

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

AND

CITY OF ORLANDO, FLORIDA

CLEAN WATER STATE REVOLVING FUND

LOAN AGREEMENT

WW650041

Florida Water Pollution Control Financing Corporation
1801 Hermitage Boulevard
Tallahassee, Florida 32308

CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT

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CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT

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THIS AGREEMENT is executed by the FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION (the "Corporation") and the CITY OF ORLANDO, FLORIDA (the "Local Borrower"), existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Sections 403.1835 and 403.1837, Florida Statutes (the "State Act"), the Corporation is authorized to make loans to local government agencies to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the State of Florida Department of Environmental Protection (the "Department"); and

WHEREAS, in accordance with the provisions of the State Act and a Service Contract dated as of June 1, 2001 (as amended from time to time, the "Service Contract") between the Corporation and the Department, the Department has responsibility for the performance of various activities in connection with such loans; and

WHEREAS, the Local Borrower has made application for the financing of the Project (as hereinafter defined), and the Corporation and the Department have determined that such Project meets all requirements for a loan and have agreed to make a loan to the Local Borrower as set forth in this Agreement (the "Loan"); and

WHEREAS, in accordance with the provisions of a Master Trust Indenture dated as of June 1, 2001 (as supplemented and amended from time to time, the "Indenture") between the Corporation and U.S. Bank Trust National Association, as trustee (together with any successor trustee, the "Trustee"), the Corporation is authorized to issue bonds (the "Bonds") from time to time to fund loans pursuant to the State Act and to refund bonds issued by the Corporation; and

WHEREAS, the Loan and all payments of principal and interest thereon, including prepayments, and all proceeds thereof, but excluding the Loan Service Fee (as such term is hereinafter defined), have been pledged and assigned to the Trustee under the Indenture as security for the payment of principal of, premium, if any, and interest on the Bonds; and

WHEREAS, pursuant to the provisions of the State Act, the Service Contract and the Indenture, and as provided herein, the Corporation and the Department will cooperate to assure continuing compliance with the various requirements and separate duties and responsibilities arising from the issuance of the Bonds and the loans made by the Corporation.

NOW, THEREFORE, in consideration of the Corporation loaning money to the Local Borrower, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

ARTICLE I – DEFINITIONS

1.01. WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below:

- (1) “Agreement” or “Loan Agreement” shall mean this loan agreement.
- (2) “Authorized Representative” shall mean the official or officials of the Local Borrower authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) “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.
- (4) “Code” means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable.
- (5) “Defeasance Obligations” means:
 - (a) Direct obligations of, or obligations the prompt payment of principal and interest on which are fully guaranteed by, the United States of America which are not callable prior to maturity (except at the option of the holder thereof);
 - (b) Bonds, debentures, notes or other evidences of indebtedness issued or fully insured or guaranteed by any agency or instrumentality of the United States of America which are backed by the full faith and credit of the United States of America and which are not callable prior to maturity (except at the option of the holder thereof);
 - (c) Resolution Funding Corp. (REFCORP) obligations which are not callable prior to maturity (except at the option of the holder thereof); and
 - (d) Obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable prior to maturity or as to which irrevocable determination to call such obligations prior to maturity shall have been made by the issuer thereof, and for the payment of the principal of, premium, if any, and interest on which provision shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for owners of such obligations of securities described in clauses (a), (b) or (c), the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or to whom the trustee or escrow agent may be obligated.

(6) “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 and insured by the Federal Deposit Insurance Corporation.

(7) “Fiscal Year” shall mean the period commencing on October 1 of each year and ending on September 30 of the succeeding year.

(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. After paying or providing for the payment of debt service on the Bonds, 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 Local Borrower from the ownership or operation of its Sewer 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 Sewer System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Sewer System.

(11) “Impact Fees” shall mean the fees and charges levied upon and collected from new users of the Sewer System as a contribution toward their equitable share of the cost of capital improvements required to serve new users of the Sewer System, together with the income from investment of such amounts to the extent such fees, charges, and income are legally available to pay debt service on this Loan.

