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The District covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(13) The District shall update the revenue generation system annually to assure that sufficient revenues are generated for debt service; operation and maintenance; replacement of equipment, accessories, and appurtenances necessary to maintain the system design capacity and performance during its design life; and to make the system financially self-sufficient.

## 2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the District's legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the District and shall constitute a valid and legal obligation of the District enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement identifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

## 2.03. AUDIT AND MONITORING REQUIREMENTS.

The District agrees to the following audit and monitoring requirements.

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

State Resources Awarded to the District Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:					
State Program Number	Funding Source	CSFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Wastewater Treatment and Stormwater Management TF	37.077	Wastewater Treatment Facility Construction	\$6,140,093	140131

(2) Audits.

(a) In the event that the District expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such District, the District must have a State single audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the District shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

(b) In connection with the audit requirements addressed in the preceding paragraph (a); the District shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

(c) If the District expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. The District shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the District in which the \$750,000 threshold has not been met. In the event that the District expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the District's resources obtained from other than State entities).

(d) The District is hereby advised that the Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a District should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance.

(3) Report Submission.

(a) Copies of financial reporting packages shall be submitted by or on behalf of the District directly to each of the following:

(i) The Department at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of the Inspector General, MS 40  
3900 Commonwealth Boulevard,  
Tallahassee, Florida 32399-3123

or

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

(ii) The Auditor General's Office at the following address:

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

(iii) Copies of reports or management letters shall be submitted by or on behalf of the District directly to the Department at either of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of the Inspector General  
3900 Commonwealth Boulevard, MS 40  
Tallahassee, Florida 32399-3123

or

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

(b) 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 Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(c) Districts, when submitting financial reporting packages to the Department for audits done in accordance with 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 received by the District from their auditors in correspondence accompanying the reporting package.

(4) Record Retention.

The District shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date of the Final Amendment, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The District shall ensure that 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 of the Final Amendment, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with Section 215.97, F.S., as revised monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures. By entering into this Agreement, the District 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 District is appropriate, the District agrees to comply with any additional instructions provided by the Department to the District regarding such audit. The District understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The District will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

### ARTICLE III - LOAN REPAYMENT ACCOUNT

#### 3.01. LOAN DEBT SERVICE ACCOUNT.

The District shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.07 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the District shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the District fails to make a required Monthly Loan Deposit, the District's chief financial officer shall notify the Department of such failure. In addition, the District agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the District, nor shall it be construed to

give the Department the power to require the District to levy and collect any revenues other than Pledged Revenues.

### 3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

### 3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the District's obligations pursuant to Section 8.01.

### 3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.

## ARTICLE IV - PROJECT INFORMATION

### 4.01. PROJECT CHANGES.

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 District 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.

### 4.02. TITLE TO PROJECT SITE.

The District shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

### 4.03. PERMITS AND APPROVALS.

The District 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 District to oversee construction.

#### 4.05. PROHIBITION AGAINST ENCUMBRANCES.

The District is prohibited from selling, leasing, or disposing of any part of the Utility System which would materially reduce operational integrity or Gross Revenues so long as this Agreement, including any amendment thereto, is in effect unless the written consent of the Department is first secured. The District may be required to reimburse the Department for the Principal Forgiveness funded cost of any such part, taking into consideration any increase or decrease in value.

#### 4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the District covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the District's covenants to complete and place the Project in operation.

#### 4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan or Principal Forgiveness requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

#### 4.08. LOAN DISBURSEMENTS.

This Agreement allows for funds to be advanced to the District for allowable invoiced costs, under the provisions of 216.181, Florida Statutes. Disbursements shall be made directly to the District only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. In addition to the invoices for costs incurred, proof of payment will be required with the following disbursement request.

Disbursements shall be made directly to the District 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 District 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.

