

LOAN AGREEMENT

Vermont State Revolving Fund

Loan RF1-224-1.0
Loan Amount: \$140,000.00

1. Town of Middlebury, the Municipality hereby certifies to the Vermont Municipal Bond Bank ("Bond Bank") that:

(a) It has secured all state and federal permits, licenses and approvals necessary to construct and operate the improvements to be financed by the Loan (the "Project") as described in Exhibit A;

(b) It has established, or covenants with the Bond Bank to establish, by ordinance, rule or regulation, a rate charge or assessment schedule which will generate annually sufficient revenue to pay:

(i) Principal, administrative fees and interest of the Municipal Note, as the same becomes due; and

(ii) reasonably anticipated cost of operating and maintaining the improvements to be financed by the Loan and the system of which is a part;

(c) It has duly established a fund under Title 24 of the Vermont Statutes Annotated, or by other means permitted by law which, for so long as the Municipal Note shall remain outstanding, shall be maintained and replenished from time to time, and used solely to repair, replace, improve and enlarge the improvement to be financed by the Loan.

2. The Municipality shall make funds sufficient to pay the principal, administrative fees and interest as the same matures (based upon the Maturity Schedule appended hereto as Exhibit C available to the Bond Bank at least five business days prior to each principal payment date.

3. The Bond Bank and Municipality agree that Loan proceeds will be paid to the Municipality as Project costs are incurred and paid by the Municipality over the course of the Project, but in no event shall payments be made more often than monthly, and only on Municipality's certification, through its authorized representative, that such costs have been paid.

4. The Municipality is obligated to make the principal, administrative fee and interest portion of the Municipal Note payments scheduled by the Bond Bank on an annual basis. ~~The Municipality may prepay the Loan at its option without penalty.~~

5. The Municipality shall be obligated to inform in writing to the Bond Bank, or such agent designated by the Bond Bank, at least thirty days prior to each principal payment date of any

changes to the name of the official or address to whom invoices for the payment of principal, administrative fees and interest should be sent.

6. The period of performance for this agreement begins upon execution and ends five years after execution.

7. Notwithstanding paragraph 14 hereof, prior to payment of the amount of the Loan, or any portion thereof, the Bond Bank shall have the right to cancel all or any part of its obligations hereunder and after payment of any portion thereof to require a refund of amounts paid if:

(a) Any representation made by the Municipality to the Bond Bank in connection with its application for a loan or additional loans shall be incorrect or incomplete in any material respect; or

(b) The Municipality has violated commitments made by it in its application and supporting documents or has violated any of the terms of this Loan Agreement.

8. The Municipality shall at all times comply with all applicable federal and state requirements pertaining to the Project, including but not limited to requirements of Federal Clean Water Act, Title 24 of the Vermont Statutes Annotated, and the list of Federal Laws and Authorities included as Exhibit B. The enumeration of the Federal Laws and Authorities in Exhibit B shall not be construed as a waiver by the Municipality of any exemption or exception, jurisdictional or otherwise.

9. If any provisions of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

10. This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments, and take such other actions as are necessary, to give effect to the terms of this Loan Agreement.

11. No waiver by either party of any term or condition of the Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Loan Agreement. Any delay in exercising rights or requirements of the Loan Agreement does not constitute a waiver of such rights or requirements.

12. The Municipality agrees to indemnify and hold the Bond Bank, the state, its officials, agents, and employees harmless from and against any and all claims, suits, actions, costs, and damages resulting from the negligent performance or non-performance by the Municipality or any of its officials, agents, or employees of the Municipality's obligations under this Agreement, as it

may be amended or supplemented from time to time. It is further understood that such indemnity shall not be limited by an insurance coverage.

13. The Municipality agrees that the Loan will be adjusted upon final audit to an amount equal to or less than the project costs determined eligible by the Department of Environmental Conservation and recommended to the Bond Bank for loan participation.