(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 Local Borrower 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 by the Local Borrower.

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

(16) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the Sewer 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 Gross Revenues, together with Impact Fees, derived yearly from the operation of the Sewer System after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of the Senior Revenue Obligations and any senior obligations issued pursuant to Section 7.02 of this Agreement.

(18) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the reclaimed water transmission facilities project in accordance with the plans and specifications accepted by the Department for the “Conserv I Flow Diversion Force Main – Phase II” contract.

The Project is in agreement with the planning documentation accepted by the Department effective August 2, 2004. Approval of this Project is provided by the Florida Categorical Exclusion Notification dated June 4, 2004 and no adverse comments were received. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code.

(19) “Semiannual Loan Payment” shall mean the payment due from the Local Borrower at six-month intervals.

(20) “Senior Revenue Obligations” shall mean the following debt obligations:

(a) City of Orlando, Florida, Wastewater System Refunding and Improvement Revenue Bonds, Series 2013, issued in the amount of \$36,170,000, pursuant to Ordinance No. 2012-53; and

(b) Additional bonds issued on a parity with the obligations identified above pursuant to Section 20(R) of Ordinance No. 2012-53; and

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

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

(22) “State” means the State of Florida.

(23) “Tax-Exempt Bonds” means Bonds the interest on which is intended on their date of issuance to be excludable from gross income of the holders thereof for federal income tax purposes.

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 bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. GENERAL WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Borrower warrants, represents and covenants that:

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

(2) The Local Borrower 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 Local Borrower's knowledge, threatened, which seeks to restrain or enjoin the Local Borrower 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 Local Borrower knows of no reason why any future required permits or approvals are not obtainable.

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

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

(7) All Local Borrower representations to the Corporation and the Department, pursuant to the Loan Application and this Agreement, were and are true and accurate as of the date the Loan Application and this Agreement were each executed by the Local Borrower. The financial information delivered by the Local Borrower to the Department was current and correct as of the date such information was delivered. The Local Borrower 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 this Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Local Borrower shall take such action as is necessary for compliance.

(8) The Local Borrower shall maintain records using generally accepted governmental accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Local Borrower shall keep accounts of the Sewer System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Sewer 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 Local Borrower's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Local Borrower 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 Local Borrower shall collect such funds for application as provided herein. The Local Borrower 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 Local Borrower to levy or appropriate ad valorem tax revenues; or preventing the Local Borrower 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) Each Fiscal Year, beginning three months before the first Semiannual Loan Payment and ending with the Fiscal Year during which the final Loan repayment is made, the Local Borrower's Authorized Representative or its chief financial officer shall submit, pursuant to the schedule established in Section 10.07, a certification that: (a) Pledged Revenues collections satisfy, on a pro rata basis, the rate coverage requirement; (b) the Loan Debt Service Account contains the funds required; and (c) insurance, including that issued through the National Flood Insurance Program authorized under 42 U.S.C. secs. 4001-4128 when applicable, in effect for the facilities generating the Pledged Revenues, adequately covers the customary risks to the extent that such insurance is available.

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

(12) The Local Borrower 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 Local Borrower 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.

(13) The Local Borrower 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 Local Borrower covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(14) The Local Borrower shall take such actions, shall furnish and certify to such information and execute and deliver and cause to be executed and delivered such documents, certificates and opinions as the Corporation and/or the Department may reasonably require in connection with the Bonds, including, without limitation, any necessary continuing disclosure undertaking meeting the requirements of Securities and Exchange Commission Rule 15c2-12.

2.02. TAX WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Borrower acknowledges that the Corporation may issue Tax-Exempt Bonds with which to fund the Loan to the Local Borrower and that the maintenance of the tax-exempt status of any such Tax-Exempt Bonds will depend, in part, on the Local Borrower's compliance with the provisions of this Agreement. Accordingly, the Local Borrower warrants, represents and covenants that:

(1) Notwithstanding any other provisions of this Agreement, including specifically Section 2.02(8), if the Local Borrower shall be notified by the Corporation or the Department as of any date that any payment is required to be made to the United States Treasury in respect of Tax-Exempt Bonds the proceeds of which were used to fund the Loan (hereafter, the "Applicable Tax-Exempt Bonds"), and such payment is due to the failure of the Local Borrower to comply with this Agreement, the Local Borrower shall pay to the Trustee (for deposit to the applicable Subaccount of the Rebate Account established by the Indenture) the amount specified in the notice by the Corporation or the Department.

