

LOAN AGREEMENT

Vermont State Revolving Fund

Loan RF3-416-3.0

Loan Amount: \$1,791,700.00

1. Town of Middlebury, the Municipality, hereby certifies to the Vermont Municipal Bond Bank (“Bond Bank”) that:
 - (a) It will secure all state and federal permits, licenses and approvals necessary to construct and operate the improvements to be financed by the Loan (the “Project”), if any, 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 Bond, as the same becomes due; and
 - (ii) reasonably anticipated cost of operating and maintaining the improvements to be financed by the Loan, if any, 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 Bond 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, if any.
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 Bond payments scheduled by the Bond Bank on an annual basis. The Municipality may prepay the Loan at its option without penalty.
5. Simultaneously with the delivery of the Municipal Bond and Certificate of Registration (Exhibit C) to the Bond Bank, the Municipality shall furnish to the Bond Bank an opinion of bond

counsel satisfactory to the Bond Bank which shall set forth among other things the unqualified approval of said Bond(s) then being delivered to the Bond Bank and that said Bond(s) will constitute valid and binding obligations of the Municipality.

6. 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.

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

8. Notwithstanding paragraph 15 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.

9. 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 Safe Drinking 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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). Disbursements from DEC are made on a reimbursement basis. Funds will be disbursed from Federal Award ID Number FS991218## (## 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 <https://dec.vermont.gov/water-investment/water-financing/srf/reimbursement-help> for the standard terms and conditions. If the foregoing link is not accessible, contact DEC for assistance.

19. 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.

20. 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).

21. This agreement will be funded by approximately 80 percent federal funds. These funds are being awarded in accord with the Federal Drinking Water State Revolving Fund, CFDA number 66.468, 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.

22. 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.

23. 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"), 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.

24. The effective date of the Loan Agreement is the execution date of the General Obligation Bond.

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 Bond
- EXHIBIT D: Resolution and Certificate

EXHIBIT A

PROJECT DESCRIPTION AND CONDITIONS FOR THIS AGREEMENT

Description:

Replacement of existing 12' water main and appurtenances on Washington Street, which is a critical water transmission main from the Town's storage tank, and has been subject to an increasing number of failures over the past several years.

Conditions:

- 1) Repayment of this loan shall commence one (1) year after completion of the project.
- 2) The DWSRF program has determined that the expected weighted average useful life of the funded assets equals or exceeds the loan term.
- 3) 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.

EXHIBIT B

LIST OF FEDERAL LAWS AND AUTHORITIES WHERE APPLICABLE

ENVIRONMENTAL:

- “American Iron and Steel” requirements of P.L. 113-76 the Consolidated Appropriations Act of 2014
- Archeological and Historic Preservation 16 USC §469a-1
- Bald and Golden Eagle Protection Act, 16 USC §668-668c
- Clean Air Act, 42 USC §7401
- Coastal Barrier Resources Act, 16 USC §3501
- Coastal Zone Management 16 USC §1451
- 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 USC §1531

- Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990 (1977) as amended by Executive Order 12608 (1997)
- Environmental Justice, Executive Order 12898
- Protection and Enhancement of the Cultural Environment, Executive Order 11990 (1977), as amended by Executive Order
- Farmland Protection Policy Act, 7 USC §4201
- Fish and Wildlife Coordination Act, 16 USC §661
- Magnuson-Stevens Fishery Conservation and Management Act, 16 USC §1801 *et seq.*
- Marine Mammal Protection Act, 16 USC §7703 *et seq.*
- Migratory Bird Act 16 USC Chapter 7, Subchapter II: Migratory Bird Treaty
- National Historic Preservation Act 54 USC § 300101 *et seq.*
- Rivers and Harbors Act, 33 USC §403
- Safe Drinking Water Act, 42 USC §300f
- Wild and Scenic Rivers Act 16 USC §1271

