

RESOLUTION NO. 94- 107

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING THE CHAIR OR THE COUNTY ADMINISTRATOR TO EXECUTE A STATE REVOLVING FUND LOAN AGREEMENT BETWEEN THE COUNTY AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the construction of water pollution control facilities; and

WHEREAS, the Board of County Commissioners of St. Johns County, Florida wishes to enter into a binding loan agreement with the Florida Department of Environmental Regulation to fund the project described in the loan agreement

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, that the Chair and/or the County Administrator of St. Johns County, Florida are hereby authorized and directed to execute and deliver to the Florida Department of Environmental Protection a State Revolving Fund Loan Agreement in the form attached hereto with any changes, corrections, insertions and deletions as may be approved by the Chair and/or the County Administrator, such approval by the Chair and/or the County Administrator to be evidenced conclusively by their execution thereof. The Clerk of Courts, ex officio Clerk to the Board of County Commissioners, or a deputy clerk is authorized and directed to attest the State Revolving Fund Loan Agreement and impress the County Seal thereon.

PASSED AND ADOPTED this 14 day of June, 1994.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Ellen Roberts
Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Joan Smith
Deputy Clerk

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ST. JOHNS COUNTY, FLORIDA

STATE REVOLVING FUND LOAN AGREEMENT

PRECONSTRUCTION LOAN NUMBER CS12082802P

Florida Department of Environmental Protection
Bureau of Local Government Wastewater Financial Assistance
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

STATE REVOLVING FUND PRECONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
ARTICLE I DEFINITIONS	1
1.01. WORDS AND TERMS.	3
1.02. CORRELATIVE WORDS.	
ARTICLE II WARRANTIES, REPRESENTATIONS AND COVENANTS	4
2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.	7
2.02. CONDITIONS PRECEDENT.	
ARTICLE III MONTHLY ESCROW AND LOAN REPAYMENT ACCOUNTS	
3.01. MONTHLY ESCROW ACCOUNT.	7
3.02. INVESTMENT OF MONTHLY ESCROW MONEYS.	8
3.03. MONTHLY ESCROW WITHDRAWALS.	8
3.04. LOAN REPAYMENT RESERVE ACCOUNT.	8
3.05. LOAN REPAYMENT RESERVE WITHDRAWALS.	8
3.06. RESTORATION OF LOAN REPAYMENT RESERVE ACCOUNT.	9
3.07. INVESTMENT OF LOAN REPAYMENT RESERVE MONEYS.	9
ARTICLE IV PROJECT INFORMATION	9
4.01. PROJECT SCHEDULE.	10
4.02. PROJECT RELATED COSTS.	12
4.03. LOAN DISBURSEMENTS.	12
4.04. PROJECT CHANGES.	13
4.05. TITLE TO PROJECT SITE.	13
4.06. PERMITS AND APPROVALS.	13
4.07. PROHIBITION AGAINST ENCUMBRANCES.	13
4.08. COMPLETION MONEYS.	13
4.09. PROJECT CLOSE-OUT.	13
4.10. SURPLUS LOAN FUNDS RESULTING FROM ADDITIONAL COMPLETION LOAN.	14

STATE REVOLVING FUND PRECONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
ARTICLE V RATES AND USE OF THE WATER AND SEWER SYSTEMS	
5.01. RATE COVERAGE.	14
5.02. NO FREE SERVICE.	14
5.03. MANDATORY CONNECTIONS.	14
5.04. NO COMPETING SERVICE.	14
5.05. MAINTENANCE OF THE WATER AND SEWER SYSTEMS.	14
5.06. ADDITIONS AND MODIFICATIONS.	14
5.07. COLLECTION OF REVENUES.	15
ARTICLE VI DEFAULTS AND REMEDIES	
6.01. EVENTS OF DEFAULT.	15
6.02. REMEDIES.	16
6.03. DELAY AND WAIVER.	17
ARTICLE VII THE PLEDGED REVENUES	
7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.	17
7.02. ADDITIONAL DEBT OBLIGATIONS.	17
ARTICLE VIII GENERAL PROVISIONS	
8.01. DISCHARGE OF OBLIGATIONS.	18
8.02. PROJECT RECORDS AND STATEMENTS.	18
8.03. ACCESS TO PROJECT SITE.	18
8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.	18
8.05. AMENDMENT OF AGREEMENT.	18
8.06. SEVERABILITY CLAUSE.	19
8.07. EXECUTION OF AGREEMENT.	19
ARTICLE IX DETAILS OF FINANCING	
9.01. PRINCIPAL AMOUNT OF LOAN.	19
9.02. INTEREST RATE.	19
9.03. LOAN TERM.	19
9.04. REPAYMENT SCHEDULE.	19