(2) The Local Borrower is a "governmental person" (as defined in Treasury Regulations §1.141-1(b)) (a "Governmental Unit") and it owns and operates the Project.

(3) The Local Borrower will not take any action or omit to take any action, which action or omission will adversely affect the exclusion from gross income of the interest on the Applicable Tax-Exempt Bonds for federal income tax purposes or cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code, and in the event of such action or omission, promptly upon having such brought to its attention, it will take such reasonable actions based upon an opinion of any attorney or firm of attorneys of recognized standing and experience in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and which attorney or firm of attorneys is acceptable to the Corporation ("Bond Counsel"), and in all cases at the sole expense of the Local Borrower, as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly, use or permit the use of any proceeds of the Applicable Tax-Exempt Bonds or any other funds of the Local Borrower, or take or omit to take any action, that would cause the Applicable Tax-Exempt Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Code or to fail to meet any other applicable requirement of Sections 141, 148, 149 and 150 of the Code or cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code. To that end, the Local Borrower will comply with all requirements of Sections 141, 148, 149 and 150 of the Code to the extent such provisions apply to the Applicable Tax-Exempt Bonds. In the event that at any time the Corporation or the Department is of the opinion that it is necessary to restrict or limit the yield on the investment of any moneys held by the Local Borrower, the Corporation or the Department shall so instruct the Local Borrower in writing and the Local Borrower shall so restrict the yield.

(4) The Local Borrower (or any "related party", as defined in Treasury Regulations §1.150-1(b)) is prohibited from purchasing and shall not purchase any Applicable Tax-Exempt

Bonds other than purchases in the open market for the purpose of tendering them to the Trustee for purchase and retirement.

(5) The Local Borrower will take no action, or permit or suffer any action or event, which will cause any of the Applicable Tax-Exempt Bonds to be or become a “private activity bond” within the meaning of the Code. To that end, the Local Borrower will not permit more than 5% of the Project or portion thereof financed with Tax-Exempt Bonds to be used for a Private Business Use. The term “Private Business Use” means use directly or indirectly in a trade or business or any other activity carried on by any Private Person other than use as a member of, and on the same basis as, the general public. The term “Private Person” means any person other than a Governmental Unit. For this purpose, the United States or any agency or instrumentality thereof is not a Governmental Unit and is therefore a Private Person. For purposes of this paragraph (5), property is considered “used” by a Private Person if:

- (i) it is owned by, or leased, to such Private Person;
- (ii) it is operated, managed or otherwise physically employed, utilized or consumed by such Private Person, other than operation or management pursuant to an agreement that meets the conditions described in paragraph (6) below;
- (iii) capacity in or output service from such property is reserved or committed to such Private Person under a take-or-pay, output, incentive payment or similar contract or arrangement;
- (iv) such property is used to provide service to (or such service is committed to or reserved for) such Private Person on a basis or terms that are different from the basis or terms on which such service is provided (or committed or reserved) to members of the public generally (except possibly for the amount of use and any corresponding rate adjustment);
- (v) such Private Person is a developer and a significant amount of the Project financed with proceeds of Tax-Exempt Bonds serves only a limited area substantially all of which is owned by such Private Person, or a limited group of developers, unless such improvement carries out an essential governmental function, such developer reasonably expects to proceed with all reasonable speed to develop the improvement and property benefited by that improvement, and the improvement is in fact transferred to a Governmental Unit promptly after the property benefited by the improvement is developed; or
- (vi) substantial burdens and benefits of ownership of the Project financed with proceeds of Tax-Exempt Bonds are otherwise effectively transferred to such Private Person.

(6) Use of Bond-Financed Property.