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 USC § 47113 - Minority and disadvantaged business participation
- Equal Employment Opportunity, Executive Order 11264
- Women's and Minority Business Enterprise, Executive Orders 11625 and 12138
- 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
- Signage requirements per 2015 EPA guidance
- 2 CFR 200.216 and section 889 of Public Law 115-232, Prohibition of certain telecommunication and video surveillance services or equipment

EXHIBIT C

\$1,791,700.00

UNITED STATES OF AMERICA
STATE OF VERMONT
Town of Middlebury
GENERAL OBLIGATION BOND

The Town of Middlebury (hereinafter called the “Municipality”), a body corporate and a political subdivision of the State of Vermont, promises to pay to the Vermont Municipal Bond Bank, or registered assigns, the not-to-exceed sum of \$1,791,700.00 with a preliminary interest at the rate of 0.00% per annum and with a preliminary administrative fee of 2.00%, subject to change based on final disbursed value, beginning on 10/1/2022 as follows:

Loan Agreement							
Vermont EPA Drinking Water State Revolving Fund							
Middlebury Town, Vermont							
Loan RF3-416-3.0							
Prepared on 6/21/2021							
Loan Terms							
Loan Amount:	\$1,791,700.00						
Loan Term Years:	30						
Interest rate:	0.0000%						
Administrative Fee	2.0000%						

Repayment Date	Payment Number	Principal Due	Principal Payment	Principal Forgiven	Interest Payment	Administrative Fees	Total Payment
10/1/2022	1	1,791,700.00	25,677.82	750,000.00	0.00	20,834.00	46,511.82
10/1/2023	2	1,016,022.18	26,191.38	0.00	0.00	20,320.44	46,511.82
10/1/2024	3	989,830.80	26,715.20	0.00	0.00	19,796.62	46,511.82
10/1/2025	4	963,115.60	27,249.51	0.00	0.00	19,262.31	46,511.82
10/1/2026	5	935,866.09	27,794.50	0.00	0.00	18,717.32	46,511.82
10/1/2027	6	908,071.59	28,350.39	0.00	0.00	18,161.43	46,511.82
10/1/2028	7	879,721.20	28,917.40	0.00	0.00	17,594.42	46,511.82
10/1/2029	8	850,803.80	29,495.74	0.00	0.00	17,016.08	46,511.82
10/1/2030	9	821,308.06	30,085.66	0.00	0.00	16,426.16	46,511.82
10/1/2031	10	791,222.40	30,687.37	0.00	0.00	15,824.45	46,511.82
10/1/2032	11	760,535.03	31,301.12	0.00	0.00	15,210.70	46,511.82
10/1/2033	12	729,233.91	31,927.14	0.00	0.00	14,584.68	46,511.82
10/1/2034	13	697,306.77	32,565.68	0.00	0.00	13,946.14	46,511.82
10/1/2035	14	664,741.09	33,217.00	0.00	0.00	13,294.82	46,511.82
10/1/2036	15	631,524.09	33,881.34	0.00	0.00	12,630.48	46,511.82
10/1/2037	16	597,642.75	34,558.96	0.00	0.00	11,952.86	46,511.82
10/1/2038	17	563,083.79	35,250.14	0.00	0.00	11,261.68	46,511.82
10/1/2039	18	527,833.65	35,955.15	0.00	0.00	10,556.67	46,511.82
10/1/2040	19	491,878.50	36,674.25	0.00	0.00	9,837.57	46,511.82
10/1/2041	20	455,204.25	37,407.73	0.00	0.00	9,104.09	46,511.82
10/1/2042	21	417,796.52	38,155.89	0.00	0.00	8,355.93	46,511.82
10/1/2043	22	379,640.63	38,919.01	0.00	0.00	7,592.81	46,511.82
10/1/2044	23	340,721.62	39,697.39	0.00	0.00	6,814.43	46,511.82
10/1/2045	24	301,024.23	40,491.34	0.00	0.00	6,020.48	46,511.82
10/1/2046	25	260,532.89	41,301.16	0.00	0.00	5,210.66	46,511.82
10/1/2047	26	219,231.73	42,127.19	0.00	0.00	4,384.63	46,511.82
10/1/2048	27	177,104.54	42,969.73	0.00	0.00	3,542.09	46,511.82
10/1/2049	28	134,134.81	43,829.12	0.00	0.00	2,682.70	46,511.82
10/1/2050	29	90,305.69	44,705.71	0.00	0.00	1,806.11	46,511.82
10/1/2051	30	45,599.98	45,599.98	0.00	0.00	912.00	46,511.98
			1,041,700.00	750,000.00	0.00	353,654.76	

For planning purposes only. Subject to change based on actual disbursed amounts.

