



HISTORIC TOWN OF EATONVILLE, FLORIDA

COUNCIL WORKSHOP AGENDA

Tuesday, November 19, 2024, at 6:30 PM

Town Hall - 307 E Kennedy Blvd

Please note that the HTML versions of the agenda and agenda packet may not reflect changes or amendments made to the agenda.

I. CALL TO ORDER

II. CITIZEN PARTICIPATION (Three minutes strictly enforced)

III. COUNCIL DISCUSSION

1. Discussion of the Zora Festival 2025 Agreement Between Town of Eatonville and Association to Preserve the Eatonville Community, Inc. (P.E.C.) (**Administration**)
2. Discussion of the FDEP Draft Agreements for Water and Sewer Infrastructure Funding (**Public Works**)

IV. COMMENTS

3. Staff Comments

V. ADJOURNMENT

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****PUBLIC NOTICE****

This is a Public Meeting, and the public is invited to attend. This Agenda is subject to change. Please be advised that one (1) or more Members of any of the Town's Advisory Boards/Committees may attend this Meeting and may participate in discussions. Any person who desires to appeal any decision made at this meeting will need a verbatim record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based – per Section 286.0105 Florida Statutes. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Town of Eatonville at (407) 623-8910 "at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority" - per Section 286.26



HISTORIC TOWN OF EATONVILLE, FLORIDA

TOWN COUNCIL WORKSHOP

NOVEMBER 19, 2024, AT 6:30 PM

Cover Sheet

****NOTE**** Please do not change the formatting of this document (font style, size, paragraph spacing etc.)

ITEM TITLE: Discussion of the Zora Festival 2025 Agreement Between Town of Eatonville and Association to Preserve the Eatonville Community, Inc. (P.E.C.) (**Administration**)

TOWN COUNCIL ACTION:

PROCLAMATIONS, AWARDS, AND PRESENTATIONS		Department: ADMINISTRATION
INTRODUCTIONS		Exhibits: <ul style="list-style-type: none"> • 2025 Zora Festival Agreement • Event Layout • MOT Approval Information (Staff) - Forthcoming • Flash-Rite Invoice (Staff) – Forthcoming
CONSENT AGENDA		
COUNCIL DISCUSSION	YES	
ADMINISTRATIVE		

REQUEST: For the Town Council to discuss the 2025 Zora Festival Agreement.

SUMMARY: P.E.C. in partnership with the Historic Town of Eatonville entails ensuring that the Town is an internationally recognized cultural heritage tourism destination for the arts and culture from throughout the African Diaspora, with special emphasis on the multi-disciplines as represented in the life and work of Zora Neale Hurston. The Town Council of the Town of Eatonville wishes to support all efforts that seek to draw visitors to this community.

The Historic Town of Eatonville Town Council assigns to P.E.C. the exclusive right to present the Outdoor Festival of the Arts for the 36th Annual ZORA! Festival, January 31 – February 02, 2025. The terms and conditions are outlined in the 2025 Zora Festival Agreement.

The administration and public safety team (EPD and PW) met in November 2024 in consideration of approval of the agreement.

RECOMMENDATION: Staff recommend that the Town Council discuss the 2025 Zora Festival Agreement. (Pending all payments are received prior to the event starting)

FISCAL & EFFICIENCY DATA: The Town has a proposed cost for public safety to be submitted by P.E.C. per the agreement.

Agreement between
TOWN OF EATONVILLE
&
ASSOCIATION TO PRESERVE THE EATONVILLE COMMUNITY, INC.
(P.E.C.)

Governing the 36th ZORA!® - Outdoor Festival of Arts
January 31 - February 02, 2025

WHEREAS Zora Neale Hurston popularized the Historic Town of Eatonville as “the Oldest Incorporated African-American Municipality in the United States;” and

WHEREAS the Historic Town of Eatonville wishes to inspire its residents, businesses, and visitors by providing a festive atmosphere; and

WHEREAS the Historic Town of Eatonville’s Government seeks to brand itself as a community that celebrates black culture and identity and realizes that the ZORA!® - Outdoor Festival of the Arts (sometimes referred to herein as the Festival) is a major factor in accomplishing the overall goal of branding; and

WHEREAS the Historic Town of Eatonville has become a literary destination because of the writing of Zora Neale Hurston; and

WHEREAS P.E.C. is a private, non-profit, tax-exempt organization established in 1987 with a mission to promote Eatonville, Florida’s heritage, historical, and cultural resources as a means for the community’s revitalization and economic development via programming which promotes pride, heritage, educational excellence, and the cultural arts, and will preserve and protect the community for posterity; and

WHEREAS the three (3) goals of the ZORA!® - Outdoor Festival of the Arts are:

- To celebrate the life and work of 20th-century writer, folklorist, and anthropologist, Zora Neale Hurston.
- To celebrate the significance of her hometown, Eatonville, Florida known as the Nation’s Oldest Incorporated African American Municipality; and
- To celebrate the cultural contributions people of African ancestry have made to the United States and world culture.