STATE REVOLVING FUND LOAN AGREEMENT

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and St. Johns County, existing as a local government agency (Local Government) under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Section 403.1835, Florida Statutes, the Department is authorized to make loans to local government agencies to finance the planning, design, and construction of wastewater pollution control facilities, and

WHEREAS, the Local Government has made application for the financing of the Project, and the Department has determined that such Project meets all requirements for a preconstruction loan;

NOW, THEREFORE, in consideration of the Department loaning money to the Local Government, in the principal amounts herein set forth and the covenants hereinafter set forth, 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) "Additional Completion Loan" shall mean a loan, subsequent to the Loan authorized by this Agreement and subsequent to the Department's authorization to incur Post-allowance Project Costs, which may be made to the Local Government by the Department for the purpose of furnishing additional funds for Post-allowance Project Costs. The interest rate for any Additional Completion Loan shall be established pursuant to Chapter 17-503 of the Florida Administrative Code.

(2) "Agreement" or "Loan Agreement" shall mean this agreement.

(3) "Authorized Representative" shall mean the official of the Local Government authorized by ordinance or resolution to sign documents associated with the Loan.

(4) "Capitalized Interest" shall mean interest accruing on a loan before repayment begins. Capitalized interest shall be included in the principal of the Loan. Capitalized interest is not disbursed to the Local Government, but it shall be amortized via periodic loan repayments to the Department as if it were actually

disbursed. Capitalized interest shall be computed at the interest rate 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.

(5) "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.

(6) "Loan" shall mean the amount of money to be loaned to complete planning, engineering, and administrative preconstruction activities, generally described in the schedule set forth in Section 4.01, pursuant to this Agreement.

(7) "Loan Repayment Reserve Account" shall mean the account into which will be deposited the amount set aside to pay unexpected and temporary deficiencies, if any, in the Semiannual Loan Payment.

(8) "Loan Service Fee" shall mean an origination fee, in the amount of 2.0% of the sum of the planning, engineering, and administrative allowances, shall be paid to the Department by the Local Government. The Loan Service Fee shall be paid with Loan proceeds and amortized as part of the Loan principal. The Loan Service Fee shall be adjusted downward if actual Post-allowance Project Costs, under an Additional Completion Loan, result in a Loan decrease.

(9) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Local Government to an escrow account.

(10) "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 Revenues; depreciation; and any other items not requiring the expenditure of cash.

(11) "Pledged Revenues" shall mean the specific Revenues pledged as security for repayment of the Loan and shall consist solely of the 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 the debt obligations identified as follows:

(a) St. Johns County, Florida, Water and Sewer Revenue Bonds, Series 1989, Series 1990 B-I, Series 1990 B-II, and Series 1991 A, as authorized by Resolution 89-84, adopted April 25, 1989, as amended and supplemented by Resolutions 89-189, adopted August 9, 1989, Resolution 90-61, adopted March 27, 1990, Resolution 90-208, adopted November 14, 1990, Resolution 91-113, adopted July 23, 1991, and Resolution

91-118, adopted August 13, 1991, and any additional bonds that are later issued on a parity therewith, (see also Sections 7.01 and 7.02);

(b) St. Johns County, Florida, Subordinated Water and Sewer Revenue Bonds, Series 1991, as authorized by Resolution 91-119, dated August 13, 1991, and any subordinate bonds that are later issued on a parity therewith, (see also Sections 7.01 and 7.02).

(12) "Post-allowance Project Costs" shall mean costs for allowable land acquisition construction, equipment, materials, demolition, contingency, legal and technical service costs incurred after construction bid opening, and the incremental portion of the Loan repayment reserve disbursement, Capitalized Interest, and Loan Service Fee associated with the foregoing costs.

(13) "Project" shall mean the planning, administrative, engineering work necessary for the Local Government to qualify for a State Revolving Fund loan, under Rule 17-503.410 of the Florida Administrative Code to finance construction of wastewater transmission facilities. The nature of the preconstruction work is generally described in the schedule presented in Section 4.01.

(14) "Revenues" shall mean all income or earnings received by the Local Government from the ownership or operation of its Water and Sewer Systems, including investment income, and excluding non-ad valorem assessments all as calculated in accordance with generally accepted accounting principles. Revenues shall not include proceeds from the sale or other disposition of any part of the Water or Sewer Systems, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Water or Sewer Systems.