- (i) For purposes of this Agreement, the use by a Private Person of the Project financed with the proceeds of Tax-Exempt Bonds (the “Bond Financed Property”) pursuant to a Qualified Use Contract (as hereafter defined) shall not be treated as a Private Business

Use by such Private Person of such Bond-Financed Property or of funds used to finance or refinance such Bond-Financed Property.

(ii) An arrangement under which services are to be provided by a Private Person involving the use of all or any portion of, or any function of, the Bond-Financed Property (for example, management services for an entire facility or a specific department of a facility (“Use Contract”)) is a “Qualified Use Contract” if all of the following conditions are satisfied:

(A) the compensation for services provided pursuant to the Use Contract is reasonable;

(B) none of the compensation for services provided pursuant to the Use Contract is based on net profits from operation of the Bond-Financed Property or any portion thereof;

(C) the compensation provided in the Use Contract satisfies one of the following subparagraphs:

(I) At least 95% of the compensation for each annual period during the term of the Use Contract is based on a periodic fixed fee and the term of the Use Contract, including all renewal options, does not exceed the lesser of 80% of the reasonably expected useful life of the Bond-Financed Property and 15 years. For purposes of this subparagraph (ii), a “periodic fixed fee” means a stated dollar amount for services rendered for a specified period of time that does not increase except for automatic increases pursuant to a specified, objective external standard that is not linked to the output or efficiency of the Bond-Financed Property (e.g., the Consumer Price Index) and a “renewal option” means a provision under which either party to the Use Contract has a legally enforceable right to renew the Use Contract; or

(II) At least 80% of the compensation for each annual period during the term of the Use Contract is based on a periodic fixed fee and the term of the Use Contract, including all renewal options, does not exceed the lesser of 80% of the reasonably expected useful life of the Bond-Financed Property and 10 years; or

(III) At least 50% of the compensation for each annual period during the term of the Use Contract is based on a periodic fixed fee, the term of the Use Contract, including all renewal options, does not exceed 5 years, and the Use Contract is terminable by the Local Borrower on reasonable notice, without penalty or cause, at the end of the third year of the Use Contract term; or

(IV) All of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee, the term of the Use Contract, including all renewal options, does not exceed 5 years, and the Use Contract is terminable by the Local Borrower on reasonable

notice, without penalty or cause, at the end of the third year of the Use Contract term. A “capitation fee” means a fixed periodic amount for each person for whom the Service Provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of service actually provided to covered persons varies substantially; or

(V) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee, the term of the Use Contract, including all renewal options, does not exceed 3 years and the Use Contract is terminable by the Local Borrower on reasonable notice, without penalty or cause, at the end of the second year of the Use Contract term. A “per-unit fee” means a fee based on a unit of service provided (e.g., a stated dollar amount for each specified procedure); or

(VI) All of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee, the term of the Use Contract, including all renewal options, does not exceed 2 years and the Use Contract is terminable by the Local Borrower on reasonable notice, without penalty or cause, at the end of the first year of the Use Contract term. This subparagraph (VI) applies only to (a) Use Contracts under which the Private Person primarily provides services to third parties, or (b) Use Contracts involving the Bond-Financed Property during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues (or gross expenses in the case of a Use Contract based on a percentage of gross expenses) (e.g., a Use Contract for general management services for the first year of operations), in which case, the compensation for services may be based on a percentage of gross revenues, adjusted gross revenues (i.e., gross revenues less allowances for bad debts and contractual and similar allowances) or expenses of the Bond-Financed Facilities, but not more than one.

