

**STATE REVOLVING FUND
AMENDMENT 1 TO LOAN AGREEMENT DW501740
CITY OF LAKE WORTH BEACH**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF LAKE WORTH BEACH, FLORIDA, existing as a local governmental entity (Project Sponsor) 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”.

The Department and the Project Sponsor entered into a State Revolving Fund Loan Agreement, Number DW501740; and

Loan repayment activities need rescheduling to give the Project Sponsor additional time to complete construction; and

Certain provisions of the Agreement need revision and revisions need to be added to the Agreement.

The Parties hereto agree as follows:

1. Section 1.01 of the Agreement is amended to include the following definitions:

“Electric System” shall mean all facilities owned by the Project Sponsor for supplying electricity for residential, commercial, industrial, and governmental use.

“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.

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

2. Subsections 1.01(7), (14), and (16) of the Agreement are deleted and replaced as follows:

(7) “Gross Revenues” shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its Water, Sewer, and Electric Systems, 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 Water, Sewer, or Electric System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Water, Sewer, or Electric System.

(14) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the Water, Sewer, and Electric Systems 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.

(16) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Gross Revenues derived yearly from the operation of the Water, Sewer, and Electric Systems after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of the Senior Revenue Debt and any senior or parity obligations issued pursuant to Section 7.02 of this Agreement.

3. Subsection 2.01(8), of the Agreement is deleted and replaced as follows:

(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 Water, Sewer, and Electric Systems separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Water, Sewer, and Electric Systems, and of the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

4. Section 4.05 of the Agreement is deleted and replaced as follows:

4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Project Sponsor is prohibited from selling, leasing, or disposing of any part of the Water, Sewer, or Electric 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.

5. Article V of the Agreement is deleted and replaced as follows:

ARTICLE V - RATES AND USE OF THE WATER, SEWER, AND ELECTRIC SYSTEMS

5.01. RATE COVERAGE.

The Project Sponsor shall maintain rates and charges for the services furnished by the Water, Sewer, and Electric Systems which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year. In addition, the Project Sponsor shall satisfy the coverage requirements of all Senior Revenue Debt and Parity Debt obligations.

5.02. NO FREE SERVICE.

The Project Sponsor shall not permit connections to, or furnish any services afforded by, the Water, Sewer, or Electric 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 Water, Sewer, or Electric System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE WATER, SEWER, AND ELECTRIC SYSTEMS.

The Project Sponsor shall operate and maintain the Water, Sewer, and Electric Systems 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 Water, Sewer, and Electric Systems which it deems desirable and which do not materially reduce the operational integrity of any part of the Water, Sewer, or Electric System. All such renewals, replacements, additions, modifications and improvements shall become part of the Water, Sewer, and Electric Systems.

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 Water, Sewer, or Electric 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 Water, Sewer, and Electric Systems and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Water, Sewer, and Electric System rates, fees and other charges.

6. Article VI of the Agreement is deleted and replaced as follows:

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

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

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

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

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

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Water, Sewer, or Electric 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 Water, Sewer, or Electric System.

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

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

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

6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether

specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, *inter alia*, any of the following remedies:

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

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

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

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

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution or State law. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

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

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

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

6.03. DELAY AND WAIVER.

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

shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

7. Section 7.02 of the Agreement is deleted and replaced as follows:

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent may be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water, Sewer, and Electric Systems and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed 1.15 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Project Sponsor and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

8. Section 8.06 of the Agreement is deleted and replaced as follows:

8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

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

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

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

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

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

9. Section 9.03 of the Agreement is deleted and replaced as follows:

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 Water, Sewer, and Electric Systems (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 Water, Sewer, and Electric 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.

10. Unless repayment is further deferred by amendment of the Agreement, Semiannual Loan Payments as set forth in Section 10.05 shall be received by the Department beginning on October 15, 2021, and semiannually thereafter on April 15 and October 15 of each year until all amounts due under the Agreement have been fully paid.

11. The items scheduled under Section 10.07 of the Agreement are rescheduled as follows:

(2) Completion of Project construction is scheduled for April 15, 2021.

(3) Establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than April 15, 2021.

(4) The first Semiannual Loan Payment in the amount of \$81,551 shall be due October 15, 2021.

12. All other terms and provisions of the Loan Agreement shall remain in effect.

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This Amendment 1 to Loan Agreement DW501740 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 amendment to the Loan Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Department.

for
CITY OF LAKE WORTH BEACH

Mayor

Attest:

Approved as to form and legal sufficiency:

City Clerk
SEAL

City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date