WHEREAS P.E.C., in partnership with the Historic Town of Eatonville, wishes to ensure the Town is considered an internationally recognized cultural heritage tourism destination for arts and culture from throughout the African Diaspora, with special emphasis on the multi-disciplines represented in the life and work of Zora Neale Hurston; and

WHEREAS the Town Council of the Town of Eatonville wishes to support all efforts that

seek to draw visitors to this community.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- The Historic Town of Eatonville Town Council assigns to P.E.C. the exclusive right to present the Outdoor Festival of the Arts for the 36th Annual ZORA!® - Outdoor Festival of the Arts within the Historic Town of Eatonville's corporate Limits, and grants to P.E.C. an exclusive permit to conduct this event subject to the terms of this Agreement.
- In granting this exclusive right and permit, the Parties acknowledge that the Festival Grounds will be located on both Public and Private Property. Please see the attached "Outdoor Festival Location Guide" which is incorporated into and made a part of this Agreement as Exhibit "A."
- The Town will not issue permits to any other vendors during the ZORA!® - Outdoor Festival of the Arts season (**January 31 – February 01, 2024**) and will request that the Town's Police Department shut down and/or remove any party which seeks to establish vending which has not been authorized under P.E.C.'s permit.
- P.E.C. is permitted to use the vacant lot across the street from the Eatonville Community Redevelopment Agency (ECRA) as a part of the ZORA!® - Outdoor Festival of the Arts "Inventory."
- The Town will endorse P.E.C.'s coordination with the Eatonville Community Redevelopment Agency (ECRA) for the use of its external and internal space as P.E.C. facilitates Festival operations. For example, when the V.I.P. Guests and/or Elected Officials arrive on Saturday, P.E.C. can use the ECRA Conference Room as a "Green Room."
- P.E.C. is permitted to use the Town Hall Parking Lot on Saturday and Sunday for Public Service/Community Space Booths such as the Blood Bank, Orange County Fire & Rescue, *et al.*

IN EXCHANGE FOR THE EXCLUSIVE PRIVILEGES IDENTIFIED ABOVE, P.E.C, AGREES TO:

- **Full Compliance with Town Code:** P.E.C. shall fully comply with all requirements of the Town's Code of Ordinances, and specifically with Article II, Division 2, Sec. 12-48, and Sec. 12-50 – 52.
- **Free entry dates: Friday, January 31 – Sunday, February 02, 2025:** To allow free entry to ZORA!® - Outdoor Festival of the Arts, to all Eatonville residents who provide authorized proof of residency (Driver's License or Official Florida Identification) within the Town of Eatonville to the company managing gate admissions. Eatonville residents (adults & children) who wish to sit in the reserved/V.I.P section of the Main Stage on **Saturday, February 01 and Sunday, February 02, 2025**, must pay the established ticket price.

- Pay **\$22,000.00** to the Town for public safety services (police and fire/rescue) **on or before January 27, 2025, by certified cashier's check.** There will be a reconciliation of public safety hours worked after the event and if a credit is due to P.E.C. (based on the applicable billable rates for public safety employees as quoted in Composite Exhibit "B") then the Town will issue a refund within 30 days after the reconciliation. If the reconciliation indicates a balance is due, then P.E.C. will be notified and will have 30 days thereafter to pay any additional sums owed to the Town. Failure to adhere to the January 27, 2025, deadline for advance payment for public safety services will result in cancelation of this agreement and the Festival itself. See Composite Exhibit "B," the terms and rates of which are incorporated into and made part of this Agreement.

