Invocation

Pledge of Allegiance

Call to Order – Mayor Holbrook

Roll Call
Mayor John Holbrook
Council Member Ray Royce     Council Member Charles Wilson
Council Member Greg Sapp     Council Member Nell Frewin-Hays

1. Lake Placid Camp and Conference Center water and wastewater issues.
   A. Adopt a Resolution approve the FDEP Grant Agreement
   B. Adopt a Resolution approving the Third Agreement between the Town and the Lake Placid Camp and Conference Center
   C. Adopt a Resolution requesting an extension of the FDEP Grant.
   D. Adopt any other agreements, resolutions and matters regarding the FDEP Grant, design, construction, security, or related matters

2. Adopt and approve the FDEP Wastewater Collection and Treatment Grant Application and Related Resolutions(s); and other agreements, resolutions and matters regarding the FDEP Grant Application, design, construction, security, or related matters.

3. CITIZENS NOT ON AGENDA (Comments are to be limited to 3 minutes, unless a longer period of time is permitted by the presiding officer or by a majority of the Town Council)

4. ADJOURNMENT

Any person who might wish to appeal any decision made by the Lake Placid Town Council, in public hearing or meeting is hereby advised that he will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. The Lake Placid Town Council, does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the Council’s functions, including one's access to, participation, employment or treatment in its programs or activities. Anyone requiring reasonable accommodation as provided for in the Americans with Disabilities Act or Section 286.26 Florida Statutes should contact Town Administrator Phil Williams, ADA Coordinator at: 863-699-3747 or by email lakeplacidinfo@gmail.com. Requests for CART or interpreter services should be made at least 24 hours in advance to permit coordination of the service. PLEASE NOTE OUR WEB SITE ADDRESS: www.lakeplacidfl.net
MEETING DATE: 20 July 2022 MEETING TYPE: Town Council

AGENDA ITEM # AND TITLE: Resolutions and Agreements for the wastewater collection line loan and grant.

PLACED ON AGENDA BY: Joe Barber, Town Engineer and Bert Harris, Town Attorney

STATEMENT OF ISSUE: These resolutions and agreements hopefully complete the loan and grant required for the construction of the wastewater collection line.

FISCAL IMPACT: The Lake Placid Camp and Conference Center is responsible for paying the construction cost not funded by the Grant. That construction cost is funded by the SRF loan.

ATTACHED ITEMS:
1. FDEP Construction Loan Agreement and Grant Agreement.
2. Bulk Wastewater Agreement with the Camp and Conference Center.
3. Resolution Pledging Bulk Wastewater Income.
4. Third Agreement with the Camp and Conference Center.
5. Town Attorney’s proposed Opinion Letter.
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

TOWN OF LAKE PLACID, FLORIDA

CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
WW280220
GRANT AGREEMENT
SG280221

Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, MS 3505
Tallahassee, Florida  32399-3000
ARTICLE I - DEFINITIONS
1.01. WORDS AND TERMS. 1
1.02. CORRELATIVE WORDS. 3

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS 3
2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS. 3
2.02. LEGAL AUTHORIZATION. 5
2.03. AUDIT AND MONITORING REQUIREMENTS. 5

ARTICLE III - LOAN REPAYMENT ACCOUNT 9
3.01. LOAN DEBT SERVICE ACCOUNT. 9
3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS. 9
3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS. 9
3.04. ASSETS HELD IN TRUST. 9

ARTICLE IV - PROJECT INFORMATION 10
4.01. PROJECT CHANGES. 10
4.02. TITLE TO PROJECT SITE. 10
4.03. PERMITS AND APPROVALS. 10
4.04. ENGINEERING SERVICES. 10
4.05. PROHIBITION AGAINST ENCUMBRANCES. 10
4.06. COMPLETION MONEYS. 10
4.07. CLOSE-OUT. 10
4.08. LOAN DISBURSEMENTS. 11

ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM 11
5.01. RATE COVERAGE. 11
5.02. NO FREE SERVICE. 11
5.03. MANDATORY CONNECTIONS. 12
5.04. NO COMPETING SERVICE. 12
5.05. MAINTENANCE OF THE UTILITY SYSTEM. 12
5.06. ADDITIONS AND MODIFICATIONS. 12
5.07. COLLECTION OF REVENUES. 12

ARTICLE VI - DEFAULTS AND REMEDIES 12
6.01. EVENTS OF DEFAULT. 12
6.02. REMEDIES. 13
6.03. DELAY AND WAIVER. 14

ARTICLE VII - THE PLEDGED REVENUES 15
7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT. 15
7.02. ADDITIONAL DEBT OBLIGATIONS. 15

ARTICLE VIII - GENERAL PROVISIONS 15
8.01. DISCHARGE OF OBLIGATIONS.
8.02. PROJECT RECORDS AND STATEMENTS.
8.03. ACCESS TO PROJECT SITE.
8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.
8.05. AMENDMENT OF AGREEMENT.
8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.
8.07. SEVERABILITY CLAUSE.
8.08. USE AS MATCHING FUNDS.
8.09. DAVIS-BACON ACT REQUIREMENTS.
8.10. AMERICAN IRON AND STEEL REQUIREMENT.
8.11. ASSET MANAGEMENT PLAN.
8.12. PUBLIC RECORDS ACCESS.
8.13. SCRUTINIZED COMPANIES.
8.14. SUSPENSION.

ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE
9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.
9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.
9.03. INSURANCE REQUIRED.

ARTICLE X - DETAILS OF FINANCING
10.01. PRINCIPAL AMOUNT OF LOAN.
10.02. LOAN SERVICE FEE.
10.03. FINANCING RATE.
10.04. LOAN TERM.
10.05. REPAYMENT SCHEDULE.
10.06. PROJECT COSTS.
10.07. SCHEDULE.
10.08. SPECIAL CONDITION.

ARTICLE XI - EXECUTION OF AGREEMENT
CLEAN WATER STATE REVOLVING FUND
CONSTRUCTION LOAN AGREEMENT
WW280220 & GRANT AGREEMENT SG280221

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the TOWN OF LAKE PLACID, FLORIDA, (Local Government) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Local Government shall be referred to as “Parties” or individually as “Party”.

RECITALS

Pursuant to Section 403.1835, Florida Statutes, and Chapter 62-503, Florida Administrative Code, the Department is authorized to make loans to finance or refinance the construction of wastewater pollution control facilities, the planning and design of which have been reviewed by the Department; and

Pursuant to Section 403.1838, Florida Statutes, and Chapter 62-505, Florida Administrative Code, the Department is authorized to award grants to financially disadvantaged small communities; and

The Local Government applied for the financing of the Project, and the Department has determined that such Project meets all requirements for a Loan and Grant.

AGREEMENT

In consideration of the Department loaning money to the Local Government, 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 construction loan agreement.

(2) “Asset Management Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. The requirements for asset management plans are in Subsection 62-503.700(7), Florida Administrative Code.

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

(5) “Depository” shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than $50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(6) “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, the interest rate, Loan Service Fee, amortization schedule and Semiannual Loan Payment amount.

(7) “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.

