

MARYLAND WATER QUALITY FINANCING ADMINISTRATION

DEPOSIT AGREEMENT

THIS DEPOSIT AGREEMENT (this “Agreement”) is made this _____ day of _____, 20____, by and between the MARYLAND WATER QUALITY FINANCING ADMINISTRATION (the “Administration”), a unit of the Department of the Environment of the State of Maryland, and _____, a financial institution qualified to conduct business in Maryland (the “Lender”).

RECITALS

The Maryland Water Quality Financing Administration Act (Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended) authorizes the Administration to establish a Linked Deposit Program (the “Program”) whereby funds of the Administration are invested in interest earning accounts with a lender to promote loans to borrowers for the purpose of controlling nonpoint sources of pollution and protecting the quality of the waters of the State of Maryland (the “State”) in accordance with the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

The Administration has approved a deposit under the Program in the amount of _____ dollars (\$ _____) to be deposited with the Lender for a term not to exceed _____ years and evidenced by a Certificate of Deposit and/or other type of documentation evidencing an interest-bearing deposit account (the “Deposit”).

The Lender agrees to make a loan to _____ (the “Borrower”) in the amount corresponding to the Deposit placed with the Lender at a fixed interest rate which shall be at least _____ percentage points below its prevailing market rate for similar loans and for a term of _____ (_____) years (the “Loan”). The proceeds of the Loan are to be used exclusively to finance (description of project) _____.

The Administration and the Lender have entered into this Agreement to set forth the terms and conditions of the placement of the Deposit with the Lender under the Program.

THEREFORE, in consideration of the respective undertakings of the parties to the transaction described in this Agreement, the Administration and the Lender agree as follows:

ARTICLE I
TERMS AND CONDITIONS

Section 1.1. Placement of Deposit. The Administration hereby agrees to place a Deposit with the Lender in the amount of \$ for a term of () years at a fixed rate that is percentage points below the Lender's prevailing market rate for equivalent deposits, which is presently percent (%) per annum. The rate of interest payable on the Deposit is percent (%) per annum. The Deposit shall be placed with the Lender no earlier than thirty (30) days prior to the closing of the Loan.

Section 1.2. Extension of Loan. The Lender hereby agrees to make the Loan to the Borrower in the maximum principal amount of \$ for a term of () years and to charge the Borrower a fixed interest rate, which is at least percentage points below the Lender's prevailing market rate for similar loans, which is presently percent (%) per annum. The rate of interest on the Loan is percent (%) per annum.

ARTICLE II
REPRESENTATION AND WARRANTIES BY THE ADMINISTRATION

Section 2.1 Representations and Warranties of the Administration. The Administration hereby represents and warrants the following to the Lender:

A. Organization of the Administration. The Administration is a unit of the Department of the Environment of the State of Maryland.

B. Authority. Under the provisions of the Act, as amended, the Administration has the power to enter into this Agreement and the transaction contemplated hereunder and to carry out its obligations hereunder.

C. Necessary Actions. By proper action, the Administration has (1) approved the purposes for which the loan proceeds are to be used, (2) approved the placement of the Deposit under the Program with respect to the transaction as described herein, and (3) duly authorized the execution of this Agreement.

D. Compliance with Laws. The Administration is not in violation of any laws of the State which would affect its existence or its ability to enter into this Agreement or to carry out its obligations hereunder.

ARTICLE III
COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE LENDER

Section 3.1 Representation and Warranties of the Lender. The Lender hereby represents, warrants, and covenants the following to the Administration:

A. Authority of Lender. The Lender has full corporate power and authority to enter into and execute and deliver this Agreement and to enter into the transactions contemplated hereunder and to carry out and perform its obligations hereunder.

B. Execution of Documents. This Agreement has been duly and properly executed by the Lender.

C. Use of Proceeds. The Lender warrants that its loan agreement with Borrower requires Borrower to use the proceeds of the Loan solely for the purposes approved by the Administration. Failure by the Borrower to use the loan proceeds for the purposes approved by the Administration or an unreasonable delay in completing the Project shall constitute an event of Default and the Administration shall have the right to declare the unpaid principal of the Deposit, together with interest, and all other sums due hereunder to be immediately due and payable in full. Furthermore, Lender agrees that any Loan proceeds not utilized or drawn down by the Borrower shall be returned to the Administration at the next scheduled return of principal on the Deposit as provided in Section 4.2 herein.