For purposes of this paragraph (6)(ii)(C), a Use Contract is considered to contain termination penalties if the termination limits the Local Borrower’s right to compete with the Private Person, requires the Local Borrower to purchase equipment, goods, or services from the Private Person, or requires the Local Borrower to pay liquidated damages for cancellation of the Use Contract. Another contract between the Private Person and the Local Borrower (for example, a loan or guarantee by the Private Person) is considered to create a contract termination penalty if that contract contains terms that are not customary or arm’s-length that could operate to prevent the Local Borrower from terminating the Use Contract. A requirement that the Local Borrower reimburse the Private Person for ordinary and necessary expenses, or restrictions on the hiring by the Local Borrower of key personnel of the Private Person, are not treated as contract termination penalties;

(D) The Private Person has no role or relationship with the Local Borrower, directly or indirectly, that, in effect, substantially limits the Local

Borrower's ability to exercise its rights under the Use Contract, including cancellation rights. This requirement is satisfied if:

(I) The Private Person and its directors, officers, shareholders and employees possess in the aggregate, directly or indirectly, no more than 20 percent of the voting power of the governing body of the Local Borrower;

(II) No individual who is a member of the governing body of the Private Person and the Local Borrower is the chief executive officer of the Local Borrower or the Private Person or the chairperson of the governing body of the Local Borrower or the Private Person; and

(III) The Local Borrower and the Private Person are not "related parties" (within the meaning of Treasury Regulations §1.150-1(b)).

(iii) The Local Borrower may treat a Use Contract that does not comply with one or more of the criteria of subparagraph (6)(ii) as not resulting in Private Business Use of Bond-Financed Property if it delivers to the Corporation and the Department, at its expense, an opinion of Bond Counsel to the effect that to do so would not adversely affect the exclusion from gross income of interest on the Applicable Tax-Exempt Bonds or cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code.

(7) Notwithstanding any provision of this Section 2.02, if the Local Borrower provides, at the Local Borrower's expense, to the Corporation and the Department an opinion of Bond Counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusions from gross income of interest on the Applicable Tax-Exempt Bonds pursuant to Section 103(a) of the Code, the Local Borrower, the Corporation and the Department may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

(8) All tax warranties, representations, covenants and obligations of the Local Borrower contained in this Section 2.02 shall remain in effect and be binding upon the Local Borrower until all of the Applicable Tax-Exempt Bonds have been paid, notwithstanding any earlier termination of this Agreement or any provision for payment of principal of and premium, if any, and interest on the outstanding Applicable Tax-Exempt Bonds and release and discharge of the Indenture.

(9) Amounts deposited from time to time in the Loan Debt Service Account will be used to pay principal and interest within 13 months after the amounts are so deposited.

(10) The Local Borrower has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay principal of, interest and any redemption premium on the Loan other than the Loan Debt Service Account. Except as set forth in the next sentence and except for money referred to in paragraph (9) above, no other money or investment property (including, without limitation, fixed income, equity and other investments) is or will be pledged as collateral or used

for the payment of such principal and interest (or for the reimbursement of any others who may provide money to pay that principal and interest), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the Corporation or holders of the Applicable Tax-Exempt Bonds reasonable assurance of the availability of such money or investment property to pay debt service on the Loan or the Applicable Tax-Exempt Bonds.

(11) Except as stated otherwise in this Agreement, no portion of the Loan will be used:

(i) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Corporation, the Local Borrower or any other Governmental Unit,

(ii) to replace any proceeds of another issue of tax-exempt bonds that were not expended on the project for which such other issue was issued,

(iii) to replace any money that was or will be used directly or indirectly to acquire investments,

(iv) to make a loan to any other person or Governmental Unit,

(v) to pay any working capital expenditure other than expenditures identified in Treasury Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., issuance costs of the Applicable Tax-Exempt Bonds, qualified administrative costs, reasonable charges for a qualified guarantee or for a qualified hedge, interest on the Loan for a period commencing on the issuance date of the Applicable Tax-Exempt Bonds and ending on the date that is the later of three years from that issuance date or one year after the date on which the Project was or will be placed in service, payments of amounts, if any, pursuant to paragraph (i), and costs, other than those already described, that do not exceed 5% of the sale proceeds of the Applicable Tax-Exempt Bonds and that are directly related to capital expenditures financed or deemed financed by the Applicable Tax-Exempt Bonds), or

(vi) to reimburse any expenditures made prior to the issuance date of the Applicable Tax-Exempt Bonds except those that qualify as a reimbursement of prior capital expenditures, based upon an opinion of Bond Counsel, at the expense of the Local Borrower, delivered to the Department and the Corporation.

