

RESOLUTION NO. 2009-257

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS AND REQUIREMENTS OF THE CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENTS BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, RELATING TO THE CONSTRUCTION OF SEWER IMPROVEMENTS TO PHASE-OUT EXISTING SEPTIC TANKS IN THE CITY, UNDER WHICH LOAN AGREEMENTS ST. JOHNS COUNTY, FLORIDA, AGREES TO REPAY THE RELATED LOANS MADE TO THE CITY IN ACCORDANCE WITH SAID LOAN AGREEMENTS AND THE INTERLOCAL AGREEMENT, AS AMENDED, BETWEEN THE CITY AND THE COUNTY RELATING THERETO; AND AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE SAID LOAN AGREEMENTS ON BEHALF OF ST. JOHNS COUNTY, FLORIDA.

WHEREAS, the St. Johns County, Florida (the "County"), and the City of St. Augustine Beach, Florida (the "City"), entered into an Interlocal Agreement dated April 28, 1992, in order to establish terms and conditions related to transportation level of service, road maintenance, water and sewer, protection of potable water wellfields, emergency medical services and fire protection, recreation, solid waste recycling, and solid waste; and

WHEREAS, in order to more fully establish the terms, conditions, provisions, requirements, responsibilities and obligations of the County and the City in connection with a phase-out of existing septic tanks and the implementation of the sewer project contemplated by the County and the City (the "Sewer Project") and to pursue and secure loan funds for the Sewer Project, the County and the City entered into a First Addendum and a Second Addendum to said Interlocal Agreement, dated June 5, 2006 and July 8, 2009, respectively (collectively, the "Interlocal Agreement"); and

WHEREAS, the County and the City desire to qualify the Sewer Project for the American Recovery and Reinvestment Act from the Stimulus Funds and for other available loan funds through the Florida Department of Environmental Protection (the "FDEP"); and

WHEREAS, the qualifications for such FDEP loan funds require that the City be the funding applicant for such FDEP loans; and

WHEREAS, pursuant to the Interlocal Agreement, the City has applied for FDEP loan and principal forgiveness loan funds for the Sewer Project and agreed to enter into

loan agreements with the FDEP relating to such loans (the "Loan Agreements"), copies of which are attached hereto as Exhibit A, the City has agreed to provide all such loan funds to the County to utilize for the Sewer Project, the County has agreed to construct, operate and maintain the Sewer Project as part of the County's primary utility system (the "System"), pay to the City sums sufficient to pay the principal and interest on the City's loans not forgiven used by the County for the Sewer Project, as the same become due and payable, but solely from the net water and sewer revenues of the System (the "Net Revenues") after payment of all of the County's indebtedness now or hereafter secured by a pledge of the Net Revenues (the "County's Indebtedness"), and to secure such payment obligation, the County pledged to the City the Net Revenues, provided such pledge in favor of the City is junior, subordinate and inferior in every respect to any pledge or lien on the Net Revenues in favor of the holders of the County's Indebtedness, all in the manner and to the extent described in the Interlocal Agreement; and

WHEREAS, the FDEP requires the County to sign the Loan Agreements in order to provide assurance that the County will provide for repayment of the FDEP loans in accordance with the Loan Agreements and the Interlocal Agreement; and

WHEREAS, the County has determined that execution of the Loan Agreements will serve the collective interests of both the County and the City;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. The above Recitals are incorporated into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

SECTION 2. The Board of County Commissioners of St. Johns County, Florida, approves the terms, provisions, conditions and requirements of the Loan Agreements relating to the County as set forth in the Loan Agreements and the Interlocal Agreement, and authorizes the Chair of the Board of County Commissioners to execute the Loan Agreements on behalf of the County.

SECTION 3. The County Administrator is authorized to delegate responsibility to appropriate County staff, in order to carry out the technical, financial and administrative activities associated with this Resolution and the Loan Agreements.

SECTION 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 15th day of September, 2009.

OF

BOARD OF COUNTY COMMISSIONERS

ST. JOHNS COUNTY, Florida

Attest:

By:

Pam Halterman
Deputy Clerk

Cyndi Stevenson
Cyndi Stevenson, Chair

RENDITION DATE 9/16/09



Exhibit A

LOAN AGREEMENTS

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

CITY OF ST. AUGUSTINE BEACH, FLORIDA

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

WW550300

**Florida Department of Environmental Protection
Bureau of Water Facilities Funding
Bob Martinez Center
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400**

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
ARTICLE I - DEFINITIONS	1
1.01. WORDS AND TERMS.	1
1.02. CORRELATIVE WORDS.	4
ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS	4
2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.	4
2.02. LEGAL AUTHORIZATION.	6
2.03. AUDIT AND MONITORING REQUIREMENTS.	6
ARTICLE III - LOAN REPAYMENT ACCOUNT	9
3.01. LOAN DEBT SERVICE ACCOUNT.	9
3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.	10
3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.	10
3.04. ASSETS HELD IN TRUST.	10
ARTICLE IV - PROJECT INFORMATION	10
4.01. PROJECT CHANGES.	10
4.02. TITLE TO PROJECT SITE.	10
4.03. PERMITS AND APPROVALS.	11
4.04. ENGINEERING SERVICES.	11
4.05. PROHIBITION AGAINST ENCUMBRANCES.	11
4.06. COMPLETION MONEYS.	11
4.07. CLOSE-OUT.	11
4.08. LOAN DISBURSEMENTS.	11
ARTICLE V - RATES AND USE OF THE SEWER SYSTEM	12
5.01. RATE COVERAGE.	12
5.02. NO FREE SERVICE.	12
5.03. MANDATORY CONNECTIONS.	12
5.04. NO COMPETING SERVICE.	13
5.05. MAINTENANCE OF THE SEWER SYSTEM.	13
5.06. ADDITIONS AND MODIFICATIONS.	13
5.07. COLLECTION OF REVENUES.	13
ARTICLE VI - DEFAULTS AND REMEDIES	13
6.01. EVENTS OF DEFAULT.	13
6.02. REMEDIES.	14
6.03. DELAY AND WAIVER.	15
ARTICLE VII - THE PLEDGED REVENUES	15
7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.	15
7.02. ADDITIONAL DEBT OBLIGATIONS.	15
ARTICLE VIII - GENERAL PROVISIONS	16
8.01. DISCHARGE OF OBLIGATIONS.	16

