

**WATER POLLUTION CONTROL
REVOLVING LOAN FUND LOAN AGREEMENT**

THIS AGREEMENT is executed by the STATE OF MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY (Commission) acting through the DEPARTMENT OF ENVIRONMENTAL QUALITY (Department) and the CITY OF TUPELO, existing as a local government or agency (Loan Recipient) under the laws of the State of Mississippi.

WITNESSETH:

WHEREAS, pursuant to the Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, Sections 49-17-81, et seq. Mississippi Code Annotated (1972) (the "Act"), the Department is authorized to make loans to certain local government agencies to finance the construction of eligible pollution control projects; and

WHEREAS, the Loan Recipient has submitted a facilities plan and has made application for the financing of a particular Project (the "Project"), and the Department has determined that, based upon these submittals, such Project appears to meet all requirements for a loan; and

WHEREAS, pursuant to the Act, this Loan Agreement shall retain payment priority and all Loan Repayment shall be made prior to, the principal or interest on any bonds subsequently issued by the Loan Recipient in connection with the eligible pollution control project that is the subject of this Loan Agreement.

NOW, THEREFORE, in consideration of the Department loaning money to the Loan Recipient, in the principal amount and the covenants hereinafter set forth, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS. Words and terms used herein shall have the meanings set forth in the Water Pollution Control Revolving Loan Fund Regulations and as set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this Agreement, as amended.
- (2) "Loan" shall mean the amount of money to be loaned pursuant to this Agreement.

(3) "Loan Repayment" shall mean the monthly (or "semi-annual" if Loan Repayment is made through Withholding of Homestead Exemption) payment due from the Loan Recipient to the Department, comprised of principal and interest.

(4) "Project" shall mean facilities funded under this Agreement as described in Article IX.

(5) "Revenues" shall mean all income or earnings received by the Loan Recipient from the ownership or operation of its facilities, including investment income, all as calculated in accordance with generally accepted accounting principles as prescribed by the State Auditor. Revenues shall not include proceeds from the sale or other disposition of any part of the facilities, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the facilities.

(6) "WPCRLF Regulations" shall mean the Water Pollution Control Revolving Loan Fund Program Regulations effective for projects funded on and after December 19, 2004.

1.02. CORRELATIVE WORDS. Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS. The Loan Recipient warrants, represents and covenants that:

(1) The Loan Recipient has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Loan Recipient is not subject to bankruptcy, insolvency, or reorganization and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would restrain or enjoin it from entering into, or complying with this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body pending which seeks to restrain or enjoin the Loan Recipient from entering into or complying with this Agreement.

(4) The Loan Recipient knows of no reason why any future required permits, real property interests, or approvals for the Project cannot be obtained within the time frame required by this loan agreement.

(5) The Loan Recipient shall undertake the Project on its own responsibility. The Loan Recipient is responsible for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The

Department's approval of any document does not relieve the Loan Recipient or any others of any liabilities or responsibilities. Such approval of any document is for loan eligibility or allowability purposes only and does not establish or convey any such liability or responsibility.

(6) The Loan Recipient has, or will have prior to advertisement of the project for bids, a procurement protest procedure in accordance with Appendix I of the WPCRLF Regulations for dealing with third parties and shall independently resolve any bid protest or other dispute between the Loan Recipient and a third party.

(7) The financial information delivered by the Loan Recipient to the Department is current and correct. The Loan Recipient shall provide the Department with additional financial information via the audits required by Section 49-17-87 of the Mississippi Code and other notification of changing conditions relating to the Loan Recipient's ability to repay this Loan.

(8) The Loan Recipient agrees to design, acquire land and easements, and construct the Project in accordance with the Project schedule, delays incident to strikes, riots or acts of God beyond the reasonable control of the Loan Recipient excepted.

(9) The Loan Recipient covenants that this Agreement is entered into for the purpose of borrowing moneys to design, acquire land and easements, construct, and place in operation the Project which will in all events serve a public purpose. The Loan Recipient covenants that it will, under all conditions, complete and place the Project in operation to the end that the public need will be met.

(10) The Loan Recipient must accept flows from any community or area designated in the approved facilities plan to be served by the system funded by the WPCRLF loan, generally without regard to any condition other than user charges developed on an equitable cost basis and the terms of the interlocal agreements required by the WPCRLF Regulations.

(11) The Loan Recipient covenants that it has provided the Department a list of any and all issuances of bonds, the proceeds of which have or will be used in connection with the Project in any respect.

(12) The Loan Recipient covenants in the event there are any future bond issuances where proceeds are used in connection with the Project in any respect that Payments under this Agreement shall be made prior to the payments of principal or interest on those bonds.

