RESOLUTION NO. 13-03-10

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM PROJECT NUMBER WW882020; APPROVING AMENDMENT #1 TO THE LOAN AGREEMENT BETWEEN THE VILLAGE AND THE STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION; ESTABLISHING PLEDGED REVENUES; DESIGNATING AUTHORIZED REPRESENTATIVES; PROVIDING FOR EXECUTION; PROVIDING AUTHORITY; PROVIDING FOR ISSUANCE FEES AND TRANSACTION COSTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Statutes provide for loans to local government agencies to finance the construction of wastewater and water pollution control facilities (the “State Revolving Fund” or “SRF”); and

WHEREAS, pursuant to Resolution No. 12-09-82 the Village entered into a Loan Agreement expanded to include financing of pre-construction and construction activities in the Remaining Service Areas (RSA) with a disbursable loan amount in FY 2013 of $26,194,014; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to amend the Loan Agreement to include an additional allocation of $20 million and increase the disbursable loan amount in FY 2013 from $26,194,014 to $46,194,014.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
**Section 2. Amendment #1 to the Loan Agreement Authorized.**

Amendment #1 to the Loan Agreement (Exhibit 1) making an additional $20 million available in SRF loan funds in FY2013 (excluding capitalized interest and loan issuance fees) for the Project is approved.

**Section 3. Authorization and Approval to Amend Loan Agreement.**

Amendment of the Loan Agreement between the Village and the Lender (Clean Water State Revolving Fund Loan Agreement Number WW882020) to increase the disbursable amount of $26,194,014 to $46,194,014 (excluding capitalized interest and loan issuance fees) in FY 2013, with such non-material changes as may be required by the Lender and are acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is authorized and approved.

**Section 4. Pledged Revenues.** The revenues pledged for repayment of the loan are wastewater non-ad valorem assessments (adopted pursuant to Village Resolution Nos. 11-06-38 and 11-07-47) and the gross revenues derived yearly from the operation of the sewer system constructed by the Project after payment of the operation and maintenance expenses. To secure the payment of the Village’s obligations to the Lender under the Loan Documents, the Village shall budget and appropriate from the wastewater non-ad valorem assessments and available gross revenues an amount sufficient to pay all amounts due to the Lender in the applicable budget year.

**Section 5. Authorization of Village Officials.** The Village Manager is hereby designated as the authorized representative to provide the assurances and commitments required by the State Revolving Fund, the Loan Agreement, and any Amendments to the Loan Agreement. The Village Manager and, if required by the
Lender, the Mayor and other appropriate Village officials are authorized and directed to execute and deliver the necessary loan amendment documents (the “Loan Documents”) to apply for and borrow the funds from the Lender. The Village Manager, the Mayor and the Village Attorney are each authorized and directed to execute any and all certifications and other agreements or any other documents required by the Lender as a prerequisite or precondition to making the loan in the Loan Documents and any such representation made therein shall be deemed to be made on behalf of the Village.

Section 6. Execution of Documents. The Mayor is hereby designated as the authorized representative to execute the Loan Documents, which will become a binding obligation in accordance with its terms when signed by both parties. The Village Manager is authorized to represent the Village in carrying out the Village’s responsibilities under the Loan Documents. The Village Manager is authorized to delegate responsibility to appropriate Village staff to carry out technical, financial, and administrative activities associated with the Loan Documents.

Section 7. Legal Authority for Borrowing Funds. The Village’s legal authority for borrowing moneys, issuing bonds, notes or other obligations to finance the cost to construct this Project is pursuant to the Florida Constitution; the Village’s Home Rule Authority; Chapter 166, Florida Statutes; the Village’s Charter; the Village Code, Ordinances and Resolutions, and the applicable laws of the State of Florida.

Section 8. Issuance Fees and Transaction Costs. The Village authorizes the payment of issuance fees and transaction costs from legally available sources in connection with the execution and delivery of the Loan Agreement.
Section 9. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

Motion to adopt by Vice Mayor Ted Blackburn, second by Councilwoman Deb Gillis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

Mayor Ken Philipson  YES
Vice Mayor Ted Blackburn  YES
Councilman Mike Forster  YES
Councilwoman Deb Gillis  YES
Councilman Dave Purdo  YES

PASSED AND ADOPTED on this 28th day of March, 2013.

KEN PHILIPSON, MAYOR

ATTEST:

ARIANA S. LAWSON, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY

VILLAGE ATTORNEY
AMENDMENT 1 TO LOAN AGREEMENT WW882020
ISLAMORADA, VILLAGE OF ISLANDS

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, (the “Local Government”) existing as a local governmental agency under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Local Government entered into a Clean Water State Revolving Fund Loan Agreement, Number WW882020, authorizing a Loan amount of $26,194,014, excluding Capitalized Interest; and

WHEREAS, the Local Government is entitled to additional financing of $20,000,000, excluding Capitalized Interest; and

WHEREAS, revised provisions for audit and monitoring are needed; and

WHEREAS, a Financing Rate must be established for the additional financing amount awarded in this amendment; and

WHEREAS, a Loan Service Fee must be estimated for the additional financing; and

WHEREAS, the Semiannual Loan Payment amount needs revision to reflect an adjustment in the Loan amount.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subsection 2.03(1) of the Agreement is hereby deleted and replaced as follows:

   Funds provided under this Agreement have been identified as second-tier monies under the Federal Clean Water Act which are identified as state funds whose use is federally protected.