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
8.02. PROJECT RECORDS AND STATEMENTS.	16
8.03. ACCESS TO PROJECT SITE.	16
8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.	16
8.05. AMENDMENT OF AGREEMENT.	17
8.06. ANNULMENT OF AGREEMENT.	17
8.07. SEVERABILITY CLAUSE.	17
8.08. FALSE CLAIMS.	17
8.09. ARRA LOGO DISPLAY.	17
8.10. COMPLIANCE VERIFICATION.	17
ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE	18
9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.	18
9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.	19
9.03. INSURANCE REQUIRED.	19
ARTICLE X - DETAILS OF FINANCING	20
10.01. PRINCIPAL AMOUNT OF LOAN.	20
10.02. RESERVED.	20
10.03. FINANCING RATE.	20
10.04. LOAN TERM.	20
10.05. REPAYMENT SCHEDULE.	20
10.06. PROJECT COSTS.	21
10.07. SCHEDULE.	21
10.08. SPECIAL CONDITIONS.	22
ARTICLE XI - EXECUTION OF AGREEMENT	23

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT
WW550300

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF ST. AUGUSTINE BEACH, FLORIDA, (Local Government) existing as a local governmental agency 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 or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the Department; and

WHEREAS, pursuant to OGC Case No: 09-0459, Emergency Order, the Department is authorized to allow Principal Forgiveness on Loans funded by the American Recovery and Reinvestment Act; 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 Loan and Principal Forgiveness.

NOW, THEREFORE, in consideration of the Department loaning money to the Local Government, in the principal amount and pursuant to 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) "Agreement" or "Loan Agreement" shall mean this construction loan agreement.
- (2) "Associated Loan" shall mean the money awarded to the Local Government for the Project by the Department pursuant to the Associated Loan Agreement and amendments thereto.
- (3) "Associated Loan Agreement" shall mean the Cleanwater SRF Loan Agreement, Number WW550301, including amendments thereto, between the Local Government and the Department.
- (4) "ARRA" shall mean the American Recovery and Reinvestment Act of 2009.

- (5) "Authorized Representative" shall mean the official of the Local Government authorized by ordinance or resolution to sign documents associated with the Loan.
- (6) "Capitalized Interest" shall mean a finance charge that accrues at the Financing Rate 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.
- (7) "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.
- (8) "Financing Rate" shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan.
- (9) "Interlocal Agreement" shall mean the agreement between the City of St. Augustine Beach and the Board of Commissioners of St. Johns County to establish terms and conditions related to transportation level of service, road maintenance, water and sewer, protection of potable water wellfields, emergency medical services and fire protection, recreation, solid waste recycling, and solid waste signed on April 28, 1992, as amended on June 5, 2006 and July 8, 2009.
- (10) "Loan" shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.
- (11) "Loan Application" shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.
- (12) "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 Local Government for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.
- (13) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Local Government to the Loan Debt Service Account.
- (14) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from revenues of the System, depreciation, and any other items not requiring the expenditure of cash.
- (15) "Pledged Revenues" shall mean the specific revenue amounts received by the Local Government from St. Johns County relating to the Project pursuant to the terms of the Interlocal Agreement pledged as security for repayment of the Loan and the Associated Loan, and shall not to exceed \$3,982,117 in principal, excluding Capitalized Interest, derived yearly from the operation of the System after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of any St. Johns County Senior Revenue Obligations (see (20) below) and any senior obligations issued pursuant to Section 7.02 of this Agreement.

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

(17) "Project" shall mean the works financed by this Loan, the Associated Loan and the Associated Grant and shall consist of furnishing all labor, materials, and equipment to construct the collection facilities project in accordance with the plans and specifications accepted by the Department for the "St. Augustine Beach Sewer System Improvements" contract.

The Project is in agreement with the planning documentation accepted by the Department effective September 7, 2005. A Florida Categorical Exclusion Notification was published on August 5, 2005 and no adverse comments were received. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code.

(18) "Semiannual Loan Payment" shall mean the payment due from the Local Government to the Department at six-month intervals.

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

(20) "Senior Revenue Obligations" shall mean the following debt obligations:

(a) St. Johns County, Florida, Water and Sewer Revenue Bonds, Series 1991A, issued in the amount of \$14,680,398, pursuant to Resolution No. 89-84 as amended and supplemented; and

(b) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 1996, issued in the amount of \$19,990,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(c) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 1998, issued in the amount of \$2,225,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(d) St. Johns County, Florida, Water and Sewer Revenue Refunding Bonds, Series 1999A and 1999B, issued in the amount of \$14,260,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(e) St. Johns County, Florida, Water and Sewer Revenue Bonds, Series 2004, issued in the amount of \$27,601,380, pursuant to Resolution No. 89-84 as amended and supplemented; and

(f) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 2006, issued in the amount of \$42,830,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(g) Additional bonds issued on a parity with the bonds identified above pursuant to Section 5.02 of Resolution No. 89-84 as amended and supplemented; and

(h) Any refunding bonds issued to refund the obligations identified above provided such bonds shall not increase annual debt service during the repayment period of this Loan; and

(i) State Revolving Fund Loan CS12082802P in the principal amount of \$1,950,267.75; and

(j) Lease Obligations between St. Johns County and Johnson Controls, Inc. dated May 3, 2006, as amended.

