

CITY MANAGER

# CITY COUNCIL AGENDA ITEM

### REQUESTED COUNCIL MEETING DATE

December 11, 2007 JAN. 8, 2008

1/8/08.

[] Tabled Indefinitely

SUBJECT: Amendment No. 1 to State Revolving Fund (SRF) Loan Agreement WW72514S for the South Peninsula Wastewater Collection System Part I  DEPARTMENT: Public Utilities
RECOMMENDED MOTION: To approve Ordinance No. 2008, authorizing the City to enter into Amendment No. 1 to the State Revolving Fund (SRF) Loan Agreement for the South Peninsula Wastewater Collection System Part I, and to authorize the Mayor and City Manager to execute the Ordinance and loan agreement.
Wastewater Facility Plan, which identified various planned improvements, thereby making them eligible to receive SRF Loans to assist with design and construction of improvements. Retrofit of gravity sanitary sewers to provide service to the South Peninsula was identified in the Facilities Plan.  Phase I of the project located between Dunlawton Avenue and Marcelle Avenue was completed at a cost less than the initial budget. The original loan agreement approved by Council October 26, 2004 listed a total loan principal amount of \$7,423,913.00. Amendment No. 1 lists the total loan principal amount as \$7,312,594.42, a net reduction of \$111,318.58.
ATTACHMENTS: [X] Ordinance [] Resolution [] Budget Resolution
[ ] Other [X] Support Documents/Contracts Available for Review in Public Utilities
DEPARTMENT HEAD Roger M. Smith Date 12-10-0
FINANCE DEPARTMENT Approver as to Budget Requirements  Date 12-10-07
CITY ATTORNEY Approved as to Form and Legality Date / - 3 - 0 7

Approved Agenda Item For:

[] Disapproved

[] Approved with Modification:

[] Approved as Recommended

[] Continued to Date Certain

## **ORDINANCE NO. 2008-**

AN ORDINANCE SUPPLEMENTING ORDINANCE NO. 2004-36 ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ON OCTOBER 26, 2004 AND NOVEMBER 16, 2004, RESPECTIVELY, AND ENTITLED.

"AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AUTHORIZING THE CITY TO PARTICIPATE IN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM; AUTHORIZING THE CITY TO ENTER INTO THE CLEAN WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT NO. WW72514S: AUTHORIZING THE BORROWING OF NOT **EXCEEDING THE PRINCIPAL AMOUNT OF \$7,423,913.00** TO FINANCE THE CONSTRUCTION OF THE SOUTH PENINSULA WASTEWATER COLLECTION SYSTEM PART I: PROVIDING FOR THE PAYMENT OF SAID OBLIGATION FROM THE REVENUES DERIVED FROM THE OPERATION OF THE CITY'S WATER AND SEWER SYSTEM AND DEVELOPMENT FEES: DESIGNATING THE AUTHORIZED REPRESENTATIVE: AUTHORIZING EXECUTION OF THE LOAN AGREEMENT; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE."

DECREASING THE PRINCIPAL LOAN AMOUNT TO \$7,312,594.42 FOR PAYMENT OF PROJECT COSTS; AUTHORIZING THE CITY TO ENTER INTO THE REVISED CLEAN WATER STATE REVOLVING FUND AMENDMENT 1 TO THE LOAN AGREEMENT FOR SUCH BORROWING;

PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 403.1835, Florida Statutes, the Florida

Department of Environmental Protection (the "Department") is authorized to make loans
to local government agencies to finance or refinance the construction of water

transmission and distribution facilities and wastewater pollution control facilities within the local governmental agency.

WHEREAS, the City of Port Orange, Florida (the "City"), has made application for the financing of the acquisition and construction of certain improvements to the City's water and sewer system (the "Project"), and the Department has determined that such Project meets all requirements for participation in the State Revolving Loan Fund.

WHEREAS, the Department has sent to the City a revised Clean Water State Revolving Fund Amendment 1 to Loan Agreement WW72514S to provide for such adjustment and making other corrections corresponding to the Department's loan approval.

