

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 14, 2024

Consent Regular
Public Hearing

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A.) **approve** a Drinking Water State Revolving Fund (DWSRF) Planning and Design Loan Agreement (Agreement) DW5020C0 in the amount of \$9,968,768 for Planning and Design for the upgrades to Water Treatment Plant (WTP) Nos. 2, 3, 8 & 9 to remove perfluoroalkyl and polyfluoroalkyl substance (PFAS). The Agreement is effective as of the date of execution by Florida Department of Environmental Protection (FDEP) and ends August 15, 2028;

B.) **delegate authority to** the County Administrator, or her designee which in this case shall be the Director of Palm Beach County Water Utilities Department (PBCWUD), to sign all loan agreements and supporting documents, complete all registration requirements, future time extensions, task assignments, certifications, and other forms associated with the loan agreement and any necessary minor amendments that do not substantially change the scope of work, terms, or conditions of the agreement; and

C.) **approve** a \$9,968,768 Budget Amendment in the Water Utilities Department Capital Improvement Fund to establish budget for the grant revenue and related expenditures.

Summary: The DWSRF Program provides low-interest loans to eligible entities for planning, designing and constructing public water facilities. Funds are made available for planning, design and construction loans. The SRF was allocated an additional fund source for the SRF Emerging Contaminants (EC) program which is for projects with the primary purpose of addressing emerging contaminants in drinking water, such as PFAS. Under the SRF EC program 100% of the funding will be given as principal forgiveness. PBCWUD has received funding to evaluate and develop potential treatment options at the lime softening facilities for WTP 2 and 8 to reduce PFAS concentrations. PBCWUD has also received funding to evaluate solutions for expansion of nanofiltration at the membrane facilities of WTP 3 and 9 to meet near-term demand of the Eastern water distribution system. **The \$9,968,768 loan has 100% principal forgiveness and no repayment/match is required.** Countywide (MWJ)

Background and Justification: President Biden signed the Bipartisan Infrastructure Law (BIL) on November 15, 2021. The BIL provides \$5 billion through the SRFs to reduce exposure to PFAS and other emerging contaminants through drinking water. The BIL provides emerging contaminants funding through the SRFs that must be distributed to communities entirely as forgivable loans or grants.

Attachments:

1. Two (2) Drinking Water State Revolving Fund Planning and Design Loan Agreements
2. Budget Amendment Form

Recommended By: Kristin Bet for Department Director Date 4-17-2024

Approved By: _____ Assistant County Administrator Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028			
Capital Expenditures	\$9,968,768	0	0	0	0			
Operating Costs	0	0	0	0	0			
External Revenues	(9,968,768)	0	0	0	0			
Program Income (County)	0	0	0	0	0			
In-Kind Match County	0	0	0	0	0			
NET FISCAL IMPACT	0	0	0	0	0			
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0			
Budget Account No.:	Fund	4011	Dept	721	Unit	W053	Object	6541

Is Item Included in Current Budget? Yes ___ No X

Does this item include the use of Federal Funds? Yes X No ___

Does this item include the use of State Funds? Yes ___ No X

Reporting Category N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Item provides \$9,968,768 million in funding to evaluate and develop potential treatment options at the lime softening facilities of WTP 2 and 8 and evaluate solutions for expansion of nanofiltration at the membrane facilities of WTP 3 and 9.

C. Department Fiscal Review: Bony Foreman

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 Suzanne M. ... OFMB V. S. S. II 5/1/24	 Brunda Mack Contract Development and Control 5/2/24
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B. Legal Sufficiency:

Assistant County Attorney
 5/3/24

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND

PALM BEACH COUNTY, FLORIDA

**DRINKING WATER STATE REVOLVING FUND
PLANNING AND DESIGN LOAN AGREEMENT
DW5020C0**

Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, MS 3505
Tallahassee, Florida 32399-3000

DRINKING WATER STATE REVOLVING FUND PLANNING AND DESIGN LOAN
AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND
PLANNING AND DESIGN LOAN AGREEMENT
DW5020C0**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and PALM BEACH 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".

RECITALS

Pursuant to Section 403.8532, Florida Statutes and Chapter 62-552, Florida Administrative Code, the Department is authorized to make loans to finance the planning, design and construction of public water systems; and

The Department is authorized to allow Principal Forgiveness on Loans funded by the Federal Drinking Water Act; and

The Project Sponsor applied for the financing of Planning and Design Activities, and the Department has determined that all requirements for a Loan and Principal Forgiveness have been met.

AGREEMENT

In consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

Words and terms used herein shall have the meanings set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this agreement.
- (2) "Authorized Representative" shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) "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.
- (4) "Design Activities" shall mean the design of work defined in the approved planning document that will result in plans and specifications, ready for permitting and bidding, for an eligible construction project.