(21) "System" shall mean the complete primary water and sewer facilities now owned, operated and maintained by St. Johns County and any and all other water and sewer facilities hereafter acquired and operated by the County which shall be expressly declared by resolution of the Board of County Commissioners to be part of the System, which System shall also include any and all improvements, extensions, and additions to the foregoing which shall be hereafter constructed or acquired, together with all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therein. The System shall not include the County's Ponte Vedra water and sewer facilities.

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.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Government warrants, represents and covenants that:

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

(2) The Local Government currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Local Government's knowledge, threatened, which seeks to restrain or enjoin the Local Government from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. 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, in accordance with the Interlocal Agreement, 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, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Local Government representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Local Government to the Department was current and correct as of the date such information was delivered. The Local Government shall comply with Chapter 62-503, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Local Government shall take such action as is necessary for compliance.

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

(9) In the event the anticipated Pledged Revenues are shown 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 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 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 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 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 non-ad valorem funds.

(10) Each year, beginning three months before the first Semiannual Loan Payment 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, pursuant to the schedule established in Section 10.07, a certification that: (a) the Loan Debt Service Account contains the funds required; and (b) 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.

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

(12) The Local Government agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Government are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(13) The Local Government covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Local Government covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

2.02. LEGAL AUTHORIZATION.

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

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

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

2.03. AUDIT AND MONITORING REQUIREMENTS.

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

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

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
95423009-0	EPA	66.458	Capitalization Grants for State Revolving Funds	\$6,938,519	140132

(2) Audits.

(a) In the event that the Local Government expends \$500,000 or more in Federal awards in its fiscal year, the Local Government must have a single or program-specific audit conducted

in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Government shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Local Government conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Government shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Government expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. The Local Government shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government in which the \$500,000 threshold has not been met. In the event that the Local Government expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Local Government resources obtained from other than Federal entities).

(d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://12.46.245.173/cfda.html>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Government directly to each of the following:

(i) The Department at the following address:

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street

Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/fac/>

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Government shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Local Governments, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Local Government in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs, the Local Government shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Local Government shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

(5) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Local Government shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

The Local Government is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this

Agreement. For federal financial assistance, the Local Government shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section __.210 for determining whether the relationship represents that of a subrecipient or vendor.

The Local Government should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

In addition, the Local Government agrees to complete and submit the Certification of Applicability to Single Audit Act Reporting, Attachment A, attached hereto and made a part hereof, within four (4) months following the end of the Local Government's fiscal year. Attachment A should be submitted to the Department's Grants Development and Review Manager at 3900 Commonwealth Boulevard, Mail Station 93, Tallahassee, Florida 32399-3000. The Grants Development and Review Manager is available to answer any questions at (850) 245-2361.

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Government 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 Local Government 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 Local Government fails to make a required Monthly Loan Deposit, the Local Government's chief financial officer shall notify the Department of such failure. In addition, the Local Government 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 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.

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 Local Government'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.

Project changes prior to bid opening shall be made by addendum to plans and specifications. Changes after bid opening shall be made by change order. The Local Government shall submit all addenda and all change orders to the Department for an eligibility determination.

4.02. TITLE TO PROJECT SITE.

The Local Government, subject to the terms of the Interlocal Agreement, 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.

4.03. PERMITS AND APPROVALS.

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

4.04. ENGINEERING SERVICES.

A professional engineer, registered in the State of Florida, shall be employed by, or under contract with, the Local Government and/or St. Johns County pursuant to the terms of the Interlocal Agreement to oversee construction.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

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

4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Local Government covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Local Government's covenants to complete and place the Project in operation.

4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

4.08. LOAN DISBURSEMENTS.

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 Local Government for reimbursement of the incurred construction costs and related services. The Principal Forgiveness on each disbursement will be 65 percent of the requested amount after subtracting costs that are ineligible for Principal Forgiveness. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor,

or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Local Government is required to make such payments.

(3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.

(4) A report to the Department on the number of permanent and temporary jobs created and a statement on how the determination was made.

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

ARTICLE V - RATES AND USE OF THE SEWER SYSTEM

5.01. RATE COVERAGE.

Pursuant to the Interlocal Agreement, the Local Government shall collect the Pledged Revenues from St. Johns County in such amounts and at such times to ensure that such Pledged Revenues will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding the sum of the Semiannual Loan Payments due in such Fiscal Year.

The Local Government shall maintain or cause to be maintained rates and charges for the services furnished by the Sewer System and the System which, along with Pledged Revenues, 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 Sewer System without making a charge therefor based on St. Johns County'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 Sewer System to connect such building to the Sewer System.

5.04. NO COMPETING SERVICE.

The Local Government, except as otherwise provided in the Interlocal Agreement, shall not allow any person to provide any services which would compete with the Sewer System.

