



SMALL BUSINESS POLLUTION PREVENTION ASSISTANCE LOAN PROGRAM

(Authority: Part 145, PA 451 of 1994, as amended. Completion of this agreement is mandatory to be considered for a loan.)

Lender Agreement

(Please print with black ink or type all information.)

This Small Business Pollution Prevention Loan Program Lender Agreement (the "Lender Agreement"), dated as of _____, _____, is between the Michigan Department of Environmental Quality (the "MDEQ") and _____ (the "Lending Institution") in accordance with the Small Business Pollution Prevention Loan Program pursuant to Part 145, Natural Resources and Environmental Protection Act, as amended (Act 451) and the administrative rules promulgated thereunder, Part 145, Small Business Pollution Prevention Assistance Loan, R 324.14501 to R 324.14508. Nothing in this Lender Agreement shall be interpreted in a manner that is in conflict with the statute and rules governing this program.

The MDEQ and the Lending Institution agree as follows:

Section 1 The Loan The Lending Institution and the MDEQ are providing a small business pollution prevention loan (the "Loan") dated as of _____, _____, pursuant to the MDEQ's Small Business Pollution Prevention Loan Program to

_____ a Michigan _____ (the "Borrower"). The Borrower shall repay the Lending Institution and the MDEQ upon the terms and conditions of the Loan documents and as described in this Lender Agreement. The essential Loan terms are:

- Principal amount of the Loan \$ _____
- Effective interest rate to be paid by the Borrower: _____% per annum
- Pollution prevention project: _____ (the "Project").

The Borrower shall repay the Loan in _____ (monthly/quarterly) installments commencing _____, 20____, and concluding _____, 20____. The Loan repayments (with their principal and interest components) are detailed in Schedule A attached to this Lender Agreement.

Section 2 Loan Participation Amounts and Interest Rates

- Lending Institution Principal Share: \$ _____ and Interest Rate _____%
- MDEQ Principal Share: \$ _____ and Interest Rate _____%

The MDEQ will disburse its principal share to the Lending Institution upon the MDEQ's receipt of the fully executed Loan documents and the Borrower's Supplemental Agreement with the MDEQ.

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Section 3 Ownership of Loan Participation Interest The MDEQ shall be considered for all purposes as the legal and equitable owner of the above share of the Loan and all security and documents relating to the Loan. This Lender Agreement constitutes a sale of a percentage ownership interest in the Loan and related security and documents. It is not, however, an extension of credit by the MDEQ to the Lending Institution.

Section 4 Administration of the Loan

(a) The Lending Institution shall provide the MDEQ with copies of all Loan documents executed by the Borrower, as well as any co-maker, guarantor, or endorser for the Loan.

(b) The Lending Institution shall act as the disclosed agent of the MDEQ in connection with the servicing of the Loan and collecting payments to be made by the Borrower. The Lending Institution shall exercise the same degree of care and discretion in servicing the Loan and collecting payments from the Borrower as it would take in servicing the Loan and collecting payments solely for its own account.

(c) The Lending Institution may not, without the prior consent of the MDEQ:

(1) amend the terms and conditions of the Loan or any document securing the Loan;

(2) waive or release any claim against any Borrower or any co-maker, guarantor, or endorser of the Loan;

(3) consent to any release, substitution, or exchange of collateral;

(4) accelerate payment under the Loan or any note evidencing the Loan;

(5) commence any collection proceeding against any Borrower or any co-maker, guarantor, or endorser of the Loan; or

(6) seize, sell, transfer, assign, foreclose, or attempt to exercise against any collateral securing the Loan.

(d) The Lending Institution shall provide semi-annual reporting to the MDEQ in the form of Schedule B attached to this Agreement.

Section 5 Representations of Lending Institution The Lending Institution makes the following representations to the MDEQ:

(a) the Borrower, as well as any co-maker, guarantor, or endorser for the Loan, has consented to the sale of the above percentage interest in the Loan to the MDEQ;

(b) the proceeds of the Loan will not be applied to any prior loan, line of credit, or other borrowing between any Borrower and the Lending Institution;

(c) to the extent required under law, the security documents for the Loan were (and/or will be) properly recorded in order to validly perfect and maintain a security interest in the collateral securing the Loan, and the Lending Institution will take whatever additional actions may be necessary to validly perfect and maintain a security interest in the collateral securing the Loan; and

(d) the Loan documents were validly executed by the Lending Institution and are the valid and binding obligations of the Lending Institution.