(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” shall mean funds awarded under SG280221 pursuant to this Agreement and any subsequent amendments. The Grant agreement is incorporated into this Loan agreement. Grant funds are not disbursed to the Local Government but are a portion of the Loan.

(10) “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.

(11) “Gross Revenues” shall mean all income or earnings received by the Local Government 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.

(12) “Loan” shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

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

(14) “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 the Semiannual Loan Payments.
(15) “Loan Service Fee” shall mean an origination fee which shall be paid to the Department by the Local Government.

(16) “Local Governmental Entity” means a county, municipality, or special district.

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

(18) “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.

(19) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Bulk Revenues as defined by Town Resolution 2022-____ derived yearly from the operation of the Utility System after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of any senior or parity obligations issued pursuant to Section 7.02 of this Agreement.

(20) “Project” shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct the LPC3 Forcemain and Lift Station in accordance with the plans and specifications accepted by the Department for the LPC3 Forcemain and Lift Station contract.

The Project is in agreement with the planning documentation accepted by the Department effective July 23, 2021. A Florida Finding of No Significant Impact was published on July 12, 2021 and no adverse comments were received.

(21) “Semiannual Loan Payment” shall mean the payment due at six-month intervals.

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

(23) “Utility System” shall mean all devices and facilities of the Sewer System owned by the Local Government.

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 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 to comply with this agreement.

(8) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Department and the Local Government understand that this Agreement is not a commitment of future appropriations.

(9) 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 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 of the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

(10) In the event the anticipated Pledged Revenues are shown by the Local Government's annual budget to be insufficient to make 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.

(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.

(14) The Local Government shall update the revenue generation system annually to assure that sufficient revenues are generated for debt service, operation and maintenance, replacement of equipment, accessories, and appurtenances necessary to maintain the system design capacity and performance during its design life, and to make the system financially self-sufficient.

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:

<table>
<thead>
<tr>
<th>State Program Number</th>
<th>Funding Source</th>
<th>CSFA Number</th>
<th>CSFA Title or Fund Source Description</th>
<th>Funding Amount</th>
<th>State Appropriation Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Agreement</td>
<td>Wastewater Treatment and Stormwater Management TF</td>
<td>37.077</td>
<td>Wastewater Treatment Facility Construction</td>
<td>$1,879,600</td>
<td>140131</td>
</tr>
<tr>
<td>State Program Number</td>
<td>Funding Source</td>
<td>CSFA Number</td>
<td>CSFA Title or Fund Source Description</td>
<td>Funding Amount</td>
<td>State Appropriation Category</td>
</tr>
<tr>
<td>Original Agreement</td>
<td>Small Community Wastewater Grant</td>
<td>37.075</td>
<td>Federal Grants Trust Fund</td>
<td>$1,503,680</td>
<td>143276</td>
</tr>
</tbody>
</table>

(2) Audits.

(a) In the event that the Local Government expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such Local Government, the Local Government must have a State single audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Local Government shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

(b) In connection with the audit requirements addressed in the preceding paragraph (a); the Local Government shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

(c) If the Local Government expends less than $750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. The Local Government shall inform the Department of findings and
recommendations pertaining to the State Revolving Fund in audits conducted by the Local Government in which the $750,000 threshold has not been met. In the event that the Local Government expends less than $750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity’s resources (i.e., the cost of such an audit must be paid from the Local Government’s resources obtained from other than State entities).

(d) The Local Government is hereby advised that the Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a Local Government should access the Florida Single Audit Act website located at https://apps.fldfs.com/fsaa for assistance.

(3) Report Submission.

(a) Copies of financial reporting packages shall be submitted by or on behalf of the Local Government directly to each of the following:

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

By Mail:
Auditor Director
Florida Department of Environmental Protection
Office of the Inspector General
3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3123

or

Electronically:
FDEPSingleAudit@dep.state.fl.us

(ii) The Auditor General’s Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

(iii) Copies of reports or management letters shall be submitted by or on behalf of the Local Government directly to the Department at either of the following addresses:
By Mail:

**Audit Director**
Florida Department of Environmental Protection  
Office of the Inspector General  
3900 Commonwealth Boulevard, MS 40  
Tallahassee, Florida  32399-3123

or

Electronically:  
FDEPSingleAudit@dep.state.fl.us

(b) 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 Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(c) Local Governments, when submitting financial reporting packages to the Department for audits done in accordance with 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 received by the Local Government from their auditors in correspondence accompanying the reporting package.

(4) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date 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 Local Government 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 Section 215.97, F.S., as revised monitoring procedures may include, but not be limited to, on-site visits by Department staff 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 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 Local Government 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 - LOAN REPAYMENT ACCOUNT

3.01. LOAN DEBT SERVICE ACCOUNT.

The Local Government shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.07 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Local Government shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Local Government fails to make a required Monthly Loan Deposit, the Local Government’s chief financial officer shall notify the Department of such failure. In addition, the Local Government agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Local Government, nor shall it be construed to give the Department the power to require the Local Government to levy and collect any revenues other than Pledged Revenues.

3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Local Government’s obligations pursuant to Section 8.01.

3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.
ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

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

4.02. TITLE TO PROJECT SITE.

The Local Government 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. The Authorized Representative shall submit a clear site title certification by the date set forth in Section 10.07 of this Agreement.

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 Utility System which would materially reduce operational integrity or Gross Revenues 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 amount of the Grant shall be fixed at the time of Project close-out and transferred as a one time payment against the Loan balance. The Loan principal, adjusted to the amount borrowed, 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 directly to the Local Government for reimbursement of the incurred construction 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 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 UTILITY SYSTEM

5.01. RATE COVERAGE.

The Local Government shall maintain rates and charges for the services furnished by the Utility System which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year.

5.02. NO FREE SERVICE.

The Local Government shall not permit connections to, or furnish any services afforded by, the Utility System without making a charge therefore based on the Local Government's uniform schedule of rates, fees, and charges.
5.03. MANDATORY CONNECTIONS.

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

5.05. MAINTENANCE OF THE UTILITY SYSTEM.

The Local Government 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 Local Government 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. COLLECTION OF REVENUES.

The Local Government shall use its best efforts to collect all rates, fees and other charges due to it. The Local Government shall establish liens on premises served by the Utility 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 Utility 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 Utility System rates, fees and other charges.

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) 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 15 days.
Section 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 8.14 below, and such failure shall continue for a period of 30 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, or if Local Government 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 Local Government, 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 Local Government, 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 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 Gross Revenues of the Utility 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) 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 Local Government 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 Local Government 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 on the Pledged Revenues, 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 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 Utility 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 Utility 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.

6.03. DELAY AND WAIVER.

No course of dealing between Department and Local Government, 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 - 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, of equal priority, 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. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Local Government may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department’s written consent is obtained. Such consent may 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 Utility System and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed 1.15 times the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Local Government and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

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, 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 for inspection at any reasonable time after the Local Government has received a disbursement and until five years after the Final Amendment date.

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 (EPA). 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. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Local Government 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 Local Government, suspend or terminate this Agreement.