5.05. MAINTENANCE OF THE SEWER SYSTEM.

Subject to the terms of the Interlocal Agreement, the Local Government shall operate and maintain the Sewer System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

Subject to the terms of the Interlocal Agreement, the Local Government may make any additions, modifications or improvements to the Sewer System which it deems desirable and which do not materially reduce the operational integrity of any part of the Sewer System. All such renewals, replacements, additions, modifications and improvements shall become part of the Sewer System.

5.07. COLLECTION OF REVENUES.

The Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government shall establish, or cause to be established, liens on premises served by the Sewer System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Local Government shall, to the full extent permitted by law, cause to discontinue the services of the Sewer System and use its best efforts to shut off, or cause to be shut off, service furnished to persons who are delinquent beyond customary grace periods in the payment of Sewer System 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 make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsections 6.01(1) and 6.01(7), 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 and such failure shall continue for a period of 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 Sewer System or if such order or decree, having been entered without the consent or acquiescence of the Local Government, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

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

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

(7) Failure of the Local Government to give immediate written notice of default to the Department and such failure shall continue for a period of 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 Sewer System, 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 Sewer System 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 Sewer System, 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 a penalty 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. The Department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt.

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 Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate for a default under Subsection 6.01(1).

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, which along with any other Department State Revolving Fund liens on the Pledged Revenues, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Government under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. 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.

The Local Government 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 shall be granted if the Local Government demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the System 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 Local Government and will satisfy the coverage requirements of all other debt

obligations secured by the Pledged Revenues. However, no such consent is required with respect to issuance of Senior Revenue Obligations as defined in Section 1.01.

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 entire principal amount of the Loan, and as applicable, interest and 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 until three years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

8.03. ACCESS TO PROJECT SITE.

The Local Government shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Local Government shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Local Government. The Local Government shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency. This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A final

amendment establishing the final Project costs based on actual Project costs shall be completed after the Department's final inspection of the Project records.

8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Local Government does not award construction contracts prior to October 1, 2009 or if they have not drawn any of the Loan proceeds prior to January 1, 2010. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Local Government.

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. FALSE CLAIMS.

The Local Government must promptly refer to the EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or sub-grants awarded by the grantee. The Local Government is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

8.09. ARRA LOGO DISPLAY.

The Local Government must display the ARRA logo in a manner that informs the public that the Project is an ARRA investment.

8.10. COMPLIANCE VERIFICATION.

(1) The Local Government shall periodically interview, or cause to be interviewed, a sufficient number of employees entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Local Government must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The Local Government shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Local Government must conduct, or cause to be conducted, interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Local Governments must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or

subcontractor is not complying with Davis-Bacon. Local Governments shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

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

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

Local Governments must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact Sheryl Parsons at Parsons.Sheryl@epamail.epa.gov and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

The following documentation is required to receive the Department's authorization to award construction contracts:

- (1) Proof of advertising.
- (2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.

(4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.

(5) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.

(6) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

(7) Assurance that the Local Government and contractors are in compliance with Section 1606 with labor standards, including prevailing wage rates established for its locality by the U.S. Department of Labor under the Davis-Bacon Act for Project construction.

(8) Certification that all procurement is in compliance with Section 1605 of the ARRA, which states that all iron, steel, and manufactured goods used in the Project must be manufactured or assembled in the United States unless (a) a waiver is provided to the Local Government by the Environmental Protection Agency (EPA) or (b) compliance would be inconsistent with United States obligations under international agreements.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

After the Department's authorization to award construction contracts has been received, the Local Government shall submit:

- (1) Contractor insurance certifications.
- (2) Certified copy of the award resolution.
- (3) Notices to proceed with construction.

9.03. INSURANCE REQUIRED.

The Local Government shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Sewer System (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of Revenue Producing Facilities of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Local Government shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is \$6,938,519. Of that, the estimated amount of Principal Forgiveness is \$4,510,037. The estimated principal amount of the Loan to be repaid is \$2,509,782, which consists of \$2,428,482 to be disbursed to the Local Government and \$81,300 of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Government, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing 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 establishing the schedule of actual disbursements.

Additional State Revolving Fund financing for the Project is dependent upon the availability of additional funds and future funding priority entitlement.

10.02. RESERVED.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 2.92 percent per annum. However, if this Agreement is not executed by the Local Government and returned to the Department before October 1, 2009, the Financing Rate may be adjusted. A new Financing Rate shall be established for any funds provided by amendment to this Agreement.

10.04. LOAN TERM.

The Loan shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan 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 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.

Each Semiannual Loan Payment shall be in the amount of \$83,283 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, which includes Capitalized Interest. The interest on the unpaid balance shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on July 15, 2012 and semiannually thereafter on January 15 and July 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 Loan principal to be repaid of \$2,509,782.

10.06. PROJECT COSTS.

The Local Government and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Local Government receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Local Government's Project audit or a Department audit. The Local Government agrees to the following estimates of Project costs:

PROJECT COSTS

	Estimated	Authorized	Authorized
LINE ITEM	Total Costs	ARRA Loan WW550300*	Direct Loan WW550301*
Construction	6,307,744	6,307,744	0
Contingency	315,387	0	315,387
Technical Services	630,775	630,775	0
Subtotal (Disbursable Amount)	7,253,906	6,938,519	315,387
Less Principal Forgiveness	(4,510,037)	(4,510,037)	0
Subtotal (Loan Amount)	2,743,869	2,428,482	315,387
Estimated Capitalized Interest	91,900	81,300	10,600
Total (Loan Principal Amount)	2,835,769	2,509,782	325,987

*The Direct and ARRA Loans can't exceed \$3,982,117, which is the upper amount specified in the Interlocal Agreement, Addendum 2.

