RESOLUTION NO. 08-02

A RESOLUTION OF THE CITY COUNCIL OF MARCO ISLAND, FLORIDA, SUPPLEMENTING CITY RESOLUTION NOS. 07-38, 07-44 AND 07-67; APPROVING REVISED FORMS OF SRF LOAN AGREEMENTS AND DIRECTING EXECUTION OF SAME; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

SECTION 1. DEFINITIONS. Capitalized terms not otherwise defined herein shall have the meanings ascribed in Resolution Nos. 07-38, 07-44 and 07-67 (collectively, the "SRF Resolutions").

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared as follows:

(A) The City Council of the City of Marco Island, Florida (the "City") has previously adopted the SRF Resolutions authorizing execution of Clean Water State Revolving Fund Loans ("SRF Loans") with the Florida Department of Environmental Protection ("DEP") to finance construction of certain improvements to the City's wastewater utility system (the "Utility System").

(B) The SRF Resolutions approved the standard form of Loan Agreement made available by DEP.

(C) In connection with the SRF Resolutions and in order to grant its credit approval, DEP has included security requirements for the Loan Agreement whereby, to the extent the anticipated Wastewater Collection Assessments for a particular Area are insufficient to make semi-annual loan payments relating to such Area when due, the City shall budget and utilize other legally available revenues which will be sufficient, when combined with proceeds of the Wastewater Collection Assessments, to make the required semi-annual loan payments.

(D) The interest rate on the SRF Loans is considerably lower than the interest rate the City would expect to pay in the issuance of revenue bonds and/or the incurrence of a bank loan to finance the contemplated Wastewater Collection Improvements relating to each Area, resulting in significant cost savings to the City over time.

(E) Resolution No. 07-38, adopted by the City Council on June 18, 2007, was the subject of a Final Judgment of the Circuit Court of Collier County rendered on or about August 27, 2007 (the "Validation Judgment"). The Validation Judgment does not preclude the City from making the attached modifications to such resolution or the Loan Agreement; however, to the extent the City makes material modifications thereto, such modifications may not be considered

"validated" under Florida law. The City is not prohibited, barred, estopped or prevented by the Validation Judgment from modifying the Loan Agreement to include additional security provisions and all security provisions in the Loan Agreement will be binding in accordance with and subject to the limitations in the City Charter, including but not limited to the expenditure limitations in Section 1.03 of the City Charter, if applicable. Further, the Validation Judgment does not prohibit, bar, estopp or prevent DEP from exercising all of its remedies and rights under the Loan Agreement.

SECTION 3. REVISED LOAN AGREEMENT.

(A) It is the intent of the City Council in adopting this Resolution to supplement the SRF Resolutions as necessary to satisfy DEP requirements and thereby effectuate closing on the SRF Loans and secure the advantageous financing terms attendant thereto.

(B) Accordingly, the SRF Resolutions are hereby supplemented to authorize additional security for the SRF Loans as more fully described in the Loan Agreement attached hereto as Exhibit A and incorporated herein. The Loan Agreement attached hereto as Exhibit A relates only to the West Winterberry Assessment Area. The Loan Agreements for the North Barfield Assessment Area and the North Marco Assessment Area are substantially similar. All three Loan Agreements are collectively referred to herein as the "Loan Agreements."

(C) Except as modified herein, the SRF Resolutions shall remain in full force and effect.

(D) The City Council hereby approves the Loan Agreements and, subject to the authority and parameters set forth in the SRF Resolutions and herein, the City Manager or designee (the "City Manager") is hereby authorized and directed to execute and deliver, and the City Clerk or any assistant or deputy City Clerk (the "City Clerk") to attest, on behalf of the City, Loan Agreements for each Area substantially in the revised form attached hereto as Exhibit A, with such changes, insertions, and additions as they may approve, their execution thereof being evidence of such approval. The approval of execution given herein includes the approval of the City to allow the City Manager to execute and deliver, and the City Clerk to attest, any requested documents on behalf of the City with respect to the execution and delivery of the Loan Agreements.

SECTION 4. TRANSACTION COSTS. From legally available sources, the City authorizes payment of legal fees to Bond Counsel of $7,500 for services provided in connection with the execution and delivery of the revised Loan Agreements.

SECTION 5. REPEAL OF INCONSISTENT DOCUMENTS. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

DULY ADOPTED this 4th day of February, 2008.

CITY COUNCIL OF MARCO ISLAND, FLORIDA

By: _____
Michael F. Minozzi, Jr., Chairman

(SEAL)

ATTEST:

_____
Laura M. Litzan, City Clerk

Approved as to Form:

_____
Alan L. Gabriel, City Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

EXHIBIT A

SRF LOAN AGREEMENT

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

CITY OF MARCO ISLAND, FLORIDA
(WEST WINTERBERRY AREA WASTEWATER COLLECTION IMPROVEMENTS)

CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
WW715040

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

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CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

WW715040

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF MARCO ISLAND, 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) "Assessment Resolution" shall mean Resolution No. 06-32, adopted by the City Council of the Local Government on September 5, 2006, as amended and supplemented from time to time, and as particularly supplemented by resolution adopted by the City Council of the Local Government on November 6, 2006.