(13) The Loan Recipient covenants and agrees that it shall provide the Department with notice within ten (10) days of the first official action regarding the Loan Recipient's intent to issue bonds in connection with the Project whether contemporaneous with or subsequent to the execution of this Agreement.

(14) The Loan Recipient covenants and agrees that, in the event that Loan Recipient issues bonds in connection with the Project, the Loan Recipient shall subordinate said bonds to the terms of this Agreement.

(15) The Loan Recipient covenants and agrees to allow the Department to execute and file for record a Uniform Commercial Code (UCC-1) Financing Statement pledging all personal property and fixtures related to the Project as further security for the Loan Repayment pursuant to the terms of this Agreement, a copy of the UCC-1 is attached hereto as Exhibit A. Upon execution, the UCC-1 shall be filed in the Land Records of Lee County, Mississippi.

(16) The Loan Recipient covenants and agrees to enter into a Memorandum of Agreement with the Department for the purpose of providing notice of this Agreement, a proposed copy of the Memorandum of Agreement is attached hereto as Exhibit B. Upon execution, the Memorandum of Agreement shall be filed for record in the Land Records of Lee County, Mississippi.

2.02. COMPLIANCE WITH STATE STATUTES AND REGULATIONS. The Loan Recipient agrees to comply with all applicable state statutes and regulations including, but not limited to, the WPCRLF Regulations. The WPCRLF Regulations are attached hereto and made a part hereof for all purposes.

2.03. PROHIBITION AGAINST ENCUMBRANCES. The Loan Recipient is prohibited from selling, leasing or disposing of any part of the Project which would materially reduce its operational integrity unless the written consent of the Department is first secured. The Loan Recipient is also prohibited from selling, leasing or transferring ownership of all or a substantial portion of the Project to another entity unless the written consent of the Department is first secured.

2.04. LOCAL FUNDS. In addition to the proceeds of this Loan, the Loan Recipient covenants that it has obtained, or will obtain sufficient moneys from other sources to complete and place the Project in operation. Should the Department not award additional loan funds, this shall not constitute a waiver of the Loan Recipient's covenants to complete and place the Project in operation.

ARTICLE III - OPERATION AND FISCAL INTEGRITY OF THE SYSTEM

3.01. OPERATION AND MAINTENANCE OF THE PROJECT. The Loan Recipient shall operate and maintain the Project in a proper, sound and economical manner and shall promptly make all necessary repairs and replacements.

3.02. ADDITIONS AND MODIFICATIONS. The Loan Recipient may make any additions, modifications or improvements to the Project which it deems desirable and which do not materially reduce the operational integrity of any part of the Project. All such additions, modifications, or improvements must be approved by the Department and, if approved, shall become part of the Project.

3.03. **COLLECTION OF REVENUES.** The Loan Recipient shall use its best efforts to collect all rates, fees and other charges due to it. The Loan Recipient shall establish liens on premises served by the Project for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Loan Recipient shall, to the full extent permitted by law, cause to discontinue the services of the Project and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Project rates, fees and other charges. The Loan Recipient shall comply and require compliance with its approved User Charge System during the life of the Project.

3.04. **LOAN RECIPIENT ACCOUNTING AND AUDITING PROCEDURES.** The Loan Recipient shall maintain project accounts in accordance with generally accepted accounting principles as prescribed by the State Auditor.

ARTICLE IV - DEFAULTS AND REMEDIES

4.01. **EVENTS OF DEFAULT.** Each of the following events is hereby declared an event of default:

(1) Failure of the Loan Recipient to make any loan repayment when it is due and such failure shall continue for a period of thirty (30) days.

(2) Failure to comply with the provisions of this Agreement or in the performance or observance of any of the covenants or actions required by this Agreement.

(3) Any warranty, representation or other statement by, or on behalf of, the Loan Recipient contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading in any material respect.

(4) An order or decree entered, with the acquiescence of the Loan Recipient, appointing a receiver of any part of the Project or Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Loan Recipient, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Loan Recipient, for the purpose of effecting a compromise between the Loan Recipient and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Revenues of the Project.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Loan Recipient under federal or state bankruptcy or insolvency laws now or hereafter in effect and, if instituted against the Loan Recipient, is not dismissed within sixty (60) days after filing.

(7) Failure to give timely notice of default as required below when such failure shall continue for a period of thirty (30) days.

4.02. NOTICE OF DEFAULT. The Loan Recipient shall give the Department immediate written notice of an event of default.

4.03. REMEDIES. Upon any event of default, the Department may enforce its rights by utilizing one or more of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish and collect fees and charges for use of the Project and to require the Loan Recipient to fulfill this Agreement.

