

INTRODUCED 16-05-2009  
PUBLIC HEARING 10-19-2009  
COUNCIL ACTION 11-02-2009  
EXECUTIVE ACTION 11-03-2009  
EFFECTIVE DATE 11-03-2009

County Council of  
Howard County, Maryland

2009 Legislative Session

Legislative Day No. 13

Bill No. 56-2009

Introduced by: The Chairperson at the request of the County Executive

A BOND ISSUE AUTHORIZATION ORDINANCE providing for the issuance and sale of the Howard County, Maryland Water Quality Bond, Series 2009A (ARRA), in the maximum principal amount of \$3,530,000; providing for and approving a Loan Agreement with the Maryland Water Quality Financing Administration (the "Administration"); prescribing the forms of such Bond and Loan Agreement; providing certain details relating thereto or the method of determining such details; providing that such Bond shall be issued on the County's full faith and credit; providing for disbursement of the proceeds of such Bond and for the levying of taxes for payment of the principal of and interest on such Bond; providing for the private (negotiated) sale of such Bond to the Administration; and providing for and determining various matters in connection therewith.

Introduced and read first time October 5, 2009. Ordered posted and hearing scheduled.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on October 19, 2009.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

This Bill was read the third time on November 2, 2009 and Passed ☒, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Scaled with the County Seal and presented to the County Executive for approval this 3rd day of November, 2009 at 11:00 a.m./p.m.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Approved by the County Executive Nov. 3, 2009

Ken Ulman  
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

### **Recitals**

1       The County Council of Howard County (the "County Council"), by Council Bill No. 55-2009,  
2   enacted and in effect prior to the enactment of this Ordinance (the "Bond Enabling Law"), has authorized  
3   and empowered Howard County, Maryland (the "County") (a) to borrow, on its full faith and credit, an  
4   amount not exceeding \$3,530,000 from the Maryland Water Quality Financing Administration (the  
5   "Administration") and to issue and sell one or more installment bonds (the "Bonds") to the  
6   Administration, pursuant to and in accordance with the Howard County Charter and the Maryland Water  
7   Quality Financing Administration Act, Sections 9-1601 to 9-1622 of the Environment Article, Annotated  
8   Code of Maryland, as amended (the "MWQFA Act"), the proceeds thereof to be used to pay a portion of  
9   the costs of Capital Project S6175 (Little Patuxent Parallel Sewer), a capital project needed to meet the  
10   existing and projected sewage flows of the Little Patuxent Sewer service area as outlined in the approved  
11   Master Plan for Water and Sewerage (the "Capital Project"), with the portion of the Capital Project to be  
12   financed with proceeds of the Bonds consisting of and including the construction of sewer and sewer  
13   interceptor improvements (the "Project"), including payment of all related costs, which include, without  
14   limitation, the costs incurred by the County in connection with the issuance of the Bonds to the  
15   Administration, and the cost of planning, construction, improvements, renovation, rehabilitation,  
16   equipping, engineering and architect's services, surveys, studies, landscaping, site development and land  
17   acquisition, to the extent permitted by the Administration (collectively, the "Costs of the Project"), as  
18   more particularly set forth in the Bond Enabling Law; and (b) to enact an ordinance or ordinances in  
19   accordance with Sections 606 and 618 of the Howard County Charter, the MWQFA Act and other  
20   applicable provisions of law, providing for (i) the issuance and sale of the Bonds to the Administration,  
21   (ii) the designation, form, tenor, maximum principal amount (and the formula for computing the final  
22   principal amount), denomination and maturity (not exceeding 20 years after Project completion), (iii) the  
23   amortization schedule of the Bonds (or the formula for computing such schedule, subject to any  
24   limitations contained in the MWQFA Act and any program requirements of the Administration), (iv) the  
25   interest rate (or the method of determining such rate) payable on the Bonds, and (v) the form and terms  
26   and conditions of one or more Loan Agreements between the County and the Administration to effect and

1 evidence any loans from the Administration (each, the "Loan Agreement"); and (c) to levy annually ad  
2 valorem taxes upon the assessable property within Howard County sufficient, together with benefit  
3 assessments, ad valorem taxes levied upon assessable property in the Metropolitan District and other  
4 available funds, to pay the principal of and interest on the Bonds until the entire aggregate principal  
5 amount of the Bonds shall mature and be redeemed.

6 Pursuant to and in accordance with the MWQFA Act, the Administration is authorized to make  
7 loans to "local governments" for the purpose of financing all or a portion of the cost of a "wastewater  
8 facility" and to refinance debt obligations of "local governments" if such debt obligations were incurred  
9 after March 7, 1985. The County is a "local government" and the Project is a "wastewater facility", both  
10 as defined in the MWQFA Act.

11 In accordance with the American Recovery and Reinvestment Act of 2009 (the "ARRA"), the  
12 U.S. Environmental Protection Agency has awarded a grant to the Administration for deposit into the  
13 Maryland Water Quality Revolving Loan Fund (the "Fund") to be used to finance eligible projects.

14 Section 9-1606 of the MWQFA Act provides as follows:

15  
16 "§9-1606 Loans.

17 (a) *Loan Agreement.* A loan made by the Administration shall  
18 be evidenced by a loan agreement. Loans made from the Water Quality  
19 Fund, except for loans made in accordance with §9-1605(d)(9) of this  
20 subtitle, shall be subject to the provisions of §9-1605(d)(1) of this subtitle.  
21 Loans made from the Drinking Water Loan Fund, except for loans made in  
22 accordance with §9-1605.1(d)(10) of this subtitle, shall be subject to the  
23 provisions of §9-1605.1(d)(1) of this subtitle. Subject to the provisions of  
24 any applicable bond resolution, the Administration may consent to the  
25 modification, with respect to rate of interest, time of payment of any  
26 installment of principal or interest, security, or any other term of any loan  
27 agreement or loan obligation. In connection with any security received by  
28 or owned by the Administration, including any loan obligations, the  
29 Administration may commence any action to protect or enforce the rights  
30 conferred upon it by any law or loan agreement or loan obligation.

31  
32 (b) *Issue and sale of loan obligations by borrower.*  
33 Notwithstanding any other provision of public general or public local law,  
34 charter, or ordinance, a borrower may issue and sell loan obligations to the  
35 Administration:

36  
37 (1) At private sale, without public bidding;

38  
39 (2) Without regard to any limitations on the denomination of  
40 such obligations; and  
41

1 (3) At any interest rate or cost or at any price that the borrower  
2 considers necessary or desirable.

3  
4 (c) *Payment of fees or charges by borrower.* A borrower may  
5 pay any fees or charges necessary to enable the Administration to sell its  
6 bonds, including any fees for the insurance of its loan obligations or bonds  
7 of the Administration, or to provide any other guarantee, credit  
8 enhancement, or additional security for any such loan obligations or bonds.  
9

10 (d) *Pledge of moneys borrower is entitled to receive from*  
11 *State.* Notwithstanding any other provision of public general or public local  
12 law, charter, or ordinance, a borrower may agree with the Administration to  
13 pledge any moneys that the borrower is entitled to receive from the State,  
14 including the borrower's share of the State income tax, to secure its  
15 obligations under a loan agreement. The State Comptroller and the State  
16 Treasurer shall cause any moneys withheld under such a pledge to be paid  
17 to, or applied at the direction of, the Administration.  
18

19 (e) *Loan obligation cancelable only upon repayment in full.*  
20 Each loan agreement shall contain a provision whereby the borrower  
21 acknowledges and agrees that the borrower's loan obligation is cancelable  
22 only upon repayment in full and that neither the Administration, the  
23 Secretary, nor the Board is authorized to forgive the repayment of all or any  
24 portion of the loan, except for loans to disadvantaged communities,  
25 pursuant to the federal Safe Drinking Water Act, and loans made in  
26 accordance with §§9-1605(d)(9) and 9-1605.1(d)(10) of this subtitle.  
27

28 (f) *Default on loan obligation –* In the event of a default on a loan  
29 obligation by a borrower other than a local government, the Administration  
30 may place a lien against property of the borrower securing the loan which,  
31 subject to the tax liens of the federal, State, and local governments, shall  
32 have the same priority and status as a lien of the State for unpaid taxes  
33 under §§ 14-804 and 14-805 of the Tax - Property Article. The  
34 Administration may exercise the same rights and powers in enforcing such  
35 lien and collecting funds for the payment of amounts in default under the  
36 loan obligation as the State may exercise in collecting unpaid taxes under  
37 Title 14, Subtitle 8 of the Tax - Property Article.”

38 Section 9-1605(d)(9) of the MWQFA Act provides that amounts in the Fund may be used “[t]o  
39 provide financial assistance in the form of grants, negative interest loans, forgiveness of principal, subsidized  
40 interest rates, and any other form of financial assistance as authorized or required by the American Recovery  
41 and Reinvestment Act of 2009, as may be amended or supplemented.” Section 9-1605(d)(1) of the MWQFA  
42 Act provides that annual principal and interest payments will commence not later than one year after  
43 completion of any wastewater facility and all loans will be fully amortized not later than 20 years after project  
44 completion, and that a local government borrower will establish a dedicated source of revenue for repayment  
45 of loans.