(1) Failure of the Local Government 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 Local Government, 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 4.07) and provide written notification of Final Unilateral Amendment to the Local Government.

In the event that following the execution of this Agreement, the Local Government decides not to proceed with this Loan, this Agreement can be cancelled by the Local Government, 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. USE AS MATCHING FUNDS.

The EPA has provided a class deviation from the provisions of 40 CFR 35.3125(b)(1) to allow these second tier funds to be used as local matching requirements for most EPA grant funded treatment works projects, including special Appropriations Act projects.

8.09. DAVIS-BACON ACT REQUIREMENTS.

1. The Local Government shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. Local Governments shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5) all interviews must be conducted in confidence. The Local Government must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

3. The Local Government shall periodically review contractors’ and subcontractors’ use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor (DOL) or a state, as appropriate, and that contractors and subcontractors are not using disproportionate
numbers of laborers, trainees, and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in items (1) and (2) above.

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

8.10. AMERICAN IRON AND STEEL REQUIREMENT.

The Local Government’s subcontracts must contain requirements that all of the iron and steel products used in the Project are in compliance with the American Iron and Steel requirement as described in Section 608 of the Federal Water Pollution Control Act unless the Local Government has obtained a waiver pertaining to the Project or the Department has advised the Local Government that the requirement is not applicable to the Project.

8.11. ASSET MANAGEMENT PLAN.


Are available at the construction phase of a Project only if the Local Government adopts and implements, prior to the final disbursement of the associated State Revolving Fund construction loan, an Asset Management Plan that meets all requirements of subsection 62-503.700(7), F.A.C.

The Asset Management Plan shall include, at a minimum, the following elements: i) an inventory of all the assets within the Local Government’s system; ii) an evaluation of the current age, condition, and anticipated useful life of each asset; iii) the current value of the assets; iv) the cost to operate and maintain all assets; v) a capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life; vi) an analysis of funding needs; vii) an analysis of population growth and wastewater or stormwater flow projections, as applicable, for the sponsor’s planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures; industrial pretreatment fees and parameters; viii) the establishment of an adequate funding rate structure; ix) a threshold rate set to ensure the proper operation of the utility (if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility); and x) a plan to preserve the assets, as well as the renewal, replacement, and repair of the assets as necessary (such plan should incorporate a risk-benefit analysis to determine the optimum renewal or replacement time).

In order to retain the rate reduction included in this Loan, the implementation of the plan must be verified at least three months prior to the date of the first loan repayment scheduled in Article X.
8.12. PUBLIC RECORDS ACCESS.

(1) The Local Government 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 Local Government 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 Local Government to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Local Government 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 LOCAL GOVERNMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LOCAL GOVERNMENT’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

8.13. SCRUTINIZED COMPANIES.

(1) The Local Government 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 Local Government or its subcontractors are found to have submitted a false certification; or if the Local Government, 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 Local Government 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 Local Government, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Local Government, 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 Local Government 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.

8.14. SUSPENSION.

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

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

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

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Local Government 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 Local Government 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.

Local Government 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 Local Government 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 Local Government, 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.
ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

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

(1) Proof of advertising.

(2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).

(3) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement, if applicable.

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

(5) Certification that the Local Government and contractors are in compliance with labor standards, including prevailing wage rates established for its locality by the DOL under the Davis-Bacon Act for Project construction.

(6) Certification that all procurement is in compliance with Section 8.10 which states that all iron and steel products used in the Project must be produced in the United States unless (a) a waiver is provided to the Local Government by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements.

9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

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

(1) Contractor insurance certifications.

(2) Executed Contract(s).

(3) Notices to proceed with construction.

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

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 Utility System (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of utility systems of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.
The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Local Government shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is $1,879,600. Of that, the estimated Grant amount is $1,503,680 based on initial estimated Project costs. The estimated principal amount of the Loan to be repaid is $375,920, which consists of $375,920 to be disbursed to the Local Government and $0 of Capitalized Interest. The Grant amount will be transferred by the Department as a payment to the Loan when the first repayment is due.

Capitalized Interest is not disbursed to the Local Government, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the Financing Rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements.

10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as $37,592 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 $1,879,600. 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 repayment(s) following the Final Amendment.

10.03. FINANCING RATE.

The Financing Rate on the unpaid principal of the Loan amount specified in Section 10.01 is 0 percent per annum. The Financing Rate equals the sum of the interest rate and the Grant Allocation Assessment Rate. The interest rate is 0 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum. However, if this Agreement is not executed by the Local Government and returned to the Department before January 1, 2022, the Financing Rate may be adjusted. A new Financing Rate shall be established for any funds provided by amendment to this Agreement.

10.04. LOAN TERM.

The Loan term shall be 10 years.
10.05. REPAYMENT SCHEDULE.

Repayments shall be made semiannually (twice per year). 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 $20,676 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 September 15, 2022 and semiannually thereafter on March 15 and September 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 $413,512, 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 final Grant amount will be based on final Grant eligible Project costs. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as the result of an audit.

The Local Government agrees to the following estimates of Project costs:
<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>PROJECT COSTS ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Demolition</td>
<td>1,636,000</td>
</tr>
<tr>
<td>Contingencies</td>
<td>163,600</td>
</tr>
<tr>
<td>Technical Services After Bid Opening</td>
<td>80,000</td>
</tr>
<tr>
<td><strong>SUBTOTAL (Disbursable Amount)</strong></td>
<td><strong>1,879,600</strong></td>
</tr>
<tr>
<td>Less Grant (SG280221) funding</td>
<td>1,503,680</td>
</tr>
<tr>
<td>Capitalized Interest</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL (Principal Amount to repay)</strong></td>
<td><strong>375,920</strong></td>
</tr>
</tbody>
</table>

10.07. SCHEDULE.

The Local Government agrees by execution hereof:

(1) Invoices submitted for work performed on or after August 11, 2021 shall be eligible for reimbursement.

(2) Completion of Project construction is scheduled for September 15, 2022.

(3) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than September 15, 2022.

(4) A clear site title certification shall be submitted no later than September 15, 2023.

(5) The first Semiannual Loan Payment in the amount of $20,676 shall be due March 15, 2023.