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

- (1) Construction contracts shall be awarded no later than October 1, 2009.
- (2) Completion of Project construction is scheduled for January 15, 2012.
- (3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than January 15, 2012.

(4) The initial annual certification required under Subsection 2.01(10) of this Agreement shall be due April 15, 2012. Thereafter the certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Payment is made.

(5) The first Semiannual Loan Payment in the amount of \$83,283 shall be due July 15, 2012.

10.08. SPECIAL CONDITIONS.

(1) Prior to any funds being released, the Local Government shall submit a signature page of the application signed by the Mayor.

(2) Project costs shall be reviewed, and may be adjusted, once the final Project costs have been established.

(3) Funding for allowances has been provided for in Disadvantaged Small Community Grant SG510010.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW550300 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.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Deputy Director and the Local Government and St. Johns County have caused this Agreement to be executed on their behalf by their Authorized Representatives and by their affixed seals. The effective date of this Agreement shall be as set forth below by the Deputy Director.

for
ST. AUGUSTINE BEACH

for
ST. JOHNS COUNTY

Mayor

Chairman, Board of County Commissioners

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

The County agrees to provide for repayment in accordance with this Agreement and the Interlocal Agreement

City Attorney

Seal

Attest

City Clerk

Seal

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Deputy Director
Division of Water Resource Management

Date

Attachment included as part of this Agreement:

Attachment A - Certification of Applicability to Single Audit Act Reporting

ATTACHMENT A

CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING

Local Government's Name:

Local Government's Fiscal Year Period: FROM: _____ TO: _____

Total State Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$ _____

Total Federal Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$ _____

Please identify grants to be included in the Single Audit that are provided by the Department of Environmental Protection

CSFA#CFDA# DEP LOAN AGREEMENT NUMBER

CERTIFICATION STATEMENT:

I hereby certify that the above information is correct:

Name

Date

Title



**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

CITY OF ST. AUGUSTINE BEACH, FLORIDA

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

WW550301

**Florida Department of Environmental Protection
Bureau of Water Facilities Funding
Bob Martinez Center
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400**

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
ARTICLE I - DEFINITIONS	1
1.01. WORDS AND TERMS.	1
1.02. CORRELATIVE WORDS.	4
ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS	4
2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.	4
2.02. LEGAL AUTHORIZATION.	6
2.03. AUDIT AND MONITORING REQUIREMENTS.	6
ARTICLE III - LOAN REPAYMENT ACCOUNT	9
3.01. LOAN DEBT SERVICE ACCOUNT.	9
3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.	10
3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.	10
3.04. ASSETS HELD IN TRUST.	10
ARTICLE IV - PROJECT INFORMATION	10
4.01. PROJECT CHANGES.	10
4.02. TITLE TO PROJECT SITE.	10
4.03. PERMITS AND APPROVALS.	11
4.04. ENGINEERING SERVICES.	11
4.05. PROHIBITION AGAINST ENCUMBRANCES.	11
4.06. COMPLETION MONEYS.	11
4.07. CLOSE-OUT.	11
4.08. LOAN DISBURSEMENTS.	11
ARTICLE V - RATES AND USE OF THE SEWER SYSTEM	12
5.01. RATE COVERAGE.	12
5.02. NO FREE SERVICE.	12
5.03. MANDATORY CONNECTIONS.	13
5.04. NO COMPETING SERVICE.	13
5.05. MAINTENANCE OF THE SEWER SYSTEM.	13
5.06. ADDITIONS AND MODIFICATIONS.	13
5.07. COLLECTION OF REVENUES.	13
ARTICLE VI - DEFAULTS AND REMEDIES	13
6.01. EVENTS OF DEFAULT.	13
6.02. REMEDIES.	14
6.03. DELAY AND WAIVER.	15
ARTICLE VII - THE PLEDGED REVENUES	15
7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.	15
7.02. ADDITIONAL DEBT OBLIGATIONS.	15
ARTICLE VIII - GENERAL PROVISIONS	16
8.01. DISCHARGE OF OBLIGATIONS.	16

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

<u>CONTENTS</u>	<u>PAGE</u>
8.02. PROJECT RECORDS AND STATEMENTS.	16
8.03. ACCESS TO PROJECT SITE.	16
8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.	16
8.05. AMENDMENT OF AGREEMENT.	16
8.06. ANNULMENT OF AGREEMENT.	17
8.07. SEVERABILITY CLAUSE.	17
ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE	17
9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.	17
9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.	17
9.03. INSURANCE REQUIRED.	18
ARTICLE X - DETAILS OF FINANCING	18
10.01. PRINCIPAL AMOUNT OF LOAN.	18
10.02. LOAN SERVICE FEE.	18
10.03. FINANCING RATE.	19
10.04. LOAN TERM.	19
10.05. REPAYMENT SCHEDULE.	19
10.06. PROJECT COSTS.	19
10.07. SCHEDULE.	20
10.08. SPECIAL CONDITIONS.	20
ARTICLE XI - EXECUTION OF AGREEMENT	21

CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

WW550301

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF ST. AUGUSTINE BEACH, FLORIDA, (Local Government) existing as a local governmental agency 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 or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the Department; 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 loan.

NOW, THEREFORE, in consideration of the Department loaning money to the Local Government, in the principal amount and pursuant to 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) "Agreement" or "Loan Agreement" shall mean this construction loan agreement.
- (2) "Associated Loan" shall mean the money awarded to the Local Government for the Project by the Department pursuant to the Associated Loan Agreement and amendments thereto.
- (3) "Associated Loan Agreement" shall mean the Cleanwater SRF Loan Agreement, Number WW550300, including amendments thereto, between the Local Government and the Department.
- (4) "Authorized Representative" shall mean the official of the Local Government authorized by ordinance or resolution to sign documents associated with the Loan.
- (5) "Capitalized Interest" shall mean a finance charge that accrues at the Financing Rate 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.