1           The Administration has indicated that the Project is eligible for financing in an amount not to exceed  
2     \$3,530,000 from moneys made available to the Administration pursuant to the ARRA at an interest rate of  
3     one percent (1%) per annum, provided that construction commences by December 31, 2009 and loan closing  
4     occurs by December 31, 2009 or such later date as to which the Administration may agree, within its sole  
5     discretion.

6           The Department of Finance estimates that loan funding provided by the Administration for  
7     Project purposes pursuant to the ARRA will save the County an estimated \$40,000.00 in interest  
8     payments annually over the life of the bond funding, as compared to any Metropolitan District bond  
9     financing issued by the County for Project purposes.

10  
11          The County Council has determined that (a) it is in the best interest of the County (1) to issue and  
12     sell its Howard County, Maryland Water Quality Bond, Series 2009A (ARRA) (or as otherwise  
13     designated as required by the Administration, the "Bond") in the maximum principal amount of  
14     \$3,530,000 (or such lesser principal amount as may be determined as described in Section 2(e) below) to  
15     the Administration in order to pay a portion of the Costs of the Project, and (2) to participate thereby in  
16     the Administration's Revolving Loan Fund Program; and (b) the probable useful life of the Project is  
17     more than 20 years, and the Bond shall be fully paid within such probable useful life.

18          Now therefore, in accordance with the provisions of Article VI of the Howard County  
19     Charter and other applicable provisions of law:

20          Section 1. Be it enacted by the County Council of Howard County, Maryland, That all terms  
21     used herein with an initial capital letter and defined in the Recitals hereof and not otherwise defined  
22     therein shall have the meanings given such terms therein, unless the context clearly indicates a contrary  
23     meaning.

24          Section 2. Be it further enacted by the County Council of Howard County, Maryland, (a)  
25     That Howard County, Maryland, a body politic and corporate and a charter county of the State of  
26     Maryland (the "County"), pursuant to the authority contained in the MWQFA Act and the Bond Enabling  
27     Law, shall borrow upon the full faith and credit of the County and shall issue and sell upon the full faith

1 and credit of the County \$3,530,000 (or such lesser principal amount as may be determined in accordance  
2 with subsection (e) below) of its bonds in fully-registered form, without coupons. Such bonds shall be  
3 issued in the form of a single installment bond, shall be known as the Howard County, Maryland Water  
4 Quality Bond, Series 2009A (ARRA) and shall have such additional or other designation as required by  
5 the Administration (the "Bond") and shall be sold to the Administration by private (negotiated) sale. The  
6 County hereby finds and determined that it is in the best interest of the County to sell the Bond by private  
7 (negotiated) sale due to the attractive interest rate and loan terms provided by the Administration, which  
8 interest rate is substantially less than the County could obtain by selling the bonds authorized by the Bond  
9 Enabling Law for Project purposes to the public.

10 (b) The date of issue of the Bond shall be the date of issuance and delivery of the  
11 Bond (the "Closing Date") and the Bond shall be dated as of such date of issue. Unless otherwise agreed  
12 to by the Administration in its sole discretion, the Bond shall be issued and delivered no later than  
13 December 31, 2009.

14 (c) The loan to the County from the Administration (the "Loan") which is evidenced  
15 by the Bond shall be further evidenced by the Loan Agreement dated as of the Closing Date between the  
16 County and the Administration (the "Loan Agreement"). The Loan Agreement shall be in substantially  
17 the form of the Loan Agreement attached hereto as Exhibit A and made a part hereof (the "Loan  
18 Agreement Form"), and such form is hereby approved as to form and content. Without limiting the  
19 generality of the foregoing, the County shall also pay to the Administration the annual Administrative Fee  
20 (as defined in the Loan Agreement Form) on August 1 of each year, commencing on the August 1 which  
21 is approximately 45 days after the Closing Date (or such shorter or longer period as the Administration  
22 may determine prior to the Closing Date) subject to the terms of the final Loan Agreement.

23 (d) The Bond shall be in substantially the form of the Bond attached as Exhibit F to  
24 the Loan Agreement Form (the "Bond Form") and such form is hereby approved as to form and content.

25 (e) (i) The aggregate principal amount of the Bond shall be payable in 20  
26 consecutive annual installments beginning on February 1, 2012 and continuing on each February 1  
27 thereafter to and including February 1, 2031, or shall begin on such earlier or later date and mature on

1 such earlier or later date (in any such case, the "Maturity Date") as the Administration shall determine is  
2 necessary to meet its program requirements prior to the Closing Date, including, without limitation, by  
3 requiring a minimal \$1,000.00 payment on the August 1 before regular February 1 principal amortization  
4 commences. The Bond shall mature on the Maturity Date and the outstanding principal balance of the  
5 Bond and all accrued and unpaid interest thereon shall be due on such date. The amount of each principal  
6 installment shall equal the annual principal payment amounts necessary to amortize the remaining  
7 aggregate principal amount of the Bond on an approximately level debt service basis over an  
8 approximately 20-year term following Project completion, as determined by the Administration.

9 (ii) Notwithstanding the foregoing, the installments payable on the Bond shall be  
10 reamortized and reduced in accordance with the Loan Agreement and the Bond in the event that the total  
11 amount of the Loan advanced to the County is less than the principal amount of the Bond as originally  
12 issued, so long as neither the amount of any principal installment payable on the Bond in any year nor the  
13 interest rate thereon is increased.

14 (f) The Bond shall bear interest on amounts advanced and outstanding under the Loan  
15 Agreement at an annual rate of interest equal to one percent (1%) per annum. Such interest shall be  
16 payable semiannually on each February 1 and August 1 commencing on the first of such dates which is  
17 approximately 45 days after the Closing Date (or such shorter or longer period as the Administration shall  
18 determine prior to the Closing Date) and continuing to and including the Maturity Date.

19 (g) The Bond shall be subject to prepayment and redemption to the extent permitted and  
20 in accordance with the Loan Agreement.

21 **Section 3. Be it further enacted by the County Council of Howard County, Maryland, (a)**  
22 **That the proceeds of the Bond shall be advanced to the Director of Finance of the County (the "Director**  
23 **of Finance") in accordance with the Loan Agreement and shall be applied to defray a portion of the Costs**  
24 **of the Project.**

25 (b) The estimated cost of the Capital Project and the other sources of funds for the  
26 Capital Project are set forth in Appendix I attached hereto and made a part hereof.

27 (c) The probable useful life of the Project is more than 20 years, and the Bond shall

1 be fully paid within such probable useful life.

2       **Section 4. Be it further enacted by the County Council of Howard County, Maryland, That**  
3 for the purpose of paying the principal of and interest on the Bond when due as the same shall become  
4 payable, there is hereby levied and there shall hereafter be levied in each fiscal year that any portion of  
5 the Bond is outstanding, ad valorem taxes on real and tangible personal property and intangible property  
6 subject to taxation by the County without limitation of rate or amount and, in addition, upon such other  
7 intangible property as may be subject to taxation by the County within limitations prescribed by law, in  
8 an amount sufficient, together with benefit assessments, ad valorem taxes levied upon assessable property  
9 in the Metropolitan District and other available funds, to pay the principal of and interest on the Bond  
10 payable during the succeeding year until the entire principal amount of the Bond shall mature and be  
11 redeemed; and the full faith and credit and the unlimited taxing power of the County are hereby  
12 irrevocably pledged to the punctual payment of the principal of and interest on the Bond as and when the  
13 same become due and payable. The dedicated source of revenues required by the MWQFA Act, which  
14 shall be identified on Exhibit E to the Loan Agreement, shall be water and sewer user charges, including  
15 any and all fees for use of the public water and sewer system or connection to it.

16       **Section 5. Be it further enacted by the County Council of Howard County, Maryland, That**  
17 (a) the Bond shall be signed by the County Executive of the County (the "County Executive") and by the  
18 Director of Finance by their manual signatures, and the Bond shall bear the corporate seal of the County,  
19 attested by the manual signature of the Chief Administrative Officer of the County (the "Chief  
20 Administrative Officer"); and (b) the Loan Agreement shall be signed by the County Executive by his  
21 manual signature, and the Loan Agreement shall bear the corporate seal of the County, attested by the  
22 manual signature of the Chief Administrative Officer. In the event that any officer whose signature shall  
23 appear on the Bond or the Loan Agreement shall cease to be such officer before the delivery of the Bond  
24 or the Loan Agreement, as applicable, such signature shall nevertheless be valid and sufficient for all  
25 purposes, the same as if such officer had remained in office until delivery.

26       **Section 6 Be it further enacted by the County Council of Howard County, Maryland, (a)**  
27 That the County Executive is hereby authorized, prior to execution and delivery of the Bond and the Loan

1 Agreement, to make such changes or modifications in the forms thereof as may be required or deemed  
2 appropriate by him in order to accomplish the purpose of the transactions authorized by this Ordinance,  
3 including, without limitation, to complete the exhibits to the Loan Agreement to reflect matters  
4 determined or required by the Administration, including any requirements of the ARRA that the  
5 Administration determines should be set forth in the Loan Agreement; provided that such changes shall  
6 be within the scope of the transactions authorized by this Ordinance; and the execution of the Bond and  
7 the Loan Agreement by the County Executive shall be conclusive evidence of the approval by the County  
8 Executive of all changes or modifications in the form of the Bond and the Loan Agreement and the due  
9 execution of the Bond and the Loan Agreement on behalf of the County, and the Bond and the Loan  
10 Agreement shall thereupon become binding upon the County in accordance with their respective terms.