10.08. SPECIAL CONDITION.

Prior to execution of this Agreement, the Local Government shall submit a certified copy of the Resolution which authorizes the application, establishes the Pledged Revenues, and designates an Authorized Representative for signing the application and executing the Loan Agreement.
ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement WW280220 and Grant Agreement SG280221 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 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 Department.

for

TOWN OF LAKE PLACID

________________________________________
Mayor

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

________________________________________
Town Clerk

________________________________________
Town Attorney

SEAL

for

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

________________________________________
Secretary or Designee

________________________________________
Date
TOWN OF LAKE PLACID, FLORIDA

RESOLUTION 2022 – ___

LIMITED AND CONDITIONAL PLEDGE OF WASTEWATER SYSTEM REVENUE TO THE FLORIDA STATE REVOLVING FUND

THE LAKE PLACID TOWN COUNCIL (“Town Council”) met in special session on 20 July 2022. A quorum was present. Mayor John Holbrook presided. Upon motion duly made and seconded, the following resolution was adopted, to wit:

WHEREAS the State of Florida provides for loans to local government agencies to finance the construction of wastewater collection and treatment facilities (“Wastewater Facilities”); and

WHEREAS the Town of Lake Placid (“Town”) applied for and has been awarded a State Revolving Fund Loan and Grant (“SRF Loan”) to finance and fund certain improvements to the Town’s Wastewater Facilities;

WHEREAS the Town desires to secure the SRF Loan with a limited and conditional pledge of the revenues from a portion of the wastewater revenues paid by the Lake Placid Camp and Conference Center (“Conference Center”) under its bulk service agreement with the Town;

WHEREAS the Town of Lake Placid intends to enter into a loan agreement with the Department of Environmental Protection regarding and securing the SRF Loan;

IT IS THEREFORE RESOLVED BY THE LAKE PLACID TOWN COUNCIL, AS FOLLOWS:

Section 1. The foregoing findings are true and correct and are incorporated herein by this reference.

Section 2. The Town of Lake Placid owns and operates the Lake Placid Regional Utility which provides Wastewater Facilities within the Town and certain surrounding areas. As such, the Town of Lake Placid is authorized and qualified to apply for a SRF Loan to finance construction of Wastewater Facilities which would extend the Town’s Wastewater Facilities and services to the Conference Center.
Section 3. The Town entered that certain AGREEMENT REGARDING APPLICATIONS FOR FUNDING AND CONSTRUCTION COSTS AND BULK SERVICE AGREEMENT FOR SEWER (Third Agreement), and the Bulk Service Agreement dated 20 July 2022 between the Town and the Lake Placid Camp and Conference Center (the “Bulk Service Agreement”).

Section 4. The Bulk Service Agreement provides for the monthly payment by the Conference Center to the Town of $3,602.57 which is the Town’s net revenue from the Conference Center. This Bulk Service Fee is agreed to be the amount required to pay the SRF Loan in full. For the avoidance of doubt, the Conference Center pays to the Town an additional monthly fee representing the cost of collecting and treating and disposing of its wastewater.

Section 5. The Town of Lake Placid pledges the revenue from the Bulk Service Agreement between the Town and the Conference Center dated 20 July 2022 to the SRF; provided however, that so long as the SRF has not declared the SRF Loan to be in default, the Town shall continue to collect said Bulk Service Fee. Upon declaration of default in the SRF Loan, the said Bulk Service Fee shall be paid by the Conference Center directly to the SRF. The Bulk Service Fee is pledged to and intended to pay in full this SRF loan. No other revenues are pledged.

Section 6. If any part of this resolution is held to be invalid, unlawful, or unconstitutional, the remaining portion of this resolution shall remain in full force and effect.

Section 7. This resolution shall be effective upon its adoption.

RESOLVED by the Lake Placid Town Council meeting in regular session on 20 July 2022.

TOWN OF LAKE PLACID, a Florida municipal corporation

By: ______________________________
    John M. Holbrook, Mayor
(SEAL)

Attest: ______________________________
    Eva Cooper Hapeman, Town Clerk
AGREEMENT REGARDING APPLICATIONS FOR FUNDING AND CONSTRUCTION COSTS AND BULK SERVICE AGREEMENT FOR SEWER (Third Town-District Agreement) (20 July 2022 Agenda-Revised)

THIS AGREEMENT (the “Agreement”) is made and entered into as of this ___ day of July 2022, by and between the TOWN OF LAKE PLACID, a Florida municipal corporation, 1069 U.S. Highway 27 North, Lake Placid, Florida 33852 (the “Town”), and the DISTRICT ADVISORY BOARD OF SOUTHERN FLORIDA DISTRICT, CHURCH OF THE NAZARENE, INC., a Florida not for profit corporation, 2680 Placid View Drive, Lake Placid, Florida 33852 (the “District”).

FOR AND IN CONSIDERATION of the premises, the mutual undertakings and agreements herein contained and assumed, District and Town hereby covenant and agree as follows:

I. GENERAL TERMS AND CONDITIONS

1. Incorporation. The above recitations are incorporated herein by this reference.

2. District Project. This Agreement is the third in a series of agreements by and between the parties regarding the wastewater collection system being designed and constructed to serve the District (the “District Project”). All of the agreements between the parties, as well as the Town’s resolutions regarding the District Project shall be read and construed together. The District Project is intended to satisfy the District’s obligations under a Consent Agreement with the Florida Department of Environmental Protection (the “Consent Agreement”).

3. District’s Request for Assistance. As part of the District’s construction obligations under the Utility Services Agreement, the District has asked the Town to pursue and apply for State and Federal funding to assist in construction costs associated with the Utility Services Agreement (the “Funding Application Process”).
4. **Resolution Approving the Utility Agreement.** To facilitate the District wastewater project, the Town Council adopted the District Resolution dated 8 June 2020 approving the Utility Agreement which is also dated 8 June 2020.

5. **Utility Service and Annexation Agreement.** The District (also known as the “Developer” in this agreement) and the Town entered into a Utility Services Agreement effective on 7 July 2020, (the “Utility Services Agreement”).

6. **Reimbursement Agreement.** The Parties entered into their second agreement, the Agreement Regarding Payment of Costs Associated with Grants, Loans, and Construction Costs effective as of 23 February 2021 (the “Reimbursement Agreement”) which requires the District to pay the therein specified costs associated with the District Project.

7. **Town Grants and/or Loans.** The funding application process requires the Town to be the grant and loan applicant and recipient of record. The Town in its sole and exclusive discretion shall determine which grants and which loans that it will seek and which grants and loans it will accept. The Town’s decision to apply for grants and loans does not obligate the Town to accept the resulting grant or loan. For example, the Town is requesting grants and possibly low interest loans for other projects. All other terms in the agreements by and between the Parties notwithstanding, nothing obligates the Town to accept any grant or loan which will impair the Town’s ability to obtain any grant or loan. To be clear, the Town may apply for one or more grants and/or loans to determine the availability, terms and conditions of each; but the application does not commit the Town to accept any grant or loan. The Parties understand and agree that the Town may yet require the District to seek alternative funding for the District wastewater project to avoid such conflict. Otherwise, the Town shall cooperate in the application process.

8. **Resolution Adopting the Facility Plan.** Town Council Resolution dated 26 May 2021 adopts the Facility Plan which sets out the improvements to be accomplished by the District Project.

**II. SRF APPLICATION**

9. **Agreement Regarding Applications for Funding and Construction Costs (Third Town-District Agreement).** This Third Agreement between
the Parties addresses the allocation of construction costs between the parties based upon the amount of the SRF loan which may be forgiven.

10. **Wastewater System Improvement Funding.** To help the District obtain one or more grants or to finance some or all of the District Project, the Town will be the applicant under several grants, loans, or grant-loan combinations (the “Grant-Loans”). Among these is the Florida Department of Environmental Protection, State Revolving Loan (the “SRF”) program which provides loans and on occasion forgives those loans.