(6) "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.

(7) "Financing Rate" shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan. The Financing Rate shall consist of an interest rate component and a Grant Allocation Assessment rate component.

(8) "Grant Allocation Assessment" shall mean an assessment, expressed as a percent per annum, accruing on the unpaid balance of the Loan. It is computed similarly to the way interest charged on the Loan is computed and is included in the Semiannual Loan Payment. The Department will use Grant Allocation Assessment moneys for making grants to financially disadvantaged small communities pursuant to Section 403.1835 of the Florida Statutes.

(9) "Interlocal Agreement" shall mean the agreement between the City of St. Augustine Beach and the Board of Commissioners of St. Johns County to establish terms and conditions related to transportation level of service, road maintenance, water and sewer, protection of potable water wellfields, emergency medical services and fire protection, recreation, solid waste recycling, and solid waste signed on April 28, 1992, as amended on June 5, 2006 and July 8, 2009.

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

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

(12) "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 Local Government for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(13) "Loan Service Fee" shall mean an origination fee which shall be paid to the Department by the Local Government.

(14) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Local Government to the Loan Debt Service Account.

(15) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from revenues of the System, depreciation, and any other items not requiring the expenditure of cash.

(16) "Pledged Revenues" shall mean the specific revenue amounts received by the Local Government from St. Johns County relating to the Project pursuant to the terms of the Interlocal Agreement pledged as security for repayment of the Loan and the Associated Loan, and shall not to exceed \$3,982,117 in principal, excluding Capitalized Interest, derived yearly from the operation of the System after payment of the Operation and Maintenance Expense and the

satisfaction of all yearly payment obligations on account of any St. Johns County Senior Revenue Obligations (see (20) below) and any senior obligations issued pursuant to Section 7.02 of this Agreement.

(17) "Project" shall mean the works financed by this Loan, the Associated Loan and the Associated Grant and shall consist of furnishing all labor, materials, and equipment to construct the collection facilities project in accordance with the plans and specifications accepted by the Department for the "City of St. Augustine Beach Sewer System Improvements" contract.

The Project is in agreement with the planning documentation accepted by the Department effective September 7, 2005. A Florida Categorical Exclusion Notification was published on August 5, 2005 and no adverse comments were received. This Project is a Capitalization Grant Project as defined in Chapter 62-503, Florida Administrative Code.

(18) "Semiannual Loan Payment" shall mean the payment due from the Local Government to the Department at six-month intervals.

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

(20) "Senior Revenue Obligations" shall mean the following debt obligations:

(a) St. Johns County, Florida, Water and Sewer Revenue Bonds, Series 1991A, issued in the amount of \$14,680,398, pursuant to Resolution No. 89-84 as amended and supplemented; and

(b) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 1996, issued in the amount of \$19,990,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(c) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 1998, issued in the amount of \$2,225,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(d) St. Johns County, Florida, Water and Sewer Revenue Refunding Bonds, Series 1999A and 1999B, issued in the amount of \$14,260,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(e) St. Johns County, Florida, Water and Sewer Revenue Bonds, Series 2004, issued in the amount of \$27,601,380, pursuant to Resolution No. 89-84 as amended and supplemented; and

(f) St. Johns County, Florida, Water and Sewer Revenue and Refunding Bonds, Series 2006, issued in the amount of \$42,830,000, pursuant to Resolution No. 89-84 as amended and supplemented; and

(g) Additional bonds issued on a parity with the bonds identified above pursuant to Section 5.02 of Resolution No. 89-84 as amended and supplemented; and

(h) Any refunding bonds issued to refund the obligations identified above provided such bonds shall not increase annual debt service during the repayment period of this Loan; and

(i) State Revolving Fund Loan CS12082802P in the principal amount of \$1,950,267.75; and

(j) Lease Obligations between St. Johns County and Johnson Controls, Inc. dated May 3, 2006, as amended.

(21) "System" shall mean the complete primary water and sewer facilities now owned, operated and maintained by St. Johns County and any and all other water and sewer facilities hereafter acquired and operated by the County which shall be expressly declared by resolution of the Board of County Commissioners to be part of the System, which System shall also include any and all improvements, extensions, and additions to the foregoing which shall be hereafter constructed or acquired, together with all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therein. The System shall not include the County's Ponte Vedra water and sewer facilities.

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.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Local Government warrants, represents and covenants that:

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

(2) The Local Government currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Local Government's knowledge, threatened, which seeks to restrain or enjoin the Local Government from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. 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, in accordance with the Interlocal Agreement, 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, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Local Government representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Local Government to the Department was current and correct as of the date such information was delivered. The Local Government shall comply with Chapter 62-503, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Local Government shall take such action as is necessary for compliance.

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

(9) In the event the anticipated Pledged Revenues are shown 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 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 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 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 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 non-ad valorem funds.

(10) Each year, beginning three months before the first Semiannual Loan Payment 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, pursuant to the schedule established in Section 10.07, a certification that: (a) the Loan Debt Service Account contains the funds required; and (b) 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.