FURTHER CONDITIONS GOVERNING THIS CONTRACT:

- P.E.C. must notify residents on the west side of I-4, via a form of notice pre-approved by Town administration **on or before January 15, 2025,** regarding:
 1. Festival site location
 2. Hours of operation
 3. Potential noise
 4. Traffic congestion
- P.E.C. and the Town's Police Department will follow the Orange County-approved MOT, which will be implemented by Flash-rite. Flash-rite will be contracted directly by P.E.C., and the Town shall have no responsibility for directing, supervising or controlling Flash-rite or its personnel in the performance of its contractual obligations to P.E.C. P.E.C. must provide the Eatonville Police Department with all appropriate documentation regarding the MOT and Flash-rite **no later than January 20, 2025.** Failure to timely provide this documentation to the satisfaction of the Eatonville Police Department is grounds for the Town's termination of this Agreement and cancelation of the Festival.
- The areas to be designated as "NO PARKING" or "TOW AWAY" zones ("Non-Parking Areas") shall be determined by the Town's Police Department and the Town's Police Department shall direct P.E.C. as to where the appropriate signs for such areas must be placed. It is P.E.C.'s responsibility to properly place the signs.
- If a vehicle is towed for violating the Non-Parking Areas, the vehicle will be towed to the following tow facility: TRL Towing, 605 Ferguson Drive, Orlando, FL 32805; (321-274-5369). A function of the Flash-rite Contract.
- P.E.C. shall maintain and provide proof to the Town of a Two-Million-Dollar (\$2,000,000.00) liability insurance policy covering ZORA!® - Outdoor Festival of the Arts and naming the Town of Eatonville as an additional insured for the duration of the Festival. P.E.C. shall provide a true copy of the certificate of insurance to the Town Clerk's Office **no later than January 27, 2024,** which is the Monday prior to the first

day of the Festival, Friday, January 31, 2025. Failure to timely provide this proof of insurance coverage protecting the Town is grounds for the Town’s termination of this Agreement and cancelation of the Festival.

- This Agreement cannot be revised, amended, or modified without the written, mutual consent of the parties hereto.
- In the event any term or condition of this Agreement is ruled illegal or unconstitutional, the Parties agree that those terms and conditions may be severed from this Agreement, and that the remaining terms and conditions of this Agreement shall remain enforceable between the Parties.
- Any Town employee that works for P.E.C. during the Festival shall be paid directly by P.E.C. for their services **no later than Monday, February 07, 2025**, notwithstanding the compensation agreement for public safety officers to be provided by the Town.
- In providing courtesy passes to the Town Council, P.E.C., agrees to observe the guidelines mandated by Florida Commission on Ethics, including filing any gift reports as may be required.
- Flash-rite, through its contract with P.E.C., will be responsible for the placement of safety cones, barricades, tapes, signs, and other precautionary measures to minimize traffic control hazards during the event.
- P.E.C. shall defend, indemnify and hold harmless the Town of Eatonville and all of the Town of Eatonville’s officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable attorneys’ fees and court costs, arising from the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of P.E.C., its officers, agents or employees in performance or non-performance of its obligations under the agreement. This clause shall survive the termination of this agreement. Any ambiguity or inconsistency found in this Agreement by a court of competent jurisdiction shall be interpreted in favor of the Town of Eatonville. Time is of the essence regarding all deadlines contained within this Agreement.

**Association to Preserve Eatonville
Eatonville Community, Inc. (P.E.C.)**

Winfred Chad McKendrick, President

Town of Eatonville

Angie Gardner, Mayor

ATTEST:

Veronica L. King, Town Clerk



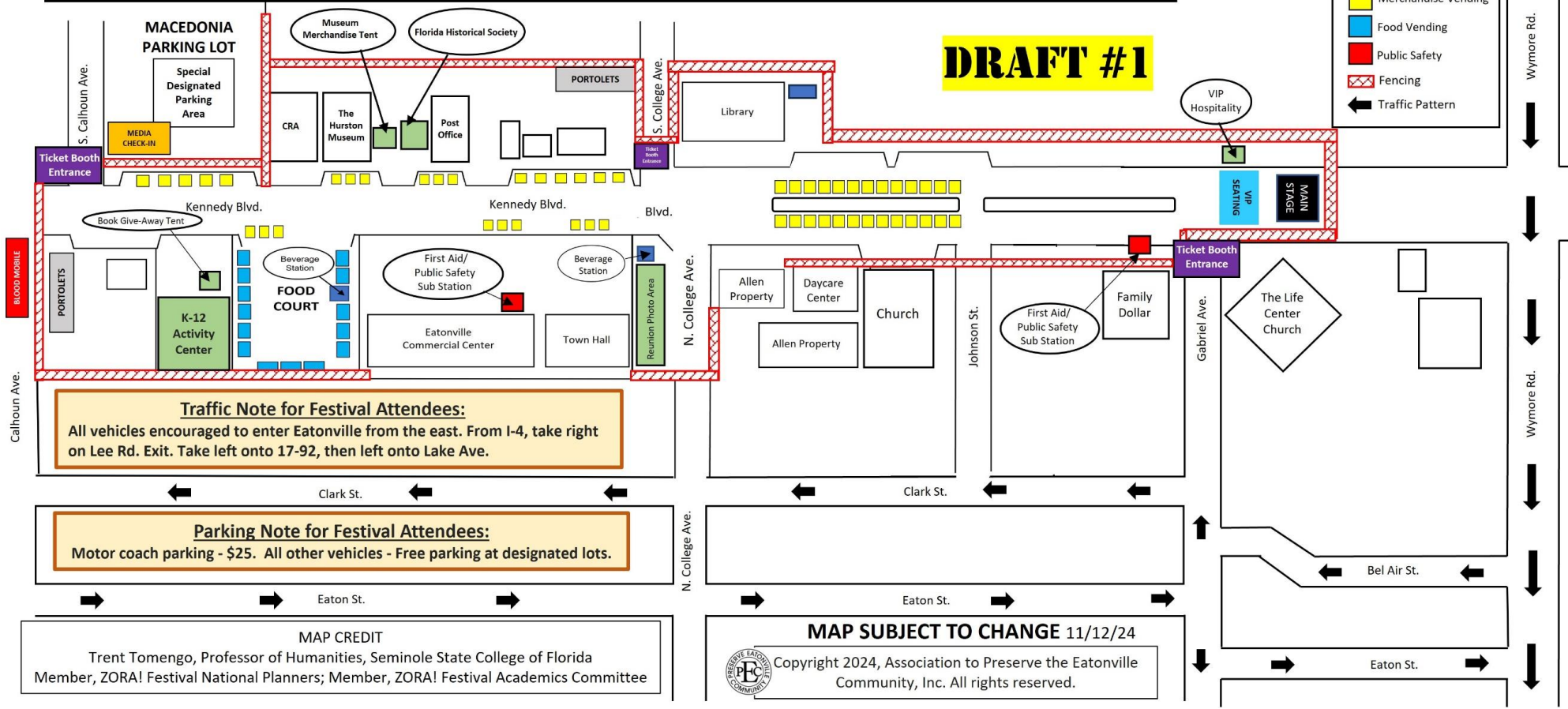
36th Annual Zora Neale Hurston® Festival of the Arts and Humanities Outdoor Festival of the Arts Location Guide

January 30 – February 2, 2025



- Festival Tents
- Merchandise Vending
- Food Vending
- Public Safety
- Fencing
- Traffic Pattern

DRAFT #1



Traffic Note for Festival Attendees:
All vehicles encouraged to enter Eatonville from the east. From I-4, take right on Lee Rd. Exit. Take left onto 17-92, then left onto Lake Ave.

Parking Note for Festival Attendees:
Motor coach parking - \$25. All other vehicles - Free parking at designated lots.

MAP CREDIT
Trent Tomengo, Professor of Humanities, Seminole State College of Florida
Member, ZORA! Festival National Planners; Member, ZORA! Festival Academics Committee

MAP SUBJECT TO CHANGE 11/12/24
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HISTORIC TOWN OF EATONVILLE, FLORIDA

TOWN COUNCIL WORKSHOP

NOVEMBER 19, 2024, AT 06:30 PM

Cover Sheet

****NOTE**** Please do not change the formatting of this document (font style, size, paragraph spacing etc.)

ITEM TITLE: Discussion of the FDEP Draft Agreements for Water and Sewer Infrastructure Funding (**Public Works**)

TOWN COUNCIL ACTION:

PROCLAMATIONS, AWARDS, AND PRESENTATIONS		Department: PUBLIC WORKS DEPARTMENT
INTRODUCTIONS		Exhibits: FDEP Draft Agreements for Water and Sewer System Infrastructure funding
CONSENT AGENDA		
COUNCIL DISCUSSION	YES	
ADMINISTRATIVE		

REQUEST: Request for the Town Council to Review and Discuss the FDEP Draft Agreements for Water and Sewer System Infrastructure funding prior to execution.

SUMMARY: The Town will receive \$34 Million in 100% forgivable funding from FDEP. The draft FDEP Agreements for Water and Sewer System Infrastructure funding is being presented to Town Council for review.

RECOMMENDATION: Staff is recommending for the Town Council to Review and Discuss the FDEP Draft Agreements for Water and Sewer System Infrastructure funding prior to execution.

FISCAL & EFFICIENCY DATA: N/A

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

TOWN OF EATONVILLE, FLORIDA

**DRINKING WATER STATE REVOLVING FUND
PLANNING, DESIGN AND CONSTRUCTION LOAN AGREEMENT**

DW4802A0

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 **PLANNING, DESIGN AND CONSTRUCTION**
LOAN AGREEMENT

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DRINKING WATER STATE REVOLVING FUND **PLANNING, DESIGN AND CONSTRUCTION**
LOAN AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND
PLANNING, DESIGN AND CONSTRUCTION LOAN AGREEMENT
DW4802A0**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the TOWN OF EATONVILLE, FLORIDA, (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 the planning, design and construction of public water systems; and

Executive Order No. 22-218 and 22-229 declared a state of emergency in Florida due to Hurricane Ian which made landfall on September 28, 2022 and the Department adopted Emergency Final Order OGC No. 22-2686 to address such emergency conditions; and

The Project Sponsor applied for the financing of the Project, and the Department has determined that such Project meets requirements for a Loan and Principal Forgiveness to address immediate health and safety needs attributed to Hurricane Ian.

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 planning, design and construction loan agreement.
- (2) “Authorized Representative” shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) “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.

(4) “Design Activities” shall mean the design of work defined in the approved planning document that will result in plans and specifications, ready for permitting and bidding, for an eligible construction project.

(5) “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.

(6) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06.

(7) “Financial Assistance” shall mean Principal Forgiveness funds or Loan funds.

(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 planning, design, and construction loan financial assistance.

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

(13) “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.

(14) “Planning Activities” shall mean the administrative work necessary for the Project Sponsor to qualify for Drinking Water State Revolving Fund financing for construction of drinking water facilities.

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

(16) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to plan, design, and construct the Supplemental Appropriation for Hurricanes Fiona and Ian Drinking Water Project. The Project is an Equivalency Project as defined in Chapter 62-552, Florida Administrative Code.

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

(18) "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) The Project Sponsor knows of no reason why any future required permits or approvals associated with the Project 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, design, 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 Loan disbursement receipts.

(9) RESERVED.

(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 complete the Project in accordance with the 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.

(12) The Project Sponsor covenants that this Agreement is entered into for the purpose of completing 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) RESERVED.

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 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.

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor 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
SJ-03D10824-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	\$14,565,300	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://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

(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 – RESERVED.

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Project Sponsor shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

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 or necessary approvals 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. The Authorized Representative shall submit a clear site title certification by the date set forth in Section 10.07 of this Agreement.

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 amendments 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 the Project 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.

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.

(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. RESERVED.

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) RESERVED.

(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 8.15, 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, 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, to fulfill this Agreement.
- (2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department.
- (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.

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 - RESERVED

ARTICLE VIII - GENERAL PROVISIONS

8.01. RESERVED.

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 provide copies of relevant records and statements for inspection and 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 and Project schedule. A Final Amendment establishing the final 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 on the Loan proceeds within eighteen months after the effective date of this Agreement, or by the dates set in Section 10.07 for submittal and approval of Planning and/or Design Activities, 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 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/interim-davis-bacon-act-guidance>.

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. RESERVED.

8.12. RESERVED.

8.13. 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, 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**

8.14. 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.

8.15. 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.

8.16. CIVIL RIGHTS.

The Project Sponsor shall comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Equal Employment Opportunity requirements (Executive Order 11246, as amended) which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

8.17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

The Project Sponsor and any contractors/subcontractors are prohibited from obligating or expending any Loan or Principal Forgiveness funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

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 Sections 8.10 which states that all iron and steel products, manufactured products, and construction materials 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 \$14,565,300. Of that, the estimated amount of Principal Forgiveness is \$14,565,300.

10.02. RESERVED.

10.03. RESERVED.

10.04. RESERVED.

10.05. RESERVED.

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. 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 the result of an audit.

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

CATEGORY	PROJECT COSTS (\$)
Planning Activities	0
Design Activities	0
Construction	12,623,000
Contingencies	1,262,300
Technical Services After Bid Opening	500,000
Asset Management Plan (AMP)	180,000
SUBTOTAL (Disburseable Amount)	<u>14,565,300</u>
Less Principal Forgiveness	<u>(14,565,300)</u>
TOTAL (Loan Principal Amount)	0

10.07. SCHEDULE.

The Project Sponsor agrees by execution hereof:

- (1) This Agreement shall be effective on February 14, 2024. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.
- (2) Initial submittal of Planning Activities is scheduled for July 15, 2025. Planning Activities must be approved by the Department before reimbursement for Design Activities.
- (3) Initial submittal of Design Activities is scheduled for May 15, 2026. Design Activities must be approved by the Department before reimbursement for Construction.
- (4) A clear site title certification shall be submitted no later than November 15, 2027.
- (5) Evidence that permitting requirements have been satisfied for all Project facilities proposed for construction loan funding no later than November 15, 2027.
- (6) Completion of Project construction is scheduled for November 15, 2027.