11 (b) The officers of the County authorized to execute the Bond and the Loan  
12 Agreement are expressly authorized to execute and deliver from time to time (1) such amendments to the  
13 Bond and the Loan Agreement as shall be deemed necessary or appropriate by such officers to cure any  
14 defect or ambiguity in the Bond or the Loan Agreement, to add any provision thereto beneficial to the  
15 County or to comply with Administration practices and policy from time to time, and (2) such  
16 amendments to the Bond (or a new Bond or Bonds in replacement thereof) in accordance with the Loan  
17 Agreement and the Bond as shall be necessary to provide for the reamortization and reduction of the  
18 principal installments due thereunder in the event that the total amount advanced thereunder shall be less  
19 than the maximum aggregate principal amount of the Bond, so long as neither the amount of any principal  
20 installment under the Bond in any year, nor the interest rate thereon shall be increased.

21 **Section 7. Be it further enacted by the County Council of Howard County, Maryland, That**  
22 **the County Executive, the Chief Administrative Officer, the Director of Finance and other officials of the**  
23 **County are hereby authorized and empowered to do all such acts and things and to execute, acknowledge,**  
24 **seal and deliver such documents and certificates, as the County Executive may determine to be necessary**  
25 **to carry out and comply with the provisions of this Ordinance, subject to the limitations set forth in the**  
26 **MWQFA Act, the Bond Enabling Law and in this Ordinance.**

1           **Section 8. Be it further enacted by the County Council of Howard County, Maryland, (a)**  
2   That the Director of Finance is hereby designated and appointed as bond registrar and paying agent for  
3   the Bond (the "Bond Registrar"). The Bond Registrar shall maintain books of the County for the  
4   registration and transfer of the Bond. The Bond may not be registered to bearer. In addition, the County  
5   may from time to time, either prior to or following the issuance of the Bond, designate and appoint the  
6   Department of Finance of the County, any officer or employee of the County or one or more banks, trust  
7   companies, corporations or other financial institutions to act as a substitute or alternate bond registrar,  
8   paying agent or authenticating agent for the Bond, and any such substitute or alternate shall be deemed to  
9   be the Bond Registrar or an alternate Bond Registrar for all purposes specified in the resolution  
10   appointing such substitute or alternate. Any such appointment shall be made by the County Council by  
11   resolution; and the exercise of such power of appointment, no matter how often, shall not be an  
12   exhaustion thereof.

13           (b)     The Bond shall be transferable upon the terms and conditions set forth therein.

14           **Section 9. Be it further enacted by the County Council of Howard County, Maryland,**  
15   That the County covenants and agrees with the registered owner from time to time of the Bond as  
16   follows:

17           (a)     The County covenants that it will not make or (to the extent that it exercises  
18   control or direction) permit to be made, any use of the proceeds of the Bond or any moneys, securities or  
19   other obligations on deposit to the credit of the County or otherwise which may be deemed by the Internal  
20   Revenue Service to be proceeds of the Bond pursuant to the Internal Revenue Code of 1986, as amended,  
21   and Income Tax Regulations thereunder (collectively, the "Code"), which would cause the Bond to be an  
22   "arbitrage bond" or a "private activity bond" within the meaning of the Code.

23           (b)     The County further covenants that it will comply with those provisions of the  
24   Code which are applicable to the Bond on the date of issuance of the Bond and which may subsequently  
25   lawfully be made applicable to the Bond. To the extent that provisions of the Code apply to only a  
26   portion of the proceeds of the Bond or other moneys, securities or other obligations deemed to be

1 proceeds, it is intended that the covenants of the County contained in this Section 9 be construed so as to  
2 require the County to comply with the provisions of the Code only to the extent of such applicability.

3 (c) The County further covenants that it will make such use of the proceeds of the  
4 Bond, regulate the investment of the proceeds thereof (to the extent that it exercises control or direction),  
5 and take such other and further action as may be required to maintain the excludability from gross income  
6 for federal income tax purposes of interest on the Bond.

7 (d) The County further covenants that it will not (i) take any action, (ii) fail to take  
8 any action, or (iii) make any use of the proceeds of the Bond which would cause the interest on the Bond  
9 to be or become includible in gross income for federal income tax purposes in the hands of the registered  
10 owner of the Bond. All officers, employees and agents of the County are hereby authorized and directed  
11 to take such actions, and to provide such certifications of facts and estimates regarding the amount and  
12 use of the proceeds of the Bond, as may be necessary or appropriate from time to time to comply with, or  
13 to evidence the County's compliance with, the covenants set forth in this Section.

14 **Section 10. Be it further enacted by the County Council of Howard County, Maryland, That**  
15 **this Ordinance shall take effect on the date of its enactment.**

## **EXHIBIT AND APPENDIX**

**Exhibit A - Form of Loan Agreement**

**Appendix I - Schedule of Capital Project Costs and Other Sources of Funds**

**Exhibit A**

**FORM OF LOAN AGREEMENT**

**LOAN AGREEMENT**

**By and Between**

**MARYLAND WATER QUALITY  
FINANCING ADMINISTRATION**

**and**

**"Insert Name of Entity"**

**Dated as of           , 2009**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, made this            day of            , 2009 between the Maryland Water Quality Financing Administration (the "Administration"), a unit of the Department of the Environment (the "Department") of the State of Maryland (the "State"), and "Insert Name of Entity", a            of the State (the "Borrower").

### RECITALS

Title VI of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), as amended by the Water Quality Act of 1987 ("Title VI"), authorizes the Environmental Protection Agency ("EPA") to award grants to qualifying States to establish and capitalize State water pollution control revolving funds ("SRFs") for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of the State at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended (the "Act"), establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a "local government" (as defined in the Act) for the purpose of financing all or a portion of the cost of a "wastewater facility" project (as defined in the Act).

In accordance with the American Recovery and Reinvestment Act of 2009 ("ARRA"), the EPA has awarded a grant to the Administration (the "ARRA Funds") for deposit into the Fund to be used to finance eligible projects.

The Borrower, which is a "local government" within the meaning of the Act, has applied to the Administration for a loan from the Fund to assist in the financing of a certain project or projects of the Borrower (the "Project," as defined herein) which constitutes a "wastewater facility" within the meaning of the Act. The Project is one designated for funding in an Intended Use Plan promulgated by the Administration in accordance with regulations issued by the EPA pursuant to Title VI, and the Project conforms to the applicable "county plan" adopted pursuant to the requirements of Subtitle 5 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended.

The Director of the Administration has determined that the making of a loan to the Borrower for the purpose of assisting the financing of the Project, on the terms and conditions hereinafter set forth, is necessary and desirable in the public interest, will promote the health, safety

and welfare of the inhabitants of the State and the United States by assisting in the prevention of pollution of the environment, and will further the purposes of Title VI and the Act.

The Act authorizes the Administration, subject to the prior approval of the Secretary of the Department and the Board of Public Works, to issue its revenue bonds for the purpose of providing monies for deposit to the Fund. The Administration may issue and sell one or more series of such revenue bonds (the "Bonds") for the purpose of providing monies for deposit to the Fund in an amount sufficient, together with certain other monies expected to be available for that purpose, to enable the Administration to make, or reimburse the Administration for making, a loan to the Borrower and certain other entities to assist in the financing of projects, all as contemplated by the Administration's Intended Use Plan. The revenues from this loan and such other loans, whether or not funded from the proceeds of Bonds, may be pledged by the Administration to secure Bonds.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Administration, each intending to be legally bound, hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Act" means the Maryland Water Quality Financing Administration Act, Sections 9-1601 through 9-1622 of the Environment Article, Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof.

"Administration" means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

"Administrative Fee" means the fee payable by the Borrower pursuant to this Agreement for the general administrative services and other functions and expenses of the Administration.

"Agreement" means this Loan Agreement, including the Exhibits attached hereto and any amendments hereto.

"Application" means the application for the Loan submitted by the Borrower to the Administration, together with any amendments thereto.

**"ARRA"** means the American Recovery and Reinvestment Act of 2009, as may be amended from time to time, and rules, guidance, and regulations promulgated thereunder.

**"Authorized Officer"** means, in the case of the Borrower, any person authorized by law or by a resolution of the governing body of the Borrower to perform any act or execute any document.

**"Board"** means the Board of Public Works of the State.

**"Bonds"** means any series of revenue bonds issued by the Administration under the Act.

**"Bond Counsel"** means a law firm acceptable to the Administration whose legal opinions are generally accepted by purchasers of municipal bonds.

**"Borrower"** means the local government (as defined in the Act) that is identified in the first paragraph of this Agreement, and its successors and assigns.