WHEREAS, it is now desirable to enact this supplemental ordinance to authorize the City's borrowing not exceeding the principal amount of \$7,312,594.42 to undertake the Project, which Project serves essential public purposes of the City. As evidence of the City's obligation for repayment of the loan, the City is authorized to enter into the Clean Water State Revolving Fund Amendment 1 to Loan Agreement WW72514S.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Findings. The recitals contained in the foregoing "Whereas" clauses are hereby declared to be findings of the City Council and the same are incorporated in the body of this Ordinance by this reference.

Section 2. <u>Definitions.</u> In addition to words and terms elsewhere defined in Ordinance No. 2004-36 and this Ordinance, the following words and terms as used in

this Ordinance shall have the following meanings, unless some other meaning is plainly intended:

"Revised Agreement" shall mean the "Clean Water State Revolving Fund Construction Loan Agreement WW 72514S" between the State of Florida Department of Environmental Protection and the City, in substantially the form attached to Ordinance No. 2004-36 as Exhibit "A" and Clean Water State Revolving Fund Amendment 1 to Loan Agreement WW72514S, in substantially the form attached hereto as Exhibit "A".

"Outstanding Bonds" shall mean the City's outstanding Water and Sewer Refunding Revenue Bonds, Series 1999, dated January 1, 1999; and Capital Improvement Refunding Revenue Note, Series 2003A and Capital Improvement Refunding Revenue Note, Series 2003B; Water and Sewer Refunding Revenue Bonds, Series 2006, dated February 8, 2006. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. The words "Bondholder", "holder" and "owner" shall include the plural as well as the singular number unless the context shall otherwise indicate.

Section 3. Authorization of Decrease of Principal Amount of Loan. Subject and pursuant to the provisions of the Ordinance, this Supplemental Ordinance and the Revised Agreement, the aggregate principal amount of the Loan, previously authorized pursuant to the Ordinance, is hereby decreased by \$111,318.58 to \$7,312,594.42.

Section 4. Use of Proceeds. The proceeds of the Loan shall be applied to pay Project Costs in the manner provided in the Agreement.

Section 5. Loan Payments Not General Obligations. The Loan payments shall Page 3 of 6

not be or constitute general obligations or indebtedness of the City within the meaning of the Florida Constitution, but shall be special and limited obligations of the City payable solely from and secured by a pledge of the Pledged Revenues. The lien on the Pledged Revenues in favor of the Loan shall be in all respects junior and subordinate to the lien thereon in favor of the holders of the Outstanding Bonds. The Department shall never have any claim or lien on any revenues, funds or property of the City or be entitled to payment from any source except as expressly provided herein. The Loan and related documents shall not pledge the full faith and credit or ad valorem taxing power of the City and the Department and any fiduciary or agent shall not have the right to compel the exercise of the ad valorem taxing power of the City to pay any payments on the Loan, any Loan Service Charges thereon or any other claims arising thereunder.

<u>Section 6.</u> <u>Authorized Representative.</u> The Mayor and City Manager are hereby designated as the authorized representatives to provide the assurances and commitments required by the Loan application.

Section 7. Execution of Loan Agreement. The Mayor and City Manager are hereby authorized to execute the Revised Agreement which will become a binding obligation in accordance with its terms.

Section 8. Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the City contained in this Ordinance, any supplemental ordinance or any supplemental resolution are and shall be deemed to be covenants, stipulations, obligations and agreements of the City. No such covenant, stipulation, obligation or agreement of the City shall be deemed to be a covenant,

stipulation, obligation or agreement of any present or future member of the City Council, or of any official, employee or agent of the City in other than that person's official capacity. Neither the members of the City Council nor any official executing or attesting the Loan or other agreement relating to the Loan shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance or execution thereof.

Section 9. Governing Law. This Ordinance, all ordinances or resolutions supplemental hereto, and the Loan shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 10. Severability. In case any section or provision of this Ordinance, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Ordinance, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Ordinance, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein. Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

Section 11. Conflicts. All ordinances and resolutions or parts thereof in conflict

Page 5 of 6

herewith are to the extent of such conflict superseded and repealed.

Section 12. Effective Date. This Ordinance shall become effective ten (10) days after the date of its enactment.