(2) By action or suit in equity, require the Loan Recipient to account for all moneys received from the Department or from the ownership of the Project and to account for the receipt, use, application or disposition of the Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Project, establish and collect fees and charges, and apply the Revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Commissioner of the Mississippi Department of Revenue delinquency on loan repayments, the Department may intercept the delinquent amount, plus ten (10) percent annual penalty interest on the amount due to the Department, from any unobligated funds due to the Loan Recipient under any revenue or tax sharing fund established by the State. Penalty interest shall accrue on any amount due and payable beginning on the thirtieth (30th) day following the date upon which payment is due. The penalty interest shall be compounded monthly (or "semi-annual" if Loan Repayment is made through Withholding of Homestead Exemption).

(6) By notifying financial market credit rating agencies.

(7) By administratively charging or suing for payment of amounts due, or becoming due, plus ten (10) percent annual penalty interest which shall accrue on any amount due and payable beginning on the thirtieth (30th) day after such notification by the Department, together with all costs of collection, including attorneys' fees. The penalty interest shall be compounded monthly (or "semi-annual" if Loan Repayment is made through Withholding of Homestead Exemption).

(8) By accelerating the repayment schedule or increasing the interest rate in accordance with the WPCRLF Regulations.

(9) By withholding payments to the Loan Recipient.

(10) By terminating the Loan Agreement, after providing thirty (30) days written notice of such intent to terminate the Loan Agreement. Such termination will not affect the duty of the Loan Recipient to repay loan funds paid thus far.

4.04. DELAY AND WAIVER. No delay or omission to exercise any right or power accruing upon event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE V - GENERAL PROVISIONS

5.01. DISCHARGE OF OBLIGATIONS. All loan repayments required to be made under this Agreement shall be cumulative. Any deficiencies in any month (or "semi-annual repayment period" if Loan Repayment is made through Withholding of Homestead Exemption) shall be added to the Loan Repayment due in the succeeding month (or "semi-annual repayment period" if Loan Repayment is made through Withholding of Homestead Exemption) and all months (or "semi-annual repayment periods" if Loan Repayment is made through Withholding of Homestead Exemption) thereafter until fully repaid. Repayments shall continue to be secured by this Agreement until all of the repayments required shall be fully repaid to the State Water Pollution Control Revolving Fund. If, at any time, the Loan Recipient shall have repaid the Loan and interest required, the pledge of, and lien on, the Revenues to the State Water Pollution Control Revolving Fund shall be no longer in effect.

5.02. PROJECT RECORD AND STATEMENT. Books, records, reports, design documents, contract documents, and papers related to the Project shall be available to the authorized representatives of the Department and the U.S. Environmental Protection Agency for inspection at any reasonable time after the Loan Recipient has executed a loan agreement and before one year has elapsed after the Loan Recipient repays the loan in full. If litigation, a claim, an appeal, or an audit is begun before the end of the one year period, all records must be kept for one year after the litigation, appeal, claim, or audit is complete or resolved.

5.03. ASSIGNMENT OF RIGHTS UNDER AGREEMENT. The Department may assign any part of its rights under this Agreement without the consent of the Loan Recipient. The Loan Recipient shall not assign rights created by this Agreement without the consent of the Department.

5.04. AMENDMENT OF AGREEMENT. Modification, changes or amendments to this Agreement may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this Agreement shall be (1) in writing and signed by both parties, and (2) consistent with applicable statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency.

5.05. SEVERABILITY CLAUSE. If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

5.06. CONFLICTS CLAUSE. In the event that any provision of this Agreement conflicts with the WPCRLF Regulations, the Regulations will govern unless this Agreement specifically provides otherwise.

5.07. EXECUTION OF AGREEMENT. This Agreement becomes effective upon execution by the Department and the Loan Recipient. This Agreement will not be altered by the Loan Recipient after execution by the Department.

5.08. BONDS AND INSURANCE REQUIRED. The Loan Recipient shall require contractors to provide performance and payment bonds for the full amount of the contracts. Insurance against all risks during the period of construction shall be provided. Builder's risk or similar types of insurance in the amount of the full replacement cost of the Project shall be provided to the extent that such insurance is obtainable from time to time against any one or more of such risks.

The Loan Recipient shall cause insurance to be obtained and maintained against such risks as is customary during construction. Insurance requirements include workers' compensation, comprehensive general liability, contractors' indemnification obligations, vehicle liability, flood and property insurance. The Department reserves the right to require business interruption insurance when the Project includes revenue producing facilities and when such revenue produced therefrom is to be used for repayment of the loan. Any such requirement shall be included in the Project Specific Loan Conditions. The proceeds of insurance policies received as a result of damage to, or destruction of, facilities or structures shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Loan Recipient shall provide such restoration or replacement of the damaged portions of the facilities. Such restoration or replacement shall be promptly completed.