**"Business Day"** means a day other than a Saturday, Sunday, or day on which the offices of the Administration or commercial banks in the State are authorized or obligated to remain closed.

**"Change Orders"** means any amendments or modifications to any Plans and Specifications or any general construction contract for the Project.

**"Clean Water Act"** means the Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. §1251 et seq., and rules and regulations promulgated thereunder.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, or any successor federal income tax statute or code, and the applicable regulations and rulings promulgated thereunder.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

**"Department"** means the Maryland Department of the Environment, and its successors.

**"Director"** means the Director of the Administration.

**"Eligible Project Costs"** means all those costs of the Project permitted by the Act to be funded by a loan from the Fund and which have been approved by the Director.

**"EPA"** means the United States Environmental Protection Agency, and its successors.

**"Event of Default"** means any occurrence or event specified in Section 4.01 hereof.

**"Fiscal Year"** means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

**"Fund"** means the Maryland Water Quality Revolving Loan Fund.

**"Governmental Authority"** means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and including EPA, the Department, the Board and the Administration.

**"Indenture"** means the indenture of trust, bond resolution or other trust agreement between the Administration and the Trustee, providing for the issuance of Bonds, as amended, modified or supplemented from time to time.

**"Independent Counsel"** means any attorney or attorneys duly admitted to practice law before the highest court of any state who have regularly engaged in the practice of law as their primary occupation for at least five years. Independent Counsel may also serve as Bond Counsel if it qualifies as Bond Counsel.

**"Independent Public Accountant"** means an individual, partnership or corporation engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Maryland and in fact independent.

**"Loan"** means the aggregate amounts which are advanced from time to time by the Administration to the Borrower pursuant to the terms and provisions of this Agreement.

**"Loan Closing Date"** means the date on which the Note is executed and delivered to the Administration.

**"Loan Commitment"** means that amount which the Administration is obligated to lend to the Borrower pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

**"Loan Proceeds Questionnaire and Certificate"** means the Loan Proceeds Questionnaire and Certificate executed and provided by the Borrower in connection with the Loan, in form and substance satisfactory to the Administration.

"Loan Year" means the period beginning on the first February 1 on which principal of the Loan is payable and each February 1 thereafter and ending on the immediately succeeding January 31.

"Note" means the bond, note or other obligation executed and delivered by the Borrower to the Administration to evidence the Loan, such Note to be substantially in the form attached hereto as Exhibit F.

"Plans and Specifications" means the final plans and specifications for the construction of the Project prepared by the architect or engineer and approved by the Department.

"Project" means the project or projects of the Borrower described in Exhibit B to this Agreement.

"Project Budget" means the budget for the Project as set forth in Exhibit C to this Agreement, as revised in accordance with Section 2.02(d).

"Related Financing" means any bond, note, agreement or other instrument or transaction (other than this Agreement or the Note) pursuant to which the Borrower obtains any monies that may be expended to pay costs of the Project.

"Requirement" means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System ("NPDES") permit or in a construction permit issued by the Department.

"State" means the State of Maryland.

"Tax-Exempt Bonds" means Bonds the interest on which is excludable from gross income for federal income tax purposes under the Code.

"Trustee" means the trustee for the Bonds.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms "agree" and "agreement" shall include and mean "covenant", and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF BORROWER

Section 2.01. Representations of Borrower. The Borrower represents for the benefit of the Administration as follows:

(a) Corporate Organization and Authority. The Borrower:

(i) is a "local government" as defined in the Act; and

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Note, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Administration in writing that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower, or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(d) Borrowing Legal and Authorized. The consummation of the transactions provided for in this Agreement and the Note and compliance by the Borrower with the provisions of this Agreement and the Note:

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Borrower; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Borrower pursuant to, any indenture, loan agreement or other instrument (other than this Agreement and the Note) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Borrower or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement and the Note or receipt of the Loan, would constitute a Default hereunder. The Borrower is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(f) Governmental Consent; Project Consistency.

(i) The Borrower has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Borrower of its obligations under this Agreement and the Note or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Borrower as a condition to the execution and delivery of this Agreement and the Note or the consummation of any transaction herein contemplated.

(ii) The Project is consistent with (A) the local plan of the Borrower as contemplated under Section 5-7A-02 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; (B) the State Economic Growth, Resource Protection, and Planning Policy established in Section 5-7A-01 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; and (C) all applicable provisions of *Subtitle 7B*; "Priority Funding Areas" of Title 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended.

(g) **No Conflicts.** No member, officer, or employee of the Borrower, or its designees, or agents, no consultant, no member of the governing body of the Borrower or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person's tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or benefit therefrom, which is part of the Project.

(h) **Use of Proceeds.** The Borrower will apply the proceeds of the Loan from the Administration as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Eligible Project Costs; and (ii) to reimburse the Borrower for all or a portion of the Eligible Project Costs paid or incurred prior to the date hereof in anticipation of reimbursement by the Administration (and subject to compliance with Section 2.02(l) of this Agreement). Except as provided in Sections 3.01 and 3.03(c) of this Agreement, before each and every advance of the proceeds of the Loan to the Borrower, the Borrower shall submit to the Administration a requisition meeting the requirements of Section 3.03 of this Agreement.

(i) **Loan Closing Submissions.** On or before the Loan Closing Date, the Borrower will cause to be delivered to the Administration each of the following items:

(i) an opinion of Independent Counsel, acceptable to the Administration, dated as of the Loan Closing Date, substantially in the form set forth in Exhibit D to this Agreement;

(ii) an opinion of Bond Counsel [who may rely, as to the validity of this Agreement and the Note, on the opinion of Independent Counsel referred to in (i)], dated as of the Loan Closing Date, and acceptable to the Administration, to the effect that (A) interest on the Loan and the Note will be excludable from gross income for purposes of federal income taxation and (B) interest on the Loan and the Note will not be included in the alternative minimum taxable income of individuals, corporations or other taxpayers as an enumerated item of tax preference or other specific adjustment;

(iii) fully executed counterparts of this Agreement, the Note and the Loan Proceeds Questionnaire and Certificate;

(iv) copies of the ordinance, resolution or other official action of the governing body of the Borrower authorizing the execution and delivery of this Agreement and the Note, certified by an appropriate officer of the Borrower;

(v) a certificate, dated as of the Loan Closing Date, signed by an Authorized Officer of the Borrower and in form satisfactory to the Administration, confirming the Borrower's obligations under and representations in the Loan Agreement and the Loan Proceeds Questionnaire and Certificate as of such date;

(vi) a requisition in an amount not less than the lesser of 5% of the Loan Commitment or \$50,000 for (i) reimbursement to the Borrower of Eligible Project Costs together

with paid invoices supporting such reimbursement or (ii) payment to third-parties of currently due and payable invoices for Eligible Project Costs or (iii) a combination of (i) and (ii); and

(vii) such other certificates, documents, opinions and information as the Administration may require.

**Section 2.02. Particular Covenants of the Borrower.**

(a) **Maintenance of Project; Insurance.** The Borrower shall (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are operated by persons operating a first-class facility of a similar nature. The Borrower shall maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by governmental entities similarly situated and as are consistent with sound governmental practice.

(b) **Sale or Disposition of Project.** The Borrower reasonably expects that no portion of the Project will be sold prior to the final maturity date of the Loan. In the event that the Borrower shall sell or otherwise dispose of any portion of the Project prior to the final maturity date of the Loan, the Borrower shall apply the net proceeds thereof to the prepayment of the Loan or as the Administration shall otherwise direct unless (i) the Borrower shall have obtained the prior written consent of the Administration to some other proposed application of such net proceeds and (ii) there shall have been delivered to the Administration an opinion of Bond Counsel to the effect that, in the opinion of such firm, such proposed application of such net proceeds will not adversely affect the tax-exempt status for federal income tax purposes of the interest on any Tax-Exempt Bonds applicable to the Project or the Note.

(c) **Inspections; Information.** The Borrower shall permit the Administration or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to attend all construction progress meetings relating to the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the financing thereof, and shall supply such reports and information as the Administration may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Borrower shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to loans made by the Administration from the Fund, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Loan, the total cost of the

activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All such books, records and other documents shall be maintained at the offices of the Borrower, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All such books, records and other documents shall be maintained until the completion of an audit of the Project by the EPA or notification from the State or the EPA that no audit is required.

(d) Completion of the Project; Payment of Excess Costs of the Project. The Borrower shall proceed diligently to complete the Project in accordance with the Plans and Specifications, and in accordance with any requirements set forth in the construction and NPDES permits. The Borrower shall satisfy all applicable Requirements for operation of the Project by the completion of the Project, and shall commence operation of the Project promptly upon its completion. No substantial changes may be made to the Plans and Specifications, the general construction contract or the Project Budget, or in the construction of the Project without the prior written approval of the Administration in its discretion. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Project in excess of the amount available to be loaned to the Borrower hereunder. Upon the completion of the Project, the Borrower shall deliver to the Administration a certificate of the Borrower certifying that the Project was completed as of the date set forth in such certificate.

