

CS-20-263

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**AMERICAN BEACH WATER AND SEWER DISTRICT**

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

**DW450510**

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 DESIGN LOAN AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND  
DESIGN LOAN AGREEMENT  
DW450510**

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

**RECITALS**

Pursuant to Section 403.8532, Florida Statutes and Chapter 62-552, Laws of Florida, the Department is authorized to make loans to finance the planning, design and construction of public water systems; and

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

The Project Sponsor applied for the financing of Design Activities, and the Department has determined that all requirements for a Loan and Principal Forgiveness have been met.

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

(5) "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.

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

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

(8) "Financial Assistance" shall mean Principal Forgiveness funds or Loan funds.

(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) "Interlocal Agreement" shall mean the agreement between American Beach Water and Sewer District, Nassau County, and the Florida Government Utility Authority, dated December 12, 2019 and amended on June 17, 2021, for the purpose of performing certain capital repair and replacement project administration services as identified by Nassau County within the American Beach Water and Sewer District.

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

(12) "Loan Application" shall mean the completed form which provides all information required to support obtaining loan financial assistance from the Department.

(13) "Loan Payment" shall mean the payment due from the Project Sponsor to the Department.

(14) "Loan Repayment Reserve Account" or "Loan Repayment Reserve" shall mean an interest-bearing account, established and maintained, into which will be deposited the amount set aside as Pledged Revenues to pay the Loan.

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

(16) "Local Governmental Entity" means a county, municipality, or special district.

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

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

(18) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be deposited in the Loan Repayment Reserve Account in the amount of \$120,480.

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

(20) "Project" shall mean the Design Activities for the distribution system project. This Project is a Capitalization Grant Project as defined in Chapter 62-552, Florida Administrative Code.

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

(22) "Utility System" shall mean all devices and facilities of the Water System and Sewer System owned by the Project Sponsor.

(23) "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 shall undertake the Project on its own responsibility, to the extent permitted by law.

(5) 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 Design Activities financed by this Loan.

(6) 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. 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.

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

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

(9) The Project Sponsor agrees to complete the Design Activities 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. However, there shall be no resulting diminution or delay in the Loan Payment or the Monthly Loan Deposit.

(10) The Project Sponsor covenants that this Agreement is entered into for the purpose of completing Design Activities in order to construct facilities which will, in all events, serve a public purpose.

## 2.02. LEGAL AUTHORIZATION.

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

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

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

## 2.03. AUDIT AND MONITORING REQUIREMENTS.

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

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

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
FS98452220-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	\$231,500	140129

(2) Audits.

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

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

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

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



(3) Report Submission.

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

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

By Mail:

**Audit Director**

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

Electronically:

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

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

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

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

(b) Pursuant to 2 CFR Part 200, Subpart F, the Project Sponsor shall submit a copy of the reporting package described in 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a)(i) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Project Sponsor in correspondence accompanying the reporting package.

(4) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date of the Final Amendment, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor shall ensure that working papers are made

available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date of the Final Amendment, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR Part 200, Subpart F., and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN REPAYMENT RESERVE ACCOUNT.

The Project Sponsor shall establish a Loan Repayment Reserve Account with a Depository. The Project Sponsor shall deposit into the account the reserve amount identified in Section 10.07 of this Agreement by the date set forth therein. Loan Repayment Reserve account funds shall be used to make the Loan Payment as identified in Section 10.05. A letter restricting withdrawals from the account must be provided prior to any funds being disbursed.

3.02. RESTORATION OF LOAN REPAYMENT RESERVE ACCOUNT.

A default causing the Project Sponsor to use the Loan Repayment Reserve Account or the use of the account to prevent default shall result in the Project Sponsor being responsible for making special deposits to restore the account. Special restoration deposits shall be made from the first moneys legally available to the Project Sponsor for such purpose.

3.03. INVESTMENT OF LOAN REPAYMENT RESERVE MONEYS.

Moneys on deposit in the Loan Repayment Reserve Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date set for the final Loan Payment provided, however, that moneys must be available for withdrawal, if necessary, pursuant to Section 3.05 of this Agreement. All investment income and earnings shall be credited to the Loan Repayment Reserve Account.

#### 3.04. LOAN REPAYMENT RESERVE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Repayment Reserve Account shall be for the sole purpose of making the Loan Payment.