#### 4.09. ADVANCE PAYMENT.

The Department may provide an advance to the District, in accordance with Section 216.181(16)(b), Florida Statutes. Such advance will require written request from the District, the Advance Payment Justification Form and approval from the State's Chief Financial Officer. The District must temporarily invest the advanced funds, and return any interest income to the Department, within thirty (30) days of each calendar quarter. Interest earned must be returned to the Department within the timeframe identified above or invoices must be received within the same timeframe that shows the offset of the interest earned.

Unused funds, and interest accrued on any unused portion of advanced funds that have not been remitted to the Department, shall be returned to the Department within sixty (60) days of Agreement completion.

The parties hereto acknowledge that the State's Chief Financial Officer may identify additional requirements, which must be met in order for advance payment to be authorized. If the State's Chief Financial Officer imposes additional requirements, the District shall be notified, in writing, by the Department regarding the additional requirements. Prior to releasing any advanced funds, the District shall be required to provide a written acknowledgement to the Department of the District's acceptance of the terms imposed by the State's Chief Financial Officer for release of the funds.

If advance payment is authorized, the District shall be responsible for submitting the information requested in the Interest Earned Memorandum to the Department quarterly.

### ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM

#### 5.01. RATE COVERAGE.

The District shall establish, maintain, and collect Special Assessments which will be sufficient to pay the costs of collecting such assessments and to provide, in each Fiscal Year,

Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year.

5.02. NO FREE SERVICE.

The District shall not permit connections to, or furnish any services afforded by, the Utility System without making a charge therefore based on the District's uniform schedule of rates, fees, and charges.

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The District shall not allow any person to provide any services which would compete with the Utility System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE UTILITY SYSTEM.

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

5.06. ADDITIONS AND MODIFICATIONS.

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

5.07. COLLECTION OF REVENUES.

The District shall use its best efforts to collect all rates, fees and other charges due to it. The District shall establish liens on premises served by the Utility System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The District shall, to the full extent permitted by law, cause to discontinue the services of the Utility System and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Utility System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Upon the occurrence of any of the following events (the Events of Default) all obligations on the part of Department to make any further disbursements hereunder shall, if Department elects, terminate. The Department may, at its option, exercise any of its remedies set forth in this Agreement, but Department may make any disbursements or parts of disbursements after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further disbursement:

(1) Failure to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsection 6.01(1), failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.14 below, and such failure shall continue for a period of 30 days after written notice thereof to the District by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the District contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading, or if District shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, or any other document given in connection with the Loan (provided, that with respect to non-monetary defaults, Department shall give written notice to District, which shall have 30 days to cure any such default), or is unable or unwilling to meet its obligations thereunder.

(4) An order or decree entered, with the acquiescence of the District, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the District, 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 District, for the purpose of effecting a composition between the District 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 Gross Revenues of the Utility System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the District under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the District, is not dismissed within 60 days after filing.

(7) Any charge is brought alleging violations of any criminal law in the implementation of the Project or the administration of the proceeds from this Loan against one or more officials of the District by a State or Federal law enforcement authority, which charges are not withdrawn or dismissed within 60 days following the filing thereof.

(8) Failure of the District to give immediate written notice of its knowledge of a potential default or an event of default, hereunder, to the Department and such failure shall continue for a period of 30 days.

## 6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of

Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, *inter alia*, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the District to fulfill this Agreement.

(2) By action or suit in equity, require the District to account for all moneys received from the Department or from the ownership of the Utility System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

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

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus a penalty from any unobligated funds due to the District under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. The Department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate.

### 6.03. DELAY AND WAIVER.

No course of dealing between Department and District, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies of Department, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No delay or omission by the Department to exercise any right or power accruing upon Events of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

## 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, of equal priority, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the District under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

### 7.02. ADDITIONAL DEBT OBLIGATIONS.

The District 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 may be granted if the District demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Utility 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 1.15 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the District and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

## ARTICLE VIII - GENERAL PROVISIONS

### 8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the District shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan, and as applicable, Loan Service Fee, interest, and Grant Allocation Assessment charges, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

### 8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department for inspection at any reasonable

time after the District has received a disbursement and until five years after the Final Amendment date.