10.08. SPECIAL CONDITIONS.

- (1) Prior to execution of this Agreement, the following items must be submitted:
 - (a) A certified copy of the Resolution which authorizes the application, and designates an Authorized Representative for signing the application and executing the Loan Agreement.
 - (b) A completed EPA Preaward Compliance Report; and a Federal funding Accountability and Transparency Act form (FFATA).
- (2) The Local government will need advance payment approval or submit invoices with proof of payment dated on or after the effective date specified in 10.07(1) for payment of allowable invoiced costs.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW4802A0 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
TOWN OF EATONVILLE

Mayor

Attest:

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

Town Clerk

Town Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

TOWN OF EATONVILLE, FLORIDA

**CLEAN WATER STATE REVOLVING FUND
PLANNING, DESIGN, AND CONSTRUCTION LOAN AGREEMENT**

WW480290

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 PLANNING, DESIGN, AND CONSTRUCTION
LOAN AGREEMENT

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CLEAN WATER STATE REVOLVING FUND PLANNING, DESIGN, AND CONSTRUCTION
LOAN AGREEMENT

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**CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
WW480290**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the TOWN OF EATONVILLE, FLORIDA, (Local Government) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Local Government 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 the planning, design and construction of wastewater pollution control facilities; and

Executive Order No. 22-218 and 22-229 declared a state of emergency in Florida due to Hurricane Ian which made landfall on September 28, 2022 and the Department adopted Emergency Final Order OGC No. 22-2686 to address such emergency conditions; and

The Local Government applied for the financing of the Project, and the Department has determined that such Project meets requirements for a Loan and Principal Forgiveness to address immediate health and safety needs attributed to Hurricane Ian.

AGREEMENT

In consideration of the Department loaning money to the Local Government, 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 planning, design and construction loan agreement.
- (2) “Authorized Representative” shall mean the official of the Local Government authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) “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.

- (4) “Design Activities” shall mean the design of work defined in the approved planning document that will result in plans and specifications, ready for permitting and bidding, for an eligible construction project.
- (5) “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.
- (6) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06.
- (7) “Financial Assistance” shall mean Principal Forgiveness funds or Loan funds.
- (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 Local Government 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 planning, design and construction loan financial assistance.
- (12) “Local Governmental Entity” means a county, municipality, or special district.
- (13) “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.
- (14) “Planning Activities” shall mean the planning or administrative work necessary for the Local Government to qualify for Clean Water State Revolving Fund financing for construction of wastewater transmission, collection, reuse, and treatment facilities.
- (15) “Principal Forgiveness” shall mean the amount of money awarded pursuant to this Agreement and subsequent amendments that is not to be repaid.
- (16) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to plan, design, and construct the Supplemental Appropriation for Hurricanes Fiona and Ian Clean Water Project.
- (17) “Sewer System” shall mean all facilities owned by the Local Government for collection, transmission, treatment and reuse of wastewater and its residuals.

(18) "Utility System" shall mean all devices and facilities of the Sewer System owned by the Local Government.

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 Local Government warrants, represents and covenants that:

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

(2) The Local Government 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 Government's knowledge, threatened, which seeks to restrain or enjoin the Local Government from entering into or complying with this Agreement.

(4) The Local Government knows of no reason why any future required permits or approvals are not obtainable.

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

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

(7) All Local Government 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 Local Government to the Department was current and correct as of the date such information was delivered. The Local Government 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 Local Government shall take such action to comply with this agreement.

(8) The Local Government shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Local Government 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 Loan disbursement receipts.

(9) RESERVED.

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

(11) The Local Government agrees to complete the Project in accordance with the schedule set forth in Section 10.07. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Government are excepted.

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

(13) RESERVED.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Local Government’s legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that this Agreement has been duly authorized by the Local Government and shall constitute a valid and legal obligation of the Local Government enforceable in accordance with its terms upon execution by both parties.

2.03. AUDIT AND MONITORING REQUIREMENTS.

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

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

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
ST-03D10924-0	EPA	66.458	Capitalization Grants for State Revolving Funds	\$19,823,318	140131

(2) Audits.