11. **Resolution Authorizing the SRF Application.** The Town Council adopted that certain Resolution dated 26 May 2021 authorizing the Town’s application to the State Revolving Fund for a loan and or grant to fund the District Project. The Parties will not know until later in the process which Grant-Loans will be awarded to the Town, or whether any will be forgiven. The Parties anticipate that the SRF may forgive a significant part of the SRF loan.

12. **System Improvements.** The Parties agree that the District Project is set out in the Facility Plan adopted by the Town. All elements of the District Project are necessary to increase the wastewater system’s collection capacity and reliability in order for the system to serve the District. The Parties also agree that this increased capacity and reliability will benefit the system as-a-whole. However, the cost of the following System Improvements shall be allocated between the Parties as stated below:

   a. **Allocation of the cost of the High School Lift Station.** The High School lift station will be completely replaced with a new well, new pumps, new panel, and new diesel generator. The Town shall pay for all of these improvements except for the pumps and their installation. The District shall pay for the new pumps and the installation whether they are installed in the old or the new lift station.

   b. **Allocation of the cost of the North Main Street Lift Station.** This is the Town’s master lift station. The Master Lift Station will be renovated to include new pumps, a new electric panel, and a new diesel generator. The Town shall pay for the work to this lift station.
13. ** Allocation of Improvement Costs.** The Town shall apply to the SRF for grants and loans to pay for the District Project. The Town shall pay the costs set out in paragraph 12 as Town cost, but only to the extent that the grants and forgiven loans are not sufficient to pay for same. To be clear, the extent that the Town receives grants to fund the District Project improvements (or loans which are forgiven), the Parties agree that the granted sums and the forgiven sums shall first be applied to pay the Town’s costs set out in paragraph 12, above. Since the initial drafting of this agreement, the SRF Loan has been granted, and a sufficient portion of that SRF loan has been forgiven to pay in full for the Town’s portion of costs listed in paragraph 12, above.

14. **Obligations of The District.** The District agrees and binds itself to the following obligations:

   a. The District shall pay monthly within 15 days of invoice by the Town, 100% of all costs, fees and expenses associated with the funding application process including, but not limited to, any closing costs, interest charges, penalties or fees resulting from or associated with the same, other than those costs excluded in Paragraphs 7 and 8 above.

   b. The District agrees to indemnify and hold the Town harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) to which Town may become subject by reason of or arising out of the funding application process and any and all funding resulting from the same.

   c. No application, correspondence or agreement will be used in the application process without the express written permission of the Mayor of the Town of Lake Placid. No application or agreement shall be used in any application for funding (grant or loan) until approved by the Lake Placid Town Council. All communications to any entity to which the Town applies for funding shall be approved by the Town. All communications from the entities to which applications are dispatched shall be immediately given to the Town.

   d. The District shall modify its current contracts with Guardian Community Resource Management, Inc. (“GCRM”) and Delisi Land use Planning & Water Management (“Delisi”) to specify the Town as
the primary contact for the funding application process. To be clear, both are employed by the District and not the Town.

e. The District or its contractors shall prepare the documentation, applications, studies and reports required for the applications.

f. The Town will not employ any entity to support the application process. The District may employ a lobbyist and a consultant to assist in applying for the grants and loans.

g. GCRM and Delisi shall keep the Town informed on what both contractors communicate to the State of Florida, its agencies and legislators, relative to the application process (and shall provide copies of all communications to the Town). The Town shall have approval determination relative to any representations regarding the Town, made by GCRM and Delisi.

h. The District shall pay the Town’s costs according to the Reimbursement Agreement.

i. All documentation necessary for the funding application process as required by the State and Federal agencies associated with the applications shall be prepared and submitted to the Town for execution at least 10 business days before filing. Complete Agreements and Applications shall be submitted to the Town for consideration ten days before the appropriate Town Council meeting.

j. The District shall pay the total cost of the construction contract entered by the Town to construct the District Project (and all other costs attributable to the District), less the money received by the Town under the SRF loan forgiveness and grant, herein after the “Net Debt.”

15. Obligations of the Town. The Town shall execute all completed and properly prepared (in the Town’s reasonable discretion) and timely presented documentation necessary to complete an application for a grant or loan reasonably requested by the District.
16. **Conditions Precedent to Town Acceptance of a Grant or Loan.** The Town will not proceed with any loan from the State Revolving Fund (“SRF”), unless and until:

   i. The Town’s collateral securing any loan made under this agreement is limited to the Base Service Charge discussed below.

   ii. The Town obtains a written opinion from the SRF administrator(s) saying that the grant or loan with the proposed collateral (the Base Service Charge) will not impair or impact the Town’s ability to obtain grants or loans from the SRF for other Town wastewater projects.

b. The Town will not proceed with any other loan or grant to assist the District unless and until similar assurances are obtained from that entity.

17. **Collateral.** Prior to closing any grant or loan, the District shall provide collateral security payable to the Town in the event of default in an amount equal to 115% of the outstanding balance of any loan(s) obtained through the application process; or in the amount of 115% of the penalty for default under any grant. Such collateral shall be in the form of a non-modifiable Bond good for the life of the loan provided by the District as Principal and only for the benefit of the Town in the amount set forth above, in a form and manner approved by the Town (in its sole and absolute discretion). Notwithstanding anything contained herein to the contrary, the collateral security amount shall only be for those loan amounts attributable to the Net Debt associated with the District Project.

18. **Bulk Service Agreement.** Notwithstanding anything contained herein to the contrary, the monthly service charge shall be calculated upon the outstanding loan amounts attributable to the Net Debt associated with the District Project and shall be trued up annually (including payments under paragraph 19, below).

The Bulk Service Charge will be established in a separate and independent Bulk Service Agreement between the parties, which shall be pledged to the FDEP SRF by separate resolution of the Town.
19. **Wastewater Pioneering Agreement.** Pursuant to Section 16 of the underlying Utility Services Agreement, the District has the benefit of a Pioneering Agreement associated with new wastewater utility accounts connecting to the system contemplated under the Utility Services Agreement. The District and the Town agree that, to the extent any payments or credits become payable to the District under the Pioneering Agreement during the term of any loan secured through the application process, such payments or credits shall be paid over to the Town and applied to the then existing loan amounts secured through the application process.

### III. Miscellaneous

20. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of District and Town. This Agreement may not be assigned by either party without the written consent of the other party, which consent may not be unreasonably withheld. The Bulk Service Agreement between the Town and the District will be conditionally pledged to the FDEP.

21. **Governing Law and Venue.** Regardless of where executed, this Agreement shall be governed by the laws of the State of Florida, notwithstanding contrary principles of conflicts of law, if any. Sole and exclusive jurisdiction for any and all actions at law or in equity arising from the Agreement shall be in the Tenth Judicial Circuit, in and for Highlands County, Florida.

22. **Superseding Terms.** The Town and the District agree that this Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between District and Town, made with respect to the matters herein contained, and when duly executed, fully constitutes the agreement between District and Town, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by all signatories herein.
23. **Waiver.** The parties expressly waive all claims one against the other for punitive and consequential damages. In any litigation to enforce or interpret this agreement, the prevailing party shall recover is reasonable attorney fees from the other.