(e) Cancellation of Loan. As provided by Section 9-1606(e) of the Act, the Borrower acknowledges and agrees that its obligation to make the payments due hereunder and under the Note is cancelable only upon repayment in full of the Loan, and that neither the Administration, the Secretary of the Department, nor the Board is authorized to forgive the repayment of all or any portion of the Loan.

(f) Dedicated Source of Revenue. Pursuant to the Clean Water Act, the Borrower has established one or more dedicated sources of revenue for repayment of the Loan, as described in Exhibit E attached hereto as a part hereof.

(g) Indemnification. To the extent permitted by law, the Borrower releases the Administration, the Fund, the Department, the Board and the State from, agrees that the Administration, the Fund, the Department, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Administration, the Fund, the Department, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Administration, the Fund, the Department, the Board or the State, as a result of or in connection with the Project or the financing thereof. To the extent permitted by law, all money expended by the Administration, the Fund, the Department, the Board or the State as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate provided in the Note from the date of such payment, shall constitute an additional indebtedness of the Borrower and shall be immediately and without notice due and payable by the Borrower to the Administration.

(h) Non-discrimination. The Borrower certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. The Borrower further agrees to comply with all applicable civil rights laws. At such times as the Administration requests, the Borrower shall submit to the Administration information relating to the Borrower's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Administration.

(i) Compliance with Requirements. The Borrower acknowledges that the Loan and this Agreement are subject to, and the Borrower agrees to comply with, all Requirements applicable to the Project and the financing thereof, including (without limiting the generality of the foregoing) the Clean Water Act, the ARRA, the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the EPA, the Board, the Department, the Administration, or other Governmental Authority.

(j) Annual Audit. Within 150 days of the end of each Fiscal Year, the Borrower shall cause financial statements of the Borrower to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, applicable to governmental units, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Public Accountant. Such financial statements and report shall be delivered upon completion to the Administration.

(k) Bonds Not to Be Arbitrage Bonds. The Administration expects to deliver on each date of issuance of each series of Tax-Exempt Bonds a certificate (such certificate, as it may be amended and supplemented from time to time in accordance with the Indenture, being referred to herein as the "Section 148 Certificate") that complies with the requirements of Section 148 of the Code or applicable successor provisions ("Section 148") and that states the Administration's reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of such Tax-Exempt Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Tax-Exempt Bonds within the meaning of Section 148 (collectively, "Bond Proceeds"). The Borrower covenants to provide, or cause to be provided, such facts and estimates as the Administration reasonably considers necessary to enable it to execute and deliver its Section 148 Certificate including (but not limited to) those updates required in the Loan Proceeds Questionnaire and Certificate. The Borrower further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Tax-Exempt Bonds and will be, to the best of the knowledge of the officers of the Borrower providing such facts and estimates, true, correct and complete as of that date, and (ii) the Borrower will make reasonable inquiries to ensure such truth, correctness and completeness.

The Borrower covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause any of the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148. The Borrower further covenants that it will comply with those provisions of Section 148 that are applicable to the Tax-Exempt Bonds on the date of issuance of such Tax-Exempt Bonds and with those provisions of Section 148 that may subsequently be lawfully made applicable to such Bonds.

The Administration and the Borrower shall hold and invest Bond Proceeds within their control (if such proceeds are invested) in accordance with the expectations of the Administration set forth in the Section 148 Certificate. If the Administration is of the opinion upon receipt of advice of Bond Counsel that it is necessary further to restrict or limit the yield on the investment of any Bond Proceeds in order to avoid any of the Tax-Exempt Bonds being considered "arbitrage bonds" within the meaning of Section 148, the Borrower shall take such action as is necessary to restrict or limit the yield on such investment, irrespective of whether the Borrower is of the same or a different opinion. Upon the request of the Borrower and receipt of advice of Bond Counsel the Administration may, and upon receipt of an approving ruling from the Internal Revenue Service or a decision of a court of competent jurisdiction the Administration shall, take such action as is necessary to remove or modify a restriction or limitation on the yield on the investment of any Bond Proceeds that was formerly deemed necessary. The Administration shall incur no liability in connection with action as contemplated herein so long as the Administration acts in good faith.

The Administration contemplates and will use its best efforts to provide for the payment of rebate or penalties in lieu of rebate with respect to the Tax-Exempt Bonds pursuant to Section 148 from the proceeds of the Tax-Exempt Bonds or investment earnings thereon. However, in the event that funds from this source are inadequate to provide for any such payment of rebate or such penalties, the Borrower agrees to pay to the Administration the portion of the rebate or penalties with respect to any Tax-Exempt Bonds fairly allocable to the Loan (as reasonably determined by the Administration) upon written request of the Administration accompanied by an explanation of the method for allocating any such penalties or rebate.

In addition, the Borrower covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the monies deemed to be proceeds of any other Tax-Exempt Bonds of the Administration that would cause any such Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148. The Borrower further covenants that it will comply with those provisions of Section 148 that are applicable to such other Tax-Exempt Bonds on the date of issuance of such Tax-Exempt Bonds and with those provisions of Section 148 that may subsequently be lawfully made applicable to such Tax-Exempt Bonds. The Borrower shall have no obligation under this paragraph unless advised of such in writing by the Administration.

(l) Compliance With Loan Proceeds Questionnaire and Certificate. Without otherwise limiting the covenants or representations set forth in this Agreement or in the Loan Proceeds Questionnaire and Certificate, the representations set forth in Paragraphs 3 through 9, inclusive, and Paragraphs 11 through 14, inclusive, of the Loan Proceeds Questionnaire and Certificate are hereby incorporated as continuing representations of the Borrower, except to the

extent that the Administration shall receive an opinion from Bond Counsel to the effect that any variation from such representations shall not adversely affect the excludability of interest on any Tax-Exempt Bonds from gross income for federal income tax purposes. The Borrower shall not take or permit to be taken any action or actions which would cause any Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or which would otherwise cause interest on any Tax-Exempt Bonds to be includable in gross income for federal income tax purposes.

(m) Additional Disclosure Information. The Borrower agrees to provide the Administration with such information regarding the Borrower and its finances as the Administration may from time to time request. The Borrower further acknowledges that the Administration may issue one or more series of Bonds pursuant to the Indenture, and that any or all of such Bonds may be secured in part by repayments of the Borrower with respect to the Loan. The Borrower accordingly agrees to provide to the Administration such information regarding the Borrower and its finances as the Administration may from time to time request for inclusion in the official statements or other offering documents to be distributed in connection with the sale of any such Bonds or any annual disclosure document or other informational document prepared from time to time by the Administration to be made available to prospective purchasers or holders of any of such Bonds. The Borrower shall also furnish to the Administration at its request a certificate of an Authorized Officer of the Borrower to the effect that any information so provided or included contains no material inaccuracy or omission in light of the purposes for which such information is provided or included. The Borrower agrees to notify the Administration promptly in writing of (a) any changes in the condition or affairs of the Borrower (financial or other) that would cause any information regarding the Borrower so provided or included in an official statement or any subsequent offering document, annual disclosure document or other informational document of the Administration that the Borrower has had an opportunity to review and certify as to its accuracy, to contain a material inaccuracy or omission in light of the purposes for which such information is so included, and (b) any event set forth in Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as such rule may be amended and supplemented.

(n) Related Financing. The Borrower agrees that the proceeds of any Related Financing shall be expended to pay costs of the Project on a monthly basis proportionately with the proceeds of the Loan, taking into account the total amount of the proceeds of such Related Financing available to pay costs of the Project and the maximum amount of the Loan Commitment. The Borrower agrees to provide the Administration upon its request with such information as the Administration deems reasonably necessary to determine whether the Borrower is in compliance with the provisions of this Section 2.02(n).

## ARTICLE III

### LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

Section 3.01. The Loan. Subject to the provisions of Sections 3.02, 3.03 and 3.08 hereof, the Administration hereby agrees to advance amounts under this Agreement to the Borrower, and the Borrower agrees to borrow and accept from the Administration amounts advanced under this Agreement, in an aggregate principal amount not to exceed the maximum amount of the Loan Commitment set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Administration expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Borrower in accordance with the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Borrower recognizes, however, that the Administration is a governmental entity with limited financial resources and that the Administration's ability to make such advances may be adversely affected by events or circumstances beyond the Administration's control. The Borrower accordingly assumes the risk that monies may not be available to make advances of the Loan to the Borrower, and, in such event, the Borrower specifically agrees that the Administration shall have no obligation to lend any amounts to the Borrower in excess of the amount theretofore advanced to the Borrower.

Section 3.03. (a) Requisitions and Disbursements. Amounts shall be loaned from time to time to pay, or reimburse the Borrower for the payment of, Eligible Project Costs, upon receipt of requisitions of the Borrower. Each such requisition shall (i) state the names of the payees, (ii) describe in reasonable detail the purpose of each payment, (iii) state the amount of each payment (supported by appropriate paid invoices or other evidence satisfactory to the Administration that the amount requisitioned has been paid or has been incurred by the Borrower and is then due), (iv) state that the amount so requisitioned constitutes a part of the Eligible Project Costs and (v) state that no Default or Event of Default under this Agreement has occurred and is continuing; provided, that this section shall not apply to advances made or deemed to have been made as provided in Section 3.03(c) hereof. In no event shall the Administration be obligated to advance to the Borrower any amount so long as any Default or Event of Default under this Agreement shall have occurred and be continuing. The Administration shall not be required to advance monies on more than one day in each month, and the Administration shall not be required to advance monies for the Project sooner than, or in an amount greater than, the schedule of disbursements for the Project shown on the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Administration may require the Borrower to submit requisitions in advance of each such disbursement date in such manner as shall be reasonably acceptable to the Administration.