(a) In the event that the Local Government expends \$750,000 or more in Federal awards in its fiscal year, the Local Government 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 Local Government 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 Local Government 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 Local Government shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR Part 200, Subpart F.

(c) If the Local Government 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 Local Government shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government. In the event that the Local Government 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 Local Government resources obtained from other than Federal entities).

(d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://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 Local Government 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

(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 Local Government 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) Local Governments, 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 Local Government in correspondence accompanying the reporting package.

(4) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date 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 Local Government 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 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 Local Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government 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 Local Government 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 – RESERVED.

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Local Government shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

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

4.02. TITLE TO PROJECT SITE.

The Local Government shall have an interest in real property or necessary approvals 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. The Authorized Representative shall submit a clear site title certification by the date set forth in Section 10.07 of this Agreement.

4.03. PERMITS AND APPROVALS.

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

4.04. ENGINEERING SERVICES.

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

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Local Government 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 Local Government 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 Local Government 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 Local Government'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 Local Government for allowable invoiced costs, under the provisions of 216.181, Florida Statutes. Disbursements shall be made directly to the Local Government 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 Local Government for reimbursement of the incurred planning, design, and construction costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

- (1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.
- (2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Local Government is required to make such payments.
- (3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the

Project's performance standards, scope, or purpose since the issue of the Department construction permit.

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

Requests by the Local Government for disbursements of the planning, design, or construction funds shall be made using the Department's disbursement request form. The Department reserves the right to retain 25% of the funds until the information necessary for the Department to prepare the Environmental Information Document as described in Rule 62-503.751, Florida Administrative Code, has been provided.

4.09. ADVANCE PAYMENT.

The Department may provide an advance to the Local Government, in accordance with Section 216.181(16)(b), Florida Statutes. Such advance will require written request from the Local Government, the Advance Payment Justification Form and approval from the State's Chief Financial Officer. The Local Government 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 Local Government shall be notified, in writing, by the Department regarding the additional requirements. Prior to releasing any advanced funds, the Local Government shall be required to provide a written acknowledgement to the Department of the Local Government's acceptance of the terms imposed by the State's Chief Financial Officer for release of the funds.

If advance payment is authorized, the Local Government 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. RESERVED.

5.02. NO FREE SERVICE.

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

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The Local Government 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 Local Government 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 Local Government 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 Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government 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 Local Government 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) RESERVED.

(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 8.11 below, and such failure shall continue for a period of 30 days after written notice thereof to the Local Government by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Local Government 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 the Local Government 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 the Local Government, 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 Local Government, 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 Local Government, 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 Government, for the purpose of effecting a composition between the Local Government 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 Local Government under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Local Government, 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 Local Government 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 Local Government 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, 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, to fulfill this Agreement.

(2) By action or suit in equity, require the Local Government to account for all moneys received from the Department.

(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.

6.03. DELAY AND WAIVER.

No course of dealing between Department and Local Government, 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 – RESERVED.

ARTICLE VIII - GENERAL PROVISIONS

8.01. RESERVED.

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 Local Government has received a disbursement and until five years after the Final Amendment date.

8.03. ACCESS TO PROJECT SITE.

The Local Government shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Local Government shall cause its engineers and contractors to provide copies of relevant records and statements for inspection and 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 Local Government. The Local Government 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, Project schedule. A Final Amendment establishing the final 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 Local Government 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 Local Government, suspend or terminate this Agreement.

(1) Failure of the Local Government to draw on the Loan proceeds within eighteen months after the effective date of this Agreement, or by the dates set in Section 10.07 for submittal and approval of Planning and/or Design Activities, whichever date occurs first.

(2) Failure of the Local Government, 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 Local Government.

In the event that following the execution of this Agreement, the Local Government decides not to proceed with this Loan, this Agreement can be cancelled by the Local Government, 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 Local Government 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 REQUIREMENT.

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

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

(3) The Local Government shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees, and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (1) and (2) above.

(4) Local Governments 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/interim-davis-bacon-act-guidance>.

8.10. AMERICAN IRON AND STEEL REQUIREMENT.

The Local Government'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 Local Government has obtained a waiver pertaining to the Project or the Department has advised the Local Government that the requirement is not applicable to the Project.

8.11. RESERVED.

8.12. FISCAL SUSTAINABILITY PLAN.

The Federal Water Pollution Control Act (FWPCA), under Section 603(d)(1)(E)(i) of that act, requires a recipient of a Loan for a project that involves the repair, replacement, or expansion of a treatment works to develop and implement a Fiscal Sustainability Plan or certify that it has developed and implemented such a plan.