(5) "Final Amendment" shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount.

(6) "Final Unilateral Amendment" shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(7) "Financial Assistance" shall mean Principal Forgiveness funds or Loan funds.

(8) "Gross Revenues" shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its Utility System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Utility System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Utility System.

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

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

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

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

(13) "Planning Activities" shall mean the planning or administrative work necessary for the Project Sponsor to qualify for Drinking Water State Revolving Fund financing for construction of drinking water facilities.

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

(15) "Project" shall mean the Planning and Design Activities to address emerging contaminants. This Project is a Capitalization Grant Project as defined in Chapter 62-552, Florida Administrative Code.

(16) "Utility System" shall mean all devices and facilities of the Water System owned by the Project Sponsor.

(17) "Water System" shall mean all facilities owned by the Project Sponsor for supplying and distributing water for residential, commercial, industrial, and governmental use.

1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include corporations and associations, including public entities, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

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

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

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

(4) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(5) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its Planning and Design Activities financed by this Loan.

(6) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action to comply with this agreement.

(7) The Project Sponsor shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accounts of the Utility System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Utility System, and Loan disbursement receipts.

(8) RESERVED.

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

(10) The Project Sponsor agrees to complete the Planning and Design Activities in accordance with the schedule set forth in Section 10.07. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted.

(11) The Project Sponsor covenants that this Agreement is entered into for the purpose of completing Planning and Design Activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor's legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that this Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor enforceable in accordance with its terms upon execution by both parties; and

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor agrees to the following audit and monitoring requirements.

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

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
4E-02D65722-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	\$9,968,768	140129

(2) Audits.

(a) In the event that the Project Sponsor expends \$750,000 or more in Federal awards in its fiscal year, the Project Sponsor must have a Federal single audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. In determining the Federal awards expended in its fiscal year, the Project Sponsor shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F.

An audit of the Project Sponsor conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Project Sponsor shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR Part 200, Subpart F.

(c) If the Project Sponsor expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, is not required. The Project Sponsor shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Project Sponsor. In the event that the Project Sponsor expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Project Sponsor resources obtained from other than Federal entities).

(d) The Project Sponsor may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by 2 CFR Part 200, Subpart F, by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-30000

Electronically:

FDEPSingleAudit@dep.state.fl.us

(ii) The Federal Audit Clearinghouse designated in 2 CFR Section 200.501(a) at the following address:

<https://harvester.census.gov/facweb/>

(iii) Other Federal agencies and pass-through entities in accordance with 2 CFR Section 200.512.

(b) Pursuant to 2 CFR Part 200, Subpart F, the Project Sponsor shall submit a copy of the reporting package described in 2 CFR Part 200, Subpart F, and any management letters issued by

the auditor, to the Department at the address listed under Subsection 2.03(3)(a)(i) 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 2 CFR Part 200, Subpart F, 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) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F, 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 Project Sponsor in correspondence accompanying the reporting package.

(4) Record Retention.

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

(5) Monitoring.

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F, 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 2 CFR Part 200, Subpart F., and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

ARTICLE III – RESERVED

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Project Sponsor shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

4.02. CLOSE-OUT.

The Department shall conduct a final inspection of the Planning and Design Activities records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan or Principal Forgiveness requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. After the Department establishes the final costs to be financed by the Loan, the itemized costs will be adjusted by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs.

4.03. DISBURSEMENTS.

Disbursements shall be made only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Project Sponsor for reimbursement of the incurred planning and design costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

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

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received.

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

Requests by the Project Sponsor for disbursements of the planning and design funds shall be made using the Department's disbursement request form. The Department reserves the right to retain 25% of the funds until the information necessary for the Department to prepare the Environmental Information Document as described in Rule 62-552.680, Florida Administrative Code, has been provided.

ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM

5.01. RESERVED.

5.02. RESERVED.

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The Project Sponsor shall not allow any person to provide any services which would compete with the Utility System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE UTILITY SYSTEM.

The Project Sponsor shall operate and maintain the Utility System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

The Project Sponsor may make any additions, modifications or improvements to the Utility System which it deems desirable and which do not materially reduce the operational integrity of any part of the Utility System. All such renewals, replacements, additions, modifications and improvements shall become part of the Utility System.

5.07. RESERVED.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

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

(1) RESERVED.

(2) Except as provided in Subsection 6.01(1) failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.11 below, and such failure shall continue for a period of 30 days after written notice thereof to the Project Sponsor by the Department.