#### 3.05. ASSETS HELD IN TRUST.

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

### ARTICLE IV - PROJECT INFORMATION

#### 4.01. PROJECT CHANGES.

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.

#### 4.02. CLOSE-OUT.

The Department shall conduct a final inspection of the Design Activities 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. After the Department establishes the final costs to be financed by the Loan, the itemized costs will be adjusted 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 Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

#### 4.03. 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 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. Disbursements shall be made directly to the Project Sponsor for reimbursement of the incurred design 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. Proof of payment will be required with the following disbursement request.

(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.

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

Requests by the Project Sponsor for disbursements of the design 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 62-552.680, Florida Administrative Code, has been provided.

#### 4.04. 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 Authority'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. MANDATORY CONNECTIONS.

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

### 5.04. NO COMPETING SERVICE.

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

### 5.05. MAINTENANCE OF THE UTILITY SYSTEM.

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

### 5.06. ADDITIONS AND MODIFICATIONS.

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

### 5.07. COLLECTION OF REVENUES.

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

## ARTICLE VI - DEFAULTS AND REMEDIES

### 6.01. EVENTS OF DEFAULT.

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

(1) Failure to fund the Loan Repayment Reserve Account or to make the Loan Payment when it is due and such failure shall continue for a period of 15 days.

(2) Except as provided in Subsection 6.01(1) failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.11 below, and such failure shall continue for a period of 30 days after written notice thereof to the Project Sponsor by the Department.

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

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Project Sponsor, for the purpose of effecting a composition between the Project Sponsor and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the Utility System.

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

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

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

## 6.02. REMEDIES.

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

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

- (1) By mandamus or other proceeding at law or in equity, 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 offices and other sites where Design Activities or Project work (if financed by this Loan) is ongoing, or has been performed, 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.

#### 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, 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). A Final Amendment establishing the final costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

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

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

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

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

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.02) 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. RESERVED.

8.09. PUBLIC RECORDS ACCESS.

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

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

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

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

8.10. 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.

#### 8.11. SUSPENSION.

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

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

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

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Project Sponsor in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

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

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

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

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

## ARTICLE IX – RESERVED

### ARTICLE X - DETAILS OF FINANCING

#### 10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is \$231,500. Of that, the estimated amount of Principal Forgiveness is \$115,750. The estimated principal amount of the Loan to be repaid is \$115,850, which consists of \$115,750 to be disbursed to the Project Sponsor and \$100 of Capitalized Interest.

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

#### 10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$4,630 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$231,500. The Loan Service Fee is estimated at the time of execution of the loan agreement and shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and will be assessed in the final Loan amendment. The Project Sponsor shall pay the Loan Service Fee from the first available repayments following the Final Amendment.

#### 10.03. INTEREST RATE.

The rate of interest on the unpaid principal of the Loan amount specified in Section 10.01 is 0.93 percent per annum. However, if this Agreement is not executed by the Project Sponsor and returned to the Department before July 1, 2021, the interest rate may be adjusted.

#### 10.04. LOAN TERM.

The Loan term shall be 6 months.

#### 10.05. REPAYMENT SCHEDULE.

The Loan Payment shall be computed based upon the principal amount of the Loan less the Principal Forgiveness plus the estimated Loan Service Fee and the principle of level debt service. The Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Loan Payment shall be based upon the actual Project costs, the actual Loan Service Fee and Loan Service Fee Capitalized Interest, if any, and actual dates and amounts of disbursements. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records. The Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the Final Amendment.

The Loan Payment shall be in the amount of \$120,480. The interest and Grant Allocation Assessment portions of the Loan Payment shall be computed, using their respective rates, on the unpaid balance of the principal amount of the Loan, which includes Capitalized Interest. Interest (at the Financing Rate) also shall be computed on the estimated Loan Service Fee. The interest and Grant Allocation Assessment on the unpaid balance shall be computed as of the due date of the Loan Payment.

The Loan Payment shall be received by the Department on or before March 15, 2022 to avoid interest accruing on the Loan amount. Funds transfer shall be made by electronic means.

10.06. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that actual Project costs have not been determined as of the effective date of this Agreement. An adjustment may be made due to a reduction in the scope of work proposed for Loan funding as a result of the facilities planning process. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final costs shall be established in the final amendment. Changes in costs may also occur as a result of the Project Sponsor's audit or the Department's audit.