(b) Conditions Precedent. Before making the first advance of Loan proceeds, the Administration shall receive the following in form and content satisfactory to the Administration:

(i) copies of the Plans and Specifications and of any Change Orders issued through the date of such advance, the general construction contract, and the Project Budget;

(ii) a survey showing the location of existing and proposed easements, rights-of-way and improvements, and the perimeter boundaries of the land upon which the Project will be located, if any Loan proceeds are to be used for acquisition of the land;

(iii) copies of all building permits, if any, pertaining to the Project;

(iv) cost breakdown in trade form showing all subcontracts which represent at least 10 percent of the costs of the Project, and indicating use of the proceeds of the Loan therefor;

(v) a fully executed copy of any contract for the purchase of real property constituting a portion of the Eligible Project Costs described in Exhibit C; and

(vi) evidence satisfactory to the Administration that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Administration's obligation to make any advance of Loan proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

(c) Interest During Construction. In the event that the Administration has consented to permit the Borrower to pay interest on the Loan from proceeds of the Loan during all or a portion of the period of time related to construction of the Project (as itemized in Exhibit C) ("Construction Period Interest"), the Administration shall on each February 1 and August 1 during such period advance to the Borrower an amount equal to the interest on the Loan due on such February 1 or August 1 and not theretofore paid by the Borrower. Any such amount of Construction Period Interest advanced by the Administration shall constitute part of the principal amount of the Loan hereunder immediately upon its advance to the Borrower in accordance with this paragraph. Notwithstanding the advance of any Construction Period Interest to the Borrower in accordance with this Section, the Borrower shall pay directly to the Administration the Administrative Fee on the dates and in the amounts set forth in Section 3.04(c), and no amounts shall be advanced under the Loan for the payment of the Administrative Fee.

Section 3.04. (a) Amounts Payable. The Borrower shall punctually repay the Loan in installments on the dates, in the amounts, and in the manner specified in the Note. The outstanding amount of the Loan shall bear interest at a rate per annum equal to the rate or rates of interest set forth in Exhibit B, and shall be payable in accordance with the amortization schedule as specified in Exhibit B attached hereto and more particularly set out in the Note (which amortization schedule is subject to adjustment in accordance with this Agreement and the Note). On or prior to the Loan Closing Date, the Borrower shall execute the Note to evidence such obligation. In addition, the Borrower shall pay to the Administration an Administrative Fee in accordance with paragraph (c) of this Section.

(b) **Late Charges.** In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Borrower shall pay (i) a late charge for any payment of principal or interest on the Loan that is received later than the tenth day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate set forth in Exhibit B. Amounts payable pursuant to this paragraph (b) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(c) **Administrative Fee.** (i) On the date specified in Exhibit B for the first payment of the Administrative Fee and on each August 1 thereafter that the Note remains outstanding and unpaid to and including the date of final maturity of the Note (each such date, an "Administrative Fee Payment Date"), the Borrower shall pay to the Administration an Administrative Fee. Subject to paragraph (iv) below, the Administrative Fee for any Administrative Fee Payment Date shall be the (A) Administrative Fee set forth in Exhibit B or (B) after any date on which the outstanding principal amount of the Loan Commitment is reduced by the Administration by a notice in writing to the Borrower in accordance with this Agreement (other than by reason of the repayment of the principal of the Loan) the Administrative Fee set forth in a notice from the Administration to the Borrower in connection with such reduction. Any adjustment of the Administrative Fee in accordance with the foregoing shall be prospective only, and the Administration shall in no event be obligated to refund any portion of any Administrative Fee payment theretofore received from the Borrower.

(ii) In prescribing the Administrative Fee for a loan with a term of twenty years or more for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: the Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by the total number of scheduled Administrative Fee Payment Dates. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$5,000,000 and the Percentage Rate were 5%, and the total number of scheduled Administrative Fee Payment Dates were 21, the Administrative Fee to be paid each year would equal:

$$\frac{\$5,000,000 \times .05}{21} = \$11,904.76$$

(iii) In prescribing the Administrative Fee for a loan with a term of less than twenty years for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the

Administration and the Borrower: The Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by 20. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$4,000,000 and the Percentage Rate were 5%, the Administrative Fee to be paid each year would equal:

$$\frac{\$4,000,000 \times .05}{20} = \$10,000.00$$

(iv) The Percentage Rate for each Fiscal Year shall be fixed as a uniform rate for all borrowers receiving loans from the Fund in order to provide sufficient revenues to pay the expenses of the Administration, as approved in the operating budget of the State by the General Assembly of the State; provided, however, that in no event shall the Percentage Rate exceed five percent (5%). In each Fiscal Year the Administration shall review the Percentage Rate then in effect and adjust it for the immediately succeeding Fiscal Year to reflect its approved budget for the immediately succeeding Fiscal Year, a retainage of not more than ten percent (10%) for an operating reserve within the Administration's general account, and other factors as reasonably determined by the Secretary. No later than June 1 following the end of the Session of the General Assembly in each Fiscal Year, the Administration shall notify the Borrower of the newly established Percentage Rate, which shall be the Percentage Rate applicable to the immediately succeeding Fiscal Year, and of any change in the amount of the Administrative Fee payable by the Borrower in such Fiscal Year as a result of the application of such Percentage Rate.

Section 3.05. Sources of Payment. (a) Dedicated Revenues. In accordance with Section 2.02(f) hereof, the principal of and interest on the Note, and any other amounts due from time to time under this Agreement, shall be payable in the first instance from the dedicated source of revenues described in Exhibit E attached hereto.

(b) General Obligation. In addition, the Note constitutes a general obligation of the Borrower, to the payment of which the full faith and credit and taxing power of the Borrower are pledged.

(c) State Withholding. As further security for the payment of the Note and any other amounts due hereunder, the Borrower hereby pledges the following to the Administration and grants a security interest therein to the Administration: (i) as authorized by Section 9-1606(d) of the Act, the Borrower's share of any and all income tax revenues collected by the State from time to time that would otherwise be payable to the Borrower, and (ii) to the maximum extent permitted by law, any and all other tax revenues, grants, and other monies that the Borrower is or may from time to time be entitled to receive from the State or that may at any time be due from the State, or any department, agency, or instrumentality of the State, to the Borrower. The Borrower further agrees that, upon the occurrence of an Event of Default, among other things, the State Comptroller and the State Treasurer may (i) withhold any such amounts that the Borrower is then or may thereafter be entitled to receive and (ii) at the direction of the Administration, apply the amounts so withheld to the payment of any amounts then due or thereafter becoming due hereunder (including, without

limitation, payments under the Note) until the Borrower's obligations hereunder have been fully paid and discharged.

Section 3.06. Unconditional Obligations. The obligations of the Borrower to make payments under the Note as and when due and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any Governmental Authority, any failure of the Administration, the Department or the State to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Agreement, or otherwise or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Administration, the Department or the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

Section 3.07. Loan Commitment. The Borrower acknowledges and agrees that the monies attributable to the Borrower's Loan Commitment are the property of the Administration and are held by the Administration to provide for advances to be made to the Borrower in accordance with this Agreement. Without limiting the foregoing, the Borrower acknowledges and agrees that monies attributable to the Borrower's Loan Commitment may at the discretion of the Administration be pledged or applied to the payment of Bonds.

Section 3.08. Reduction of Loan Commitment. The Loan Commitment is subject to reduction in accordance with the provisions of this Section 3.08.

(a) Any portion of the Loan Commitment not advanced to the Borrower under Section 3.03 of this Agreement at the later of (1) two years from the date of this Agreement and (2) the earlier of one year following (i) actual completion of construction of the Project or (ii) the estimated completion date specified on Exhibit B attached hereto, shall no longer be available to be advanced to the Borrower and the amount of the Loan Commitment shall be reduced by an amount equal to the portion of the Loan Commitment not advanced, unless otherwise agreed to by the Administration in writing.

(b) The Administration may, by a notice in writing delivered to the Borrower, reduce the amount of the Loan Commitment if the Administration should for any reason determine that it will be unable to fund the full amount of the Loan Commitment (including, without limitation, a determination that the Eligible Project Costs to be paid with proceeds of the Loan are expected to be less than the maximum amount of the Loan Commitment), or if it determines that the Borrower is not proceeding satisfactorily and expeditiously with the Project in accordance with schedules and

plans provided to the Administration, or if it determines that the Borrower is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions. Such notice shall specify the reason for and the amount of the reduction.

(c) Any reduction in the amount of the Loan Commitment shall not affect the obligation of the Borrower to repay the Loan in accordance with the provisions of this Agreement and the Note.

