

**RESOLUTION NO. 26-014**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING AMENDMENT #5 TO THE LOAN AGREEMENT; REAFFIRMING PLEDGED REVENUES; PROVIDING ASSURANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, Florida Statutes provide for loans to local government agencies to finance the planning, design, and construction of stormwater treatment facilities; and

**WHEREAS**, applicable statutes and administrative rules require authorization to apply for loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

**WHEREAS**, the Town entered into a loan agreement on May 3, 2021 with the Florida Water Pollution Control Financing Corporation under the State Revolving Fund for Project SW360860 financing (“Loan Agreement”) for an initial loan amount of \$12,500,000.00; and

**WHEREAS**, the Town authorized amendment #1 to the Loan Agreement on February 16, 2022 with the Florida Water Pollution Control Financing Corporation for an additional loan amount of \$3,704,800.00, bringing the total loan amount to \$16,204,800.00; and

**WHEREAS**, the Town authorized amendment #2 to the Loan Agreement on August 1, 2023 with the Florida Water Pollution Control Financing Corporation to reschedule the start of the loan repayment from April 2023 to April 2025 as a result of the impact of Hurricane Ian; and

**WHEREAS**, the Town authorized amendment #3 to the Loan Agreement on February 6, 2024 with the Florida Department of Environmental Protection to transfer oversight and management from the Florida Water Pollution Control Financing Corporation to the Florida Department of Environmental Protection; and

**WHEREAS**, the Town authorized amendment #4 to the Loan Agreement on June 12, 2024 with the Florida Department of Environmental Protection under the State Revolving Fund for

Project SW360860 financing (“Loan Agreement”) to provide for advance payments to the Town which would allow the Town to request reimbursement for expenditures in advance of actual payment by the Town; and

**WHEREAS**, the Town intends continue to construct necessary improvements to its stormwater system (the “Project”) and desires to borrow an additional \$8,265,117.00 from the State Revolving Fund to finance those improvements, bringing the total loan amount to \$24,469,917.00.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Manager is hereby authorized to execute Amendment #5 to the Loan Agreement with the Florida Department of Environmental Protection that will increase the loan amount by \$8,265,117.00 to finance the Project, bringing the total loan amount to \$24,469,917.00, and will increase the required semiannual loan payment amount from \$413,222 to \$623,982.00 beginning May 15, 2029.

Section 3. The revenues pledged for the repayment of the Loan Agreement are the gross revenues derived yearly from the operation of the Town’s stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment. No senior debt obligations pledging these revenues currently exist. The stormwater rates will be adjusted in accordance with a rate study (previously authorized by Town Council via Resolution 25-88 to be conducted by Raftelis Financial Consultants, Inc.), that will take into consideration the required increase in semiannual repayments beginning May 15, 2029.

Section 4. The legal authority for borrowing moneys to construct this Project is Section 166.111, *Florida Statutes* and Section 403.1835, *Florida Statutes*.

Section 5. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

Section 6. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 7. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Safford, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Scott Safford, Vice Mayor	Aye
John R. King, Council Member	Aye
Vacant, Council Member	---
Rebecca Link, Council Member	Aye

ADOPTED this 5<sup>th</sup> day of January 2026 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*  
Dan Allers (Jan 9, 2026 10:21:27 EST)

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Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
Amy Baker (Jan 13, 2026 12:11:17 EST)

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

*Nash*  
Nash (Jan 12, 2026 14:21:04 EST)

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Jan 13, 2026.

**STATE REVOLVING FUND  
AMENDMENT 5 TO LOAN AGREEMENT SW360860  
TOWN OF FORT MYERS BEACH**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the TOWN OF FORT MYERS BEACH, FLORIDA, (the “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”.

The Department and the Local Government entered into a Clean Water State Revolving Fund Loan Agreement, Number SW360860, as amended, authorizing a Loan amount of \$16,204,800, excluding Capitalized Interest; and

The Local Government is entitled to additional financing of \$8,265,117, excluding Capitalized Interest; and

Certain provisions of the Agreement need revision.

