

**STATE REVOLVING FUND
AMENDMENT 1 TO LOAN AGREEMENT DW0802L0
CHARLOTTE COUNTY**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and CHARLOTTE COUNTY, FLORIDA, (Project Sponsor) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Project Sponsor shall be referred to as “Parties” or individually as “Party”.

The Department and the Project Sponsor entered into a State Revolving Fund Loan Agreement, Number DW0802L0; and

Certain provisions of the Agreement need revision.

The Parties hereto agree as follows:

1. Section 8.09 of the Agreement is deleted and replaced as follows:

8.09. DAVIS-BACON AND RELATED ACTS REQUIREMENTS.

(1) The Project Sponsor shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. Project Sponsors shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5) all interviews must be conducted in confidence. The Project Sponsor 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 Project Sponsor shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Project Sponsor 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, if practicable, the subrecipient should spot check 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 of the contract or subcontract. Project Sponsors 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 Project Sponsor shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(3) The Project Sponsor shall periodically review 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 (1) and (2) above.

(4) Project Sponsors must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm> and to the EPA Region 4 Water Division/Grants and Infrastructure Section by calling 404-562-9345. Additional information on Davis-Bacon guidance is located on the EPA website at: <https://www.epa.gov/grants/davis-bacon-and-related-acts-dbra>.

2. Section 8.12 of the Agreement is deleted and replaced as follows:

8.12. FISCAL SUSTAINABILITY PLAN.

The Federal Water Pollution Control Act (FWPCA), under Section 603(d)(1)(E)(i) of that act, requires a recipient of a Loan for a project that involves the repair, replacement, or expansion of a treatment works to develop and implement a Fiscal Sustainability Plan or certify that it has developed and implemented such a plan.

The Local Government shall either develop and implement a Fiscal Sustainability Plan or certify that it has developed and implemented a Fiscal Sustainability Plan , that includes the following : An inventory of critical assets that are a part of the treatment works; an evaluation of the condition and performance of inventoried assets or asset groupings; a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

At a minimum, the Fiscal Sustainability Plan shall include: an inventory of critical assets that are part of the Project funded by this Agreement; an evaluation of the condition and performance of these assets; a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

A Fiscal Sustainability Plan certification is a certification by the Local Government that the Fiscal Sustainability Plan has been developed and is being implemented. For systems that self-certify under Section 603(d)(1)(E)(ii), certification is due at the time of loan closing. For systems developing a Fiscal Sustainability Plan under Section 603(d)(1)(E)(i), the requirement to develop and implement a Fiscal Sustainability Plan is a condition of the Loan Agreement and is due before the final disbursement is approved.

3. Section 8.16 of the Agreement is deleted and replaced as follows:

8.16. CIVIL RIGHTS.

The Project Sponsor shall comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975,

which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

4. Article IX of the Agreement is deleted and replaced as follows:

ARTICLE IX – CONTRACTS AND INSURANCE

9.01. CONTRACTS.

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

- (a) Proof of advertising.
- (b) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (c) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.
- (d) Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion.
- (e) Certification by the Authorized Representative that affirmative steps were taken to encourage Disadvantaged Business Enterprises participation in Project construction.
- (f) Current certifications for Disadvantaged 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.
- (g) Certification that the Project Sponsor and contractors are in compliance with labor standards, including prevailing wage rates established for its locality by the DOL under the Davis-Bacon Act for Project construction.
- (h) Certification that all procurement is in compliance with Section 8.10 which states that all iron and steel products used in the Project must be produced in the United States unless (a) a waiver is provided to the Project Sponsor by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements.

(2) The following must be provided to the Department for professional services contract(s):

- (a) Certification by the Authorized Representative that affirmative steps were taken to encourage Disadvantaged Business Enterprises participation.
- (b) Current certifications for Disadvantaged Business Enterprises participating in the contract.

9.02. SUBMITTAL OF CONTRACT DOCUMENTS.

(1) After the Department's authorization to award construction contracts has been received, the Project Sponsor shall submit the following documents:

- (a) Contractor insurance certifications.
- (b) Executed Contract(s).
- (c) Notices to proceed with construction.

(2) After the Project Sponsor has awarded the professional services contract(s), the Project Sponsor shall submit the following documents:

- (a) Executed Contract(s).
- (b) Professional Services Procurement Certification.

9.03. INSURANCE REQUIRED.

The Project Sponsor shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Utility 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 utility systems of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

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

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

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This Amendment 1 to Loan Agreement DW0802L0 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

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

for
CHARLOTTE COUNTY

William Truex, Chairman of the Board of Commissioners

Attest:

Approved as to form and legal sufficiency:

Deputy Clerk

Janette S. Knowlton, County Attorney
LR25-0798

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date