The Loan Recipient shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, to be insured by an insurance company or companies licensed to do business in the State of Mississippi against such risks as are customary in connection with the operation of facilities of like size, type and location in customary amounts to the extent such insurance is obtainable from time to time against any one or more of such risks. Such insurance shall be maintained at least until such time as the loan amount has been completely repaid.

ARTICLE VI - CLEAN WATER ACT AND OTHER FEDERAL REQUIREMENTS

6.01. TITLE VI PROVISIONS. The Loan Recipient shall comply with all provisions of Title VI of the Clean Water Act and regulations thereunder.

6.02. APPLICABLE STATE AND FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS. The Loan Recipient shall comply with all applicable state and federal laws, regulations, and executive orders as required by the WPCRLF Regulations, Appendix J.

6.03. SINGLE AUDIT ACT. The Loan Recipient shall comply with all provisions of the Single Audit Act Amendments of 1996 and regulations thereunder. When required by the Act, the Loan Recipient must submit the required copies of its Single Audit to the Department and the designated Federal Clearinghouse, within the time frames allowed in the Act.

ARTICLE VII - DETAILS OF FINANCING

7.01. AMOUNT OF LOAN. The amount of the Loan authorized is \$18,000,000.00.

7.02. PROJECT BUDGET. The Loan Recipient agrees to the following Project Budget. Payments to the Loan Recipient for each cost item may not exceed the sum of that project budget line item and any remaining contingency. Payments out of the contingency line item may be further limited if the Department determines that such payments could jeopardize completion of the Project. Amendments to the project budget must be requested by the Loan Recipient and approved by the Department, and must be in accordance with the WPCRLF Regulations.

	<u>Loan Amount</u>
(1) Planning and Loan Application Phase Professional Services	\$ <u>246,750.00</u>
(2) Design and Land Acquisition Phase Professional Services	\$ <u>1,192,990.00</u>
(3) Land and Easement Costs	\$ <u>50,000.00</u>
(4) Construction	\$ <u>14,061,000.00</u>
(5) Construction Phase Professional Services	\$ <u>1,268,800.00</u>
(6) Contingency	\$ <u>1,181,460.00</u>
(7) TOTAL LOAN AMOUNT	\$ <u>18,000,000.00</u>

7.03. INTEREST RATE AND ACCRUAL. The rate of interest on the unpaid principal of the Loan is 0.8 percent per annum, to be compounded monthly (or "semi-annual" if Loan Repayment is made through Withholding of Homestead Exemption). Interest on amounts paid to the Loan Recipient shall commence on March 8, 2025 one year after the date established in the initial loan agreement for issuance of the notice to proceed for the earliest construction contract in accordance with WPCRLF Regulation Rule 7.3.I (1). Interest accrued prior to initiation of the repayment process will be added to the final allowable project costs to determine the principal amount to be repaid by the Loan Recipient.

7.04. REPAYMENT SCHEDULE. The Loan Recipient hereby authorizes the Mississippi Department of Revenue to withhold \$82,132.564 monthly from the amount of sales tax reimbursement it is to remit to said Loan Recipient under Section 27-65-75, Mississippi Code of 1972, as amended, for repayment of the loan amount as specified in Article 7.01. of this Agreement for a period of 237 months, to begin January, 2026, subject to amendment in accordance with the WPCRLF Regulations. The monthly repayments to be made by the Mississippi Department of Revenue to the State Water Pollution Control Revolving Fund from the Loan Recipient for the repayment of the loan amount as specified in Article 7.01. of this Agreement made to said Loan Recipient are hereby determined to be \$82,132.56, for a period of 237 months, to begin February, 2026, with the exception of that portion of the repayments specified below in Article 7.05. as the administrative fee. The annual total of payments shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). The Mississippi Department of Revenue will deposit the administrative fee portion of the loan repayments into State Treasury Fund #3588 until such time that the administrative fee is collected in full. This repayment schedule is subject to amendment in accordance with the WPCRLF Regulations.

7.05. ADMINISTRATIVE FEE. An administrative fee will be collected from the loan repayment amounts described in Article 7.04. to defray the costs of administering the fund. Beginning with the initiation of the repayment process and until such time that the total administrative fee is collected, the interest portion of each repayment will not be charged, and in lieu of the interest portion, an equal amount of the repayment will be collected as the administrative fee. The amount of the administrative fee to be collected will be equal to \$900,000.00 (which is five percent of the final total loan amount reflected in Article 7.01) or the total amount of interest due over the life of the loan, whichever is less. This supersedes and constitutes a variance to WPCRLF Regulation Rule 7.3.J.