   (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>Statewide Surface Water Restoration and Wastewater Projects</td>
<td>$46,194,014</td>
<td>140131</td>
</tr>
</tbody>
</table>
2. Section 8.09 of the Agreement is deleted and replaced as follows:

(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. 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. 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 EPA Davis-Bacon contact Sheryl Parsons at Parsons.Sheryl@epamail.epa.gov and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

3. Additional financing in the amount of $20,000,000, excluding Capitalized Interest, is hereby awarded to the Local Government.

4. A Financing Rate of 2.19 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 1.095 percent per annum and the Grant Allocation Assessment rate is 1.095 percent per annum. However, if this amendment is not executed by the Local Government and returned to the Department before April 1, 2013, the Financing Rate may be adjusted.

5. The estimated principal amount of the Loan is hereby revised to $47,799,014, which consists of $46,194,014 authorized for disbursement to the Local Government and $1,605,000 of Capitalized Interest. This total consists of the following:

(a) Revised Original Agreement amount of $27,204,414, including $26,194,014 authorized for disbursement to the Local Government and adjusted Capitalized Interest of
$1,010,400, at a Financing Rate of 2.44 percent per annum (the interest rate is 1.22 percent per annum and the Grant Allocation Assessment rate is 1.22 percent per annum); and

(b) Amendment 1 of $20,594,600, including $20,000,000 authorized for disbursement to the Local Government and $594,600 of Capitalized Interest, at a Financing Rate of 2.19 percent per annum (the interest rate is 1.095 percent per annum and the Grant Allocation Assessment rate is 1.095 percent per annum).

6. An additional Loan Service Fee in the amount of $400,000, for a total of $923,880, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest, that is, two percent of $46,194,014.

7. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of $1,531,188. Such payments shall be paid to, and must be received by the Department beginning on June 15, 2016 and semiannually thereafter on December 15 and June 15 of each year until all amounts due hereunder have been fully paid. Until this Agreement is further amended, each Semiannual Loan Payment will be proportionally applied toward repayment of the amounts owed on each incremental Loan amount at the date such payment is due.

The Semiannual Loan Payment amount is based on the total amount owed of $48,722,894, which consists of the Loan principal plus the estimated Loan Service Fee.

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

Funds disbursed in accordance with Section 4.08 of this Agreement shall be disbursed in the order in which they have been obligated without respect to budgetary line item estimates. All disbursements shall be made from the original Loan amount until that amount has been disbursed; the Financing Rate established for the original Loan amount shall apply to such disbursements for the purpose of determining the associated Capitalized Interest and repayment amount. The Financing Rate established for any additional increment of Loan financing shall be used to determine the Capitalized Interest and repayment amount associated with the funds disbursed from that increment.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
The estimated Project costs are revised as follows:

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>COST($)</th>
<th>AMOUNT($) TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowance costs</td>
<td>1,820,199</td>
<td></td>
</tr>
<tr>
<td>Design and Construction</td>
<td>90,900,000</td>
<td><em>Line items may vary</em></td>
</tr>
<tr>
<td>Contingencies</td>
<td>4,545,000</td>
<td><em>based on Actual</em></td>
</tr>
<tr>
<td>Technical Services After Bid Opening</td>
<td>10,405,880</td>
<td><em>Disbursements</em></td>
</tr>
<tr>
<td>SUBTOTAL (Disbursable Amount)</td>
<td>107,671,079</td>
<td>46,194,014</td>
</tr>
<tr>
<td>Capitalized Interest</td>
<td>1,605,000</td>
<td>1,605,000</td>
</tr>
<tr>
<td>TOTAL (Loan Principal Amount)</td>
<td>109,276,079</td>
<td>47,799,014</td>
</tr>
</tbody>
</table>

9. Section 10.08 is amended to include the following:

(3) The Local Government shall deposit an additional $1,301,996 in the Loan Repayment Reserve Account for a total of $3,062,376 no later than December 15, 2013, and provide documentation before any funds from this Amendment are disbursed.

10. All other terms and provisions of the Loan Agreement shall remain in effect.
This Amendment 1 to Loan Agreement WW882020 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Program Administrator 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 Program Administrator.

for

ISLAMORADA, VILLAGE OF ISLANDS

[Signature]
Mayor

Attest

[Signature]
Village Clerk

Attest as to form and correctness:

[Signature]
Village Attorney

SEAL

APPROVED AND ACCEPTED BY THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

[Signature]
Program Administrator
State Revolving Fund

Date