(15) "Semiannual Loan Payment" shall mean the payment due from the Local Government to the Department at six-month intervals, and it is comprised of principal and interest.

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

(17) "Water System" shall mean all facilities owned by the Local Government 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 bodies, as well as natural persons. Capitalized words not otherwise defined herein shall be defined as set forth in the Florida Administrative Code, Chapter 17-503 .

ARTICLE II- WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS. The Local Government warrants, represents and covenants that:

- (1) The Local Government has full power and authority to enter into this Agreement and to comply with the provisions hereof.
- (2) The Local Government is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.
- (3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Local Government's knowledge, threatened, which seeks to restrain or enjoin the Local Government from entering into or complying with this Agreement.
- (4) The Local Government knows of no reason why any future required permits or approvals are not obtainable.
- (5) The Local Government shall undertake the Project on its own responsibility, to the extent permitted by law.
- (6) To the extent permitted by law, the Local Government shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Local Government's actions or omissions in its planning, engineering, and administrative activities financed by this Loan.
- (7) All Local Government representations to the Department, pursuant to the Loan application and Agreement, were true and accurate as of the date such representations were made. The Local Government shall comply with all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Local Government shall take such action as is necessary for compliance.

(8) The financial information delivered by the Local Government to the Department was current and correct as of the date such information was delivered. The Local Government shall provide the Department with additional financial information via audits required by Chapter 17-503 of the Florida Administrative Code, notification of changing conditions adversely affecting the Local Government's ability to repay this Loan, or upon request of the Department.

(9) The Local Government shall maintain records using Generally Accepted Governmental Accounting Standards established by the Government Accounting Standards Board. As part of its bookkeeping system, the Local Government shall keep accounts of the Water and Sewer Systems separate from all other accounts and it shall keep accurate records of all Revenues, Pledged Revenues, Loan disbursement receipts, expenses, and expenditures relating to the Water and Sewer Systems.

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

(11) Beginning with the Fiscal Year during which the Loan is executed and for each year until the Loan is retired, the Local Government shall submit annual audit reports to the Department. Annual reports shall be submitted no later than the date established in Subsection 4.01(17). Audits shall be conducted in accordance with "Government Auditing Standards" (1988) issued by the Comptroller General of the United States.

Beginning with the Fiscal Year during which the Loan is made and continuing through the Fiscal Year during which the final Loan disbursement to the Local Government is received, audits shall be conducted under the Office of Management and Budget Circular A-128, "Audits of State and Local Governments" (1985), which provides policies, procedures, and guidelines for the Single Audit Act of 1984. The Loan shall be treated as a major Federal assistance program regardless of the disbursed amount received during the Fiscal Year being audited.

Beginning with the first Fiscal Year after the final loan disbursement to the Local Government is received and ending with the Fiscal Year during which the Loan is retired, financial audits shall be conducted as required under Section 11.45 of the Florida Statutes.

(12) Beginning with the first Fiscal Year during which Monthly Loan Deposits to a debt service account are required and continuing through the Fiscal Year during which the Loan is retired, the Local Government shall cause its auditor to comment on its compliance with the Loan Agreement covenants and on its ability to repay the Loan. The Department shall be notified immediately if anything comes to the auditor's attention during the annual examination of the Local Government's records that would constitute a default under the Loan Agreement or adversely affect the Local Government's ability to repay the Loan; or the audit report shall include a statement to the effect that nothing came to the auditor's attention that would constitute a default under the Loan Agreement or adversely affect the Local Government's ability to repay the Loan.

(13) After the Department issues the administrative close-out amendment to this Agreement, the Local Government shall submit to the Department a separate audit report, by an independent certified public accountant, of the loan revenues and expenditures. The audit report shall be submitted no later than the date to be established under Section 4.09. The audit shall be conducted in accordance with "Government Auditing Standards" (1988) issued by the Comptroller General of the United States. The audit shall address whether the Local Government complied with requirements set forth in the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Rule 17-503, Florida Administrative Code. A final determination of the allowability of such costs shall be made by the Department.

(14) Each year, beginning with the 12-month period preceding the Local Government's second semiannual Loan repayment and ending with the year during which the final Loan repayment is made, the Local Government's Authorized representative or its chief financial officer shall submit, no later than the date established in Subsection 4.01(14), a certification that: (a) Pledged Revenue collections satisfy, on a pro rata basis, the rate coverage requirement; (b) the monthly escrow account contains the funds required; (c) the Loan Repayment Reserve Account contains the funds required; and (d) insurance, including that issued through the National Flood Insurance Program authorized under 42 U.S.C. secs. 4001-4128 when applicable, in effect for the facilities generating the Pledged Revenues, adequately covers the customary risks to the extent that such insurance is available.