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

(12) The Local Government agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Local Government are excepted. If for any reason construction is not completed as scheduled, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(13) The Local Government covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Local Government covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

2.02. LEGAL AUTHORIZATION.

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

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

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

2.03. AUDIT AND MONITORING REQUIREMENTS.

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

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

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
CS120001-100	EPA	66.458	Capitalization Grants for State Revolving Funds	\$315,387	140131

(2) Audits.

(a) In the event that the Local Government expends \$500,000 or more in Federal awards in its fiscal year, the Local Government must have a single or program-specific audit conducted

in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Government shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Local Government conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Government shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Government expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. The Local Government shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government in which the \$500,000 threshold has not been met. In the event that the Local Government expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Local Government resources obtained from other than Federal entities).

(d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://12.46.245.173/cfda.html>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Government directly to each of the following:

(i) The Department at the following address:

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street

Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/fac/>

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Government shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Local Governments, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Local Government in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs, the Local Government shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Local Government shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

(5) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Local Government shall ensure that audit working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

The Local Government is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this

Agreement. For federal financial assistance, the Local Government shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section ____.210 for determining whether the relationship represents that of a subrecipient or vendor.

The Local Government should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

In addition, the Local Government agrees to complete and submit the Certification of Applicability to Single Audit Act Reporting, Attachment A, attached hereto and made a part hereof, within four (4) months following the end of the Local Government's fiscal year. Attachment A should be submitted to the Department's Grants Development and Review Manager at 3900 Commonwealth Boulevard, Mail Station 93, Tallahassee, Florida 32399-3000. The Grants Development and Review Manager is available to answer any questions at (850) 245-2361.

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE III - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Government 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 Local Government 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 Local Government fails to make a required Monthly Loan Deposit, the Local Government's chief financial officer shall notify the Department of such failure. In addition, the Local Government 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 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.

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 Local Government'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.

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

4.02. TITLE TO PROJECT SITE.

The Local Government, subject to the terms of the Interlocal Agreement, 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.

4.03. PERMITS AND APPROVALS.

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

4.04. ENGINEERING SERVICES.

A professional engineer, registered in the State of Florida, shall be employed by, or under contract with, the Local Government and/or St. Johns County pursuant to the terms of the Interlocal Agreement to oversee construction.

4.05. PROHIBITION AGAINST ENCUMBRANCES.

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

4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Local Government covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Local Government's covenants to complete and place the Project in operation.

4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

4.08. LOAN DISBURSEMENTS.

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 Local Government for allowance costs and reimbursement of the incurred construction costs and related services. Disbursement of the allowance costs shall be made upon the Department's receipt of a disbursement request form. Up to seventy percent of the estimated allowance shall be disbursed after the Loan Agreement is signed. The remainder of the allowance shall be disbursed after all procurement contracts are executed and shall be adjusted to reflect as-bid costs. The entire estimated allowance may be disbursed after the Loan Agreement is signed if

the local government agrees to an allowance adjustment after all contracts have been bid. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Local Government is required to make such payments.

(3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.

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

ARTICLE V - RATES AND USE OF THE SEWER SYSTEM

5.01. RATE COVERAGE.

Pursuant to the Interlocal Agreement, the Local Government shall collect the Pledged Revenues from St. Johns County in such amounts and at such times to ensure that such Pledged Revenues will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding the sum of the Semiannual Loan Payments due in such Fiscal Year.

The Local Government shall maintain, or cause to be maintained, rates and charges for the services furnished by the Sewer System and the System which, along with Pledged Revenues, 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 Sewer System without making a charge therefor based on St. Johns County'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 Sewer System to connect such building to the Sewer System.

5.04. NO COMPETING SERVICE.

The Local Government, except as otherwise provided in the Interlocal Agreement, shall not allow any person to provide any services which would compete with the Sewer System.

5.05. MAINTENANCE OF THE SEWER SYSTEM.

Subject to the terms of the Interlocal Agreement, the Local Government shall operate and maintain the Sewer System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

Subject to the terms of the Interlocal Agreement, the Local Government may make any additions, modifications or improvements to the Sewer System which it deems desirable and which do not materially reduce the operational integrity of any part of the Sewer System. All such renewals, replacements, additions, modifications and improvements shall become part of the Sewer System.

5.07. COLLECTION OF REVENUES.

The Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government shall establish, or cause to be established, liens on premises served by the Sewer System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Local Government shall, to the full extent permitted by law, cause to discontinue the services of the Sewer System and use its best efforts to shut off, or cause to be shut off, service furnished to persons who are delinquent beyond customary grace periods in the payment of Sewer System 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 make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsections 6.01(1) and 6.01(7), 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 and such failure shall continue for a period of 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 Sewer System or if such order or decree, having been entered without the consent or acquiescence of the Local Government, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

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

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

(7) Failure of the Local Government to give immediate written notice of default to the Department and such failure shall continue for a period of 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 Sewer System, 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 Sewer System 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 Sewer System, 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 a penalty 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. The

Department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. 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 Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate for a default under Subsection 6.01(1).

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, which along with any other Department State Revolving Fund liens on the Pledged Revenues, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Local Government under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. 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.

The Local Government 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 shall be granted if the Local Government demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the System 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 Local Government and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues. However, no such consent is required with respect to issuance of Senior Revenue Obligations as defined in Section 1.01.

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 entire principal amount of the Loan, and as applicable, Loan Service Fee, interest, and Grant Allocation Assessment charges, 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 until three years after the date that the Project-specific audit report, required under Subsection 2.03(4), is issued.

8.03. ACCESS TO PROJECT SITE.

The Local Government shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Local Government shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Local Government. The Local Government shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency. This

Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A final amendment establishing the final Project costs and the Loan Service Fee based on actual Project costs shall be completed after the Department's final inspection of the Project records.