(d) The Administration shall advise the Borrower in writing of any reduction in the amount of the Loan Commitment. In the event of any such reduction, the Borrower shall repay the Loan in accordance with such revised principal amortization schedule (prepared by applying such amount to reduce the installments of principal due under the Note in inverse order of payment, such that any such reduction is applied first to the last installment of principal due under the Note) as may be prescribed by the Administration in accordance with the provisions of the Note executed in connection therewith. The Administration may require, and the Borrower shall deliver, such certificates, documents, opinions and other evidence as the Administration may deem necessary or advisable in connection with any such reduction in the Loan Commitment. If a new Note is delivered in connection with any such reduction, the Administration shall cancel the Note initially delivered to the Administration by the Borrower pursuant to this Agreement.

Section 3.09. Disclaimer of Warranties. The Administration makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the Administration be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 3.10. Prepayments. The Loan shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the EPA's State Revolving Fund Program Regulations. Otherwise, the Loan may be prepaid by the Borrower, in whole or in part, only at such times and in such amounts, and upon the payment by the Borrower of such prepayment premium or penalty, as the Director, in his or her discretion, may specify and approve.

Section 3.11. Assignment. Neither this Agreement nor the Note may be assigned by the Borrower for any reason without the prior written consent of the Administration. The Administration may transfer, pledge or assign the Note and any or all rights or interests of the Administration under this Agreement without the prior consent of the Borrower.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Borrower to pay any amount required to be paid hereunder or under the Note when due, which failure shall continue for a period of 20 days;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Administration, unless the Administration shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Administration will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) if (i) at any time any representation made by the Borrower in Section 2.01(f)(ii) is incorrect, or (ii) any other representation made by or on behalf of the Borrower contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Loan Commitment or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Borrower; (ii) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (iii) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Borrower (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Borrower by any court of competent jurisdiction under any law for the relief of debtors .

Section 4.02. Notice of Default. The Borrower shall give the Administration prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Administration shall have the right to take one or more of the following remedial steps:

(a) declare all amounts due hereunder (including, without limitation, payments under the Note) to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

Section 4.04. Attorneys' Fees and Other Expenses. The Borrower shall on demand pay to the Administration the reasonable fees and expenses of attorneys and the Trustee and other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Borrower upon an Event of Default.

Section 4.05. Application of Monies. Any monies collected by the Administration pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

Section 4.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Administration is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administration to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit B attached hereto and to the Administration at Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Administration and the Borrower and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Borrower shall, at the request of the Administration, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement and the Note.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Loan. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only if and to the extent permitted by the Indenture and by an instrument in writing jointly executed by the Administration and the Borrower.

Section 5.10. Disclaimer of Relationships. The Borrower acknowledges that the obligation of the Administration is limited to making the Loan in the manner and on the terms set forth in this Agreement. Nothing in this Agreement nor any act of either the Administration or of the Borrower shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Borrower and the Administration.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Administration's execution.

Section 5.12. Term of this Agreement. Unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Borrower and the Administration, this Agreement shall continue and remain in full force and effect until the Loan, together with interest and all other sums due and owing in connection with this Agreement or the Loan, have been paid in full to the satisfaction of the Administration. Upon payment in full of the Loan together with interest and all other sums due and owing in connection with this Agreement or the Loan from any source whatsoever, this Agreement shall be terminated.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Borrower of the planning, construction or carrying out of the Project shall not relieve the Borrower of any obligations under this Agreement and any other documents executed in connection with the Loan.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

(SEAL)

WITNESS:

MARYLAND WATER QUALITY FINANCING  
ADMINISTRATION

\_\_\_\_\_

\_\_\_\_\_  
Jag Khuman  
Director

(SEAL)

ATTEST:

BORROWER: \_\_\_\_\_

\_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Local Attorney for  
Borrower

\_\_\_\_\_  
Helen E. Akparanta  
Senior Assistant Attorney General

**EXHIBIT A**  
**to Loan Agreement**

Borrower Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Project Name: \_\_\_\_\_

**THIS PROJECT HAS BEEN FINANCED WITH THE USE OF FEDERAL FUNDS UNDER CFDA #: 66.458 AND THE BORROWER MAY BE SUBJECT TO A SINGLE AUDIT PURSUANT TO OMB CIRCULAR A-133 TO BE UNDERTAKEN BY AN INDEPENDENT AUDITOR.**

**CONDITIONS TO INITIAL ADVANCE UNDER SECTION 3.03(b)(vi) OF LOAN AGREEMENT:**

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT:**

The provisions of this Exhibit A shall be deemed to be a part of the foregoing Agreement as if set forth in full therein. In the case of any conflict between this Exhibit A and any provision thereof, the provisions of this Exhibit A shall be controlling, notwithstanding any other provisions contained in the Agreement.

1. The Borrower shall begin construction of the Project by December 31, 2009, and the Project shall be completed without unnecessary delays and within the approved budget.
2. The Borrower agrees to comply with the Buy American Requirement of ARRA, which provides that all of the iron, steel, and other manufactured goods used as materials in the Project are produced or manufactured in the United States, unless a waiver is granted.
3. The Borrower agrees to comply with the provisions of the "MDE Insert" provided by the Department, and shall include the "MDE Insert" in bidding documents that outlines certain contractor responsibilities (e.g. Federal wage rates, Buy American provision, Minority & Women Business participation, Debarment, Anti-kickback etc.)
4. The Borrower shall post a sign at the Project site displaying the ARRA logo in the manner and format prescribed by the Administration prior to initiating construction.
5. The Borrower agrees to allow a representative of the U.S. Office of the Inspector General to (a) examine any of its records, records of its contractors, and subcontractors, and (b) interview

any of its officers or employees, contractors, or subcontractors regarding this transaction. The Borrower is aware that providing false, fictitious or misleading information with respect to the receipt and disbursement of ARRA Funds may result in criminal, civil or administrative fines and/or penalties and any findings or audits shall be posted on the United States Inspector General's website and linked to [www.recovery.gov](http://www.recovery.gov), except information protected from disclosure.

6. The Borrower agrees to require, in its contract documents, that all contractors and subcontractors maintain all project, payroll and accounting records relating to the Loan for a minimum period of three years after final payment on the Project, and shall include in the contract documents that the State or federal government may audit any records in conjunction with the Project, in person or by requesting a copy of the records.

7. The Borrower agrees that no ARRA Funds are to be used in lobbying the federal government or in litigation against the United States unless authorized under existing law. The Borrower shall abide by OMB Circulars A-21, A-87 or A-122 which prohibit the use of federal grant funds (such as ARRA Funds) for litigation against the United States or for lobbying or other political activities.

8. The Borrower agrees to comply with (a) 40 CFR Part 34: *New Restrictions on Lobbying*. The Borrower is required to submit certifications and disclosure forms to the Administration, which forms shall be provided to the Borrower; and (b) the Byrd Anti-Lobbying Amendment, and understands that any prohibited expenditure under Title 40 CFR Part 34 or failure to file certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

9. The Borrower certifies that it is not Debarred or Suspended from receiving financial assistance and agrees to comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 regarding Debarment and Suspension.

10. The Borrower agrees to comply with 42 U.S.C. 6962, Section 6002 which requires that preference be given in procurement programs to purchase of specific products containing recycled materials in any acquisition of items exceeding \$10,000 or where the quantity of items in the preceding year was \$10,000 or more.

11. The Borrower agrees to comply with Section 1553 of ARRA regarding protection of whistleblowers.

12. The Borrower shall promptly refer to EPA's Inspector General any credible evidence that an employee, agent, contractor, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving ARRA Funds.

13. The Borrower shall not use ARRA Funds for a casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

14. The Borrower agrees to comply with the Reporting and Registration Requirements of Section 1512 of ARRA.

15. The Borrower agrees to comply with the Wage Rate Requirements of Section 1606 of ARRA and shall include specific language regarding compliance in its contracts and subcontracts.

16. The Borrower shall ensure that payments made to consultants by the Borrower, or by any of its contractors or subcontractors, is limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18) of the federal government, to be adjusted annually.

17. The Borrower shall maintain records that separately identify the expenditure of ARRA Funds, and if subject to a Single Audit, the Borrower shall specifically identify the expenditure of ARRA Funds on the Schedule of Expenditures of Federal Awards (SEFA).

18. This Agreement is subject to all applicable provisions of ARRA and any guidance documents and regulations promulgated thereunder.