(15) Pursuant to Section 216.349 of the Florida Statutes, the Local Government shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(16) The Local Government agrees to complete the Project in accordance with the Project schedule set forth in Section 4.01. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Government are excepted. However, there shall be no resulting diminutions or delay in the Semiannual Loan Payment or the Monthly Loan Deposit or funding of the Loan Repayment Reserve Account.

(17) The Local Government covenants that this Agreement is entered into for the purpose of completing planning, engineering, and administrative activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. CONDITIONS PRECEDENT. As conditions precedent to execution of this Agreement by the Department, the Local Government shall deliver an opinion, or opinions, of its counsel that:

(1) This Agreement has been duly authorized and executed by the Local Government and shall constitute a valid and legal special obligation of the Local Government in accordance with its terms upon due and proper authorization and execution by the Department.

(2) Assuming due and proper execution of this Agreement by the Department, the pledge of the Pledged Revenues for repayment of the Loan is valid and enforceable except as the enforceability thereof may be limited by applicable bankruptcy, reorganization, insolvency and other similar laws affecting the enforcement of creditors' rights generally, and no opinion is expressed as to the availability of any discretionary equitable remedy.

ARTICLE III- MONTHLY ESCROW AND LOAN REPAYMENT ACCOUNTS

3.01. MONTHLY ESCROW ACCOUNT. The Local Government shall establish a monthly escrow account with a Depository. Beginning no later than on the date set forth in Subsection 4.01(13), the Local Government shall make a Monthly Loan Deposit from the Pledged Revenues to the monthly escrow account.

In any month in which the amount on deposit in the monthly escrow account does not equal or exceed five-sixths of the Semiannual Loan Payment, the Depository shall be required to promptly notify the Department in writing if the Local Government fails to make a Monthly Loan Deposit which equals or exceeds one-sixth

of the Semiannual Loan Payment. In the event any monthly deposit is less than one-sixth of the Semiannual Loan Payment and the amount on deposit is less than five-sixths of the Semiannual Loan Payment, the Local Government agrees to budget, by amendment if necessary, payment to the Department from other legally available 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 Local Government, nor shall it be construed to give the Department the power to require the Local Government to levy and collect any revenues other than Pledged Revenues; it shall not be construed as creating a pledge, lien, or charge upon any such other legally available funds or requiring the Local Government to levy or appropriate ad valorem tax revenues; nor shall it be construed to prevent the Local Government from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

3.02. INVESTMENT OF MONTHLY ESCROW MONEYS. Upon the direction of the Local Government, a Depository shall invest escrow moneys pursuant to the laws of the State of Florida. The investment earnings shall be used to satisfy the escrow funding requirement of this Agreement. 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.

3.03. MONTHLY ESCROW WITHDRAWALS. The withdrawal of moneys from the monthly escrow account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Local Government's obligations pursuant to Section 8.01.

3.04. LOAN REPAYMENT RESERVE ACCOUNT. A Loan Repayment Reserve Account shall be established with a Depository in the amount of 0.03 times the sum of the planning, engineering, and administrative allowances. The reserve shall be fully funded on the date set forth in Subsection 4.01(13).

3.05. LOAN REPAYMENT RESERVE WITHDRAWALS. The Loan Repayment Reserve Account shall be used by the Local Government to cure an unexpected and temporary deficiency in any Semiannual Loan Payment. The Depository shall be required to promptly notify the Department upon any withdrawal from the Account. Any unused portion of the Loan Repayment Reserve Account shall be used to reduce the final Semiannual Loan Payment(s) or for discharging the Local Government's obligations pursuant to Section 8.01.

3.06. RESTORATION OF LOAN REPAYMENT RESERVE ACCOUNT. A default causing the Local Government to use the Loan Repayment Reserve Account or the use of the Account to prevent default shall result in the Local Government being responsible for making special payments to restore its Loan Repayment Reserve

Account. Special restoration payments shall be made from the first moneys legally available to the Local Government for such purpose. The Local Government agrees to budget, by amendment if necessary, sufficient legally available funds, in order to restore the Loan Payment Reserve Account before the next Semiannual Loan Payment becomes due. The last sentence in Section 3.01 shall also apply to this Section 3.06.