(12) The Local Borrower does not intend to sell or otherwise dispose of the Project or any portion thereof during the term of the Applicable Tax-Exempt Bonds except for dispositions of property in the normal course at the end of such property's useful life to the Local Borrower.

(13) None of the Semiannual Loan Payments shall be federally guaranteed within the meaning of Section 149(b) of the Code.

2.03. LEGAL AUTHORIZATION

Upon signing this Agreement, the Local Borrower'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 Local Borrower and shall constitute a valid and legal obligation of the Local Borrower enforceable in accordance with its terms upon execution by both parties; and

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

2.04. AUDIT AND MONITORING REQUIREMENTS.

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

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

| Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following: | | | | | |
|---|----------------|-------------|---|----------------|------------------------------|
| Federal Program Number | Federal Agency | CFDA Number | CFDA Title | Funding Amount | State Appropriation Category |
| CS120001-090 | EPA | 66.458 | Capitalization Grants for State Revolving Funds | \$15,230,360 | 140131 |

(2) Audits.

(a) In the event that the Local Borrower expends \$750,000 or more in Federal awards in its fiscal year, the Local Borrower must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.04(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Borrower shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Local Borrower conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Borrower shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Borrower expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. The Local Borrower shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Borrower in which the \$750,000 threshold has not been met. In the event that the Local Borrower 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 OMB Circular A-133, as revised, the cost of the audit must be paid from

non-Federal resources (i.e., the cost of such an audit must be paid from Local Borrower resources obtained from other than Federal entities).

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

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.04(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Borrower directly to each of the following:

(i) The Department at the following address:

Valerie Peacock, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, **must be** submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/fac/>

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Borrower shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.04(3)(a) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Local Borrowers, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Local Borrower in correspondence accompanying the reporting package.

(4) Record Retention.

The Local Borrower shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Local Borrower shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

The Local Borrower is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Local Borrower shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section _____.210 for determining whether the relationship represents that of a subrecipient or vendor.

The Local Borrower should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Borrower agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Borrower is appropriate, the Local Borrower agrees to comply with any additional instructions provided by the Department to the Local Borrower regarding such audit. The Local Borrower further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Borrower 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 Local Borrower 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 Local Borrower fails to make a required Monthly Loan Deposit, the Local Borrower's chief financial officer shall notify the Department of such failure. In addition, the Local Borrower agrees to budget, by amendment if necessary, 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 the Corporation a superior claim on any revenues over prior claims of general creditors of the Local Borrower, nor shall it be construed to give the Corporation or the Department the power to require the Local Borrower 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. 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 Local Borrower's obligations pursuant to Section 8.01.

3.04. ASSETS HELD IN TRUST.

The assets in the Loan Debt Service Account 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 Corporation.

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 Local Borrower 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 Local Borrower 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 Local Borrower 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, shall be employed by, or under contract with, the Local Borrower to oversee construction.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Local Borrower is prohibited from selling, leasing, or disposing of any part of the Sewer 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.

4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Local Borrower 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 Corporation or the Department to approve additional financing shall not constitute a waiver of the Local Borrower'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 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.

Disbursements shall be made only by the Trustee for expenses incurred by the Local Borrower upon receipt of a requisition in the form provided under the Indenture executed by the Department. Loan disbursements shall be made by electronic means. Disbursements shall be made directly to the Local Borrower for reimbursement of the incurred construction costs and related

services and technical services during construction. A requisition for disbursements shall be made upon receipt by the Department of the following:

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

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

ARTICLE V - RATES AND USE OF THE SEWER SYSTEM

5.01. RATE COVERAGE.

The Local Borrower shall maintain rates and charges for the services furnished by the Sewer System which, together with Impact Fees, will be sufficient 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. In addition, the Local Borrower shall satisfy the coverage requirements of all senior and parity debt obligations.

5.02. NO FREE SERVICE.

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

5.03. MANDATORY CONNECTIONS.

The Local Borrower shall adopt, as necessary, and enforce requirements, consistent with applicable laws, for the owner, tenant or occupant of each building located on a lot or parcel of land which is served, or may reasonably be served, by the Sewer System to connect such building to the Sewer System.