7.06. BIDS IN EXCESS OF BUDGET AMOUNTS. Should the bids for construction, equipment and supplies, and testing for this project exceed the budget amounts for these items plus contingency, the Department may terminate this loan agreement in accordance with the procedures described in Article 4.03.

7.07. AVAILABILITY OF FUNDS. The Loan Recipient understands and agrees that this loan award is based upon anticipated federal, state match, and other funds being made available to the Department. The Loan Recipient agrees that should such anticipated funds not be made available to the Department, the Department may delay payments to the Loan Recipient, may terminate the loan agreement, and/or may recover any previous payments made to the Loan Recipient. The Loan Recipient releases the Department from all liability for any claims or damages related to such actions and further agrees not to take any legal or other actions against the Department in regard to such claims, damages, or actions by the Department.

7.08. PROHIBITION OF DUPLICATE FUNDING. The Loan Recipient hereby agrees that all costs requested for reimbursement from the State Revolving Fund have not been, and will not be, also requested or received from other State or Federal agency funding sources.

ARTICLE VIII - PROJECT BUDGET PERIOD

8.01. **PROJECT BUDGET PERIOD.** Unless amended, the budget period for this project begins on February 1, 2020, and expires on November 13, 2025. No costs that are incurred or requested after the expiration date will be eligible. The expiration date was determined based on 30 days after the Department's final construction observation. Department approval of loan eligible time extension change orders will automatically extend the budget period through such loan eligible date.

ARTICLE IX - PROJECT DESCRIPTION

9.01. **PROJECT DESCRIPTION.** The Project shall mean facilities funded in whole or in part under this Loan Agreement as follows:

The replacement of the Central Pump Station and Force Main, two (2) existing pump stations, and approximately 12,200 linear feet (LF) of existing 10-12 inch gravity sewer lines; the construction of one (1) new pump station and 9,750 feet LF of pressure sewer lines; and related appurtenances.

The loan eligible scope is specifically limited to that identified as eligible in the approved facilities plan, and as further described by plans, specifications, contract documents, and contract change orders approved as eligible by the Department. The Loan Recipient hereby agrees that no additional eligible scope will be added to this Project Description.

ARTICLE X - PROJECT SPECIFIC LOAN CONDITIONS

10.01. **PROJECT SPECIFIC LOAN CONDITIONS.** The Loan Recipient shall comply with the following Project Specific Loan Conditions and any amendments made thereto pursuant to the provisions of the WPCRLF Regulations.

(1) The Loan Recipient agrees to the following schedule in accordance with the WPCRLF Regulations. Earlier completion of certain actions may require earlier completion of other actions.

- a. By May 28, 2023, submit a complete set of plans, specifications and contract documents on each construction contract, limited site certificates from the Loan Recipient and title counsel for all real property (eligible and ineligible), and other submittals if required by WPCRLF Regulation Rule 7.3.D.(2)(c);
- b. By August 26, 2023, secure approval of plans, specifications and contract documents on each construction contract by the Department;
- c. By November 24, 2023, but prior to advertisement for bids on each construction contract, submit clear site certificates from the Loan Recipient and title counsel for all real property (eligible and ineligible), secure necessary local funds for

- the project and submit proof of such funds, and submit any other required permits or clearances;
- d. By November 24, 2023, advertise each construction contract for bids;
 - e. By January 8, 2024, but no later than 45 days after advertisement for construction bids on each construction contract, receive bids;
 - f. By January 22, 2024, but no later than 14 days after receipt of bids on each construction contract, submit the completed MBE/WBE documentation;
 - g. By January 29, 2024, but no later than 21 days after receipt of bids on each construction contract, submit the bid package, a loan amendment request, and all necessary executed professional services contracts;
 - h. By March 8, 2024, but no later than 60 days after receipt of bids on each construction contract, execute and submit construction contract documents and issue and submit a copy of the notice to proceed;
 - i. By July 22, 2025 (90% of construction contract time), enact the approved user charge system and ordinance and submit proof of enactment;
 - j. By July 22, 2025 (90% of construction contract time), develop and implement a Fiscal Sustainability Plan (FSP) and submit the required FSP certification;
 - k. By September 14, 2025 (date may change due to approved change orders), but no later than the contract completion date on each construction contract, complete construction;
 - l. By September 24, 2025, but no later than 10 days after completion on each construction contract, notify the Department of construction completion;
 - m. By October 14, 2025, but no later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying Department's final construction observation;
 - n. By October 14, 2025, but no later than 30 days after the contract completion date on each construction contract, the Department will perform a final construction observation;
 - o. By November 13, 2025, but no later than 30 days after the Department's final construction observation on each construction contract, the Loan Recipient must submit the following: final loan payment requests; approvable summary change order; record drawings for the entire project funded in whole or in part with WPCRLF funds; the engineer's certification of compliance with plans,

specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Loan Agreement. **Loan payment requests submitted after this date are not allowable, regardless of when the costs were incurred;**