3.07. INVESTMENT OF LOAN REPAYMENT RESERVE MONEYS. Upon the direction of the Local Government, a Depository shall invest reserved moneys pursuant to the laws of the State of Florida. The maturity or redemption date of investments shall be not later than the date set for the final Semiannual Loan Payment provided, however, that moneys must be available for withdrawal, if necessary, pursuant to Section 3.05. All investment income and earnings shall be credited to the Loan Repayment Reserve Account.

ARTICLE IV- PROJECT INFORMATION

4.01. PROJECT SCHEDULE. The Project activities shall be completed no later than by the dates set forth below to preserve the Department's Commitment to provide completion moneys for Post-allowance Project Costs. Project activities shall be completed in time to enable the Department to take the actions scheduled in Subsections (7), (8), (11), (12), and (15), below.

- (1) Facilities plan, as adopted, no later than August 23, 1994.
- (2) Capital financing plan no later than August 23, 1994.
- (3) Public hearings no later than August 23, 1994.
- (4) User charge system and ordinance no later than August 23, 1994.
- (5) Sewer use ordinance no later than August 23, 1994.
- (6) Dispute resolution ordinance no later than August 23, 1994.
- (7) Environmental information document, addressing all proposed facilities, publication by the Department no later than October 31, 1994.
- (8) Authorization for design of all facilities no later than November 30, 1994.
- (9) Design of all Project facilities no later than December 30, 1994.
- (10) Certification of availability of all sites no later than August 23, 1994.

- (11) Notice of intent to issue all construction permits by the Department no later than December 30, 1994.
- (12) All construction permits issued by the Department no later than February 1, 1995.
- (13) Establishment of the Loan Repayment Reserve Account and, until modified under an Additional Completion Loan to fund Post-allowance Project Costs, the beginning of Monthly Loan Deposits no later than February 15, 1995.
- (14) Certifications under Subsection 2.01(14) beginning November 15, 1995, and annually no later than November 15 thereafter.
- (15) Authorization to incur Post-allowance Project Costs for all Project facilities no later than February 15, 1995.
- (16) Apply for Additional Completion Loan to fund Post-allowance Project Costs and schedule construction related activities no later than March 1, 1995.
- (17) Submittal of audit reports under Subsection 2.01(11) or later than September 30, annually.

4 02. PROJECT RELATED COSTS. The Local Government and the Department acknowledge that the actual Post-allowance Project Costs that will result from the Project have not been determined as of the effective date of this Agreement. However, it is understood that neither this preconstruction Loan or an Additional Completion Loan represents complete funding of the planning, engineering, or construction of the Local Government's proposed facilities. Funds in addition to those to be made available under this Agreement as may be amended shall be obtained by the Local Government to construct and place in operation all planned facilities. Post-allowance Project Costs adjustment may be made as a result of work described in Section 4.01 and, after completion moneys have been made available by the Department, as a result of construction bidding or as a result of mutually agreed upon changes to the facilities to be constructed. Said adjustments may cause adjustments to the Project costs. The final Project costs shall be established in the close-out amendment addressed in Section 4.09. Pursuant to Rules 17-503.800(3) and (4) of the Florida Administrative Code, changes in Project costs may also occur as a result of the Local Government's Project audit or the Department's audit.

The Local Government agrees to the following estimates for the Department's financing of preconstruction Project costs and the Post-allowance Project Costs under Rule 17-503.350 of the Florida Administrative Code, including the additional

incremental costs associated with the Loan repayment reserve, Loan Service Fee, and Capitalized Interest:

(1) Preconstruction Project costs by category:

Administrative allowance	\$ 12,600
Planning allowance	\$ 78,000
Allowance for engineering	\$ 157,500
Loan repayment reserve	\$ 7,400
Loan Service Fee	\$ 5,000
Capitalized Interest	<u>\$ 2,500</u>

TOTAL PRECONSTRUCTION PROJECT COSTS \$ 263,000

(2) Post-allowance Project Costs category:

Construction, demolition, equipment, and materials	\$1,750,000
Land	\$ 0
Contingencies	\$ 175,000
Technical services during construction	\$ 100,000
Start-up services	\$ 75,000
Loan repayment reserve (incremental)	\$ 63,000
Loan Service Fee (incremental)	\$ 42,000
Capitalized Interest (incremental)	<u>\$ 28,600</u>

TOTAL POST-ALLOWANCE PROJECT COSTS \$2,233,600

(3) The maximum total amount to be disbursed (capitalized interest is not disbursed) under this preconstruction loan amount plus an Additional Completion Loan to fund Post-allowance Project Costs shall be \$2,465,500. An amount not to

exceed this sum shall be made available to the Local Government at the interest rate established in Section 9.02, under the preconstruction loan program set forth in Rule 17-503.350 of the Florida Administrative Code provided the requirements of Section 4.08 are met. The eligibility of individual line items in Subsection (2), above, shall be reevaluated before completion moneys are made available under Section 4.08.