8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Local Government has not drawn any of the Loan proceeds by the date set in Section 10.07 for establishing the Loan Debt Service Account. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Local Government.

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.

ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

The following documentation is required to receive the Department's authorization to award construction contracts:

- (1) Proof of advertising.
- (2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.
- (4) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.
- (5) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.
- (6) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

After the Department's authorization to award construction contracts has been received, the Local Government shall submit:

- (1) Contractor insurance certifications.

(2) Certified copy of the award resolution.

(3) Notices to proceed with construction.

9.03. INSURANCE REQUIRED.

The Local Government shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Sewer System (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of Revenue Producing Facilities of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Local Government shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The estimated principal amount of the Loan is \$325,987, which consists of \$315,387 to be disbursed to the Local Government and \$10,600 of Capitalized Interest.

Capitalized Interest is not disbursed to the Local Government, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing 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 establishing the schedule of actual disbursements.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$6,308 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest amount; that is, two percent of \$315,387. 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 assessed in the final loan amendment. The Local Government shall pay the Loan Service Fee from the first available repayments following the final amendment.

Capitalized Interest is computed on the assessed Loan Service Fee at the Financing Rate, or rates and included in the final amendment. It accrues and is compounded annually from the final amendment date until six months before the first Semiannual Loan Payment is due. A

service fee assessed in a final amendment occurring later than six months before the first Semiannual Loan Payment date would not accrue Capitalized Interest charges.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 2.92 percent per annum. However, if this Agreement is not executed by the Local Government and returned to the Department before October 1, 2009, the Financing Rate may be adjusted. A new Financing Rate shall be established for any funds provided by amendment to this Agreement.

10.04. LOAN TERM.

The Loan shall be repaid in 40 Semiannual Loan Payments.

10.05. REPAYMENT SCHEDULE.

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 repayments following the final amendment.

Each Semiannual Loan Payment shall be in the amount of \$11,027 until the payment amount is adjusted by amendment. The interest and Grant Allocation Assessment portions of each Semiannual Loan Payment shall be computed, using their respective rates, on the unpaid balance of the principal amount of the Loan, which includes Capitalized Interest. Interest (at the Financing Rate) also shall be computed on the estimated Loan Service Fee. The interest and Grant Allocation Assessment on the unpaid balance shall be computed as of the due date of each Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on July 15, 2012 and semiannually thereafter on January 15 and July 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 \$332,295, which consists of the Loan principal and the estimated Loan Service Fee.

10.06. PROJECT COSTS.

The Local Government and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of mutually agreed upon Project changes. Capitalized Interest will be

recalculated based on actual dates and amounts of Loan disbursements. If the Local Government receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Local Government's Project audit or a Department audit. The Local Government agrees to the following estimates of Project costs:

PROJECT COSTS

LINE ITEM	Estimated	Authorized	Authorized
	Total Costs	ARRA Loan WW550300*	Direct Loan WW550301*
Construction	6,307,744	6,307,744	0
Contingency	315,387	0	315,387
Technical Services	630,775	630,775	0
Subtotal (Disbursable Amount)	7,253,906	6,938,519	315,387
Less Principal Forgiveness	(4,510,037)	(4,510,037)	0
Subtotal (Loan Amount)	2,743,869	2,428,482	315,387
Estimated Capitalized Interest	91,900	81,300	10,600
Total (Loan Principal Amount)	2,835,769	2,509,782	325,987

*The Direct and ARRA Loans can't exceed \$3,982,117, which is the upper amount specified in the Interlocal Agreement, Addendum 2.

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

- (1) Completion of Project construction is scheduled for January 15, 2012.
- (2) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than January 15, 2012.
- (3) The initial annual certification required under Subsection 2.01(10) of this Agreement shall be due April 15, 2012. Thereafter the certification shall be submitted no later than September 30 of each year until the final Semiannual Loan Payment is made.
- (4) The first Semiannual Loan Payment in the amount of \$11,027 shall be due July 15, 2012.

10.08. SPECIAL CONDITIONS.

- (1) Prior to any funds being released, the Local Government shall submit a signature page of the application signed by the Mayor.
- (2) Funding for allowances has been provided for in Disadvantaged Small Community Grant SG510010.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW550301 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.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Deputy Director and the Local Government and St. Johns County have caused this Agreement to be executed on their behalf by their Authorized Representatives and by their affixed seals. The effective date of this Agreement shall be as set forth below by the Deputy Director.

for
ST. AUGUSTINE BEACH

for
ST. JOHNS COUNTY

Mayor

Chairman, Board of County Commissioners

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

The County agrees to provide for repayment in accordance with this Agreement and the Interlocal Agreement

City Attorney

Seal

Attest

City Clerk

Seal

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Deputy Director
Division of Water Resource Management

Date

Attachment included as part of this Agreement:

Attachment A - Certification of Applicability to Single Audit Act Reporting

ATTACHMENT A

CERTIFICATION OF APPLICABILITY TO SINGLE AUDIT ACT REPORTING

Local Government's Name:

Local Government's Fiscal Year Period: FROM: _____ TO: _____

Total State Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$ _____

Total Federal Financial Assistance Expended during Local Government's most recently completed Fiscal Year: \$ _____

Please identify grants to be included in the Single Audit that are provided by the Department of Environmental Protection

CSFA#CFDA# DEP LOAN AGREEMENT NUMBER

CERTIFICATION STATEMENT:

I hereby certify that the above information is correct:

Name

Date

Title