

COF CONTRACT NO. 2017-0137

REVOLVING FUND LOAN AGREEMENT FOR TAX REVENUE ENTITIES (i.e. TOWNS/CITIES/COUNTIES)

This Agreement is among the Tennessee Department of Environment and Conservation (the "Department"), the Tennessee Local Development Authority (the "Authority") and the City of Franklin (the "Local Government"), which is a Tennessee governmental entity authorized to own, operate, and manage wastewater facilities. The purpose of this Agreement is to provide for the financing of all or a portion of a wastewater facility by the Local Government. The Local Government submitted an application for the financing dated April 25, 2017 which is hereby incorporated into this Agreement.

1. **DEFINITIONS.** Unless the context in this Agreement indicates another meaning, the following terms shall have the following meaning:
 - (a) "Administrative fee" means the fee to be collected by the Authority for administration of the loan in accordance with Tenn. Code Ann. Sections 68-221-1004(a) and 68-221-1204(a), both as amended;
 - (b) "Agreement" means this agreement providing financing for the Project from the Fund;
 - (c) "Facility" means either a wastewater facility or a water system;
 - (d) "Fund" means:
 - (1) For wastewater projects, the wastewater revolving loan fund created by the Tennessee Wastewater Facilities Act of 1987, Tenn. Code Ann. Sections 68-221-1001, et seq., as amended, and rules and regulations promulgated thereunder; or
 - (2) For water projects, the drinking water revolving loan fund created by the Drinking Water Revolving Loan Fund Act of 1997, Tenn. Code Ann. Sections 68-221-1201, et seq., as amended, and rules and regulations promulgated thereunder;
 - (e) "Initiation of Operation" means the date when all but minor components of the Project have been built, all treatment equipment is operational and the Project is capable of functioning as designed and constructed;
 - (f) "Local Government" means the governmental entity borrowing under this Agreement described in (1) Tenn. Code Ann. Section 68-221-1003(7), as amended, if a wastewater facility and (2) Tenn. Code Ann. Section 68-221-1203(6), as amended, if a water system;
 - (g) "Obligations" means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by the Local Government;
 - (h) "Project" means the activities or tasks concerning a facility described in the application submitted by the Local Government to be financed pursuant to this Agreement;
 - (i) "Project Cost" means the total amount of funds necessary to complete the Project;
 - (j) "Project Loan" means the moneys loaned from the Fund to finance the Project and, except for principal forgiven, if any, required to be repaid pursuant to this Agreement;

(k) "Revenues" means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by the Local Government from the water or wastewater system which is the Project, or of which the Project is or will be a component, including any revenues derived or to be derived by the Local Government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with the system, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the Local Government from the operation of the system or arising from the system;

(l) "State" means the state of Tennessee acting through the Department and the Authority, jointly or separately, as the context requires;

(m) "State-Shared Taxes" has the meaning established by Tenn. Code Ann. Section 4-31-102, as amended; and

(n) "Unobligated State-Shared Taxes" means State-Shared Taxes which have not been pledged or applied to any other prior indebtedness.

2. PROJECT

(a) Description. The description of the Project is as described in the application submitted by the Local Government.

(b) Funding Sources. The Local Government estimates the Project Cost to be \$112,875,000 which is expected to be funded as follows:

(1) Project Loan	\$ 78,500,000
(2) Principal Forgiveness	\$ -0-
(3) Local Funds	\$ 32,875,000
(4) Other Funds (CG5 2017-375)	\$ 1,500,000

TOTAL	\$ 112,875,000

3. LOAN

(a) Loan and use of proceeds. The State shall lend to the Local Government from moneys available in the Fund an aggregate principal amount not to exceed \$78,500,000 to bear interest as described in (b) below. The Project Loan shall be used by the Local Government for completion of the Project and in accordance with engineering plans and specifications and special conditions, approved and required by the Department and hereby incorporated into this Agreement. Interest on the Project Loan will begin to accrue upon the first disbursement of the Project Loan pursuant to Section 5 of this Agreement.

(b) Interest rate. The rate of interest for this Project Loan is that rate established by the Authority at the meeting at which this Project Loan is approved and stated on the payment schedule which is incorporated into and attached to this Agreement.