14. The Municipality agrees that if actual final eligible costs are less than the amount paid under the Loan Agreement, repayment of the excess funds will be made within sixty days of the request made by the Department of Environmental Conservation.

15. Increases, amendments, or modifications to the project during construction will be processed for record keeping purposes only, except for the addition of major approved Project Elements, Exhibit A. The Loan Agreement will also be amended upon completion of the project based upon final audited eligible costs, and any increases in the Loan will be made contingent upon availability of funds. All Project records will be retained by the Municipality and made available for state inspection upon request for three years after Project completion or until any audit questions have been resolved, whichever is later.

16. The Municipality will obtain flood insurance for any insurable portion of the Project.

17. The Municipality agrees to use the Loan proceeds solely for the Project for which the Loan is made and any approved amendments thereto. The Municipality further agrees to make prompt payment to the contractors and to apply any interest received to the Project. Once payment has been made to contractors, the applicant shall submit a payment request to the Department of Environmental Conservation (DEC). Funds will be disbursed from Federal Award ID Number CS500001## (## equals last two digits of award year). Upon disbursement, DEC will notify the Municipality of the standard terms and conditions applicable based on the exact amount of federal funds disbursed and relevant capitalization grant being drawn down. Please see <http://dec.vermont.gov/facilities-engineering/water-financing/srf/reimbursement-help> for the standard terms and conditions. If the foregoing link is not accessible, contact DEC for assistance.

18. The terms of this Loan Agreement shall be controlling over those of any prior Agreement with respect to this Loan Agreement. However, this Loan Agreement shall not otherwise supersede the terms of any other agreements between the Municipality and the State.

19. The Municipality agrees to furnish to the Bond Bank such financial statements as the Bond Bank may reasonably request, which statements and supporting records shall be prepared and maintained in accordance with Generally Accepted Accounting Principles (GAAP).

~~20. This agreement will be funded by approximately 80 percent federal funds. These funds are being awarded in accord with the Federal Clean Water State Revolving Fund, CFDA number 66.458, under the authority of the Environmental Protection Agency. This is not a research and development award. For any accounting year in which the Municipality expends Loan proceeds and other Federal funds of \$750,000.00 or more from all Federal sources, the Municipality shall~~

have an audit performed in accord with the Federal Single Audit Act and furnish a copy to the Vermont Department of Environmental Conservation within 9 months of the end of Municipality's accounting period.

21. By acceptance of this Agreement, the Municipality agrees to complete a Subrecipient Annual Report as provided by the Department of Finance. Prior to submitting the Subrecipient Annual Report, the Municipality must review previous fiscal year disbursements from the Facilities Engineering Division to determine the actual amount of federal funds disbursed from the loan proceeds. The Subrecipient Annual Report must then be submitted to the State of Vermont Department of Finance within 45 days after its fiscal year end, informing the State whether or not a single audit is required for the prior fiscal year. If a single audit is required, the Municipality will submit a copy of the audit report to the Vermont Department of Environmental Conservation within 9 months of its fiscal year end. If a single audit is not required, only the Subrecipient Annual Report to the State Department of Finance is required.

22. The Municipality understands that the provisions of the Davis-Bacon Act, which is codified at Subchapter IV of Chapter 31 of Title 40 of the United States Code and U.S. Department of Labor Memorandum No. 208 ("Memorandum 208"), may apply to the Project, and the Municipality certifies and agrees that with respect to the Project, it has complied and will continue to comply with the requirements of the Davis-Bacon Act and Memorandum 208, as applicable.

23. The effective date of the Loan Agreement is the execution date of the General Obligation Note.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Attest:



Secretary

VERMONT MUNICIPAL BOND BANK

By: 

Executive Director

Attest:

Clerk

Town of Middlebury

By: _____
Chair of the Governing Body

And by:

Treasurer

List of Loan Exhibits

EXHIBIT A: Project description and conditions

EXHIBIT B: List of Federal Laws and Authorities

EXHIBIT C: General Obligation Note

EXHIBIT D: Resolution and Certificate

EXHIBIT A

PROJECT DESCRIPTION AND CONDITIONS FOR THIS AGREEMENT

Description:

This loan is for the 20-year evaluation of the wastewater treatment facility and the long-term planning documents for the wastewater system.