#### 8.03. ACCESS TO PROJECT SITE.

The District shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The District shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

#### 8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the District. The District shall not assign rights created by this Agreement without the written consent of the Department.

#### 8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A Final Amendment establishing the final Project costs and the Loan Service Fee based on actual Project costs shall be completed after the Department's final inspection of the Project records.

#### 8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the District to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the District, suspend or terminate this Agreement.

(1) Failure of the District to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07 to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the District, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.07) and provide written notification of Final Unilateral Amendment to the District.

In the event that following the execution of this Agreement, the District decides not to proceed with this Loan, this Agreement can be cancelled by the District, without penalty, if no funds have been disbursed.

#### 8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

#### 8.08. USE AS MATCHING FUNDS.

The EPA has provided a class deviation from the provisions of 40 CFR 35.3125(b)(1) to allow these second tier funds to be used as local matching requirements for most EPA grant funded treatment works projects, including special Appropriations Act projects.

#### 8.09. DAVIS-BACON ACT REQUIREMENT.

(1) The District shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. Districts shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5) all interviews must be conducted in confidence. The District 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 District 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 District 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, if practicable, the subrecipient should 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 of the contract or subcontract. Districts 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 District shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(3) The District 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 (1) and (2) above.

(4) Districts must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm> and to the EPA Region 4 Water Division/Grants and Infrastructure Section by calling 404-562-9345. Additional information on Davis-Bacon guidance is located on the EPA website at: <https://www.epa.gov/grants/guidance-implementation-davis-bacon-epa-funded-construction-grants>.

#### 8.10. AMERICAN IRON AND STEEL REQUIREMENT.

The District's subcontracts must contain requirements that all of the iron and steel products used in the Project are in compliance with the American Iron and Steel requirement as described in Section 608 of the Federal Water Pollution Control Act unless the District has obtained a waiver pertaining to the Project or the Department has advised the District that the requirement is not applicable to the Project.

#### 8.11. ASSET MANAGEMENT PLAN.

The Florida Administrative Code (F.A.C.) requires recipients of construction grants for Small Community Wastewater Facilities to develop and implement an Asset Management Plan. Grants under chapter 62-505.300(1)(d), F.A.C.:

Are available at the construction phase of a Project only if the District adopts and implements, prior to the final disbursement of the associated State Revolving Fund construction loan, an Asset Management Plan that meets all requirements of subsection 62-503.700(7), F.A.C.

The Asset Management Plan shall include, at a minimum, the following elements: i) an inventory of all the assets within the District's system; ii) an evaluation of the current age, condition, and anticipated useful life of each asset; iii) the current value of the assets; iv) the cost to operate and maintain all assets; v) a capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life; vi) an analysis of funding needs; vii) an analysis of population growth and wastewater or stormwater flow projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures; industrial pretreatment fees and parameters; viii) the establishment of an adequate funding rate structure; ix) a threshold rate set to ensure the proper operation of the utility (if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility); and x) a plan to preserve the assets, as well as the renewal, replacement, and repair of the assets as necessary (such plan should incorporate a risk-benefit analysis to determine the optimum renewal or replacement time).

In order to retain the rate reduction included in this Loan, the implementation of the plan must be verified at least three months prior to the date of the first loan repayment scheduled in Article X.

#### 8.12. PUBLIC RECORDS ACCESS.

(1) The District shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The District shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the District to either provide to the Department upon request, or to allow inspection and copying of

all public records made or received by the District in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

**(3) IF THE DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DISTRICT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-2118, by email at [public.services@dep.state.fl.us](mailto:public.services@dep.state.fl.us), or at the mailing address below:**

**Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Blvd, MS 49  
Tallahassee, FL 32399**

#### 8.13. SCRUTINIZED COMPANIES.

(1) The District certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the District or its subcontractors are found to have submitted a false certification; or if the District, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the District certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the District, its affiliates, or its subcontractors are found to have submitted a false certification; or if the District, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The District agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

#### 8.14. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the District under this Agreement in the following events, as determined by the Department:

- (1) The District abandons or discontinues the Project before its completion,
- (2) The commencement, prosecution, or timely completion of the Project by the District is rendered improbable or the Department has reasonable grounds to be insecure in District's ability to perform, or
- (3) The implementation of the Project is determined to be illegal, or one or more officials of the District in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the District of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has reinstated the Agreement.

District shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from District prior to re-instating the Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by District, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this 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.

(5) Certification that the District and contractors are in compliance with labor standards, including prevailing wage rates established for its locality by the DOL under the Davis-Bacon Act for Project construction.

(6) Certification that all procurement is in compliance with Section 8.10 which states that all iron and steel products used in the Project must be produced in the United States unless (a) a waiver is provided to the District by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements.

#### 9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

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

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

#### 9.03. INSURANCE REQUIRED.

The District shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Utility System (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 utility systems 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 District shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

### ARTICLE X - DETAILS OF FINANCING

#### 10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is \$6,140,093. Of that, the estimated amount of Principal Forgiveness is \$4,000,000. The estimated principal amount of the Loan to be repaid is \$2,140,093, which consists of \$2,140,093 to be disbursed to the District and \$0 of Capitalized Interest.

Capitalized Interest is not disbursed to the District, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing Rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements.

#### 10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$122,802 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest amount; that is, two percent of \$6,140,093. The Loan Service Fee is estimated at the time of execution of the loan agreement and shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and assessed in the final loan amendment. The District shall pay the Loan Service Fee from the first available repayment(s) following the Final Amendment.

#### 10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 0 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 0 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum. However, if this Agreement is not executed by the District and returned to the Department before January 1, 2022 the Financing Rate may be adjusted. A new Financing Rate shall be established for any funds provided by amendment to this Agreement.

#### 10.04. LOAN TERM.

The Loan term shall be 20 years.

#### 10.05. REPAYMENT SCHEDULE.

Repayments shall be made semiannually (twice per year). The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan less the Principal Forgiveness plus the estimated Loan Service Fee and the principle of level debt service. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs, the actual Loan Service Fee and Loan Service Fee capitalized interest, if any, and actual dates and amounts of disbursements, taking into consideration any previous payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records. The Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the Final Amendment.

Each Semiannual Loan Payment shall be in the amount of \$56,572 until the payment amount is adjusted by amendment. The interest and Grant Allocation Assessment portions of each Semiannual Loan Payment shall be computed, using their respective rates, on the unpaid balance of the principal amount of the Loan, which includes Capitalized Interest. Interest (at the Financing Rate) also shall be computed on the estimated Loan Service Fee. The interest and

Grant Allocation Assessment on the unpaid balance shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on October 15, 2023 and semiannually thereafter on April 15 and October 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount owed of \$2,262,895, which consists of the Loan principal and the estimated Loan Service Fee.

#### 10.06. PROJECT COSTS.

The District 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 mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the District 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 the result of an audit.

The District agrees to the following estimates of Project costs:

<u>CATEGORY</u>	<u>PROJECT COSTS (\$)</u>
Construction and Demolition	4,808,000
Contingencies	480,800
Technical Services After Bid Opening	<u>851,293</u>
SUBTOTAL (Disbursable Amount)	6,140,093
Less Principal Forgiveness	<u>(4,000,000)</u>
SUBTOTAL (Loan Amount)	2,140,093
Capitalized Interest	<u>0</u>
TOTAL (Loan Principal Amount)	2,140,093

#### 10.07. SCHEDULE.

The District agrees by execution hereof:

(1) This Agreement shall be effective on August 11, 2021. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.

(2) Completion of Project construction is scheduled for April 15, 2023.

(3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than April 15, 2023.

(4) The first Semiannual Loan Payment in the amount of \$56,572 shall be due October 15, 2023.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW450501 may be executed in two 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 Secretary or Designee and the District 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 Department.

for  
**AMERICAN BEACH WATER AND SEWER DISTRICT**

\_\_\_\_\_  
Board Chair

Attest:

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

\_\_\_\_\_  
District Clerk

\_\_\_\_\_  
District Attorney

SEAL

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

\_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date