- (c) Administrative fee. The Authority shall collect a fee equal to 8 basis points of the total Project Loan, where one basis point is equal to one-hundredth of one percent (0.01%). This fee shall be payable in monthly installments equal to one-twelfth (1/12) of the annual fee amount as stated on the payment schedule.
- (d) Payment schedule. The Local Government expressly agrees to make all payments of principal and interest in accordance with the payment schedule, including the form of payment (currently electronic funds transfer), as it is from time to time revised by the State. A revision of the payment schedule shall not be deemed to be an amendment of this Agreement.

4. REPAYMENT OF PROJECT LOAN.

(a) Payments.

- (1) The Local Government promises to repay to the order of the State the Project Loan plus interest, payable in installments on the 20th day of each month in accordance with the payment schedule established by the Authority and attached to this Agreement. The payment schedule will require payments of interest to begin after the first disbursement pursuant to Section 5 of this Agreement. The payment schedule will require repayments of principal to begin the earlier of:
 - (A) Within ninety (90) days after Initiation of Operation of the Project for construction loans or within two (2) years of loan approval for planning and design loans; or
 - (B) Within one hundred twenty (120) days after ninety percent (90%) of the Project Loan has been disbursed.

(2) Notwithstanding Section 4(a)(1), the Authority may agree in the instance of a newly created water system to defer the commencement of principal repayment for no more than one year after Initiation of Operation of the Project.

- (b) Reduction. The Project Loan, and the required payments made pursuant to the payment schedule, shall be reduced to reflect:
 - (1) Funding not listed in Section 2(b) which subsequently becomes available; or
 - (2) The amount actually disbursed by the State to the Local Government pursuant to the Agreement as the Project Loan.

If any of the conditions set out in Section 4(b)(1) or (b)(2) occur, a new payment schedule reflecting such changes shall be submitted to the Local Government to be attached to this Agreement, superseding any previous schedules.

- (c) Prepayment. The Local Government, at its option, may prepay all or any portion of the Project Loan.
- (d) Principal Forgiven. A portion of the original principal amount of the Project Loan may be forgiven by the State. The principal forgiven shall be Zero per cent (0%) of the original principal amount of the Project Loan, or if the full original amount of the Project Loan is not used, then Zero percent (0%) of the amount of the Project Loan actually disbursed. Notwithstanding Section 3, no interest shall accrue on the amount of principal forgiven pursuant to this Section 4(d).

5. DISBURSEMENT OF PROJECT LOAN. Each request by the Local Government for disbursement of the Project Loan shall constitute a certification by the Local Government that all representations made in this Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Local Government or its ability to complete the Project or to repay the Project Loan plus interest have occurred since the date of this Agreement unless specifically disclosed in writing by the Local Government in the request for disbursement. Submitted requests for disbursement must be supported by proper invoices and other documentation required by and acceptable to the Department and the Authority.

After the Department has certified and the Authority has approved a request for disbursement, the Authority will disburse the Project Loan during the progress of the Project. Each disbursement shall be by electronic funds transfer or such other form of payment as specified in the payment schedule and shall be equal to that portion of the unpaid principal amount incurred to the date of the Local Government's request for disbursement. The amount of any principal forgiven shall be allocated on a pro-rata basis to each disbursement made.

No more than 90% of the Project Loan shall be paid to the Local Government prior to the time: 1) the construction of the Project has been completed, 2) the facilities constituting the Project are in the opinion of the Department in proper operation, and 3) the Project has been approved by the Department. Following approval of the Project by the Department, the remaining 10% of the Project Loan may be paid to the Local Government. Provided, however, that if this Project Loan is for planning or replanning and design, payments may be made prior to the completion of construction of the Project for the full amount of costs associated with the planning or replanning and design.

6. AMENDMENT.

- (a) Increase in Project Loan. If the final Project Cost is greater than is estimated in Section 2(b), then the Project Loan may be increased by a subsequent agreement executed by the parties to this Agreement (the amount of such increase may be subject to a different interest rate) if the following conditions are fulfilled:
- (1) Amounts in the Fund are authorized and available for such increase;
 - (2) The increased Project Loan otherwise meets the applicable statutory requirements and the rules adopted thereunder; and
 - (3) Such increase in this Project Loan does not result in any violation or breach of any contract, resolution, or ordinance of the Local Government.
- (b) Other Amendments and Modifications. Any other amendment or modification of this Agreement must first be approved by the Authority and must be in writing executed by the parties to this Agreement.