The Local Government shall either develop and implement a Fiscal Sustainability Plan or certify that it has developed and implemented a Fiscal Sustainability Plan , that includes the following : An inventory of critical assets that are a part of the treatment works; an evaluation of the condition and performance of inventoried assets or asset groupings; a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

At a minimum, the Fiscal Sustainability Plan shall include: an inventory of critical assets that are part of the Project funded by this Agreement; an evaluation of the condition and performance of these assets; a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

A Fiscal Sustainability Plan certification is a certification by the Local Government that the Fiscal Sustainability Plan has been developed and is being implemented. For systems that self-certify under Section 603(d)(1)(E)(ii), certification is due at the time of loan closing. For systems developing a Fiscal Sustainability Plan under Section 603(d)(1)(E)(i), the requirement to develop and implement a Fiscal Sustainability Plan is a condition of the Loan Agreement and is due before the final disbursement is approved.

8.13. PUBLIC RECORDS ACCESS.

(1) The Local Government 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 Local Government 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 Local Government to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Local Government 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 LOCAL GOVERNMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA

STATUTES, TO THE LOCAL GOVERNMENT’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, 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**

8.14. SCRUTINIZED COMPANIES.

(1) The Local Government 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 Local Government or its subcontractors are found to have submitted a false certification; or if the Local Government, 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 Local Government 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 Local Government, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Local Government, 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 Local Government 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.

8.15. SUSPENSION.

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

(1) The Local Government abandons or discontinues the Project before its completion,

(2) The commencement, prosecution, or timely completion of the Project by the Local Government is rendered improbable or the Department has reasonable grounds to be insecure in Local Government's ability to perform, or

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Local Government 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 Local Government 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.

Local Government 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 Local Government 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 Local Government, 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.

8.16. CIVIL RIGHTS.

The Local Government shall comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Equal Employment Opportunity requirements (Executive Order 11246, as amended) which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

8.17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Local Government and any contractors/subcontractors are prohibited from obligating or expending any Loan or Principal Forgiveness funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

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 Local Government 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, manufactured products and construction materials used in the Project must be produced in the United States unless (a) a waiver is provided to the Local Government 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 Local Government shall submit:

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

9.03. INSURANCE REQUIRED.

The Local Government shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the 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 Local Government 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 \$19,823,318. Of that, the estimated amount of Principal Forgiveness is \$19,823,318.

10.02. RESERVED.

10.03. RESERVED.

10.04. RESERVED.

10.05. RESERVED.

10.06. PROJECT COSTS.

The Local Government and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of construction bidding or mutually agreed upon Project changes. If the Local Government receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as the result of an audit.

The Local Government agrees to the following estimates of Project costs:

<u>CATEGORY</u>	<u>PROJECT COSTS (\$)</u>
Planning Activities	0
Design Activities	1,721,801
Construction and Demolition	16,410,470
Contingencies	1,641,047
Technical Services After Bid Opening	50,000
SUBTOTAL (Disbursable Amount)	19,823,318
Less Principal Forgiveness	(19,823,318)
TOTAL (Loan Principal Amount)	0

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

(1) This Agreement shall be effective on February 14, 2024. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.

(2) Initial submittal of Planning Activities is scheduled for July 15, 2025. Planning Activities must be approved by the Department before reimbursement for Design Activities.

(3) Initial submittal of Design Activities is scheduled for May 15, 2026. Design Activities must be approved by the Department before reimbursement for Construction.

(4) A clear site title certification shall be submitted no later than May 15, 2026.

(5) Evidence that permitting requirements have been satisfied for all Project facilities proposed for construction loan funding no later than May 15, 2026.

(6) Completion of Project construction is scheduled for May 15, 2028

10.08. SPECIAL CONDITIONS.

(1) Prior to execution of this Agreement, the following items must be submitted:

(a) A certified copy of the Resolution which authorizes the application, establishes the designated Authorized Representative for signing the application and executing the Loan Agreement; and

(b) A signed CCNA certification and a signed contract between the engineering consulting firm and the Local Government with specific details of the design work to be completed.

(c) A completed EPA Preaward Compliance Report; and a Federal funding Accountability and Transparency Act form (FFATA).

(2) Local government will need advance payment approval or submit invoices with proof of payment dated on or after the effective date specified in 10.07(1) for payment of allowable invoiced costs.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW480290 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 Local Government has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

for
TOWN OF EATONVILLE

City Manager

Attest:

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

Town Clerk

Town Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date