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

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

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

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

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

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

6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens, the Department may enforce its rights by, *inter alia*, any of the following remedies:

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

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System.

(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 Utility System, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

6.03. DELAY AND WAIVER.

No course of dealing between Department and Project Sponsor, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of

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

ARTICLE VII - RESERVED

ARTICLE VIII - GENERAL PROVISIONS

8.01. RESERVED.

8.02. PROJECT RECORDS AND STATEMENTS.

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

8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to offices and other sites where Planning and Design Activities or Project work (if financed by this Loan) is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to provide copies of relevant records and statements for inspection.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

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

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). A Final Amendment establishing the final costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Project Sponsor to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights

hereunder, and the Department may then, upon written notification to the Project Sponsor, suspend or terminate this Agreement.

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

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

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.02) and provide written notification of Final Unilateral Amendment to the Project Sponsor.

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

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. RESERVED.

8.09. PUBLIC RECORDS ACCESS.

(1) The Project Sponsor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The Project Sponsor shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the Project Sponsor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Project Sponsor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

(3) IF THE PROJECT SPONSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROJECT SPONSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-2118, by email at public.services@dep.state.fl.us, or at the mailing address below:

**Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Blvd, MS 49
Tallahassee, FL 32399**

8.10. SCRUTINIZED COMPANIES.

(1) The Project Sponsor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the Project Sponsor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The Project Sponsor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

8.11. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the Project Sponsor under this Agreement in the following events, as determined by the Department:

(1) The Project Sponsor abandons or discontinues the Project before its completion,

(2) The commencement, prosecution, or timely completion of the Project by the Project Sponsor is rendered improbable or the Department has reasonable grounds to be insecure in Project Sponsor's ability to perform, or

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Project Sponsor in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the Project Sponsor of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has re-instated the Agreement.

Project Sponsor shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from Project Sponsor prior to re-instating the Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by Project Sponsor, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this Agreement.

8.12. 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 Equal Employment Opportunity requirements (Executive Order 11246, as amended) 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.

8.13. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

The Project Sponsor and any contractors/subcontractors are prohibited from obligating or expending any Loan or Principal Forgiveness funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

ARTICLE IX – RESERVED

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is \$9,968,768. Of that, the estimated amount of Principal Forgiveness is \$9,968,768.

10.02. RESERVED.

10.03. RESERVED.

10.04. RESERVED.

10.05. RESERVED.

10.06. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that actual Project costs have not been determined as of the effective date of this Agreement. An adjustment may be made due to a reduction in the scope of work proposed for Loan funding as a result of the planning process. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final costs shall be established in the final amendment. Changes in costs may also occur as a result of the Project Sponsor's audit or the Department's audit.

The Project Sponsor agrees to the following estimates of the Project costs:

CATEGORY	PROJECT COSTS (\$)
Planning and Design Activities	9,968,768
Less Principal Forgiveness	<u>(9,968,768)</u>
TOTAL (Loan Amount)	0

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10.07. SCHEDULE.

All Planning and Design Activities shall be completed no later than the date set forth below.

(1) Invoices submitted for work performed on or after August 9, 2023 may be eligible for reimbursement.

(2) Completion of all Planning and Design Activities for all Project facilities proposed for loan funding no later than August 15, 2028.

10.08. SPECIAL CONDITIONS.

Prior to execution of this Agreement, the following items must be submitted:

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

(2) A completed EPA Preaward Compliance Report; and

(3) A completed a Federal Funding Accountability and Transparency Act Form.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW5020C0 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

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

for
PALM BEACH COUNTY

AL Bayat

Maria Sachs, Mayor

KB

Director of Water Utilities

Attest:

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization; approved as to form and legal sufficiency.

County Clerk

[Signature]

County Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date

2024-0642

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT

Attachment 2

FUND 4011 - Water Utilities Capital Improvement Fund

BGRV 041724*459
BGEX 041724*1226

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 04/17/2024	REMAINING BALANCE
Revenues and receipts							
721W053-3139 Federal Grants Other Phys Envr	0	0	9,968,768	0	9,968,768		
Total Revenue and receipts	407,092,712	400,993,435	9,968,768	0	410,962,203		
Expenditures							
721W053-6541 Water Treatment Plant	0	0	9,968,768	0	9,968,768	0	9,968,768
Total expenditures	407,092,712	400,993,435	9,968,768	0	410,962,203		

Office of Financial Management and Budget

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS

INITIATING DEPARTMENT/DIVISION

Danny Soreman 24-Apr-24
Linda M... 5/2/2024

AT MEETING OF

Administration/Budget Department Approval

May 14, 2024

OFMB Department - Posted

Deputy Clerk to the

Board of County Commissioners