24. **Authority.** Each party represents to the other party that it has the authority to enter into this Agreement and execute and deliver all documents required hereunder.

25. **Termination of Work.** Either party may determine that work toward a specific grant or loan should be stopped and may so direct the other party without cause. All agreements by and between the parties shall remain in full force and effect.

26. **Effective Date.** This Agreement shall be effective upon the date it is last signed by both the Town and the District.

**IN WITNESS WHEREOF,** District and Town have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

_Signed, sealed and delivered in the presence of:_

DISTRICT:

DISTRICT ADVISORY BOARD OF THE SOUTHERN FLORIDA DISTRICT, CHURCH OF THE NAZARENE, INC., a Florida Not-for-Profit Corporation

By:

Brian E. Wilson, President

STATE OF FLORIDA
COUNTY OF ____________

The foregoing instrument was acknowledged before me this _____ day of _________________, 2022, by Brian E. Wilson as President of District
Advisory Board of the Southern Florida District, Church of the Nazarene, Inc., a Florida Not for Profit Corporation, who is personally known to me or who has produced a driver’s license as identification.

_____________________________
Notary Public
My commission expires:

TOWN OF LAKE PLACID, a Florida municipal corporation

By: ______________________________
    John M. Holbrook, Mayor
(SEAL OF THE TOWN OF LAKE PLACID, FLORIDA)

Attest: ______________________________
    Eva Cooper Hapeman, Town Clerk

Approved as to Form and Legal Sufficiency

By: ______________________________
    Bert J. Harris, III, Esquire.
    Town Attorney
Ms. Angela Knecht  
Program Administrator  
State Revolving Fund Management  
2600 Blair Stone Road, Mail Station 3505  
Tallahassee, FL 32399-2400

Re: Clean Water State Revolving Fund,  
Construction Loan Agreement WW280220  
Grant Agreement SG280221

Dear Ms. Knecht:

I am the Town Attorney for the Town of Lake Placid. The Town proposes to borrow $375,920 from the State Revolving Fund for Construction and connection of a sewer main to the Lake Placid Camp and Conference Center. The sewer main will be owned by the Town and will be available to serve residents along its path.

The Town of Lake Placid proposes to secure the SRF loan with a pledge of the Town’s Bulk Service Agreement between the Town and the Lake Placid Camp and Conference Center. The Town and Conference Center anticipate that the Bulk Rate Service surcharge will be over and above the rate charged by Town Ordinance to collect and treat the Camp and Conference Center’s wastewater. Accordingly, the total Bulk Rate surcharge will be net revenue as defined in the SRF Agreement with the Town. The surcharge will be sufficient to amortize and pay in full the SRF loan and would be the only wastewater revenue pledged to secure the loan.

The Town is requiring that the Lake Placid Camp and Conference Center obtain and deliver to the Town an irrevocable payment bond securing payment of the SRF loan.
The Town has the authority to amend its rate ordinance to pay any shortfall in the SRF Loan.

The income from the proposed Bulk Service Agreement between the Town and the Conference Center is unencumbered and may be pledged to the SRF to secure the SRF Loan to the Town. Except for the SRF loan pledges, the Town's wastewater revenues are unencumbered.

Very truly yours,

Bert J. Harris, III

BJH:lw
TOWN OF LAKE PLACID
AGENDA ITEM INTRODUCTION

MEETING DATE: 20 July 2022 MEETING TYPE: Town Council

AGENDA ITEM # AND TITLE: Second Septic to Sewer Grant Application

PLACED ON AGENDA BY: Joe Barber, Town Engineer and Bert Harris, Town Attorney

STATEMENT OF ISSUE: Resolution requesting the Second Septic to Sewer FDEP Grant, attached.

FISCAL IMPACT: The request is for a “no match grant.”

ATTACHED ITEMS:

Resolution requesting the Second Septic to Sewer Grant.
TOWN COUNCIL
TOWN OF LAKE PLACID

RESOLUTION NUMBER: 2022 – ___

RESOLUTION OF THE LAKE PLACID TOWN COUNCIL REQUESTING A GRANT TO FUND CONNECTIONS TO THE TOWN’S WASTEWATER COLLECTION AND TREATMENT FACILITIES

THE LAKE PLACID TOWN COUNCIL (“Town Council”) met in special session on 20 July 2022. Notice of this Special Meeting was posted at the Town Government Center and published by the Town Clerk. A quorum was present. Mayor John Holbrook presided. Upon motion duly made and seconded, the following resolution was adopted, to wit:

IT IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKE PLACID FLORIDA AS FOLLOWS:

SECTION 1. FINDINGS. The Town Council finds the following facts to be true and correct:

A. **BMAP.** The area in and around the Town of Lake Placid lies within the Basin Map Action Plan declared by the Florida Department of Environmental Protection.

B. **RAO.** The Florida Department of Economic Opportunity has designated Highlands County as a Rural Area of Opportunity.

C. **RURAL COMMUNITY.** The Town population is
2,223\(^1\) with a Median Household income of \(\$30,781\)\(^2\) The Greater Lake Placid area serves about 30,000 people.

**SECTION 2. LAKE PLACID REGIONAL UTILITY.** By Interlocal Agreement with the Board of County Commissioners of Highlands County, the Town of Lake Placid owns and operates the Lake Placid Regional Utility which provides wastewater collection and treatment services to the Town, and surrounding areas within unincorporated Highlands County, Florida.

**SECTION 3. WASTEWATER COLLECTION AND TREATMENT NEEDS.** Approximately thirty thousand (30,000) people live in the Greater Lake Placid area. Approximately 1000 homes and businesses are served by the wastewater collection and treatment system. A significant portion of that unserved population lives on the shore or near many of the area lakes. Several of the lakes are impaired waters. None of the areas around the lakes are served with wastewater collection. The FDEP grant awarded to the Town in 2021 funded the Advanced Wastewater Treatment Plant and many of the wastewater collection lines. Because the collection lines are low pressure lines, the cost of connections will be significant and has increased since the last grant application was filed.

**SECTION 4. COST OF SERVICE.** It is not financially feasible or equitable for the 2,223 citizens of the Town of Lake Placid to provide the capital investment needed to construct the wastewater

---

\(^1\) 2010 census data  
\(^2\) 2010 census data
collection and treatment facilities for the Greater Lake Placid Area. However, the Town stands ready to operate and manage the wastewater collection and treatment systems.

SECTION 5. GRANT AWARDED. The Florida Department of Environmental Protection awarded a grant to the Town of Lake Placid to design and construct a wastewater collection system and an advanced wastewater treatment plant. The engineers’ estimates of the cost to design and construct the proposed wastewater collection systems and the advanced treatment plant more than doubled since the grant application was filed. The scope of the grant has been reduced. The Town desires to use the initial grant to construct the Advanced Wastewater Treatment plant and the collection lines (primarily low-pressure lines).

SECTION 6. GRANT APPLICATIONS. The Town Staff is authorized and directed to immediately apply for a $25,000,000 grant to fund or assist with connections to the Town’s low-pressure wastewater collection lines being constructed under the 2021 FDEP grant.