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Section 6 Financial Condition of the Borrower The Lending Institution makes no representation or warranty, express or implied, as to the finances or continued solvency of the Borrower, the collectability of the Loan, or the sufficiency or value of collateral for the Loan.

Section 7 Additional Obligations of Lending Institution The Lending Institution shall promptly notify the MDEQ should the Lending Institution learn of any of the following:

(a) any change in the financial condition of the Borrower or the viability of any facility assisted by the Loan which may have a material adverse impact upon the continuance of payments under the Loan or the Loan's collectability;

(b) any change in lien status of Loan collateral;

(c) any request by the Borrower or any co-maker, guarantor, or endorser of the Loan for any change in the terms and conditions of the Loan, any note evidencing the Loan, or any agreement securing the Loan;

(d) any request by the Borrower or any co-maker, guarantor, or endorser of the Loan for the release, substitution, or exchange of collateral for the Loan or the release of any of their personal obligations under the Loan;

(e) any request by the Lending Institution for any change in the terms and conditions of the Loan, any note evidencing the Loan, or any agreement securing the Loan;

(f) any request by the Lending Institution for any increase in, or substitution for, collateral securing the Loan; or

(g) any failure by the Borrower to pay principal or interest when due under the Loan, or any other event, which with the passage of time and/or failure to cure, would constitute an event of default under the Loan, any note evidencing the Loan, or any agreement securing the Loan.

Section 8 Application of Payments The Lending Institution and the MDEQ shall each share all principal and interest payments and other collections under the Loan in proportion to their respective percentage interests in the Loan set out in Section 2 with appropriate provisions made for differences in interest rates between the Lending Institution and the MDEQ. Neither party shall have the right to precedence over the other in the repayment of their interests in the Loan. The Lending Institution shall collect all payments made under the Loan and remit the principal and interest amounts due the MDEQ no less frequently than on a _____(monthly/quarterly) basis. Remittance checks may be sent by regular mail and must include the following Remitter information:

ESSD-CMI P2 Loan - _____
Borrower Name Project Number

Remittance checks should be mailed to:
MDEQ CASHIER'S OFFICE
PO BOX 30657
LANSING MI 48909-8157

Section 9 Other Loans by Lending Institution The MDEQ acknowledges that Lending Institution may have other existing loans with the Borrower and may, in the future, make additional loans to the Borrower. The Lending Institution has no obligation to attempt to collect Loan payments in preference over the collection or enforcement of any other loan with the Borrower. The Lending Institution shall, however, apply the proceeds of all collateral securing the Loan first to the repayment of the Loan. The MDEQ shall have no interest in any other property of the Borrower taken as security for

any other loan with the Lending Institution except that, if any of that property is applied to repayments of the Loan, then the MDEQ shall be entitled to share in that application as provided in Section 8 of this Agreement.

Section 10 Default

(a) Upon the occurrence of an event of default under the Loan or the Supplemental Agreement, the Lending Institution will pursue the collection of all defaulted loans until brought current, collected in full, reduced to a judgment, or settled with the concurrence of the department.

(b) In the event the collection is not successful, the Lending Institution and the MDEQ shall consult to reach a mutually agreeable course of action for collection of the amounts due under the Loan. The Lending Institution will consider the Loan to be in default if the Borrower fails to complete the Project within _____ months of the execution of the Loan documents.

(c) If the Lending Institution and the MDEQ cannot agree upon what course of action to take, either party may elect, upon written notice to the other party, to accelerate payment under the Loan or any note evidencing the Loan and to institute legal proceedings to collect the indebtedness due under the Loan, to enforce the security for the Loan, and to preserve the respective rights and interests of the parties. To that end, the party instituting the proceedings shall join the other party, and each party shall bear the costs and expenses of the proceedings in proportion to their respective percentage interests in the Loan at the time of default.

(d) If the MDEQ elects to accelerate payment of the Loan and institute legal proceedings as provided in (c) above:

(1) The Lending Institution shall turn over the original Loan documents (including, but not limited to, any note evidencing the Loan and any security agreement related to the Loan) to the MDEQ together with such other documents, files, and records as may be necessary, in the opinion of the MDEQ and the Michigan Attorney General, to permit the MDEQ to institute appropriate collection and/or foreclosure proceedings under the Loan and the collateral securing the Loan;

(2) The Lending Institution shall turn over to the MDEQ any collateral securing the Loan in the possession of the Lending Institution;

(3) The Lending Institution shall join, if requested by the MDEQ, in any demand letter or other communication to be made by the MDEQ to the Borrower or any co-maker, guarantor, or endorser for the Loan; and

(4) The Lending Institution shall execute any additional documents in favor of the MDEQ to assist the MDEQ to foreclose against collateral securing the Loan under applicable state law procedures.