EXHIBIT C

This Bond is payable in lawful money of the United States at People’s United Bank in the City of Burlington, State of Vermont. Repayment terms shall comply with 24 V.S.A. Chapter 120, §4755 which prohibits deferral of payment. Final payment of this Bond shall be made upon surrender of this Bond for cancellation.

This Bond is issued by the Municipality for the purpose of financing of infrastructure improvements under and by virtue of Title 24 of the Vermont Statutes Annotated, and a vote of the legal voters of the Municipality duly passed on 3/3/2020.

This Bond is transferable only upon presentation to the Treasurer of the Municipality with a written assignment duly acknowledged or proved. No transfer hereof shall be effectual unless made on the books of the Municipality kept by the Treasurer as transfer agent and noted hereon by the Treasurer with a record of payments as provided hereon.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the issuing of this Bond have been done, have happened, and have been performed in regular and due form, as required by such law and vote, and for the assessment, collection and payment hereon of a tax to pay the same when due the full faith and credit of the Municipality are hereby irrevocably pledged.

IN TESTIMONY WHEREOF, the Municipality has caused this Bond to be signed by its Treasurer, and a majority of its Selectboard and its seal to be affixed hereto.

Town of Middlebury

By: _____

Majority of its Governing Body

Date _____

Treasurer

EXHIBIT C

\$1,791,700.00

Town of Middlebury
GENERAL OBLIGATION BOND

CERTIFICATE OF REGISTRATION

It is hereby certified that this Bond is a fully registered Bond payable only to the holder of record as appears of record in the office of the Treasurer of the issuing Municipality. This Bond may be transferred by presentation of the same with an assignment in writing signed by the registered holder. Presentation shall be made to the Treasurer of the Municipality at his office and he shall record such transfer in his records and on the Bond. The name and address of the original registered owner of this Bond is Vermont Municipal Bond Bank, 20 Winooski Falls Way #305, Winooski, VT 05404.

Treasurer

EXHIBIT D

RESOLUTION AND CERTIFICATE
(General Obligation)
(Vermont Drinking Water State Revolving Fund)

WHEREAS, at meetings of the municipal legislative body of the Town of Middlebury (herein called the "Municipality") at each of which all or a majority of the members were present and voting, which meetings were duly noticed, called and held as appears of record, it was found and determined that the public interest and necessity required certain public water system improvements described in Exhibit A, and it was further found and determined that the cost of making such public improvements would be too great to be paid out of ordinary annual income and revenue, and that a proposal for providing such improvements and the issuance of bonds of the Municipality to pay for its share of the cost of the same was submitted to the legal voters at meetings thereof, and it was ordered, all of which action is hereby ratified and confirmed; and

WHEREAS, pursuant to the foregoing action, at a meeting of the Municipality which was warned and held at the place and time appointed therefor, there was submitted a proposition to be voted upon by ballot between the hours stated in the Warning, all as appears by reference; and

WHEREAS, the said Warning was duly recorded, published and posted, and said meeting was duly convened and conducted, all as appears of record, and which proceedings are hereby ratified and confirmed in all respects; and

WHEREAS, immediately upon closing of the polls and after counting of the ballots cast, the results as set forth were declared by the moderator, all as appears of record, and pursuant to which the Municipality is carrying forward the authorized improvements and pursuing the same diligently to completion; and

WHEREAS, the Municipality has applied for financial assistance in making the authorized improvements which application has been approved by the Department of Environmental Conservation and the Vermont Municipal Bond Bank, as evidenced by the Funding Application Approval, the terms and conditions of which are found in Exhibit A; and

WHEREAS, pursuant to powers vested in them by law the said governing board is about to enter into a Loan Agreement on behalf of the Municipality with the Vermont Municipal Bond Bank respecting a Loan from said Bank in the amount of \$1,791,700.00, to be discounted by the amount of \$750,000, repayable with interest at the rate of 0.00% per annum, together with an administrative fee of 2.00%.