Conditions:

- 1) If this planning loan is not rolled over into a CWSRF construction loan within 5 years of execution, then repayment of this loan shall commence immediately.
 - 2) The CWSRF program has determined that the expected weighted average useful life of the funded assets equals or exceeds the loan term.
 - 3) The engineer will meet with the Facilities Engineering Division (FED) to present work summaries at 30% work completion, 60% work completion, and 90% work completion, or as otherwise directed by the FED engineer. Disbursements will not be made without each required meeting and disbursements above 90% of the loan amount will not be made until the final documents have been received, reviewed, and approved by FED.
 - 4) If this project is funded by USDA/Rural Development or any other non-CWSRF funding, the applicant shall, within sixty (60) days of receiving the non-CWSRF funding, repay the entire portion of the CWSRF planning loan(s).
 - 5) The Applicant shall, as a condition of the loan, provide the Department with a digitally formatted copy of any plan or surveys developed with funds awarded under the loan, if the Applicant or any subcontractor develops plans or surveys in digital format. By acceptance of the loan, the Applicant agrees to pass through this requirement to any subcontracts awarded and funded by the loan. This condition is included pursuant to Section 56 of Act 233 of 1994. Such digital formats are subject to the Federal Freedom of Information Act and the State Access to Public Records and Document Statute and, unless otherwise restricted, the Department will release copies of such information to the general public upon request. It shall be acceptable to submit read only copies or copies marked archival copies only. The Applicant, by acceptance of this loan agrees not to copyright any plans or surveys developed pursuant to this action. Acceptable electronic formats include pdf and pdf/A.
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EXHIBIT B

LIST OF FEDERAL LAWS AND AUTHORITIES

ENVIRONMENTAL:

- "American Iron and Steel" requirements of P.L. 113-76 the Consolidated Appropriations Act of 2014
 - Archeological and Historic Preservation Act of 1974, PL 93-291
 - Clean Air Act, 42 U.S.C. 7506(c)
 - Coastal Barrier Resources Act, 16 U.S.C. 3501, et seq.
 - Coastal Zone Management Act of 1972, PL 92-583, as amended
 - Davis-Bacon Act (40 CFR '31.36(i)(5))
 - Davis Bacon and Related Acts Wage Rate Requirements (29 CFR 5.5)
 - Endangered Species Act 16 U.S.C. 1531, et seq.
 - Executive Order 11988, Floodplain Management
 - Executive Order 11990, Protection of Wetlands
 - Executive Order 12898, Environmental Justice
 - Executive Order 15593, Protection and Enhancement of the Cultural Environment
 - Farmland Protection Policy Act, 7 U.S.C. 4210, et seq.
 - Fish and Wildlife Coordination Act, PL 85-624, as amended
 - Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat, 16 U.S.C. 1821 M-S Act § 201
 - Migratory Bird Act 16 USC Chapter 7, Subchapter II: Migratory Bird Treaty
 - National Historic Preservation Act of 1966, PL 89-665, as amended
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- Safe Drinking Water Act, essential section 1424(e), PL 92-523, as amended
 - Wild and Scenic Rivers Act, PL-942, as amended

EXHIBIT B

ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754 as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

SOCIAL LEGISLATION:

- Age Discrimination Act, PL 94-135
- Civil Rights Act of 1964, PL 88-352
- Disadvantaged Business Enterprise, 49 U.S. Code § 47113 - Minority and disadvantaged business participation
- Executive Order 11264, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

MISCELLANEOUS AUTHORITY:

- Executive Order 12549 - Debarment and Suspension
 - Trafficking and Violence Protection Act of 2000 (P.L. 106-386)
 - Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
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