4.03. LOAN DISBURSEMENTS. Disbursements shall be made only upon the issue of warrants signed by the State Comptroller and only when the requests for such warrants are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Local Government for planning, engineering, and administration allowances and for the Loan Repayment Reserve Account pursuant to Section 3.04. The disbursement of the Loan Service Fee, as defined in Subsection 1.01(8), will be made directly to the Department's Operating Trust Fund. Requests by the Local Government for disbursements of the preconstruction funds shall not require documentation of actual costs incurred. The disbursement of preconstruction funds shall be as scheduled below. The disbursements for Post-allowance Project Costs are not scheduled in the preconstruction Loan Agreement, and such disbursements shall be scheduled as a result of an Additional Completion Loan. The timing and amounts of the preconstruction disbursements are as follows:

<u>Preconstruction Disbursement</u>	<u>Date</u>	<u>Amount</u>
Administrative allowance	July 15, 1994	\$ 12,600
Planning allowance	July 15, 1994	\$ 78,000
Loan Service Fee	July 30, 1994	\$ 5,000
Engineering Allowance	November 15, 1994	\$157,500
Loan repayment reserve	February 15, 1995	\$ <u>7,400</u>
	TOTAL	\$260,500

4.04. PROJECT CHANGES. After the Department's environmental review has been completed, the Local Government promptly shall notify the Department, in writing, of any Project change that would require a modification to the environmental information document. After the Department provides the Local Government with written authorization to incur Post-allowance Project Costs, Project changes prior to bid opening shall be made by addendum to plans and specifications. Changes after bid opening shall be made by change order. The Local Government shall submit all

addenda and all change orders to the Department. Any change order which affects the performance standards to be established for the facilities to be constructed or which increases the contract amount by more than one hundred thousand dollars (\$100,000) or which alters the purpose that the facilities to be constructed will serve will require written approval by the Department.

4.05. TITLE TO PROJECT SITE. No later than the date established by Subsection 4.01(10), the Local Government shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

4.06. PERMITS AND APPROVALS. No later than the date established by Subsection 4.01(12), the Local Government shall have obtained all permits and approvals required for the construction of the facilities to be funded under an amendment to this Agreement. The Local Government shall obtain operation permits, if applicable, when construction is complete.

4.07. PROHIBITION AGAINST ENCUMBRANCES. The Local Government is prohibited from selling, leasing or disposing of any part of the Water or Sewer System which would reduce operational integrity, or Revenues, so long as this Agreement, including any amendment thereto, is in effect unless the written consent of the Department is first secured.

4.08. COMPLETION MONEYS. The Department covenants that loan funds, resulting from repayments of other loans made by the Department from the State Revolving Fund, to finance Post-allowance Project Costs in the amount set forth in Subsection 4.02(2) have been scheduled to be available to the Local Government. This Agreement shall be amended to include said funds at the interest rate set forth in Section 9.02 provided the Local Government complies with said schedule and provided there are no substantive delays in repayment of other State Revolving Fund loans upon which completion moneys are dependent. In addition to the proceeds of this Loan, as may be amended, the Local Government covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the facilities designed under the Project in operation on, or prior to, the date to be specified under an Additional Completion Loan.

4.09. PROJECT CLOSE-OUT. The Department shall conduct a final inspection of the Project records. As a result of the inspection, deadlines for submitting additional disbursement requests, if any, shall be established. When an Additional Completion Loan is made to fund Post-allowance Project Costs, the close-out of the Loan shall be postponed and combined with the close-out for the amended loan agreement. Deadlines shall be incorporated into the Loan Agreement by the

amendment. At the time of the amendment, the Local Government's audit under Subsection 2.01(13) shall be scheduled.

4. 10. SURPLUS LOAN FUNDS RESULTING FROM ADDITIONAL COMPLETION LOAN. After the Department establishes the final costs to be financed by the Loan, the Loan Service Fee, Loan repayment reserve, Capitalized Interest, and all allowances may be adjusted and the balance of Loan funds remaining will be eliminated. The principal amount of the Loan will be adjusted by the Department. Such an adjustment will change, on a pro rata basis, the amount of the remaining Semiannual Loan Payments as addressed in Section 9.04.