7. REPRESENTATIONS AND COVENANTS OF LOCAL GOVERNMENT. The Local Government hereby represents, agrees, and covenants with the State as follows:

- (a) To construct, operate, and maintain the Project in accordance, and to comply, with all applicable federal and state statutes, rules, regulations, procedural guidelines, and grant conditions;

- (b) To comply with:
- (i) The Project schedule, engineering plans and specifications, and any and all special conditions established and/or revised by the Department; and
 - (ii) Any special conditions established and/or revised by the Authority including, but not limited to, the Authority's "State Revolving Fund Policy and Guidance for Borrowers" adopted on September 21, 2016, and as may be amended or revised from time to time, the terms and conditions of which are adopted by reference as if fully set forth herein;
- (c) To commence operation of the Project on its completion and not to contract with others for the operation and management of, or to discontinue operation or dispose of, the Project without the prior written approval of the Department and the Authority;
- (d) To provide for the Local Government's share of the cost of the Project;
- (e) To comply with applicable federal requirements including the laws and executive orders listed on Exhibit A to this Agreement;
- (f) To advise the Department before applying for federal or other state assistance for the Project;
- (g) To establish and maintain adequate financial records for the Project in accordance with generally accepted government accounting principles; to cause to be made an annual audit acceptable to the Comptroller of the Treasury of the financial records and transactions covering each fiscal year; and to furnish a copy of such audit to the Authority. In the event of the failure or refusal of the Local Government to have the annual audit prepared, then the Comptroller of the Treasury may appoint an accountant or direct the Department of Audit to prepare the audit at the expense of the Local Government;
- (h) To provide and maintain competent and adequate engineering supervision and inspection of the Project to insure that the construction conforms with the engineering plans and specifications approved by the Department;
- (i) To abide by and honor any further guarantees or granting of security interests as may be required by the State which are not in conflict with state or federal law;
- (j) To do, file, or cause to be done or filed, any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created hereunder;
- (k) To establish and collect, and to increase, user fees and charges and/or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Agreement, as well as the other costs of operation and maintenance including depreciation and debt service of the system of which the Project is a part;
- (l) To receive the approval of the Authority prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be on parity or superior to the lien position created under this Agreement;
- (m) To notify the Assistant Secretary to the Authority in writing prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be subordinate to the lien position created under this Agreement;

- (n) To receive the approval of the Authority prior to pledging or encumbering the Local Government's State-Shared Taxes; and
- (o) The Local Government is subject to the jurisdiction of the Water and Wastewater Financing Board ("WWFB") established in Tenn. Code Ann. Section 68-221-1008 or of the Utility Management Review Board ("UMRB") created in Tenn. Code Ann. Section 7-82-701 as provided by law. If the Authority, in its sole discretion, determines that the Local Government's obligations under this Agreement have been or may be impaired, the Authority may refer the Local Government to the WWFB or UMRB (each a "Board") as appropriate. In the event of default under this Agreement, the Authority shall refer the Local Government to the Board having jurisdiction over the entity. In such event, the Local Government covenants, to the extent permitted by law, to request advisory technical assistance from the Board and to request that the Board propose any and all management, fiscal and/or rate changes necessary to enable the Local Government to fulfill its obligations to the Authority under this Agreement. The Local Government agrees to supply the Board with any information that the Board may request in connection with its analysis of the Local Government's system. The Local Government agrees that it will implement any and all technical, management, fiscal and/or rate changes recommended by the Board and determined by the Authority to be required for the Local Government to fulfill its obligations to the Authority under this Agreement.

8. SECURITY AND DEFAULT.

(a) As security for payments due under this Agreement, the Local Government pledges users fees and charges and/or ad valorem taxes, and covenants and agrees that it shall increase such fees or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government covenants to establish and collect such fees and taxes and to make such adjustments to raise funds sufficient to pay such monthly payments and costs but to create only a minimum excess. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Agreement.