MAYOR	ALL	ΕN	GREEN	

ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved:

C:\Legal\ORD\srf amend 1 to ww72514S s penin ww collect sys part 1.wpd

#### **EXHIBIT A**

### STATE REVOLVING FUND AMENDMENT 1 TO LOAN AGREEMENT WW72514S CITY OF PORT ORANGE

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF PORT ORANGE, FLORIDA, (Local Government) existing as a local government agency under the laws of the State of Florida.

#### WITNESSETH:

WHEREAS, the Department and the Local Government entered into a State Revolving Fund Loan Agreement, Number WW72514S, authorizing a Loan amount of \$7,230,813, excluding Capitalized Interest; and

WHEREAS, Project costs need adjustment to reflect actual costs; and

WHEREAS, the Semiannual Loan Payment amount needs revision to reflect adjustment of Project costs and the two Semiannual Loan Payments received by the Department from the Local Government.

NOW, THEREFORE, the parties hereto agree as follows:

- 1. The amount disbursed for this loan is \$7,230,813.
- 2. The Loan Service Fee is \$144,616. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$7,230,813. The Loan Service Fee is assessed as of the effective date of November 29, 2007.
- 3. The total amount to repay by the Local Government is \$7,457,210.42, which consists of \$7,230,813.00 disbursed to the Local Government, \$81,781.42 of accrued Capitalized Interest and \$144,616.00 of service fee charges.
- 4. The total amount remaining to repay which amount accounts for the Department's receipt of two semiannual Loan Payments is \$7,142,460.66, consisting of unpaid principal of the Loan of \$6,997,844.66 and an unpaid service fee charge of \$144,616.00 both at a Financing Rate of 2.85 percent per annum (the interest rate is 1.425 percent per annum, and the Grant Allocation Assessment rate is 1.425 percent per annum).
- 5. The Semiannual Loan Payment amount, adjusted to account for repayments received to date, is hereby revised and shall be in the amount of \$244,684.30. Such payments shall be received by the Department on February 15, 2008 and semiannually thereafter on August 15<sup>th</sup> and February 15<sup>th</sup> of each year until all amounts due hereunder have been fully paid.
  - 6. Subsection 2.03(1) and (3)(a)(i) are hereby deleted and replaced as follows:

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

Federal Resource Following:	s, Including	State Match,	Awarded to the Recipient Pursu	ant to this Agreen	ent Consist of the
Federal					State
Program	Federal	CFDA	•	Funding	Appropriation
Number	Agency	Number	CFDA Title	Amount	Category
CS120001-050	S120001-050 EPA 66.458		Capitalization Grants for State Revolving Funds	\$7,230,813	140131

- (3) Report Submission.
- (a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Government directly to each of the following:
  - (i) The Department at each of the following addresses:

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

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 41
Tallahassee, Florida 32399-3123

#1.4 ------ .

#### 7. Project Costs are revised as follows:

The Local Government and the Department acknowledge that changes in Project costs may occur as a result of the Local Government's Project audit or a Department audit pursuant to Chapter 62-503 of the Florida Administrative Code. Unless this Agreement is amended subsequent to an audit, the following Project disbursements shall be final.

CATEGORY	DISBURSED (\$)
Allowance	539,913.00
Construction and Demolition	6,664,621.00
Technical Services During Construction	508,400.00
Less Local Funds	(482,121.00)
SUBTOTAL (Total Disbursed)	7,230,813.00
Capitalized Interest	81,781.42
TOTAL (Loan Principal Amount)	7,312,594.42

- 8. The Project-specific audit required under Subsection 2.03(4) of the Agreement shall be submitted within twelve months after the effective date of this amendment.
  - 9. All other terms and provisions of the Loan Agreement shall remain in effect.

This Amendment 1 to Loan Agreement WW72514S 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 amendment to the Loan Agreement to be executed on its behalf by the Deputy Director, and the Local Government has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Deputy Director.