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

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

5.03. MANDATORY CONNECTIONS. The Local Government 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 Water and Sewer Systems to connect such building to the Water and Sewer Systems.

5.04. NO COMPETING SERVICE. When consistent with applicable law, the Local Government shall not allow any person to provide any services which would compete with the Water or Sewer Systems so as to adversely affect Revenues.

5.05. MAINTENANCE OF THE WATER AND SEWER SYSTEMS. The Local Government 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 Local Government may make any additions, modifications or improvements to the Water and Sewer Systems which it deems desirable and which do not reduce the operational integrity of any part of the Water or Sewer Systems. All such renewals, replacements, additions,

modifications and improvements shall become part of the Water and Sewer Systems. This does not preclude the Local Government from acquiring independent service areas, separate and apart from the existing Water and Sewer Systems.

5.07. COLLECTION OF REVENUES. The Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government shall establish liens on premises served by the Water or Sewer Systems for the amount of all delinquent rates, fees and other charges where such action is permitted by law and is economically feasible. The Local Government shall, to the full extent permitted by law, cause to discontinue the services of the Water and Sewer Systems and use its best effort to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Water and Sewer Systems rates, fees and other charges.

ARTICLE VI- DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT. Each of the following events is hereby declared an event of default:

(1) Failure to fund the Loan Repayment Reserve Account or 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 thirty (30) days.

(2) Failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement, other than as provided in Subsection 6.01(1), above, or Subsection 6.01(7), below, and such failure shall continue for a period of sixty (60) days after written notice thereof to the Local Government by the Department.

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

(4) An order or decree entered, with the acquiescence of the Local Government, appointing a receiver of any part of the Water or Sewer Systems or Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Local Government, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Local Government, for the purpose of effecting a composition between the Local Government and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any

federal or state statute now or hereafter enacted, if the claims of such creditors are payable from the Revenues of the Water or Sewer Systems.

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

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

6.02. REMEDIES. Upon any event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by any of the following remedies:

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

(2) By action or suit in equity, require the Local Government 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, subject to the rights of others having prior or superior liens on the Pledged Revenues.

(5) By certifying to the Auditor General and the Comptroller delinquency on loan repayments, the Department may intercept the delinquent amount plus six (6) percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Local Government under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. Penalty interest shall accrue on any amount due and payable beginning on the thirtieth (30th) day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies.

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

(8) By accelerating the repayment schedule or increasing the interest rate by as much as three (3) percent per annum on the unpaid principal of the Loan for a default under Subsection 6.01(1).

(9) By terminating the Department's commitment, under Section 4.08 to provide an Additional Completion Loan for the funding of Post-allowance Project Costs.

6.03. DELAY AND WAIVER. No delay or omission by the Department to exercise any right or power accruing upon event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VII- THE PLEDGED REVENUES

7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT. From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues prior and superior to any other lien, pledge or assignment not specifically set forth in this Agreement. If the loan is made in accordance with an existing bond resolution authorizing a specific amount of additional Local Government indebtedness with superior or parity liens on Pledged Revenues, all obligations of the Local Government under this Agreement shall be subordinate in right of payment to all bonds heretofore or hereafter issued under said specific provisions of the bond resolutions. The consent of the Department is not needed in connection with the issuance of any such bonds. Additionally, any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS. To the extent not permitted under Section 7.01, the Local Government may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues with the written consent of the Department which consent shall be given if the Local

Government demonstrates that the Pledged Revenues plus Revenues to be pledged to the additional proposed debt obligations will equal or exceed 1.15 times the annual combined debt service requirements of this Agreement plus debt service on other obligations proposed to be issued by the Local Government.

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 Local Government shall have paid, or shall have made provision for the timely payment of, the principal amount of the Loan and interest required, 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 and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Local Government has received a disbursement and before three years have elapsed after the Department's final Project disbursement to the Local Government.

8.03. ACCESS TO PROJECT SITE. The Local Government shall provide access to offices and other sites where Project work is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Local Government shall cause its engineers and contractors to provide copies of project 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 Local Government. The Local Government shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT. This Agreement may be amended, 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. This Agreement may be amended as set forth in Section 4.08 to provide funding for Post-allowance Project Costs. This Agreement shall be amended to close out the Project after the final Project cost has been determined by the Department as set forth in Section 4.09.

8.06. 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.

8.07. EXECUTION OF AGREEMENT. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument. The Agreement becomes effective upon execution by the Secretary of the Department.