AND WHEREAS, the Bond to be given by the Municipality to the Vermont Municipal Bond Bank at the time of receiving the proceeds of said Loan shall be substantially in the form found in Exhibit C;

THEREFORE, be it resolved that the Governing Body proceed forthwith to cause said Bond to be executed and delivered to the Vermont Municipal Bond Bank upon the price and terms stated, and be registered as the law provides; and

EXHIBIT D

BE IT FURTHER RESOLVED, that the Bond when issued and delivered pursuant to law and this Resolution shall be the valid and binding obligation of the said Municipality, payable according to law and the terms and tenor thereof from unlimited ad valorem taxes on the grand list of taxable property of said Municipality as established, assessed, apportioned and provided by law; and

BE IT FURTHER RESOLVED, that in addition to all other taxes, there shall annually be assessed and collected in the manner provided by law each year until the Bond, or any bond or bonds issued to refund or replace the same, is fully paid, a tax, charge or assessment sufficient to pay the note and bond or bonds as the same shall become due; and

BE IT FURTHER RESOLVED, that execution of the above-referenced Loan Agreement between the Municipality and the Vermont Municipal Bond Bank is hereby authorized, the presiding officer of the legislative body and Treasurer of the borrower being directed to execute said Loan Agreement on behalf of the Municipality and the legislative branch thereof; and

BE IT FURTHER RESOLVED, that the Municipality expressly incorporates into this Resolution each and every term, provision, covenant and representation set forth at length in Exhibit A to be delivered in connection with the issuance and sale of the Bond, execution and delivery of each of which is hereby authorized, ratified and confirmed in all respects, and the covenants, representations and undertakings set forth at length in said Loan Agreement are incorporated herein by reference; and

BE IT FURTHER RESOLVED, that all acts and things heretofore done by the lawfully constituted officers of the Municipality, and any and all acts or proceedings of the Municipality and of its Governing Body, in, about or concerning the improvements hereinabove described and of the issuance of evidence of debt in connection therewith, are hereby ratified and confirmed.

BE IT FURTHER RESOLVED, that in connection with the pending sale of the Bond in the face amount of \$1,791,700.00 to the Vermont Municipal Bond Bank, execution and delivery of the Bond, this Resolution Certificate, Loan Agreement and incidental documents, all attached hereto, are authorized; and

BE IT FURTHER RESOLVED, that People's United Bank in the City of Burlington, Vermont, is hereby designated the Municipality's paying agent with respect to the Bond and the Loan Agreement.

And we, the undersigned officers, as indicated, hereby certify that we as such officers have signed the Bond payable as aforesaid, and reciting that it is issued under and pursuant to the vote herein above mentioned, and we also certify that the Bond is duly registered in the office of the Treasurer of the Municipality as prescribed by law.

And we, the said officers of the Municipality, hereby certify that we are the duly chosen, qualified and acting officers of the Municipality as undersigned; that the Bond is issued pursuant to said authority; that no other proceedings relating thereto have been taken; and that no such authority or proceeding has been repealed or amended.

EXHIBIT D

We further certify that no litigation is pending or threatened affecting the validity of the Bond nor the levy and collection of taxes, charges or assessments to pay it, nor the works of improvement financed by the proceeds of the Bond, and that neither the corporate existence of the Municipality nor the title of any of us to our respective offices is being questioned.

ATTEST:

Town of Middlebury

Clerk

By: _____

Majority of its Governing Body

And By:

Its Treasurer