As further security for payments due under this Agreement, the Local Government pledges and assigns subject to the provisions herein its Unobligated State-Shared Taxes in an amount equal to the maximum annual debt service requirements under this Agreement. If the Local Government fails to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail a written notice of such failure to the Local Government within 5 days of such failure and the Authority shall suspend making disbursements as provided in Section 5 until such delinquency is cured. If the Local Government fails to cure payment delinquency within 60 days of the receipt of such notice, such failure shall constitute an event of default under this Agreement and, in addition, the Authority shall notify the Commissioner of Finance and Administration of the State of Tennessee of the default of the Local Government and the assignment of Unobligated State-Shared Taxes under this Agreement. Upon receipt of such notice, the Commissioner shall withhold such sum or part of such sum from any State-Shared Taxes which are otherwise apportioned to the Local Government and pay only such sums necessary to liquidate the delinquency of the Local Government to the Authority for deposit into the fund. The Local Government acknowledges that it has no claim on State-Shared Taxes withheld as permitted under this Agreement.

If the Local Government breaches any other provision of this Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of such breach. The Local Government's failure to cure the breach

within 60 days from receipt of notice of such breach shall constitute an event of default under this Agreement.

(b) Upon an event of default, the Authority may declare all unpaid principal and interest to be immediately due and payable as well as pursue all available legal and equitable remedies. The Local Government shall be responsible for all costs that the Authority incurs in enforcing the provisions of this Agreement after an event of default, including, but not limited to, reasonable attorneys' fees.

9. CONDITIONS PRECEDENT. This Agreement is further conditioned on the receipt of the following documents, in form and substance acceptable to the Authority, if applicable, on or before the date of the first disbursement of the Project Loan; each document is to be dated or certified, as the case may be, on or before the date of the first disbursement of the Project Loan:

(a) A general certificate of the Local Government certifying the resolution or ordinance authorizing the Local Government to enter into this Agreement, the resolution or ordinance authorizing the rate and fee structure for the users of the system, and other matters;

(b) An opinion of the attorney or special counsel to the Local Government to the effect that:

(1) The Local Government has been duly created and is validly existing and has full power and authority (under its charter and by-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of this Agreement;

(2) This Agreement is duly executed and constitutes a valid and binding contract of the Local Government, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the enforcement of creditors rights generally;

(3) This Agreement is not in conflict in any material way with any contracts, resolutions or ordinances of the Local Government; and

(4) There is no litigation materially adversely affecting this Agreement or the financial condition of the Local Government;

(c) An opinion of a licensed engineer or certified public accountant as to the sufficiency of the rates, fees and charges and any other fees and charges to meet costs of operation and maintenance, including depreciation and all debt service of the Local Government, as set forth in Paragraph 7(k) above;

(d) An opinion of a licensed engineer as to the reasonableness of the project costs and as to the estimated completion date of the Project; and

(e) A representation of the Local Government as to loans and State-Shared Taxes.

10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Agreement. The Local Government acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees, including but not limited to, the Department, the Authority, and the employees thereof, arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. Title 9, Chapter 8.

11. SEVERABILITY. In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions or provisions hereof.
12. NOTICES. Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing):

To Department: Tennessee Department of Environment and Conservation
312 Rosa L. Parks Ave, 12th Floor
Nashville, TN 37243
ATTN: State Revolving Fund Loan Program

To Authority: Tennessee Local Development Authority
Suite 1600, James K. Polk Building
Nashville, TN 37243-0273
ATTN: Assistant Secretary

To Local Government: City of Franklin
Attn: The Honorable Dr. Ken Moore, Mayor
405 Hillsboro Road,
Franklin, TN 37064

12. SECTION HEADINGS. Section headings are provided for convenience of reference only and shall not be considered in construing the intent of the parties to this Agreement.

13. EFFECTIVE DATE. The effective date of this Agreement shall be the date on which the Authority approves this Agreement as indicated below.

IN WITNESS WHEREOF, the parties to this Agreement have caused the Agreement to be executed by their respective duly authorized representatives.

LOCAL GOVERNMENT

TENNESSEE LOCAL DEVELOPMENT AUTHORITY

NAME: City of Franklin
(City)

BY: _____

BY: _____
(Dr. Ken Moore, Mayor)

TITLE: _____

TITLE: Mayor

DATE: April 25, 2017

MEETING APPROVAL DATE: _____

INTEREST RATE: _____

APPROVED AS TO FUNDING:

COMMISSIONER, DEPARTMENT OF ENVIRONMENT AND CONSERVATION

COMMISSIONER OF FINANCE AND ADMINISTRATION

BY: _____

BY: _____

DATE: _____

DATE: _____

LIST OF CLOSING DOCUMENTS RELATED TO LOAN AGREEMENT

Copy of the Local Government's Application for Project Loan

Loan Conditions

General Certificate with copies of ordinances/resolution approving Loan Agreement and Rate Structure

Opinion as to Sufficiency of Rates, Fees and Charges and Cost and Completion

Representation as to Loans and State-Shared Taxes

Legal Opinion of Attorney or Special Counsel to Local Government

EXHIBIT A***FEDERAL LAWS AND EXECUTIVE ORDERS*****ENVIRONMENTAL:**

Clean Air Act (Pub. L. 101-549, 42 U.S.C. § 7401, et seq.), as amended.

