STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
LOAN OFFER, ACCEPTANCE AND AGREEMENT
FOR DRINKING WATER TREATMENT
DESIGN AND CONSTRUCTION

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by Title 39, Chapter 36 (Act), Idaho Code, to make loans from the Drinking Water Treatment Facility Loan Account (Account) to assist municipalities in the construction of drinking water treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the City of Victor (Applicant/Borrower) has established eligibility for a loan under the terms of the Act and IDAPA 58.01.20, the Idaho Rules for Administration of Drinking Water Loan Program (the Rules).

The Applicant is a public entity with the authority to finance public improvements. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Rules.

SECTION II. DESCRIPTION OF PROJECT

This loan offer is for design and construction of the following project:

A.	Loan Project Number:	DW 1208
B.	Name and Address of Applicant:	City of Victor P.O. Box 122 Victor, Idaho 83455
C.	Project Description:	The project consists of the construction of a pump house and the replacement of two water mains.
D.	Terms:	$2,000,000 at 1.75% (interest of 0.75% and loan fee of 1.00%) to be repaid in biannual installments over 20 years.

E. Estimated Project Budget:

1.	Transmission & Distribution	$2,000,000
2.	Storage	0
3.	Source Development	0
	Total	$2,000,000

SECTION III. GENERAL CONDITIONS

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan agreement (Agreement) and the Applicant shall become a Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

A. To not transfer, assign or pledge any beneficial interest in this Agreement to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director). To not enter into sale, lease or transfer of any of the property related to the Agreement. To not make any additional material encumbrances to the project without the prior written consent of the Director. To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this Agreement without the prior written consent of the Director. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.

B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this Agreement. However, covered transactions that are under consideration for any debarred or suspended contractors must comply with presidential Executive Order 12549.

C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Borrower in support of the request for this loan. Which application is attached hereto and incorporated by reference herein.

D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.

E. To make efforts to award subagreements to Disadvantaged Business Enterprises (DBE) which includes Minority and Women-owned businesses (MBE/WBE).

a. The separate fair share goals for MBE and for WBE will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals; and,
b. Semi-annual reports of MBE/WBE utilization will be prepared on forms supplied by the Department; and,
c. Include the following language in all procurement contracts *"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."*

F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is proposed to be constructed. Clear title or legal right to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project, prior to commencement of construction. Land acquisitions shall only be reimbursed by DEQ if obtained from a willing seller.

G. To take affirmative action to ensure that the project shall be completed and operated in conformance with federal and state laws relating to occupational health and safety.

H. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.

I. That in the event there is any default in the payment of either the principal amount, loan fee or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest and fees are due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest and fee rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.

J. That any waiver by the Department at any time of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.

K. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.

L. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.

M. To comply with all applicable federal, state and local laws.

N. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

O. The total loan funds disbursed per this Agreement are considered federal financial assistance per the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA), 31 U.S.C. §§7501-7507. (2000). If Borrower expends more than $500,000 of any federal funds in a fiscal year, Borrower shall conduct an audit in accordance with the SAA. In such case, Borrower shall provide the Department a copy of the SAA audit within nine (9) months of the end of the audit period per the SAA. Borrower recognizes that it is responsible for determining if the $500,000 threshold is reached and if a SAA audit is required. Additionally, Borrower shall inform the Department, in writing, of findings or recommendations pertaining to the State Revolving Fund contained in any SAA audits conducted by Borrower.

SECTION IV. PROJECT MANAGEMENT

The Borrower agrees to:

A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be at least one hundred thousand dollars ($100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.

B. Comply with the Public Works Contractors License Act and the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.

C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.

D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.

E. Provide for the accumulation of funds through charges made for services or otherwise, for the purposes of establishing a fund dedicated solely to (1) the repayment of principal, interest and loan fee on this loan, (2) capital replacement and (3) a reserve account as required by the Terms of the loan agreement, and (4) future improvements.

F. Provide a plan and program for an equitable user charge system, as permitted by law, for payment of operation and maintenance of constructed facilities. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final

payment. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve.

G. Develop and adopt a water system protection ordinance approved by the Department prior to receiving final payment of loan funds.

H. Provide to the Department for approval, an operation and maintenance manual for the project. The manual shall be approved by the Department prior to receiving final payment of loan funds.

I. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.

J. Assure that the operator in responsible charge of the facility has a level of competency commensurate with the nature of the facility. He or she must be licensed as a Drinking Water Operator in a class equal to or greater than that of the facility.

K. Assure that distribution and treatment facility personnel shall participate in operator training programs designed to assure competence in the operation and maintenance of the facility.

L. Commence satisfactory operation and maintenance of the drinking water treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the facility without the written approval of the Department.

M. Review and update the user charge system, as permitted by law, at least biennially during the life of this Agreement to assure that all costs including debt retirement, operation and maintenance are offset by sufficient revenues.

N. Maintain project accounts in accordance with generally accepted accounting principles.

O. All laborers and mechanics employed by the prime construction contractor and subcontractors in the project using State Revolving Fund (SRF) loans shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality in accordance with the labor standards, including prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV of Chapter 31 of title 40, United States Code). Borrower agrees that all procurement contracts must include as a term and condition that contractors and subcontractors must obtain wage determinations from the Department of Labor and comply with Department of Labor guidance and regulations implementing wage rate requirements applicable to SRF funds. Wage determinations shall be finalized prior to final bid submissions. Specific requirements related to Davis Bacon compliance are included in Attachment B to this loan agreement.

P. Comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 (Suspension and Debarment). Ensure any lower tier covered transaction and subsequent lower tier covered transactions include a term or condition requiring compliance with Subpart C.

SECTION V. SPECIAL CONDITIONS

A. The Borrower shall complete the attached project schedule and submit to the Department for approval on or before 60 days from the date of this loan offer. No funds shall be disbursed per this Agreement until a project schedule has been approved by the Department. The Department approved project schedule shall be attached to this Agreement as Attachment A and incorporated by reference as if fully set forth herein. The Borrower shall complete the project in accordance with the approved project schedule.

B. All amendments to the project schedule must be approved by the project engineer in the Department's Idaho Falls Regional Office, prior to becoming effective.

C. Prior to final loan distribution, the Borrower shall have established a written customer service policy.

D. Prior to final loan distribution a technical memorandum will have been submitted for each item identified as a Green Project Reserve (GPR) component in the Letter of Interest. Each memorandum fully justifies the GPR designation according to the current EPA Guidance for Determining Project Eligibility. The technical memorandum shall be made available as part of the plans and specifications submission. Please review the following URLs for guidance *(current as of 2/22/2012)*:

1. http://kia.ky.gov/NR/rdonlyres/08C6B5D5-BD95-4DC7-A579-9CAA7AEAA7AB/0/EPA_GPR_Guidance_May2011.pdf

2. http://water.epa.gov/grants_funding/dwsrf/upload/dwsrf_gpr_business_case_examples_508_compliant.pdf

3. http://www.deq.idaho.gov/water-quality/grants-loans/green-project-reserve.aspx

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

A. This loan will be evidenced and secured by a promissory note in the amount of $2,000,000 (two million dollars). The promissory note will be issued upon project completion and incorporated by reference into this Agreement.

B. There will be a reserve fund equal to one year's payment of principal, fees and interest on the loan established. The Borrower has ten years to establish the reserve, setting aside 10% (ten percent) of one year's payment into the reserve fund each year.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II.

B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.

C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.

D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.

E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.

F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:

1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department, (b) an operations manual has been completed and (c) that the project is fully operational; and

2. The Department has inspected the project and verifies the engineer's certification.

G. Payment of the final ten percent (10%) of this loan shall be withheld until the following requirements are met:

1. The Special Conditions in Section V have been met; and

2. A responsible charge operator (RCO) has been designated who is licensed at or above the classification level of the system. At such times as the RCO is not available, a substitute RCO shall be designated to replace the RCO, who is licensed at or above the classification level of the system.

H. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Borrower the offered sum of money on the basis of the Borrower's priority position immediately upon the accrual of said sum in the Account.

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

A. This loan shall be repaid in the manner set forth in the promissory note which shall be attached to this Agreement and incorporated by reference.

B. To pay biannual payments of principal, fees and interest and to fully amortize this loan not later than twenty (20) years from project completion. Interest will begin accruing with the first disbursement of funds. At the time of closing, accrued interest will be either paid to the Department or incorporated into the final loan amount if the approved amount has not been exceeded.

C. At the time of closing, the Department may elect to impose a loan fee (not to exceed 1%) pursuant to the Rules. If a loan fee is imposed, the loan interest rate will be reduced by the amount of the loan fee. The loan fee will be assessed against the final loan balance, which shall include the entire principal balance and may include capitalized interest. Any loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period.

D. This Agreement shall remain in full force and effect until all loan proceeds, including principal, interest and loan fee, have been paid in full or the Agreement is otherwise suspended or terminated by the Department.

SECTION IX. SUSPENSION OR TERMINATION OF LOAN AGREEMENT

A. The Director may suspend or terminate this Agreement prior to final disbursement for failure of the loan recipient or its agents, including engineering firm(s), contractor(s), or subcontractor(s) to perform. This Agreement may be suspended or terminated for good cause including, but not limited to, the following:

1. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any form of tortious conduct; or

2. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or

3. Violation(s) of any term of this Agreement; or

4. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or

5. Utilizing a contractor or subcontractor who has been suspended or debarred by order of any federal or state agency from working on public work projects funded by that agency.

B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this Agreement. The notice of intent shall state:

1. Specific acts or omissions which form the basis for suspension or termination; and

2. Availability of a contested case hearing before the Board of Environmental Quality

conducted as provided for in the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23.

C. If the Borrower does not initiate a contested case hearing before the Board by filing a petition within the time period specified by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23., the Department may thereafter terminate or suspend the Agreement by written notice to the Borrower. If the Borrower initiates a contested case, the termination or suspension shall be determined by the Board.

D. The Borrower shall perform no work under the Agreement after receiving a notice of intent to suspend or terminate until all administrative proceedings and appeals therefrom are final or the Department reinstates the Agreement as provided herein.

E. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the Agreement. If a suspended Agreement is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.

F. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.

SECTION X. ACCESS AND INDEMNIFICATION

The Borrower agrees to:

A. Provide the Director, or his/her authorized agents, and the U.S. Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan.

B. Indemnify and hold harmless the State of Idaho, its agents and its employees from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the Borrower or its agents, employees, contractors, or assignees actions related to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

SECTION XI. OFFER

The offer set forth herein must be accepted, if at all, on or before 60 days from the date of this loan offer. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated February___, 2012.

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Curt A. Fransen
Director
Department of Environmental Quality

SECTION XII. ACCEPTANCE

The City of Victor, by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

_____
Signature of Representative

_____
Name and Title of Representative - type or print

_____
Date