(2) Should the Loan Recipient be subject to any administrative order, court order, or other enforcement action presently or in the future, the Loan Recipient shall comply with such enforcement action regardless of any schedules, document submittals or approvals, or any other requirements under this Loan Agreement. Any such schedules, document submittals or approvals, or any other requirements under this Loan Agreement which vary from the enforcement action requirements shall in no way relieve the Loan Recipient from compliance with such enforcement action, nor shall such enforcement action relieve the Loan Recipient from compliance with any Loan Agreement requirement.

(3) If any ineligible construction, equipment, supplies, or testing are added to this Project, the final payment for related services shall be reduced to reflect eligible costs using one of the following methods.

- a. The Loan Recipient shall submit separate invoices for eligible and ineligible work. Contracts for all related services shall have separate compensation clauses and cost ceilings for eligible and ineligible work.
- b. The payments shall be prorated by the eligibility ratio shown below. The final ratio shall be based on actual, final costs for construction, equipment and supplies, and testing; an interim ratio may be used as needed.

$$\text{Eligibility Ratio} = \frac{\text{Eligible Construction/Equipment/Supplies/Testing Cost}}{\text{Total Construction/Equipment/Supplies/Testing Cost}}$$

If it becomes apparent that the payments for related services will exceed the eligible amount, the Department may limit payments prior to the final payment.

(4) The Loan Recipient shall undertake the six affirmative steps as stated in Appendix D, of the WPCRLF Regulations and as further described in the Department's MBE/WBE Utilization Guidance to assure minority and women's business enterprises have the maximum feasible opportunity to participate in a fair share of the subagreements awarded under this Project. The fair share objectives negotiated for this Project are 3.6% minority and 2.1% women's business enterprises.

10.02. SUPPLEMENTAL FY- 2022 PROJECT SPECIFIC LOAN CONDITIONS. The following Project Specific Loan Conditions are included pursuant to WPCRLF Program changes which resulted from the federal Water Resources Reform and Development Act of 2014, P.L. 113-121 (WRRDA), and/or from the exhaustion of the banked equivalency/cross-cutter compliance utilized by the WPCRLF Program since FY-2001:

(1) **Additional “Cross-cutting” Federal Authorities.** The Loan Recipient understands and agrees that this project must comply, as applicable, with the additional “cross-cutting” federal authorities, as outlined in Part 2, Sections III.A, B, C, I and J of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan.” This condition supersedes and constitutes a variance to WPCRLF Regulation Rule 7.1.B.

(2) **Environmental Review [WRRDA Section 5002(1)].** The Loan Recipient understands and agrees that this project must comply with 40CFR35.3140(b) {Tier 1 “NEPA-like” review}, as outlined in Part 2, Section III.D of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan.” This condition supersedes and constitutes a variance to WPCRLF Regulations Appendix B.

(3) **Fiscal Sustainability Plan [WRRDA Section 5003(2)].** The Loan Recipient shall develop and implement a Fiscal Sustainability Plan (FSP), as outlined in Part 2, Section III.E of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan,” and shall certify that the required FSP has been developed and implemented by the date established in the Loan Schedule [Article X, Section 10.01(1)], which represents 90% of construction completion.

(4) **Generally Accepted Accounting Principles (GAAP) [WRRDA Section 5002].** The Loan Recipient shall maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards relating to the reporting of infrastructure assets. The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999.

(5) **Uniform Relocation Assistance and Real Property Acquisition Policies Act [Cross-Cutter].** As outlined in Part 2, Section III.H of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan,” the Loan Recipient shall comply with the federal “Uniform Act” in the acquisition of all land/easements/right-of-way required for the project. This condition supersedes and constitutes a variance to WPCRLF Regulations Appendix J, Item M.

(6) **Davis Bacon Prevailing Wage Rates [WRRDA Section 5002].** The Loan Recipient shall comply with all applicable Davis Bacon (DB) requirements, as referenced in Section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372).

(7) **American Iron and Steel [WRRDA Section 5004].** The Loan Recipient shall comply with all applicable American Iron and Steel (AIS) requirements, as outlined in Section 608 of the Federal Water Pollution Control Act (33 U.S.C. 1388).