5.04. NO COMPETING SERVICE.

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

5.05. MAINTENANCE OF THE SEWER SYSTEM.

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

5.06. ADDITIONS AND MODIFICATIONS.

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

5.07. COLLECTION OF REVENUES.

The Local Borrower shall use its best efforts to collect all rates, fees and other charges due to it. The Local Borrower shall establish liens on premises served by the Sewer System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Local Borrower shall, to the full extent permitted by law, cause to discontinue the services of the Sewer 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 Water and Sewer System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

(1) Failure to make any Monthly Loan Deposit when it is due and such failure shall continue for a period of 30 days or failure to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 5 days.

(2) Except as provided in Subsections 6.01(1) and 6.01(7), failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Local Borrower by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Local Borrower contained in this Agreement or in any document, certificate or information furnished in compliance with, or in reference to, this Agreement, which is false or misleading.

(4) An order or decree entered, with the acquiescence of the Local Borrower, appointing a receiver of any part of the Sewer System or Gross Revenues thereof; or if such order

or decree, having been entered without the consent or acquiescence of the Local Borrower, 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 Local Borrower, for the purpose of effecting a composition between the Local Borrower 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 Sewer System.

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

(7) Failure of the Local Borrower to give immediate written notice of default to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

Upon any event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce the rights of the Corporation and the Department by 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 Sewer System, and to require the Local Borrower to fulfill this Agreement.

(2) By action or suit in equity, require the Local Borrower to account for all moneys received pursuant to this Agreement or from the ownership of the Sewer 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 Corporation or the Department.

(4) By applying to a court of competent jurisdiction, cause the appointment of a receiver to manage the Sewer 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 provide for the payment to the Trustee of the delinquent amount plus a penalty from any unobligated funds due to the Local Borrower under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. A penalty may be imposed 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.

(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 for a default under Subsection 6.01(1).

6.03. DELAY AND WAIVER.

No delay or omission by the Corporation or the Department to exercise any right or power accruing upon event 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 event 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 CORPORATION.

From and after the effective date of this Agreement, the Corporation shall have a lien on the Pledged Revenues, which along with any other Corporation State Revolving Fund liens on the Pledged Revenues, on equal priority, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Borrower under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Corporation if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Borrower may issue additional debt obligations on a parity with, or senior to, the lien of the Corporation on the Pledged Revenues provided the Department's written consent is obtained. Such consent shall be granted if the Local Borrower demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Sewer 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 Local Borrower 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 Fiscal Year and all Fiscal 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 Corporation. If at any time the Local Borrower 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 Corporation shall be no longer in effect. Deposit of sufficient cash or Defeasance Obligations 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 Corporation or its assignees and shall be subject to approval by the Corporation. There shall be no penalty imposed by the Corporation 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 Corporation, the Department and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Local Borrower has received a disbursement and until five years after the final amendment date.

8.03. ACCESS TO PROJECT SITE.

The Local Borrower shall provide access to Project sites and administrative offices to authorized representatives of the Corporation and the Department at any reasonable time. The Local Borrower 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 Local Borrower hereby expressly acknowledges that the Loan and all payments of principal and interest thereon, and all proceeds thereof, but excluding the Loan Service Fee, have been pledged and assigned to the Trustee under the Indenture as security for the payment of principal of, premium, if any, and interest on the Bonds and the Trustee shall be entitled to act hereunder, and by the execution of this Agreement the Local Borrower in all respects consents to such assignment. The Corporation, the Department and the Trustee may further assign all or any parts of their rights under this Agreement without the prior consent of the Local Borrower after written notification to the Local Borrower. The Local Borrower shall not assign its rights and obligations under this Agreement without the prior 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 any applicable statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency. 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. ANNULMENT OF AGREEMENT.

The Corporation, in consultation with the Department, may unilaterally annul this Agreement if the Local Borrower has not drawn any of the Loan proceeds within twelve months after the effective date of this Agreement. If the Corporation unilaterally annuls this Agreement, the Corporation will provide written notification to the Local Borrower.

