STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

CITY OF STUART, FLORIDA

DRINKING WATER STATE REVOLVING FUND
DESIGN LOAN AGREEMENT
DW430430

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

DW430430

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF STUART, 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, the Department is authorized to make loans to finance the planning, designing and construction of public water systems; and

The Project Sponsor has applied for financing of Design Activities, and the Department has determined that all requirements for a Loan 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 interest accruing on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.

(4) "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 Semiannual Loan Payment amount.

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

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

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

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

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

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

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

(14) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the Water and Sewer 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.

(15) "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 and Sewer Systems after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of any senior or parity obligations issued pursuant to Section 7.02 of this Agreement.

(16) "Project" shall mean the construction of installation facilities designed through this Agreement.

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

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

(19) “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 Design Activities financed by this Loan or in its operation of Project facilities.

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

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

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

(11) 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 Semiannual Loan Payment or the Monthly Loan Deposit.

(12) 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:

State Resources Awarded to the Project Sponsor Pursuant to this Agreement Consist of the Following:					
State Program Number	Funding Source	CSFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Drinking Water Revolving Loan TF	37.076	Drinking Water Facility Construction	$768,375	140129

(2) Audits.

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

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

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

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

(3) Report Submission.

(a) Copies of financial reporting packages shall be submitted by or on behalf of the 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
3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3123

or

Electronically:
FDEPSingleAudit@dep.state.fl.us

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

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

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

By Mail:

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

or

Electronically:
FDEPSingleAudit@dep.state.fl.us

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

(c) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was 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 Section 215.97, F.S., as revised monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

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

Beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth

of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

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

3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

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

3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

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

3.04. ASSETS HELD IN TRUST.

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

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

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. TITLE TO PROJECT SITE.

No later than the date established by Section 10.07 for completing Design Activities, the Project Sponsor shall have an interest in real property sufficient for the construction and location of any facility planned and designed through preconstruction activities free and clear of liens and

encumbrances which would impair the usefulness of such sites for the intended use. If a limited site title certification is accepted at that date, the Department shall establish a date for submittal of a clear site title certification by amendment.

4.03. 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 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 Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

4.04. DISBURSEMENTS.

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; and proof of payment.

(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.

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

5.01. RATE COVERAGE.

The Project Sponsor shall maintain rates and charges for the services furnished by the Water and Sewer 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.

5.02. NO FREE SERVICE.

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

5.05. MAINTENANCE OF THE WATER AND SEWER SYSTEMS.

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

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

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

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

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

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

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Water or Sewer 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 or Sewer 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 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 and Sewer 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 and Sewer 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 and Sewer 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 Loan interest rate.

6.03. DELAY AND WAIVER.

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

ARTICLE VII - THE PLEDGED REVENUES

7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

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

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent may be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water and Sewer 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.

ARTICLE VIII - GENERAL PROVISIONS

8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all

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

8.02. PROJECT RECORDS AND STATEMENTS.

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

8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to 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 OF AGREEMENT BY PROJECT SPONSOR.

The Project Sponsor must 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. Failure by the Project Sponsor to do so shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the Project Sponsor, terminate this Agreement.

8.07. SEVERABILITY CLAUSE.

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

8.08. USE AS MATCHING FUNDS.

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

8.09. 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

8.10. 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.

You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not; engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

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 principal amount of the Loan is $779,275, which includes $768,375 to be disbursed to the Project Sponsor and $10,900 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 first Semiannual 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 $15,368 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of $768,375. 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 1.94 percent per annum. However, if this Agreement is not executed by the Project Sponsor and returned to the Department before January 1, 2019, the interest rate may be adjusted.

10.04. LOAN TERM.

The Loan term shall be 10 years.

10.05. REPAYMENT SCHEDULE.

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

Each Semiannual Loan Payment shall be in the amount of $43,902 until the payment amount is adjusted by amendment. The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the Loan, including Capitalized Interest. Interest also shall be computed on the unpaid balance of the Loan Service Fee. Interest shall be computed as of the due date of each Semiannual Loan Payment.

Unless repayment is deferred by an amendment to this Agreement, Semiannual Loan Payments shall be received by the Department beginning on November 15, 2020 and semiannually thereafter on May 15 and November 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount owed of $794,643, which consists of the Loan principal and the estimated Loan Service Fee.

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:

PROJECT COSTS

CATEGORY		PROJECT COSTS ($)
Design Activities	$	768,375
Capitalized Interest	$	10,900
TOTAL (Loan Principal Amount)	$	779,275

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) Invoices submitted for work performed on or after August 8, 2018 shall be eligible for reimbursement.

(2) Completion of all Design Activities for all Project facilities proposed for loan funding no later than November 15, 2019.

(3) Unless deferred by amendment, establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than May 15, 2020.

(4) The first Semiannual Loan Payment in the amount of $43,902 shall be due November 15, 2020.

10.08. SPECIAL CONDITIONS.

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

(1) 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

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

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW430430 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
CITY OF STUART

_____
Mayor

Attest and Countersign:

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization. Approved as to Form and Legality.

_____ _____
City Clerk City Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____ _____
Secretary or Designee Date