(8) **Federal Procurement for Engineering Services [WRRDA Section 5002].** As outlined in Part 2, Section III.M of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan,” the Loan Recipient shall ensure that all WPCRLF-funded contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services are negotiated in the same manner as a contract for architectural and

engineering services is negotiated under 40 U.S.C. 1101 et seq. This condition supersedes and constitutes a variance to WPCRLF Regulation Rule 7.3.B(2)(f); Appendix A, Item A.(11); and Appendix C.

(9) **Signage [Non-statutory EPA Mandate].** As outlined in Part 2, Section III.P of the “Water Pollution Control Revolving Loan Fund Program Final FY-2022 Intended Use Plan,” the Loan Recipient shall ensure that a project-specific EPA Public Awareness Notification (provided by MDEQ) is displayed on a bulletin board/sign in a prominent location at the project site for the duration of the contract. The Loan Recipient acknowledges and understands that the Notification should also be displayed in other prominent locations (Loan Recipient’s office, website, court house, library, etc.) accessible to the public.

IN WITNESS WHEREOF, the Commission has caused this Agreement to be executed on its behalf by the Executive Director of the Department and the Loan Recipient has caused this Agreement to be executed on its behalf by its Authorized Representative

CITY OF TUPELO

By: _____
Johnny Timmons, Manager
Water and Light Department

(Date)

STATE OF MISSISSIPPI
DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: *Adrienne Dean Hey*
for _____
Chris Wells
Executive Director

September 30, 2022

(Date)

STATE OF MISSISSIPPI
DEPARTMENT OF REVENUE

By: _____
Commissioner

(Date)

EXHIBIT A to LOAN AGREEMENT

UCC-1 FINANCING STATEMENT

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Mississippi Department of Environmental Quality
 OPC/SWD/Construction Branch
 WPCRLF Loan Program
 P. O. Box 2261
 Jackson, MS 39225-2261**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
City of Tupelo

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS
P. O. BOX 588

CITY Tupelo	STATE MS	POSTAL CODE 38802	COUNTRY USA
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2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
Mississippi Department of Environmental Quality

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS
P. O. Box 2261

CITY Jackson	STATE MS	POSTAL CODE 39225-2261	COUNTRY USA
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4. COLLATERAL: This financing statement covers the following collateral:

All personal property and fixtures related to the project constructed, improved, repaired, replaced, purchased or refinanced with the proceeds of Loan No. SRF-C280885-08.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. **Organization Debtor Name.** "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. **Individual Debtor Name.** "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

EXHIBIT B to LOAN AGREEMENT

MEMORANDUM OF LOAN AGREEMENT

Prepared by, and after recording, return to:
Mississippi Department of
Environmental Quality
P. O. Box 2261
Jackson, MS 39225-2261

Indexing Instructions:
Section 36 Township 9 S, Range 5 E
Section 25 Township 9 S, Range 5 E
Section 24 Township 9 S, Range 5 E
Section 6 Township 10 S, Range 6 E
Section 7 Township 10 S, Range 6 E
Section 7 Township 10 S, Range 6 E
Section 1 Township 11 S, Range 5 E
Section 6 Township 11 S, Range 6 E
Section 31 Township 10 S, Range 6 E
Section 32 Township 10 S, Range 6 E
Lee County, Mississippi

STATE OF MISSISSIPPI
COUNTY OF LEE

MEMORANDUM OF LOAN AGREEMENT

GRANTOR:

MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY
P. O. BOX 2261
JACKSON, MS 39225-2261

GRANTEE (LOAN RECIPIENT):

CITY OF TUPELO
P.O. BOX 588
TUPELO MS, 38802

THIS MEMORANDUM OF LOAN AGREEMENT (“Memorandum”) is made by and between STATE OF MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY (“Commission”) acting through the DEPARTMENT OF ENVIRONMENTAL QUALITY (“Department”) and the CITY OF TUPELO, existing as a local government or agency (“Loan Recipient”) under the laws of the State of Mississippi, effective as of September 30, 2022.

WITNESSETH:

WHEREAS, pursuant to the Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, Sections 49-17-81, et seq., Mississippi Code Annotated (1972) (the “Act”), the Department is authorized to make loans to certain local government agencies to finance the construction of eligible pollution control projects;

WHEREAS, on the September 30th, day of September, 2022, the Department and Loan Recipient entered into a mutually binding unrecorded Water Pollution Control Revolving Loan Fund Loan Agreement (“**Loan Agreement**”) specifying the terms and conditions of the project, the Loan and the Loan Repayment thereof. The Loan Agreement awarded a loan amount of \$18,000,000.00 to the Loan Recipient to finance the construction of the project;