Section 11 Right to Purchase The Lending Institution shall have the right to purchase, at its sole option, the MDEQ's ownership interest in the Loan at any time. The purchase price shall be equal to the MDEQ's principal interest in the Loan, as then outstanding, plus accrued interest, if any, through the date of purchase. Nothing in this section shall, however, be construed as obligating the Lending Institution to purchase the MDEQ's interest in the Loan or granting the MDEQ the right to demand that the Lending Institution purchase its ownership interest. The sale of the MDEQ's interest in the Loan shall be on a "non-recourse" basis.

Section 12 Sale or Assignment of Ownership Interests Neither party to this Agreement may sell, pledge, sub-participate, or otherwise transfer its ownership interest in the Loan without obtaining the prior written consent of the other party.

SMALL BUSINESS POLLUTION PREVENTION ASSISTANCE LOAN PROGRAM (continued)

Section 13 Notices All correspondence to the MDEQ regarding this Lender Agreement shall be addressed to DEQ-OPPCA, PO BOX 30457, LANSING MI 48909-7957, ATTN KAREN EDLIN. All formal notices and other formal communications concerning this Lender Agreement shall be in writing and shall be considered given when delivered in person or mailed by first class registered or certified mail or received by a nationally recognized overnight delivery service and addressed to the Lending Institution at the address specified at the end of this Lender Agreement or to the MDEQ at the address provided in this Section. Informal correspondence (for example, semi-annual reconciliation reports) may be sent by regular mail, facsimile, or electronic mail. Each party may change its address for notices and other communications by notifying the other party in writing of the new address.

Section 14 Entire Agreement This Lender Agreement embodies the entire agreement and understanding between the MDEQ and the Lending Institution and supersedes any prior agreement and understanding relative to its subject matter. This Lender Agreement may not be amended unless the amendment is in writing and signed by both parties.

Section 15 Severability If any provision of this Lender Agreement shall be held invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of the remaining provisions of this Lender Agreement.

Section 16 Section Headings Section headings are for convenience only and shall not define or limit the interpretation of this Lender Agreement.

Section 17 Governing Law. This Lender Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

Section 18 Successor Parties. At any time, the Lending Institution may substitute any affiliate, subsidiary, or successor in interest after a merger or consolidation as the Lending Institution for this Lender Agreement and all other documents related to the Loan. Similarly, any statutory successor or successor agency named in an executive order of the governor may be substituted for the MDEQ in this Lender Agreement and all other documents related to the Loan. Each party shall notify the other of a substitution under this section.

SMALL BUSINESS POLLUTION PREVENTION ASSISTANCE LOAN PROGRAM (continued)

NAME OF LENDING INSTITUTION and FEDERAL TAX ID NUMBER

CONTACT PERSON (the Lending Institution's representative for communications with the MDEQ)

MAILING ADDRESS (number and street; include post office box if applicable)

CITY

STATE

ZIP CODE

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()

TELEPHONE NUMBER (include area code)

FAX NUMBER (include area code)

LENDING INSTITUTION

BY:

DATE:

NAME:

TITLE:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

BY:

DATE:

NAME:

Chief, Office of Pollution Prevention and Compliance Assistance

TITLE:

Schedule B

Pollution Prevention Loan Program Monitoring Form for _____ (Business Name)

To: _____
Loan Officer

Bank Name

Street Address

City State Zip

Loan Balance as of:
March 31, 200__: _____
September 30, 200__: _____

Please complete these forms as of March 31st and September 30th each year and return to:

Karen Edlin, Program Manager
Small Business Pollution Prevention Loan Program
Michigan Department of Environmental Quality
Office of Pollution Prevention and Compliance Assistance
P.O. Box 30457
Lansing, Michigan 48909-7957

The information furnished should be as of _____ for the period covering _____.

Are the loan payments current? (circle one) Yes No
If no, how far past due is the loan and what steps have been taken to collect the past due payments?

Is the Lender considering any changes in the loan terms or conditions, or any changes in the terms of the guarantee(s) or the security agreement? (circle one) Yes No
If yes, please explain the changes.

Is the Lender aware of any defaults in any of the agreements covered by the Loan? (circle one) Yes No
If yes, please describe the plan to resolve the default.

Form completed by (print): _____ Title: _____
Bank Name: _____ Date: _____