**EXHIBIT B**  
**to Loan Agreement**

Borrower Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Project Name: \_\_\_\_\_

**DESCRIPTION OF THE LOAN**

- (1) Project Name: \_\_\_\_\_
- (2) Principal Amount of Loan Commitment: \$ \_\_\_\_\_
- (3) Rate of Interest: \_\_\_\_%
- (4) Amortization Schedule:
  - (a) \_\_\_\_ years.  
First Principal Payment Date: \_\_\_\_\_
  - (b) Level Principal \_\_\_\_; or  
Level Debt Service \_\_\_\_\_.
- (5) Annual Administrative Fee: \$ \_\_\_\_\_, beginning \_\_\_\_\_.
- (6) Estimated Completion Date of Project: \_\_\_\_\_
- (7) Default Rate: \_\_\_\_\_%
- (8) Description of Project: \_\_\_\_\_

**EXHIBIT C**  
**to Loan Agreement**

Borrower Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Project Name: \_\_\_\_\_

**PROJECT BUDGET**

**Breakdown of Eligible Project Costs:**

**A. Portion of Eligible Project Costs to be directly financed:**

<u>Description</u>	<u>Allocated Amount of Loan</u>
--------------------	-------------------------------------

**B. Portion of Eligible Project Costs for which Borrower will be reimbursed at closing, which the Borrower hereby certifies were paid or incurred prior to the date of the Agreement, in anticipation of being reimbursed through a loan from the Administration (and subject to compliance with Section 3.03(a) of the Agreement):**

<u>Description</u>	<u>Allocated Amount of Loan</u>
--------------------	-------------------------------------

**C. Construction Cash Draw Schedule**

OPINION OF BORROWER'S COUNSEL

[LETTERHEAD OF COUNSEL TO BORROWER]

[CLOSING DATE]

Maryland Water Quality  
Financing Administration  
1800 Washington Blvd.  
Baltimore, Maryland 21230-1718

Ladies and Gentlemen:

We are counsel to [NAME OF BORROWER], a [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower") in connection with the loan (the "Loan") by Maryland Water Quality Financing Administration (the "Administration") to the Borrower of funds to finance all or a portion of the costs of a project (the "Project") described in Exhibit B to the Loan Agreement dated as of \_\_\_\_\_, 2009 (the "Agreement") by and between the Administration and the Borrower.

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the Agreement and the Borrower's \$ \_\_\_\_\_ Water Quality Bond, Series 2009, (ARRA) dated \_\_\_\_\_, 2009 (the "Note"). The Agreement and the Note are referred to herein collectively as the "Loan Documents". Based on such review, and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a validly created and existing [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland, possessing authority to acquire, construct and operate the Project and to enter into the Loan Documents and perform its obligations thereunder.

(b) The Borrower has duly authorized, executed and delivered the Loan Documents and, assuming due authorization, execution and delivery of the Agreement by the Administration, the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

(c) The Note is a general obligation of the Borrower to which its full faith and credit is pledged, payable if and to the extent not paid from other sources as described in the Agreement from ad valorem taxes, unlimited as to rate and amount, which the Borrower is empowered to levy on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation by the Borrower.

(d) The Loan Documents and the enforceability thereof are subject to bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity.

(e) To the best of our knowledge after reasonable investigation, the Borrower has all necessary licenses, approvals and permits required to date under federal, state and local law to own, construct and acquire the Project.

(f) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, the acquisition and construction of the Project nor the fulfillment of or compliance with the terms and conditions of the Loan Documents conflicts with or results in a breach of or default under any of the terms, conditions or provisions of the charter or laws governing the Borrower (including any limit on indebtedness) or, to the best of our knowledge, any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or by which the Borrower or its properties are otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Documents.

(g) To the best of our knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or threatened against or affecting the Borrower that, if adversely determined, would materially affect the ability of the Borrower to perform its obligations under the Loan Documents, which has not been disclosed in writing to the Administration.

We hereby authorize Bond Counsel to the Administration to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

**EXHIBIT E**  
**to Loan Agreement**

**Borrower Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Attention:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_

**DESCRIPTION OF DEDICATED REVENUES**

The identification of the dedicated source or sources of revenues above is intended to specify a source or sources of revenues available in sufficient amount to provide for the payment of the costs of operating and maintaining the Project as well as the payment of the costs of debt service of any borrowing incurred to finance the Project. The specification of a dedicated source or sources of revenues above is not intended to constitute an undertaking by the Borrower to pledge, segregate or otherwise set aside any specific funds of the Borrower with the expectation that such funds would be used to pay the debt service on the Loan.

EXHIBIT F  
to Loan Agreement

\$(MAX. AMT.)

R-1

REGISTERED

UNITED STATES OF AMERICA  
STATE OF MARYLAND

[NAME OF BORROWER]  
WATER QUALITY BOND, SERIES 2009 (ARRA)  
Dated \_\_\_\_\_, 2009

PAYMENTS OF PRINCIPAL AND INTEREST ON THIS BOND ARE MADE  
BY CHECK, DRAFT OR ELECTRONIC FUNDS TRANSFER TO THE  
REGISTERED OWNER AND IT CANNOT BE DETERMINED FROM THE FACE  
OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF  
OR INTEREST ON THIS BOND HAS BEEN PAID.

REGISTERED OWNER: Maryland Water Quality Financing  
Administration

\_\_\_\_\_, a [body politic and corporate] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower"), hereby acknowledges itself obligated to pay to the Registered Owner shown above, the principal amount of \$\_\_\_\_\_ (the "Maximum Principal Amount") or so much thereof as shall have been advanced from time to time under the terms of the Loan Agreement dated as of \_\_\_\_\_, 2009 (the "Loan Agreement") by and between the Borrower and the Maryland Water Quality Financing Administration (the "Administration"), plus interest on the unpaid principal advanced under the terms of the Loan Agreement at the rate of \_\_\_\_\_ per centum (\_\_\_%) per annum.

The principal advanced under the Loan Agreement shall be paid in installments on the dates and in the amounts as set forth in the following schedule, as such schedule may be amended in accordance with the terms hereof:

<u>Due</u> <u>[February 1]</u>	<u>Principal</u> <u>Amount</u>	<u>Due</u> <u>[February 1]</u>	<u>Principal</u> <u>Amount</u>
2010		2019	
2011		2020	
2012		2021	
2013		2022	
2014		2023	
2015		2024	
2016		2025	
2017		2026	
2018		2027	

If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) in accordance with Section 3.08 of the Loan Agreement, the Maximum Principal Amount shall be reduced accordingly and the Maximum Principal Amount as so reduced shall be amortized in accordance with Section 3.08 of the Loan Agreement. The Administration shall deliver, and the Borrower shall acknowledge in writing, a certificate setting forth such reamortized payment schedule, which shall be attached hereto and shall replace and supersede for all purposes the foregoing payment schedule. Any such reduction shall not affect the obligation of the Borrower to pay the principal of and interest on this bond as and when the same shall become due.

Notwithstanding the foregoing, all outstanding unpaid principal amounts advanced under the Loan Agreement, if not previously due hereunder, shall be due on that date which is 20 years after the date of completion of the Project (as defined in the Loan Agreement), as certified by the Borrower to the Administration pursuant to Section 2.02(d) of the Loan Agreement.

Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the date of the respective advances of such principal amount, and shall be paid on \_\_\_\_\_, 200\_, and semiannually thereafter on the 1st day of \_\_\_\_\_ and \_\_\_\_\_ in each year until the principal amount hereof has been paid.

This bond is subject to prepayment only in accordance with Section 3.10 of the Loan Agreement.

Both the principal of and interest on this bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the [INSERT BORROWER'S AUTHORIZED OFFICER].

This bond is issued pursuant to and in full conformity with the provisions of [INSERT BORROWER'S LOCAL ACT(S)] and the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as amended), and by virtue of due proceedings had and taken by the Borrower, particularly [AN ORDINANCE AND OR A RESOLUTION] (numbered \_\_\_\_ ) [INSERT BORROWER'S AUTHORIZING ORDINANCE OR RESOLUTION] (collectively, the "Resolution") adopted by Borrower.

This bond, together with the Loan Agreement, evidences the Loan (as defined in the Loan Agreement) to the Borrower from the Maryland Water Quality Financing Administration. In accordance with the Loan Agreement, the principal amount of the Loan, being the amount denominated as principal under this bond, is subject to reduction or adjustment by the Administration in accordance with the Loan Agreement.

The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the prompt payment of the principal of and interest on this bond according to its terms, and the Borrower does hereby covenant and agree to pay the principal of and interest on this bond at the dates and in the manner prescribed herein.

This bond is transferable only after the first principal payment date as set forth above or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the Borrower at the office of the [INSERT BORROWER'S AUTHORIZED OFFICERS] by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the [INSERT BORROWER'S AUTHORIZED OFFICER], duly executed by the registered owner or his duly authorized attorney. The Borrower shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Borrower may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Maryland and the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, this bond has been executed by the manual signature of the [INSERT AUTHORIZED OFFICERS] and the seal of the Borrower has been affixed hereto, attested by the manual signature of the [INSERT AUTHORIZED OFFICER], all as of the \_\_ day of \_\_\_\_, 2009.

(SEAL)

ATTEST:

\_\_\_\_\_

By:

\_\_\_\_\_  
[OFFICER]

\_\_\_\_\_  
[OFFICER]

Appendix I  
Council Bill No. 56-2009

PROJECT Number	Project Description	Proceeds of the Bond	Other Sources of Funds	Estimated Cost of Project
S6175	FY2001 Little Patuxent Parallel Sewer	\$3,530,000 (W)	\$7,130,000 (C) \$800,000 (I) \$66,770,000 (M)	\$78,230,000

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on November 3, 2009.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2009.

Stephen M. LeGendre, Administrator to the County Council