ARTICLE IX- DETAILS OF FINANCING

9.01. PRINCIPAL AMOUNT OF LOAN. The amount of the Loan is \$263,000 including capitalized interest.

9.02. INTEREST RATE. The rate of interest on the unpaid principal of the Loan is 2.59% percent per annum; however, if this Agreement is not executed by the Local Government and the Department before June 30, 1994, the interest rate shall be adjusted pursuant to Section 17-503.430 of the Florida Administrative Code. This interest rate shall apply to an Additional Completion Loan to fund Post-allowance Project Costs provided the requirements set forth in Section 4.08 are met.

9.03. LOAN TERM. The Loan shall be repaid in forty Semiannual Loan Payments.

9.04. REPAYMENT SCHEDULE. The Loan repayment schedule shall be dependent upon whether an amendment to this Loan Agreement is executed for an Additional Completion Loan to fund Post-allowance Project Costs. Subsection (1), below, pertains to the repayment schedule in the event that this Agreement is amended to provide completion moneys as set forth in Section 4.08 and thereby fund Post-allowance Project Costs. Subsection (2), below, pertains to the repayment schedule in the event that this Agreement is not amended to provide completion moneys as set forth in Section 4.08.

(1) When this Agreement is amended to provide completion moneys, the first Semiannual Loan Payment shall be postponed until the date to be established in the amendment for the Additional Completion Loan. The first Semiannual Loan Payment shall be computed based upon the amended principal amount of the loan,

generally expected to be the sum of the amount estimated under Subsection 4.03(3) plus capitalized interest; the estimated disbursement schedule to be identified under an Additional Completion Loan reflecting construction related activities; the timing of the actual disbursements made under this Loan for preconstruction activities; and the principle of level debt service. Subsequent Semiannual Loan Payments may be adjusted based upon actual disbursement information, overpayment or underpayment associated with the amount of previous Semiannual Loan Payment, and the principle of level debt service. Final costs to be financed under the State Revolving Fund loan shall be established after the Local Governments certification of performance under Rule 17-503.750(1) of the Florida Administrative Code, the Department's inspection of the constructed facilities and associated records, and the close-out amendment to the Loan Agreement.

The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the amended loan, including Capitalized Interest recalculated to reflect the postponement of repayment of this Loan. Interest on the principal shall be computed as of the due date of the Semiannual Loan Payment. Semiannual Loan Payments shall be received by the Department beginning on or before six months from the date established for completion of construction as is to be set forth by amendment to this Agreement. Repayments shall be made semiannually thereafter until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means or by means of magnetic tape when such transfer mechanisms are available.

(2) Unless this Agreement is amended to provide an Additional Completion Loan to fund Post-allowance Project Costs, the first Semiannual Loan Payment shall be computed based upon the principal amount of the Loan as set forth in Section 9.01, the estimated disbursement schedule identified in Section 4.03, and the principle of level debt service. Subsequent Semiannual Loan Payments may be adjusted based on the timing of actual disbursements and an adjustment for any overpayment or underpayment associated with the amount of the first Semiannual Loan Payment. Actual Project costs shall be established after the Department's inspection of the Project records and the close-out amendment to the Loan Agreement has been issued.

Each Semiannual Loan Payment shall be in the amount of \$8,465. 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 on the principal shall be computed as of the due date of the Semiannual Loan Payment. Semiannual Loan Payments shall be received by the Department beginning on or before August 15, 1995, and semiannually thereafter on or before February 15 and August 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means or by means of magnetic tape when such

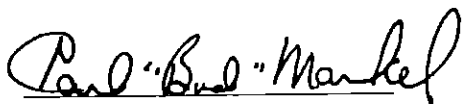
transfer mechanisms are available. This Subsection 9.04(2) shall be voided in the event of an Additional Completion Loan to fund Post-allowance Project Costs.

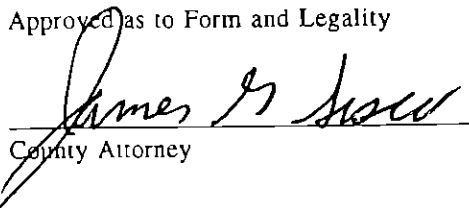
IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary of the Department and the Local Government has caused this Agreement to be executed on its behalf by the Authorized Representative with its seal affixed. The effective date of this Agreement is the 27th day of June 1994.

for
ST. JOHNS COUNTY, FLORIDA


Chairman of the Board of County Commissioners

Approved as to Form and Legality


Attest by Clerk of the Court


County Attorney

(SEAL)

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION


Secretary