1. Subsection 2.04(1) of the Agreement is deleted and replaced as follows:

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

State Resources Awarded to the Local Government Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:					
State Program Number	Funding Source	CSFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Wastewater Treatment and Stormwater Management TF	37.077	Wastewater Treatment Facility Construction	\$24,469,917	140131

2. Section 8.09 of the Agreement is deleted and replaced as follows:

**8.09. DAVIS-BACON AND RELATED ACTS 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/davis-bacon-and-related-acts-dbra>.

3. Section 8.15 of the Agreement is deleted and replaced as follows:

#### 8.15. CIVIL RIGHTS.

The Local Government shall comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

4. Article IX of the Agreement is deleted and replaced as follows:

### ARTICLE IX - CONTRACTS AND INSURANCE

#### 9.01. CONTRACTS.

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

(a) Proof of advertising.

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

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

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

(e) 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.

(f) 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 CONTRACT DOCUMENTS.

(1) After the Department's authorization to award construction contracts has been received, the Local Government shall submit the following documents:

- (a) Contractor insurance certifications.
- (b) Executed Contract(s).
- (c) Notices to proceed with construction.

(2) After the Local Government has awarded the professional services contract(s), the Local Government shall submit the following documents:

- (a) Executed Contract(s).
- (b) Professional Services Procurement Certification.

#### 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.

5. Additional financing in the amount of \$8,265,117, excluding Capitalized Interest, is hereby awarded to the Local Government.

6. A Financing Rate of 0 percent per annum is established for the additional financing amount awarded in this amendment. Individually, the interest rate is 0 percent per annum and the Grant Allocation Assessment rate is 0 percent per annum.

7. The estimated principal amount of the Loan is hereby revised to \$24,469,917, which consists of \$24,469,917 authorized for disbursement to the Local Government and \$0 of Capitalized Interest.

8. An additional Loan Service Fee in the amount of \$165,302, for a total of \$489,398, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest, that is, two percent of \$24,469,917.

9. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of \$623,982. Such payments shall be paid to, and must be received by, the Department beginning on May 15, 2029 and semiannually thereafter on November 15 and May 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 \$24,959,315, which consists of the Loan principal plus the estimated Loan Service Fee.

10. Section 10.06 of the Agreement is revised as follows:

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 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 an 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.

The estimated Project costs are revised as follows:

CATEGORY	PROJECT COSTS (\$)
Construction and Demolition	20,634,177
Contingencies	1,350,400
Technical Services After Bid Opening	2,485,340
SUBTOTAL (Disbursable Amount)	24,469,917
Capitalized Interest	0
TOTAL (Loan Principal Amount)	24,469,917

11. Subsection 10.07(4) of the Agreement is revised as follows:

(4) The first Semiannual Loan Payment in the amount of \$623,982 shall be due May 15, 2029.

12. Section 10.08. of the Agreement is added as follows:

10.08. SPECIAL CONDITIONS.

(1) Prior to execution of this Agreement, the Local Government shall submit a Legal Opinion addressing the availability of Pledged Revenues, the right to increase rates, and subordination of the pledge.

(2) Disbursements for this increase amount will need proof of payment until an updated Advanced Payment form and approval have been received.

13. All other terms and provisions of the Loan Agreement shall remain in effect.

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This Amendment 5 to Loan Agreement SW360860 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 amendment to the Loan Agreement to be executed on its behalf by the Secretary or Designee 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 Department.

for  
TOWN OF FORT MYERS BEACH

*WB McManay*

\_\_\_\_\_  
Town Manager

Attest:

Approved as to form and legal sufficiency:

*Amy Baker*

\_\_\_\_\_  
Amy Baker (Jan 13, 2026 12:11:17 EST)

Town Clerk

SEAL

*NSA*

\_\_\_\_\_  
Nancy Smith (Jan 12, 2026 14:21:04 EST)

Town Attorney

for  
**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date