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	CITY OF PORT OF	RANGE	
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SEAL	City Clerk		
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DEPARTMEN	T OF ENVIRONMEN	TAL PROTECTION	
Deputy D		Date	
Division of Water Res	ource Management		

## Combined

	Pmt.		Serv. Fee		Int Alloc	Grt Alloc		
Date	No.	Payment	Paid	SF Interest	Amount	Amount	Principal Paid	Total to Pay
8/15/2006						,		\$0.00
2/15/2007	1	\$249,544.00	\$0.00	. \$0.00	\$41,993.53	\$41,993.53	\$165,556.94	\$7,147,037.48
8/15/2007	2	\$249,544.00	\$0.00	\$0.00	\$50,175.59	\$50,175.59	\$149,192.82	\$7,142,460.66
2/15/2008	3	\$244,684.30	\$144,000.00	\$877.02	\$49,859.64	\$49,859.64	\$88.00	\$6,998,372.66
8/15/2008	4		\$616.00	\$3.75	\$49,863.41	\$49,863.41	\$144,337.73	\$6,853,418.93
2/15/2009	5	\$244,684.30	\$0.00	\$0.00	\$48,830.61	\$48,830.61	\$147,023.08	\$6,706,395.85
8/15/2009	6	\$244,684.30	\$0.00	\$0.00	\$47,783.07	\$47,783.07		\$6,557,277.69
2/15/2010	7	\$244,684.30	\$0.00	\$0.00	\$46,720.60			\$6,406,034.59
8/15/2010	8	\$244,684.30	\$0.00	\$0.00	\$45,643.00	\$45,643.00	\$153,398.30	\$6,252,636.30
2/15/2011	9	\$244,684.30	\$0.00	\$0.00	\$44,550.03	\$44,550.03	\$155,584.24	\$6,097,052.06
8/15/2011	10	\$244,684.30	\$0.00	\$0.00				\$5,939,250.76
2/15/2012	11	\$244,684.30	\$0.00	\$0.00				\$5,779,200.78
8/15/2012	12	\$244,684.30	\$0,00	\$0.00			\$162,330.68	\$5,616,870.10
2/15/2013	13	\$244,684.30	\$0.00	\$0.00	\$40,020.20			\$5,452,226.20
8/15/2013	14	\$244,684.30	\$0.00	\$0.00	\$38,847.11		\$166,990.08	\$5,285,236.12
2/15/2014	15	\$244,684.30	\$0.00	\$0.00			\$169,369.68	\$5,115,866.44
8/15/2014	16	\$244,684.30	\$0.00	<b>\$0.0</b> 0				
2/15/2015	17	\$244,684.30	\$0.00	\$0.00			\$174,231.12	
8/15/2015	18	\$244,684.30	\$0.00	\$0.00	\$33,985.20		\$176,713.90	\$4,593,138.22
2/15/2016	19	\$244,684.30	\$0.00	\$0.00	\$32,726.11	\$32,726.11	\$179,232.08	\$4,413,906.15
8/15/2016	20	\$244,684.30	\$0.00	\$0.00	\$31,449.08		\$181,786.14	\$4,232,120.01
2/15/2017	21	\$244,684.30	\$0.00	\$0.00	\$30,153.86		\$184,376.58	\$4,047,743.43
8/15/2017	22	\$244,684.30	\$0.00	\$0.00	\$28,840.17		\$187,003.96	\$3,860,739.47
2/15/2018	23	\$244,684.30	\$0.00	\$0.00	\$27,507.77		\$189,668.76	\$3,671,070.71
8/15/2018	24	\$244,684.30	\$0.00	\$0.00	\$26,156.38	\$26,156.38	\$192,371.54	\$3,478,699.17
2/15/2019	25	\$244,684.30	\$0.00	\$0.00	\$24,785.73	\$24,785.73	\$195,112.84	\$3,283,586.33
8/15/2019	26	\$244,684.30	\$0.00	\$0.00	\$23,395.55	\$23,395.55	\$197,893.20	
2/15/2020	27	\$244,684.30	\$0.00	\$0.00	\$21,985.56	\$21,985.56	\$200,713.18	\$2,884,979.95
8/15/2020	28	\$244,684.30	\$0.00	\$0.00	\$20,555.48	\$20,555.48	\$203,573.34	\$2,681,406.61
2/15/2021	29	\$244,684.30	\$0.00	\$0.00	\$19,105.02	\$19,105.02	\$206,474.26	\$2,474,932.36
8/15/2021	30	\$244,684.30	\$0.00	\$0.00	\$17,633.89	\$17,633.89	\$209,416.52	\$2,265,515.84
2/15/2022	31	\$244,684.30	\$0.00	\$0.00	\$16,141.80	\$16,141.80	\$212,400.70	\$2,053,115.14
8/15/2022	32	\$244,684.30	\$0.00	\$0.00	\$14,628.45	\$14,628.45	\$215,427.40	\$1,837,687.74
2/15/2023	33	\$244,684.30	\$0.00	\$0.00	\$13,093.53	\$13,093.53	\$218,497.24	\$1,619,190.50
8/15/2023	34	\$244,684.30	\$0.00	\$0.00	\$11,536.73	\$11,536.73	\$221,610.84	\$1,397,579.66
2/15/2024	35	\$244,684.30	\$0.00	\$0.00	\$9,957.76	<b>\$</b> 9,957.76	\$224,768.78	\$1,172,810.88
8/15/2024	36	\$244,684.30	\$0.00	\$0.00	\$8,356.28		\$227,971.74	\$944,839.14
2/15/2025	37	\$244,684.30	\$0.00	\$0.00	\$6,731.98	\$6,731.98	\$231,220.34	\$713,618.80
8/15/2025	38	\$244,684.30	\$0.00	\$0.00	\$5,084.53	\$5,084.53	\$234,515.24	\$479,103.56
2/15/2026	39	\$244,684.30	\$0.00	\$0.00	\$3,413.61	\$3,413.61	\$237,857.08	\$241,246.48
8/15/2026	40_	\$244,684.25	\$0.00	\$0.00	\$1,718.88	\$1,718.88	\$241,246.49	(\$0.00)
Totals		\$9,797,091.31	144,616.00	880.77	1,169,500.06	1,169,500.06	7,312,594.42	