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

CATEGORY	PROJECT COSTS (\$)
Design Activities	231,500
Less Principal Forgiveness	<u>(115,750)</u>
SUBTOTAL (Loan Amount)	115,750
Capitalized Interest	<u>100</u>
TOTAL (Loan Principal Amount)	115,850

10.07. SCHEDULE.

All Design Activities shall be completed no later than the completion dates set forth below to enable the Department to accept the engineering documents.

(1) This Agreement shall be effective on February 24, 2021. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.

(2) Completion of all Design Activities for all Project facilities proposed for loan funding no later than August 15, 2021.

(3) The Loan Repayment Reserve Account shall be established and \$120,480 shall be deposited no later than the execution date of this Agreement.

(4) The Loan Payment in the amount of \$120,480 shall be due February 15, 2022.

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10.08. SPECIAL CONDITIONS.

(1) Prior to execution of this Agreement, the Project Sponsor shall submit the following:

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

(b) A Legal Opinion addressing the availability of Pledged Revenues, the right to increase rates, and subordination of the pledge.

(2) Prior to any funds being released, the Project Sponsor shall submit the following:

(a) A signed contract between the engineering consulting firm and the Project Sponsor with specific details of the design work to be completed.

(b) A completed EPA Preaward Compliance Report; and

(c) Documentation that the Loan Repayment Reserve Account has been established and provide a copy of the letter restricting withdrawals, as required under item 10.07(3), above; and

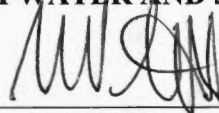
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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW450510 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

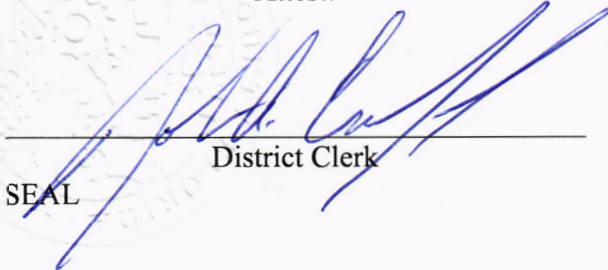
for  
**AMERICAN BEACH WATER AND SEWER DISTRICT**

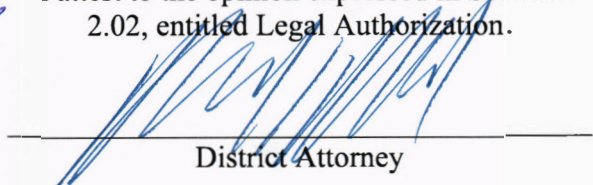


Board Chair

Attest:

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

  
District Clerk

  
District Attorney

SEAL

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

Secretary or Designee

**SCANNED**

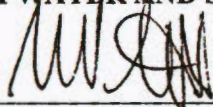
*Handwritten notes:*  
11/28/15  
Approved for Dept. Operations  
11/18/15

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW450510 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

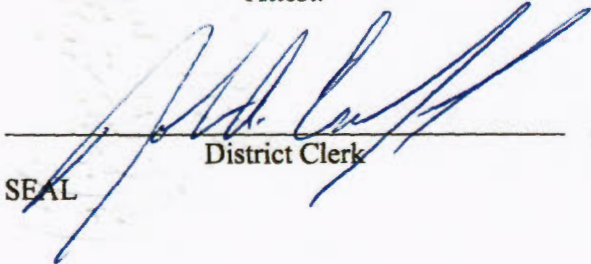
IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

for  
**AMERICAN BEACH WATER AND SEWER DISTRICT**



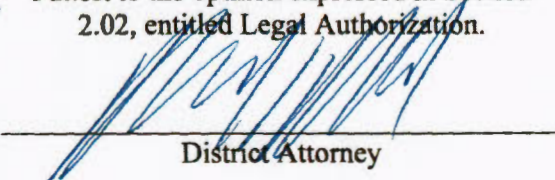
Board Chair

Attest:

  
SEAL

District Clerk

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



District Attorney

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

Trina  
Vielhauer

Digitally signed by Trina  
Vielhauer  
Date: 2021.07.09  
11:15:09 -04'00'

Secretary or Designee