Section 7. CONNECTIONS. The Town’s 2021 application represented that the Town and County would both enforce connections in their respective jurisdictions. Section 381.00655, Florida Statutes, supports both governments in that effort. However, the very high cost of gravity collection lines, the higher cost of the AWT Plant, and the local topography compelled
the Town to primarily use low-pressure collection lines and pumps or grinder pumps at each home. The cost to connecting homes to the low-pressure lines is significant. A grant to pay the connection costs will assure immediate removal of the septic tanks in favor of the new AWT system.

**SECTION 7. AUTHORITY.** John Holbrook, Mayor of the Town of Lake Placid is authorized to execute, revise and supplement applications for grants to fund the cost of connects to the Town’s wastewater collection and advanced treatment system.

**RESOLVED, ADOPTED, AND EFFECTIVE** by the Lake Placid Town Council meeting in special session this 20 July 2022.

**TOWN OF LAKE PLACID**, a Florida municipal corporation

By: __________________________

John M. Holbrook, Mayor

(SEAL)

Attest: _______________________

Eva Cooper Hapeman, Town Clerk
RESOLUTION OF THE LAKE PLACID TOWN COUNCIL
REQUESTING A GRANT TO FUND CONNECTIONS TO
THE TOWN’S WASTEWATER COLLECTION AND
TREATMENT FACILITIES

THE LAKE PLACID TOWN COUNCIL ("Town Council") met
in special session on 20 July 2022. Notice of this Special Meeting
was posted at the Town Government Center and published by the
Town Clerk. A quorum was present. Mayor John Holbrook
presided. Upon motion duly made and seconded, the following
resolution was adopted, to wit:

IT IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN
OF LAKE PLACID FLORIDA AS FOLLOWS:

SECTION 1. FINDINGS. The Town Council finds the
following facts to be true and correct:

A. BMAP. The area in and around the Town of Lake
Placid lies within the Basin Map Action Plan declared by the
Florida Department of Environmental Protection.

B. RAO. The Florida Department of Economic
Opportunity has designated Highlands County as a Rural Area
of Opportunity.

C. RURAL COMMUNITY. The Town population is
2,223\textsuperscript{1} with a Median Household income of is $30,781\textsuperscript{2} The Greater Lake Placid area serves about 30,000 people.

\textbf{SECTION 2. LAKE PLACID REGIONAL UTILITY.} By Interlocal Agreement with the Board of County Commissioners of Highlands County, the Town of Lake Placid owns and operates the Lake Placid Regional Utility which provides wastewater collection and treatment services to the Town, and surrounding areas within unincorporated Highlands County, Florida.

\textbf{SECTION 3. WASTEWATER COLLECTION AND TREATMENT NEEDS.} Approximately thirty thousand (30,000) people live in the Greater Lake Placid area. Approximately 1000 homes and businesses are served by the wastewater collection and treatment system. A significant portion of that unserved population lives on the shore or near many of the area lakes. Several of the lakes are impaired waters. None of the areas around the lakes are served with wastewater collection. The FDEP grant awarded to the Town in 2021 funded the Advanced Wastewater Treatment Plant and many of the wastewater collection lines. Because the collection lines are low pressure lines, the cost of connections will be significant and has increased since the last grant application was filed.

\textbf{SECTION 4. COST OF SERVICE.} It is not financially feasible or equitable for the 2,223 citizens of the Town of Lake

\textsuperscript{1} 2010 census data
\textsuperscript{2} 2010 census data
Placid to provide the capital investment needed to construct the wastewater collection and treatment facilities for the Greater Lake Placid Area. However, the Town stands ready to operate and manage the wastewater collection and treatment systems.

**SECTION 5. GRANT AWARDED.** The Florida Department of Environmental Protection awarded a grant to the Town of Lake Placid to design and construct a wastewater collection system and an advanced wastewater treatment plant. The engineers’ estimates of the cost to design and construct the proposed wastewater collection systems and the advanced treatment plant more than doubled since the grant application was filed. The scope of the grant has been reduced. The Town desires to use the initial grant to construct the Advanced Wastewater Treatment plant and the collection lines (primarily low-pressure lines).

**SECTION 6. GRANT APPLICATIONS.** The Town Staff is authorized and directed to immediately apply for grants to fund or assist with connections to the Town’s low-pressure wastewater collection lines being constructed under the FDEP grant (primary priority); and to seek additional grants to complete the unfunded collection lines, including Sun ‘N Lakes South and Highway Park (the secondary priority).

**SECTION 7. PROJECTS.** The Town Council designates the following projects as needed to better serve the Greater Lake Placid
7.1 CONNECTIONS. The Town’s initial application represented that the Town and County would both enforce connections in their respective jurisdictions. Section 381.00655, Florida Statutes, supports both governments in that effort. However, the very high cost of gravity collection lines, the higher cost of the AWT Plant, and the local topography compelled the Town to primarily use low-pressure collection lines and pumps or grinder pumps at each home. The cost to connecting homes to the low-pressure lines is significant. The Town will use the following tools to drive connections:

A. Grants. More connections would be accomplished with full or partial connection grants, especially but not exclusively for low to moderate income families.

B. Loans. Connections would be accomplished by lending the cost of connections, to be repaid over a reasonable time. A 15-million-dollar grant could establish a loan fund, which when repaid could be used to fund the additional collection lines or an AWT Plant on the south side of the Town. However, many low income families cannot afford to repay loans.

C. Impact Fee Waiver. Connections may be encouraged by waiving the wastewater impact fees for a period of time (1-3 years) to encourage connections.

D. Termination of Incentives. The termination of incentives within a reasonable time (say by year 5), would encourage timely connections.
E. Code Enforcement. Compelling connections by code enforcement proceedings would be the method of last resort.

7.2 HIGHWAY PARK. Highway Park is not within the Town, is a very low-income area, and is situated west of lake Huntley and east of US Highway 27.

- Approximately 350 homes.
- Approximately 42,000 gpd.
- Low pressure collection lines would cost approximately $_______. Connections to low pressure lines would cost approximately $_________.
- Alternatively, gravity collection lines would cost approximately $_______. Connections to the gravity lines would cost approximately $_________.
- Many families in this community cannot afford to contribute to the lines or connections.
- See map exhibit __, attached.

7.3 SUN ‘N LAKES, SOUTH. Twenty-eight man made canals east of and flowing directly into Lake Grassy.

- Approximately 400 homes are situated on the canals.
- About 400 more homes are along the roads 1-3 blocks away from Lake Grassy.
- Approximately 8-10 miles collection lines are needed.
- Low pressure collection lines would cost approximately $_______. Connections to low pressure lines would cost approximately $_________.


• Alternatively, gravity collection lines would cost approximately $__________. Connections to the gravity lines would cost approximately $__________.
• See map exhibit ___, attached.

SECTION 7. AUTHORITY. John Holbrook, Mayor of the Town of Lake Placid is authorized to execute, revise and supplement applications for grants to fund the cost of connects to the Town’s wastewater collection and advanced treatment system and to install collection lines in Highway Park and Sun ‘N Lakes, South.

RESOLVED, ADOPTED, AND EFFECTIVE by the Lake Placid Town Council meeting in special session this 20 July 2022.

TOWN OF LAKE PLACID, a Florida municipal corporation

By: ____________________________
   John M. Holbrook, Mayor
(SEAL)

Attest: _________________________
   Eva Cooper Hapeman, Town Clerk
BULK SERVICE FEE AGREEMENT

between

THE TOWN OF LAKE PLACID and
THE DISTRICT ADVISORY BOARD OF SOUTHERN FLORIDA
DISTRICT CHURCH OF THE NAZARENE, INC.

THIS BULK SERVICE FEE AGREEMENT ("Agreement"), made as of the ___ day of July 2022, by and between the TOWN OF LAKE PLACID, a Florida municipal corporation, 1069 U.S. Highway 27 North, Lake Placid, Florida 33852 (the “Town”), and the DISTRICT ADVISORY BOARD OF SOUTHERN FLORIDA DISTRICT, CHURCH OF THE NAZARENE, INC., a Florida not-for-profit corporation, 2680 Placid View Drive, Lake Placid, Florida 33852 (the “District”) is for the provision of sewer service and the payment by the District to the Town of an amount necessary to repay certain loans by the State of Florida to the Town for construction of the wastewater collection system being designed and constructed to serve the District.

RECITALS

WHEREAS, the Town and the District have entered into a series of Agreements regarding the wastewater collection system being designed and constructed to serve the District (the “District Project”).

WHEREAS, The District Project is intended to satisfy the District’s obligations under a Consent Agreement with the Florida Department of Environmental Protection (the “Consent Agreement”).

WHEREAS, as part of the District’s construction obligations under the Utility Services Agreement, the District has asked the Town to pursue and apply for State and Federal funding to assist in construction costs associated with the Utility Services Agreement (the “Funding Application Process”).

WHEREAS, the Parties entered into their second agreement, the Agreement Regarding Payment of Costs Associated with Grants, Loans, and Construction Costs effective as of 23 February 2021 (the “Reimbursement Agreement”) which requires the District to pay the therein specified costs associated with the District Project.

WHEREAS, the funding application process requires the Town to be the grant and loan applicant and recipient of record.
AGREEMENT

NOW THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the parties agree as follows:

1. **BULK SERVICE AGREEMENT.** The District contracts and agrees to pay to the Town a monthly payment (the “BULK SERVICE FEE”) over, above and in addition to the District’s monthly sewer fee established by the Town Code. The Bulk Service Fee is established in this agreement (the “Bulk Service Agreement”).

2. **BULK SERVICE FEE.** The Bulk Service Fee shall be the sole and only source of revenue pledged by the Town for repayment of the SRF Loan Number _______. The Bulk Service Fee shall be calculated upon the outstanding amount Loan Number ________, including all paydowns and modifications. The Bulk Service Fee shall be the sum required to pay in full the loan the Town owes to the State Revolving Fund, Loan Number _____, and shall be paid in monthly installments.

3. **BOND.** Prior to closing any grant or loan, the District shall provide collateral security (a bond) payable to the Town in the event of default in an amount equal to 115% of the outstanding balance of any loan(s) obtained through the application process; or in the amount of 115% of the penalty for default under any grant. Such collateral shall be in the form of a non-modifiable Bond good for the life of the loan provided by the District as Principal and only for the benefit of the Town (or its assigns) in the amount set forth above, in a form and manner approved by the Town (in its sole and absolute discretion). Notwithstanding anything contained herein to the contrary, the collateral security amount shall only be for the Net Debt associated with the District Project as defined in the Third Agreement between the parties (plus 15% of the Net Debt).

4. **CALCULATION OF BOND AMOUNT.** While subject to final disbursement by the State of Florida, it is anticipated that the District shall pay to the Town a monthly service charge (over and above the monthly sewer charge) in the amount of $3,602.57. This amount is based upon the anticipated total SRF Wastewater Award of $1,879,600.00, less the Grant Award for SRF Wastewater of $1,503,680.00, leaving a balance of $375,920.00 to be paid back to the SRF and amortized over ten (10) years with payments made monthly on the 15th of each month, plus an additional 15% coverage as required by the FDEP.

**NOTE 1:** THE AWARD, GRANT AND MONTHLY PAYMENT AMOUNTS SET FORTH HEREIN ARE SUBJECT TO FINAL AWARD AND DETERMINATION BY THE STATE OF FLORIDA AND SHALL BE TRUED UP ANNUALLY.

**NOTE 2:** THIS CALCULATION ASSUMES THAT THE DISTRICT IMPROVEMENTS CAN BE CONSTRUCTED BY AND UNDER A $1,879,600.00 CONSTRUCTION CONTRACT. THESE CALCULATIONS WILL CHANGE WHEN THE CONTRACT IS ENTERED TO REFLECT THE CONTRACT AMOUNT; AND FURTHER CHANGED TO REFLECT ANY CHANGE ORDERS AND THE FINAL CONSTRUCTION COST.
5. **TERMINATION.** This Bulk Service Agreement shall be in full force and effect until Loan _____ is paid in full, and until the Town has recovered from the District all money the Town pays under Loan _____. This Bulk Service Agreement will terminate when the District has paid to the Town all sums that the Town has paid to SRF under SRF Loan Number ________

6. **MISCELLANEOUS.** This Agreement shall become effective and binding upon execution by the parties. This Agreement may not be modified or amended except by a written amendment signed by both parties. No waiver by a party of any breach by the other party of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by the party or bar the right of that party to insist on strict performance by the other party of any provisions of this Agreement in the future. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective successors and assigns. This Bulk Service Agreement will be construed with the other agreements by and between the parties.

7. **DUE ON SALE.** All future and unpaid payments under this Bulk Sale Fee Agreement and the sums secured by the Bond, shall immediately become due and payable if and in the event that the District transfers title to the property served by the Bulk Sale Fee Agreement.

**IN WITNESS WHEREOF,** District and Town have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

Signed, sealed and delivered
in the presence of:

**DISTRICT:**

DISTRICT ADVISORY BOARD OF THE
SOUTHERN FLORIDA DISTRICT,
CHURCH OF THE NAZARENE, INC., a
Florida Not-for-Profit Corporation

By: _________________________________
Brian E. Wilson, President

**STATE OF FLORIDA**
**COUNTY OF**

The foregoing instrument was acknowledged before me this _____ day of July 2022 by in person appearance by Brian E. Wilson as President of District Advisory Board of the Southern Florida District, Church of the Nazarene, Inc., a Florida Not for Profit Corporation, who is personally known to me or who has produced a driver’s license as identification.

Notary Public
My Commission Expires:
TOWN:

THE TOWN OF LAKE PLACID, a Florida municipal corporation,

By: _________________________________
    John M. Holbrook, Mayor

Attest: _______________________________
    Eva Cooper Hapeman, Town Clerk

(Seal of the Town of Lake Placid, Florida)

Approved as to Form and Legal Sufficiency

By: _________________________________
    Bert J. Harris, III, Esquire.
    Town Attorney