(3) "Assessments" shall mean special assessments (sometimes characterized as non-ad valorem assessments) imposed by the Local Government against property located within the West Winterberry Assessment Area to fund the Project Cost of Wastewater Collection Improvements to serve the West Winterberry Assessment Area and related expenses, computed in the manner described in the Assessment Resolution. The term "Assessments" shall include payments advanced or funded by the Local Government on behalf of an owner of property subject to an Assessment who has entered into a Deferred Payment Agreement authorized by Sections 3.09 or 3.10 of the Assessment Resolution. The term "Assessments" shall not include any Wastewater Treatment Capacity Assessments.

(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) "Deferred Payment Agreement" shall mean the agreement resulting from the City's advance and funding, on behalf of the owner of such property, the assessment otherwise attributable to that property, and the agreement shall in turn provide for the alternative consensual special assessment of the benefited property collected separate and apart from other Assessments imposed as a result thereof.

(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. The Financing Rate shall consist of an interest rate component and a Grant Allocation Assessment rate component.

(9) "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.

(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 Repayment Reserve Account" or "Loan Repayment Reserve" shall mean an interest bearing account into which will be deposited the amount set aside to pay temporary and unexpected deficiencies, if any, in the Semiannual Loan Payment. Interest earnings shall accrue to the account.

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

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

(16) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Assessments derived yearly after the satisfaction of all yearly payment obligations on account of any senior obligations issued pursuant to Section 7.02 of this Agreement.

(17) "Project" shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the collection and transmission facilities in accordance with the plans and specifications accepted by the Department for the "West Winterberry Collection System" contract.

The Project is in agreement with the "City of Marco Island Septic Tank Replacement Program Facilities Plan", dated January 2007, and related planning documents. A Florida Finding of No Significant Impact was published on March 2, 2007 and no adverse comments were received.

(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) "Wastewater Collection Improvements" shall mean wastewater collection facilities and ancillary capital improvements to be constructed by the Local Government, including but not limited to, the acquisition, installation, construction, retrofitting and provision of gravity lines, force mains, pump or lift stations and associated subdivision type infrastructure necessary to service the West Winterberry Assessment Area, together with land or easement acquisition cost, which will provide for collection of wastewater generated within the West Winterberry Assessment Area. The Wastewater Collection Improvements do not include Wastewater Treatment Capacity Improvements.

(21) "Wastewater Treatment Capacity Assessments" shall mean special assessments (sometimes characterized as non-ad valorem assessments) imposed by the Local Government against property located within the West Winterberry Assessment Area to fund the costs of Wastewater Treatment Capacity Improvements to serve the West Winterberry Assessment Area and related expenses.

(22) "Wastewater Treatment Capacity Improvements" shall mean the wastewater transmission, treatment, disposal and reuse facilities and ancillary capital improvements to be constructed by the Local Government including, but not limited to, major transmission, treatment plant, and reuse disposal facilities, together with land or easement acquisition cost, which will receive, accommodate, treat and dispose of the additional wastewater generated by new users, growth and the construction of Wastewater Collection Improvements within the West Winterberry Assessment Area. Wastewater Treatment Capacity Improvements do not include Wastewater Collection Improvements.

(23) "West Winterberry Assessment Area" shall have the meaning ascribed thereto in the Assessment Resolution.

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, 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 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 by the Local Government's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Local Government shall include in such budget other legally available 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; (b) the Loan Repayment Reserve Account contains the funds required; and (c) 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
CS120001-070	EPA	66.458	Capitalization Grants for State Revolving Funds	$4,366,656	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. 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://aspe.os.dhhs.gov/cfda.

(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 each of the following addresses:

Robert E. Holmden, P.E., Chief
Bureau of Water Facilities Funding
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

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, Indiana 47132

(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 two addresses 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 three 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 three years from the date the audit report is issued, unless extended in writing by the Department.

(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 ACCOUNTS

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. LOAN REPAYMENT RESERVE ACCOUNT.

A Loan Repayment Reserve Account shall be established with a Depository. The Local Government shall use its own funds to deposit into the account an amount equal to two Semiannual Loan Payments by the date identified in Section 10.07. The Loan Repayment Reserve Account shall be

established in lieu of additional coverage requirements. The Loan Repayment Reserve Account shall be set up as an interest bearing account or invested in certificates of deposit, and all interest earnings shall accrue to the account.

3.05. LOAN REPAYMENT RESERVE WITHDRAWALS.

Withdrawals from the Loan Repayment Reserve Account shall be made only with the written consent of the Department and shall be used to cure a temporary and unexpected deficiency in any Semiannual Loan Payment. The Loan Repayment Reserve Account shall be used for the final Semiannual Loan Payment(s) or for discharging the Project Sponsor's obligations pursuant to Section 8.01 and any remaining balance released to the Local Government.