WHEREAS, the project is located on certain property(ies) located in Section 36 Township 9 S, Range 5 E, Section 25 Township 9 S, Range 5 E, Section 24 Township 9 S, Range 5 E, Section 6 Township 10 S, Range 6 E, Section 7 Township 10 S, Range 6 E, Section 7 Township 10 S, Range 6 E, Section 1 Township 11 S, Range 5 E, Section 6 Township 11 S Township Range 6 E Section 31 Township 10 S, Range 6 E and Section 32 Township 10 S, Range 6 E County, Mississippi, and is described in Exhibit A attached hereto;

WHEREAS, pursuant to the Act, Loan Recipient is required to and authorized to pledge for the Loan Repayment of the Loan Agreement (a) any part of the sales tax reimbursement to which it may be entitled under 27-65-75, and (b) any part of the homestead exemption annual loss reimbursement to which it may be entitled 27-33-77, to meet the Loan Repayment schedule set for in the Loan Agreement;

WHEREAS, pursuant to the Act, Loan Recipient has secured the Loan Repayment of the Loan Agreement by pledging as collateral all or any part of the Revenues from the project constructed, improved, repaired, replaced, purchased or refinanced with the proceeds of the Loan;

WHEREAS, as a condition precedent to the Loan, the Loan Recipient and the Department agreed to enter into this Memorandum of Loan Agreement for the purpose of providing record notice of the Loan Agreement and its priority lien position;

WHEREAS, as a condition precedent to the Loan, the Loan Recipient agreed that all subsequent bond issues shall be subordinate, junior, and inferior to all of the terms, covenants and conditions of the Loan;

NOW, THEREFORE, in consideration of the mutual premises contained herein, in the Loan Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. This Memorandum is not a complete summary of the terms, conditions, and provisions of the Loan Agreement. A Copy of the Loan Agreement may be found at the offices of the Department or the Loan Recipient.

2. In the event of any conflict between the terms of this Memorandum and the Loan Agreement, the terms of the Loan Agreement shall supersede and prevail.

3. This Memorandum may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS THEREOF, this Memorandum of Loan Agreement has been duly executed by the parties below on the dates set forth in the acknowledgement but to be effective as of the date above written.

ORIGINAL

[SIGNATURE PAGE – MEMORANDUM OF LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties have duly executed this Memorandum as of the day and year first above written.

**MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Adunne Stanley

for BY: CHRIS WELLS
ITS: EXECUTIVE DIRECTOR

CITY OF TUPELO

BY: JOHNNY TIMMONS
ITS: MANAGER

ACKNOWLEDGEMENT

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the said county and state, on this the _____ day of _____, 20__, within my jurisdiction, the within named Chris Wells, who acknowledged that he/she is the Executive Director of Mississippi Department of Environmental Quality, and that for and on behalf of the said agency, and as the act and deed of said agency, he/she executed the above and foregoing instrument, after first having been duly authorized so to do.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

OR

STATE OF MISSISSIPPI
COUNTY OF HINDS

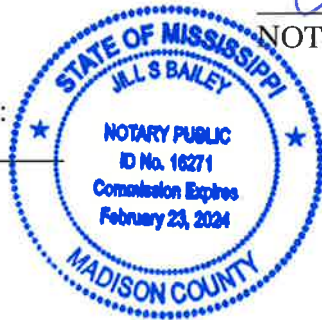
Personally appeared before me, the undersigned authority in and for the said county and state, on this the 10th day of November, 2022, within my jurisdiction, Adrienne Brantley, who acknowledged that he/she is the Chief Administrative Officer of Mississippi Department of Environmental Quality, acting on behalf of the within named Executive Director of Mississippi Department of Environmental Quality, and that for and on behalf of the said agency, and as the act and deed of said agency, he/she executed the above and foregoing instrument, after first having been duly authorized so to do.

Jill S. Bailey

NOTARY PUBLIC

My Commission Expires:

[SEAL]



ACKNOWLEDGEMENT

STATE OF MISSISSIPPI
COUNTY OF LEE

Personally appeared before me, the undersigned authority in and for the said county and state, on this the _____ day of _____, 20__, within my jurisdiction, the within named Johnny Timmons, who acknowledged that he is Manager City of Tupelo a local government or agency, and that for and on behalf of said local government or agency, and as the act and deed of said local government or agency, he/she executed the above and foregoing instrument, after first having been duly authorized so to do.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

EXHIBIT A to MEMORANDUM OF LOAN AGREEMENT

Project Description

The replacement of the Central Pump Station and Force Main, two (2) existing pump stations, and approximately 12,200 linear feet (LF) of existing 10-12 inch gravity sewer lines; the construction of one (1) new pump station and 9,750 feet LF of pressure sewer lines; and related appurtenances.