# Calculation of Semiannual Payment for Remaining Years

Sponsor: Port Orange

**Project Number:** 

72514S

Beginning of Repayment Period: 8/15/2006

Payments Remaining:

2-g-ming 01 X	epajment rem	<b>4.</b> 5/15/2000		ayments remaining.	36	
Original Loan Date		Combined	i Rate: 2.85%			
	Balance Forward	Disbursement Or Serv. Fee	Comb. Int At 2/15/2008	Total Owed At 2/15/2008	Present Value* At 8/15/2007	Payment Amount
8/15/2007	6,997,844.66		99,719.28	7,097,563.94		
11/29/2007	•	144,616	880.77	145,496.77		
Totals				7,243,060.71	7,141,297.22	244,684.30

<sup>\*</sup>Present value is the total owed divided by (1+(combined interest rate)/2).



# Florida Department of **Environmental Protection**

Charlie Crist Governor

Bob Martinez Center 2600 Blair Stone Road

ASSECT FORM 31399-2400ITY OF PORT ORANGE RECEIVED

Michael W. Sole Secretary

DEC 0.7 2007

DEC 6 2007

CITY OF PORT ORANGE PUBLIC UTILITIES

CITY MANAGER

Mr. Kenneth W. Parker, City Manager City of Port Orange 1000 City Center Circle Port Orange, Florida 32129

Re: WW72514S - Port Orange

Collection Facilities

(New Sewers - South Peninsula Part 1)

Dear Mr. Parker:

December 3, 2007

Enclosed are three original copies of proposed Amendment 1 to your State Revolving Fund loan agreement. The amendment adjusts the project costs and reduces the semiannual loan payment. The adjustments are final unless further revisions become necessary as a result of an audit. A loan statement showing the calculation of the final payment amount and an amortization schedule are also enclosed.

Please sign and seal the enclosed three copies and return them to us within three weeks at 2600 Blair Stone Road, Mail Station 3505, Tallahassee, Florida, 32399-2400. We will arrange for the Deputy Director to sign the documents and mail a fully executed copy to you. If this Amendment is not fully executed before the next payment date, February 15, 2008, the higher payment amount specified in the original agreement will be due. If you have any questions, please call Michael Isaacson at (850) 245-8358.

Sincerely,

Robert E. Holmden, P.E., Chief

Bureau of Water Facilities Funding

RH/mi

**Enclosures** 

cc: John A. Shelley - City of Port Orange

Honorable Allen Green – City of Port Orange