3.06. RESTORATION OF LOAN REPAYMENT RESERVE ACCOUNT.

A default causing the use of the Loan Repayment Reserve Account or the use of the account to prevent default shall result in the Local Government being responsible for making special deposits to restore the account. Special restoration deposits shall be made from the first moneys legally available to the Local Government for such purpose.

3.07. 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 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, 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 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. COVERAGE.

To the extent that Assessments and other legally available non-ad valorem funds, pursuant to Section 2.01(9), are insufficient to make the Semiannual Loan Payments, the Local Government shall establish, collect, maintain, and if necessary, revise fees, rates and other charges of the Sewer System which will provide sufficient legally available non-ad valorem revenues to make up for any deficiencies. In addition, the Local Government shall satisfy the coverage requirements of all senior and parity debt obligations.

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 the Local Government's uniform schedule of rates, fees, and charges.

5.03. MANDATORY CONNECTIONS.

The Local Government shall adopt, as necessary, and enforce requirements, consistent with applicable laws, for the owner, tenant or occupant of each building located on a lot or parcel of land which is served, or may reasonably be served, by the Sewer System to connect such building to the Sewer System.

5.04. NO COMPETING SERVICE.

The Local Government shall not allow any person to provide any services which would compete with the Sewer System so as to adversely affect Pledged Revenues.

5.05. MAINTENANCE OF THE SEWER SYSTEM.

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.

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 Assessments due to it. The Local Government shall establish 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 water service furnished to persons who are delinquent beyond customary grace periods in the payment of Water and Sewer System rates, fees and other charges.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

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 Pledged Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Local Government, shall not be vacated or discharged or stayed on appeal within 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 Pledged Revenues of 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 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 1.0 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 Sewer 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 1.0 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.

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.

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 Local Government's 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 $4,379,856, which consists of $4,366,656 to be disbursed to the Local Government and $13,200 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.

This project is a Segmented Project. Additional State Revolving Fund financing for the Project is dependent upon the availability of additional funds. The current funding limitations and future funding priority entitlement for Segmented Projects are set forth in the Chapter 62-503 of the Florida Administrative Code.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as $87,333 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 $4,366,656. 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 2.94 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 1.47 percent per annum and the Grant Allocation Assessment rate is 1.47 percent per annum. 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 $148,509 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 ~~October 15, 2008~~ January 15, 2009 and semiannually thereafter on ~~April 15~~ July 15 and ~~October 15~~ January 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 $4,467,189, 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

CATEGORY	COST($)	AUTHORIZED LOAN AMOUNT($) TO DATE
Construction and Demolition	7,947,669	*Line items may vary*
Contingencies	397,383	*based on Actual*
Technical Services After Bid Opening	257,498	*Disbursements*
SUBTOTAL (Disbursable Amount)	8,602,550	4,366,656
Capitalized Interest	13,200	13,200
TOTAL (Loan Principal Amount)	8,615,750	4,379,856

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

(1) Completion of Project construction is scheduled for ~~April 15, 2008.~~ July 15, 2008

(2) The Loan Repayment Reserve Account shall be established and $297,018 shall be deposited no later than ~~April 15, 2008~~. July 15, 2008

(3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than ~~April 15, 2008~~. July 15, 2008

(4) The initial annual certification required under Subsection 2.01(10) of this Agreement shall be due ~~July 15, 2008.~~ October 15, 2008 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 $148,509 shall be due ~~October 15, 2008~~. January 15, 2008

10.08. SPECIAL CONDITIONS.

(1) At the time the Loan Repayment Reserve Account is established, the Local Government shall grant control of account withdrawals to the Department by letter to the Depository, substantially in the form presented in Attachment A.

(2) Documentation of the Loan Repayment Reserve Account and a copy of the letter restricting withdrawals from the Loan Repayment Reserve Account, as required under item (1) above, shall be received by the Department no later than ~~April 30, 2008.~~ July 30, 2008

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW715040 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 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 Deputy Director.

for

CITY OF MARCO ISLAND

_____

City Manager or Finance Director

Attest

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization, and as to form and correctness.

_____ _____

City Clerk

~~City Attorney~~
Special Counsel

SEAL

for

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____ _____

Deputy Director
Division of Water Resource Management

Date

ATTACHMENT A

Addressee: (Depository)
Gentlemen:

Re: Account # (or Certificate of Deposit #)

This account is to be known as the Loan Repayment Reserve Account. It has been pledged by the City of Marco Island, as security for repayment of Loan WW715040 from the State Revolving Fund. We ask that a hold be placed on the account in favor of the Department of Environmental Protection, Bureau of Water Facilities Funding (the Department), and that the principal amount and accrued interest be disbursed only with the prior written consent of the Department, or its successor. This hold on the account shall not be revoked without the written concurrence of the Department.

by_____
City Manager or Finance Director
City of Marco Island

Acceptance by Depository (Bank Name):

by_____ _____
Signature Date

_____
Name and Title