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. COMPLIANCE VERIFICATION.

(1) The Local Borrower 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. Local Borrowers 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 Local Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Local Borrower shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Local Borrower 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. Local Borrowers must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Local Borrower shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

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

8.09. AMERICAN IRON AND STEEL REQUIREMENT.

The Local Borrower'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 H. R. 3547, "Consolidated Appropriations Act, 2014" unless the Local Borrower has obtained a waiver pertaining to the Project or the Department has advised the Local Borrower that the requirement is not applicable to the Project.

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) Assurance that the Local Borrower and contractors are in compliance with Section 1606 with labor standards, including prevailing wage rates established for its locality by the U.S. Department of Labor under the Davis-Bacon Act for Project construction.
- (8) Certification that all procurement is in compliance with Section 8.09 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 Local Borrower by the Environmental Protection Agency (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 Local Borrower shall submit:

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

9.03. INSURANCE REQUIRED.

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

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Local Borrower 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 estimated principal amount of the Loan is \$15,397,460, which consists of \$15,230,360 to be disbursed to the Local Borrower and \$167,100 of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Borrower, but is amortized via periodic Loan repayments 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.

If the total amount disbursed within eighteen months after the effective date of this Agreement is less than half of the Loan proceeds amount authorized for disbursement, the Department may unilaterally reduce the amount authorized for disbursement. Such a reduction would not affect the total authorized Loan amount.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$304,607 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$15,230,360. The Loan Service Fee amount shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and assessed in the final amendment. The Local Borrower shall pay the Loan Service Fee from the first available repayments following the final amendment.

Capitalized Interest is computed on the assessed Loan Service Fee at the Financing Rate, or rates and included in the final amendment. It accrues and is compounded annually from the final amendment date until six months before the first Semiannual Loan Payment is due. A service fee assessed in a final amendment occurring later than six months before the first Semiannual Loan Payment date would not accrue Capitalized Interest charges.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 0.80 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 0.80 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum. However, if this Agreement is not executed by the Local Borrower and returned to the Department before April 1, 2015, 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 shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan plus the estimated Loan Service Fee and the principle of level debt service. The amount of Loan proceeds authorized for disbursement and associated Capitalized Interest will be treated as the Loan principal for computing the Semiannual Loan Payment. 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 and the Loan Service Fee, 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 Corporation will deduct the Loan Service Fee and all associated interest from the first available repayments following the final amendment.

Each Semiannual Loan Payment shall be in the amount of \$425,576 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 principal 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 paid to, and must be received by, the Trustee beginning on June 15, 2018 and semiannually thereafter on December 15 and June 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 \$15,702,067, which consists of the Loan principal and the estimated Loan Service Fee.

10.06. PROJECT COSTS.

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

PROJECT COSTS

| <u>CATEGORY</u> | <u>COST(\$)</u> |
|-------------------------------|-----------------|
| Construction and Demolition | 14,925,753 |
| Contingencies | 304,607 |
| Subtotal (Disbursable Amount) | 15,230,360 |
| Capitalized Interest | 167,100 |
| TOTAL (Loan Principal Amount) | 15,397,460 |

10.07. PROJECT SCHEDULE.

The Local Borrower agrees by execution hereof:

- (1) Completion of Project construction is scheduled for December 15, 2017.
- (2) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than December 15, 2017.
- (3) The initial annual certification required under Subsection 2.01(10) of this Agreement shall be due March 15, 2018. Thereafter the certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Payment is made.
- (4) The first Semiannual Loan Payment in the amount of \$425,576 shall be due June 15, 2018.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW650041 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be executed on its behalf by its Chief Executive Officer and the Local Borrower 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 Chief Executive Officer of the Corporation.

for

FLORIDA WATER POLLUTION CONTROL FINANCING CORPORATION

Chief Executive Officer

Date

Reviewed and approved by the Corporate Secretary

for

CITY OF ORLANDO

Mayor

Attest:

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

City Clerk

City Attorney

SEAL

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

Program Administrator
State Revolving Fund