Endangered Species Act (Pub. L. 93-205, 16 U.S.C. § 1531, et seq.), as amended.

Environmental Justice, Executive Order 12898, 59 Fed. Reg. 7629 (1994), as amended.

Floodplain Management, Executive Order 11988 42 Fed Reg. 26951 (1977), as amended by Executive Order 12148, 44 FR 43239 (1979) (pertaining to Federal Emergency Management) and as further amended by Executive Order 13690, 80 FR 6425 (2015), as amended.

Protection of Wetlands, Executive Order 11990, 42 Fed Reg. 26961 (1977), as amended.

Farmland Protection Policy Act, (Pub. L. 97-98, 7 U.S.C. § 4201, et seq.), as amended.

Fish and Wildlife Coordination Act, (Pub. L. 85-624, 16 U.S.C. § 661 et seq.), as amended.

National Historic Preservation Act of 1966, (Pub. L. 113-287, 54 U.S.C. § 300101 et seq.), as amended.

Water Pollution Control Act of 1972, (Pub. L. 114-181, 33 U.S.C. § 1251 et seq.), as amended.

Safe Drinking Water Act (Title XIV of the Public Health Service Act, Pub. L. 93-523, 42 U.S.C. § 300f et seq.), as amended.

Wild and Scenic Rivers Act, (Pub. L. 90-542, 28 U.S.C. § 1271, et seq.), as amended.

ECONOMIC AND MISCELLANEOUS AUTHORITIES:

Demonstration Cities and Metropolitan Development Act of 1966, (Pub. L. 89-754, 42 U.S.C. § 3331, et seq.), as amended.

Intergovernmental Review of Federal Programs, Executive Order 12372, 47 Fed. Reg. 30959 (1982), as amended.

Procurement Prohibitions under Section 306 of Clean Air Act, 42 U.S.C. § 7606, and Section 508 of Clean Water Act, 33 U.S.C. § 1368, including Executive Order 11738, 38 Fed. Reg. 25161(1973) (Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans), as amended.

Uniform Relocation and Real Property Acquisition Policies Act (Pub. L. 91-646, 42 U.S.C § 4601, et seq.), as amended.

Debarment and Suspension, Executive Order 12549, 51 Fed. Reg. 6370 (1986), as amended.

Kickbacks from Public Works Employees Prohibited, 18 U.S.C. § 874.

Requirements for Public Work Contractors to Comply with U.S. Dept. of Labor Regulations (Pub. L. 103-322, Title XXXIII, § 330016(1)(K), 40 U.S.C. § 3145), as amended.

Contract Work Hours and Safety Standards Act (Pub. L. 111-350, 40 U.S.C. § 3701, et seq.), as amended.

SOCIAL POLICY AUTHORITIES:

Age Discrimination in Employment Act (Pub. L 114-181, 29 U.S.C. § 621, et seq.), as amended.

Title VI of Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. § 2000d, et seq.), as amended, and related anti-discrimination statutes.

Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 29 U.S.C. § 701), as amended, and Executive Order 12250 (45 Fed. Reg. 72995 (1980)).

Equal Employment Opportunity, Executive Order 11246 (30 Fed. Reg. 12319, 12935 (1965)), Executive Order 11375 (32 Fed. Reg. 14303 (1967)), and Executive Order 13672 (79 Fed. Reg. 42971 (2014)).

Women's and Minority Business Enterprise Executive Orders 11625 (36 Fed. Reg. 19967 ((1971)), 12138 (44 Fed. Reg. 29637 (1979)), and 12432 (48 Fed. Reg. 32551 (1983)).

Section 129 of Small Business Administration Reauthorization and Amendment Act (Pub. L. 100-590, 15 USC § 637), as amended.