D. Qualified Lender. The Lender is eligible to make commercial loans, is a public depository of State funds, is insured by the Federal Deposit Insurance Corporation and has executed an Agency Bank Account Services Contract with the Maryland Treasurer's Office.

E. Deposit Insured. To the maximum extent permitted by law, the Deposit shall at all times be insured by the Federal Deposit Insurance Corporation.

F. No Assignment or Transfer of Loan. Until this Agreement has been terminated and has no further force and effect, the Lender will not assign, sell or transfer its interest in the Loan to any other lender so long as the Deposit is in effect.

G. Fees to Borrower. The Lender will not charge the Borrower any other sums for origination, placement or discount fees or other similar charges as additional compensation for the Loan that are in excess of those reasonable and customary sums, if any, charged other borrowers for similar loans. Such additional sums, if any, that the Borrower is obligated to pay the Lender are .

H. Collateralization of Deposit. The Lender shall comply with all requirements of State law relating to deposits of State money including, without limitation, Sections 6-201 through 6-212 of the State Finance and Procurement Article of the Annotated Code of Maryland and all acts supplemental thereto or amendatory thereof.

I. Loan Reporting Requirements. No later than August 1 of each year hereafter, Lender shall submit to the Administration an annual report indicating the Loan's performance status, outstanding principal balance and the status of the completion progress of the project for which the Loan was made.

ARTICLE IV PERIODIC PAYMENT OF INTEREST, RETURN OF PRINCIPAL TO AND REDEMPTION OF DEPOSIT BY THE ADMINISTRATION

Section 4.1 Payment of Interest on the Deposit. Lender shall pay the Administration interest on the principal amount of the Deposit existing from time to time at such rate agreed upon herein, said interest being payable on the first day of each February hereafter, commencing February 1, 20 .

Section 4.2 Periodic Return of Principal of the Deposit to Administration. Lender shall pay to the Administration on the first day of each February hereafter, as a return of principal of the Deposit, an amount equal to the sum of all scheduled payments of principal Borrower is obligated to pay Lender pursuant to their loan agreement. Said amount shall be calculated by accounting for all such scheduled payments of principal consistent with the schedule attached hereto as Exhibit A hereof. Such payments shall commence February 1, 20 .

Section 4.3 Disbursal of Deposit to Administrations in the Event of Prepayment of the Loan. Anything contained herein to the contrary notwithstanding, in the event the Loan is prepaid in full prior to its scheduled maturity, the Lender shall notify the Administration within five (5) business days of the date all obligations of principal and interest due on the Loan are paid to the Lender. Within five (5) business days after receipt of written instructions from the Administration or the State Treasurer, the Lender shall disburse all remaining funds in the Deposit together with any accrued interest in compliance with such instructions.

Section 4.4 Disbursal of Deposit to Administrations in the Event of Default. Anything contained herein to the contrary notwithstanding, in the event the loan proceeds are used for a purpose other than a purpose approved by the Administration or there has been an unreasonable delay in completing the Project, the Lender shall notify the Administration within five (5) business days. In the event of a Default, the Administration shall have the right to declare the unpaid principal of the Deposit, together with interest, and all other sums due hereunder to be immediately due and payable in full.

ARTICLE V
NO LIABILITY FOR ADMINISTRATION, DEPARTMENT OR STATE

Section 5.1 No Liability. Neither the Administration, the Maryland Department of the Environment, the State Treasurer nor the State of Maryland are liable to Lender for payment of principal or interest on the Loan to the Borrower.

Section 5.2 Delay or Default. A delay in payment or a default by the Borrower shall not affect the terms and conditions of this Agreement in any way.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Applicable Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maryland.

Section 6.2. Notice. Notice shall be written communications given by personal delivery or by certified mail, postage prepaid, return receipt requested, addressed to the person to whom such communication is to be given, at the following addresses or such other address as may be later specified:

Administration: Maryland Water Quality Financing Administration
1800 Washington Boulevard, Suite 515
Baltimore, Maryland 21230-1718
Attention: Theresa A. Wilson, Interim Director

Lender:

Attention:

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under their respective seals, as of the day and year first above written.

WITNESS:

MARYLAND WATER QUALITY FINANCING
ADMINISTRATION

By: _____ (SEAL)
Theresa A. Wilson, Interim Director

Approved as to form and legal sufficiency this _____ day of _____, 20__.

Mary R. Sheppard-Walker
Assistant Attorney General

WITNESS:

(LENDER)

By: _____ (SEAL)
Name:
Title: