

**community**  
**septic**  
**management**  
**program**

Massachusetts Department of Environmental Protection  
Bureau of Resource Protection  
Division of Municipal Services  
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The Community Septic Management Program (CSMP) was developed through the collaboration of the Department of Environmental Protection (DEP), the Executive Office of Administration and Finance, the Office of State Treasurer, and the Department of Revenue to provide funds and assistance to Massachusetts homeowners for compliance with Title 5.

This document is a comprehensive step-by-step guide to help communities implement the CSMP at a local level.

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Copies of this document can be found on DEP's web site at : <http://www.mass.gov/dep/brp/mf/othergrt.htm>.



*images from MWPAT library*



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# THE COMMUNITY SEPTIC MANAGEMENT PROGRAM

## Highlights of the Community Septic Management Plan:

- The Commonwealth provides funding for the Community Septic Management Program to the Community through a “State Revolving Fund” (SRF) loan.
- The SRF loan is offered at an effective 0% interest rate (the technical term is “50% Grant Equivalency”) by the Commonwealth to the Community. The Community re loans these funds usually at the rate of 5% interest to homeowners.
- The Town Meeting (or City Council) Vote authorizes Communities to borrow the SRF loan funds from the Massachusetts Water Pollution Abatement Trust.
- If less than the authorized SRF is borrowed (drawn down), the Community only repays the amount it has borrowed from the Commonwealth.
- The 5% interest charged on the betterment loans to homeowners provides “positive” cash flow and additional security to the Community.
- There should be NO additional taxes if the town participates in this program – the primary repayment obligation is undertaken by the homeowners receiving betterment loans.
- If a participating homeowner defaults on the payment, the Community has a municipal lien on the property. Any homeowner defaults will be charged an accrued interest rate of 14% rising to 16% if a “taking” is required (state law for “delinquent” municipal charges).
- The Community’s repayment to the Commonwealth begins in the second year after the program commences – a year or more after the homeowners begin making payments to the Community. This enables the Community to accumulate at least one year of payments, including 5% interest, to cover unexpected defaults.
- The participation of homeowners in areas identified as environmentally sensitive (to failed systems) is not mandatory. However, if the homeowner’s septic system constitutes an imminent health hazard according to the local Board of Health, the homeowner can be given priority for assistance. Homeowner participation is encouraged because correctly operating septic systems are beneficial to the environment and the low interest rate offered by the Program helps homeowners comply with Title 5.
- The Community has an option to set aside up to 2.5% of the loan funds to obtain consulting services to administer the Program. There is also a \$20,000 grant available for first-time Communities entering the Program to provide additional funds to assist with administrative costs.
- The betterment payments can be spread over a period of up to 20 years and is assumable by the buyer of a property.
- The Community can require repayment of betterment loans by the homeowner sooner than the SRF payments are required by the Commonwealth (for example: betterment loans are made to homeowners over 10 years; the Community takes its SRF loan for 20 years). This provides extra protection to the town.
- The Community does not have to adopt any special provision at the Town Meeting to accept the ‘Betterment Law’ Chapter 111, Section 127B ½ is a ‘General Law’ and is always available.

These points, presented during town meetings, can explain how the program works, where the funding sources come from, who can apply for funding, and how this program will address the environmental issues facing your community.



## SECTION 1. THE COMMUNITY SEPTIC MANAGEMENT PROGRAM

### Introduction

Across Massachusetts, failing cesspools and septic systems are a leading cause of contaminated drinking water, tainted shellfish beds, weed-choked lakes and ponds, and polluted beaches. In 1995, the Department of Environmental Protection (DEP) with the help of key stakeholders, revised Title 5 of the State Environmental Code to protect the health of Massachusetts citizens and the state's natural resources. This was the first time the state's septic system rules were revised since 1978. This revised code reflects a new understanding of the impact of septic systems on the subsurface environment and groundwater and surface waters like rivers, lakes, and ponds. Title 5 requires inspection of private on-site sewage disposal systems before properties using them are sold, expanded, or undergo a change in use. Systems deemed "failed" are required by Title 5 to be repaired, replaced, or upgraded to protect the public health and the environment.



To help homeowners comply with the revised Title 5 rules, the Commonwealth has invested approximately \$164 million in various assistance programs aimed at upgrading septic systems, building community systems, or new sewers. The Community Septic Management Program (CSMP) was developed through the collaboration of DEP, the Executive Office of Administration and Finance, the Office of the State Treasurer, and the Department of Revenue. Funding for the Program was provided by the 1996 Open Space Bond Bill that authorized DEP to spend \$30 million to assist homeowners to comply with Title 5. DEP will use the appropriation to fund loans to communities through the Massachusetts Water Pollution Abatement Trust (the Trust). Using the State Revolving Fund (SRF) loans



from the Trust, communities can provide betterment loans to assist homeowners who must address septic system failures. Betterment loans are described in greater detail in section 4 and 5 of this document.

This manual is a comprehensive step-by-step guide to help communities implement the Community Septic Management Program at the local level. Implementation includes the development of a local inspection or management plan

and a betterment loan program administered by the Board or Department of Health that will provide direct financial assistance to homeowners with failed septic systems. The effectiveness of the Community Septic Management Program's implementation depends largely on the initiative of local officials and their sensitivity to the needs and concerns of homeowners and the community.

Communities must identify and devise a plan to protect environmentally sensitive areas from septic system contamination. Such plans always include the creation of a database and the provision of financial assistance to homeowners using betterments. As discussed in these materials, the community may devise either a Community Inspection Plan (Option A) or a Local Septic Management Plan (Option B). Communities are eligible for a planning grant and a SRF loan of \$200,000 with either Option A or Option B. The SRF loan proceeds may be used to provide betterment loans to homeowners and for eligible administrative costs.

## SECTION 2. CSMP PLANNING GUIDANCE

The Community Septic Management Program (CSMP) provides financial and management tools for local boards of health (BoH) to identify and protect environmentally sensitive areas in their cities and towns. Communities are provided with pre-loan financial assistance in the form of a grant to identify and rank environmentally sensitive areas and to create a plan to protect such areas from septic system contamination. The grant is available after submission of the application described in this manual. After the development and acceptance by DEP of the local program and borrowing authorization by the Town Meeting or City Council, the community can provide financial assistance and incentives to homeowners with failed septic systems in environmentally sensitive areas and in the community at large.

Local implementation of the Community Septic Management Program must include two (2) program elements:

Community Inspection Plan : (Option “A”) which meets the requirements of 310 CMR 15.301(4)(c) and is approved by DEP;

OR

Local Septic Management Plan : (Option “B”) which identifies, monitors, and addresses the proper operation, maintenance, and upgrade of septic systems in a comprehensive manner,

AND

Financial Assistance : The community provides financial assistance to homeowners for the repair, replacement or upgrade of failed septic systems using betterment agreements under M.G.L. c. 111 §127B½. (See Sections 4 - 8).

A Community Inspection Plan (Option A) requires the regular inspection of all septic systems at least once every 7 years, and allows the systems covered by the plan to be relieved of the inspection upon property transfer requirement in Title 5. In comparison, the Local Septic Management Plan (Option B) does not require the periodic inspection of systems, does not relieve homeowners of system inspection upon transfer, and allows for a wide range of septic system management approaches. Communities may use either approach to identify and address septic system failures. To develop and implement either plan, grant money is provided by DEP and the Trust for the first two (2) rounds of the loan program.

Schedule for Planning Assistance : Within four (4) months from the date of signing the planning grant agreement with the Trust, the participating community must submit its Local Septic Management Plan or Community Inspection Plan for DEP’s review and initial approval and comment. The proposed plan must be modified in accordance with DEP’s comments, requirements, and time frame.

After acceptance of the borrowing element of the community’s plan at a town meeting or by the City Council, the community should forward the plan to DEP for final review and approval with the Program Application (Section 3). The Program Application is brief and designed to notify DEP that the plan has local approval and that Local Authorization to borrow the funds has been voted by the Town Meeting or City Council. For sample authorization language, contact your regional coordinator (See Resources in Appendices). DEP will certify the program approval and acceptance of the Community Inspection Plan or Local Management Plan by forwarding a Project Approval Certificate/Project Regulatory Agreement (PAC/PRA) to the Trust (Section 9). The PAC/PRA is an agreement between DEP and the community and is signed by the DEP Commissioner and Chief Executive Officer of the community. The PAC/PRA will incorporate DEP’s program requirements (e.g., the approved local Plan and Betterment Loan Program), and will set the schedule and budget for implementing the program within the community. The community will then be authorized to enter into an SRF Loan Agreement with the Water Pollution Abatement Trust (See Section 10 for more information.) Communities will have 18 months to disburse the SRF Loan to homeowners for septic system repairs, replacements, and upgrades through its local program.

Loan Administration and Project Management : All communities will receive SRF loan installments to keep pace with the schedule set forth in the PAC/PRA. Upon the completion of each betterment (i.e. each homeowner project), the community must submit a Title 5 Certificate of Compliance to DEP. Copies of the betterment agreements and supporting documentation must be available for inspection and audit by DEP. Within six months of the first installment payment, DEP reviews the program's progress. Each municipality must also submit quarterly reports to the Department of Environmental Protection (DEP) and the Massachusetts Water Pollution Abatement Trust (MWPAT) .

Municipal Program Completion : Completion of the project will occur when:

- a community expends the full SRF loan proceeds for activities eligible under the program and the Project Regulatory Agreement/Project Approval Certificate (PRA/PAC), or
- as much of the funding as is expended within the project period or if DEP determines that the plan will not move forward in a timely manner.

When implementation of a plan is complete, a community is required to certify that the program has been completed according to the provisions of the PRA/PAC.

## ***GUIDELINES FOR IMPLEMENTING COMMUNITY INSPECTION PLANS (OPTION A) 310 CMR 15.301 (4)***

### Introduction

The Community Inspection Plan is one of two plans communities can choose when implementing the Community Septic Management Program. The following guidelines will help local and regional governmental agencies prepare Community Inspection Plans and details the minimum requirements necessary for DEP approval.



Title 5 requires the inspection of on-site sewage disposal systems at the time of transfer of title of the facility served by the system, unless *“the facility is subject to a comprehensive local plan of on-site septic system inspection approved in writing by the Department and administered by a local or regional governmental entity, and the system has been inspected at the most recent time required by the plan.”* (310 CMR 15.301(4)(c)). Under a Community Inspection Plan, a community must inspect all septic systems in the areas of the community subject to the Plan at least once every seven years. If the community implements a Community Inspection Plan, homeowners within the plan area are not required to have a septic system inspection when transferring title. Such a Community Inspection Plan:

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*“may prioritize systems to be inspected on the basis of proximity to water resources, soil or geological conditions, age or size of systems, history of performance, frequency of pumping or other routine maintenance activity, or other relevant factors, and may establish different schedules and frequency of inspection on the basis of such criteria, provided that all systems are inspected at least once every seven years by a System Inspector approved by the Department.”*

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### Minimum Requirements

#### A. Scope and Basis for the Plan

1. As required by Title 5, the proposed inspection plan must be comprehensive in nature. While this requirement does not mandate that the inspection plan be community-wide (in the case of a city/town) or region-wide (in the case of a regional entity), it does require the proponent to analyze and document the feasibility of implementing such a program and explain the reasons for proposing a plan of lesser scope (e.g., prioritizing a neighborhood with failed septic systems that impacts a nearby waterbody).

2. The proponent of the proposed Community Inspection plan must document the basis for scope and requirements of the plan (e.g., in the prioritization of the areas covered by the plan, the frequency of inspections, the nature and scope of interim maintenance measures, the implementation and administration of the plan).

B. Prioritization of Areas to be Inspected

1. The Community Inspection Plan must prioritize areas to be inspected based on the consideration of the following factors:

(a) Areas with high system failure rates attributable to:

- ✧ high ground water;
- ✧ poor soils (e.g. showing evidence of breakout);
- ✧ frequent pumping of systems required;
- ✧ proximity to water resources - e.g., systems located in close proximity to a surface water supply or tributary, or to private wells, systems located within a Zone I of a public well; cesspools or privies located in close proximity to a surface water or tributary, a bordering vegetated wetland or a salt marsh; large systems located within a nitrogen sensitive area or in close proximity to a surface water supply or tributary; and
- ✧ other Title 5 failure criteria.

(b) Areas of particular concern due to:

- ✧ high groundwater;
- ✧ poor soils;
- ✧ high density of private wells;
- ✧ within a Zone II or a Zone A;
- ✧ concentration of old systems and/or cesspools and privies; and
- ✧ close proximity to contaminated or degraded shellfish beds, nitrogen sensitive embayment, or other sensitive water resources (e.g. recreational lakes and ponds).

(c) Areas of high system density not included in (a) or (b) above.

(d) Areas that do not appear to pose a threat to public health or the environment.

2. The plan must include a map on which is depicted the above proposed prioritization of areas to be inspected. The map may be created as an overlay of a USGS (or GIS) map showing physical features and highlighting water resources (e.g. lakes, ponds, public water supply wells, reservoirs, Zone IIs, Zone A & B, wetlands, shellfish beds, etc.).

3. The plan must include a narrative describing prevailing site conditions in the areas that have been designated for inclusion in plan. If the area does not encompass the entire community or region, the narrative must also contain a comparative description of the site conditions existing outside of plan area (e.g., the narrative might explain that the area within plan consists of small lots close to pond, and that the area outside of plan consists generally of large lots with well drained soils).

4. The plan must describe the information and process from which the proposed inspection prioritization scheme is based (e.g., review of existing files in Board of Health, DPW, water/sewer department; survey of property owners; site visits by health agent/staff).

#### C. Proposed Schedule for System Inspections

1. The plan must identify the proposed schedule for system inspections, consistent with the requirements of Title 5. As provided for in 310 CMR 15.301(4)(c), all systems covered under the plan must be inspected at least once every seven (7) years by a DEP approved Septic System Inspector. A list of certified inspectors can be found on DEP's web site : <http://www.mass.gov/dep/brp/wwm/soilsys.htm>. The plan may identify different inspection frequencies for different categories of systems, based, e.g., on the area the system is located in or on the type and age of the system. In all cases, the plan must adequately explain and support the selected inspection schedule(s).

2. If applicable, the plan must also explain how large systems (discharging in excess 10,000 gallons per day or GPD), shared systems, innovative and alternative systems and other systems requiring periodic inspection under Title 5 are to be integrated into the plan. All system inspections must be performed in accordance with 310 C.M.R. 15.302, *Criteria for Inspection*, and all applicable DEP guidance and training materials.

#### D. Interim Maintenance Measures

The plan should describe any proposed interim maintenance measures (e.g., pumping and/or other routine maintenance activities), water quality monitoring, or reporting requirements to be required of property owners whose septic systems are covered by the plan.

#### E. Implementation and Administration of the Plan

1. The plan must describe the legal and jurisdictional basis for the establishment and enforcement of the Community Inspection plan and include all supporting documentation (e.g., enactment of a BOH regulation or a town bylaw or city ordinance). The plan must include these legally enforceable requirements:

- (a) all systems covered by the plan shall be inspected in accordance with the schedule in the DEP approved plan;
- (b) all inspections must comply with the inspection criteria in Title 5 and be performed by DEP approved Septic System Inspectors;

At the initiation of the plan:

- (1) a notice must be recorded on the properties deed served by the septic systems covered under the plan, stating the existence of the DEP approved inspection plan, its applicability to the property, and the requirement that the system be inspected in accordance with the schedule outlined in the DEP approved plan; or,
- (2) some other mechanism as approved by DEP for giving notice of the above described information to subsequent owners and other interested parties.

2. The plan must set forth a system for monitoring:

- (a) whether inspections are being performed in accordance with the DEP approved plan (using a DEP approved data base system for tracking septic system inspections); and
- (b) whether failed systems are being upgraded in accordance with the applicable time frames in Title 5.

3. The plan must include:

- (a) A proposed source of funds for administration and identification of the proposed revenue sources (e.g., fees, inspection charges) for inspections;
- (b) A proposed budget for administration and inspection;
- (c) A staffing plan for program management with identification of the personnel to be used to inspect the systems (and whether such personnel



will be staff of the city/town and/or private inspectors retained by the septic system owners and/or the city/town), as well as identification of other staff who will oversee the implementation and ongoing administration of the inspection program;

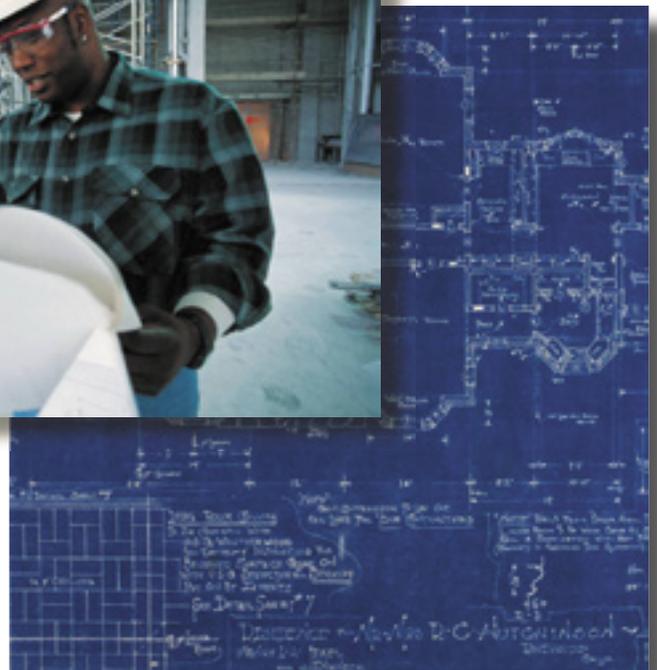
(d) An outreach and education strategy that includes a description of the proposed public education and outreach efforts that must be integrated into the implementation of the plan.

4. The plan must include an annual status report by the city/town, to be submitted to DEP within 30 days of the end of the State Fiscal year, July 1- June 30.

- (a) This plan should include the results of the above required monitoring system stating:
  - (1) the total number of systems inspected, categorized by uses (e.g., residential, commercial, institutional, school), flows, and age (if available), and
  - (2) the number of failed systems discovered during inspection, broken down by the above categories;
- (b) The number, use, flow, and age and compliance status of all systems required to be upgraded in compliance with the applicable time frames in Title 5; and
- (c) Identification of those systems which are not in compliance with the requirements of the plan, and a description of the actions taken by the city/town to address such noncompliance.

In addition, upon completion of the first time inspection of all the systems covered by the plan, the city/town shall submit a report to DEP evaluating the effectiveness of the plan and determining whether any modifications to the scope and requirements of the plan, consistent with Title 5 and applicable DEP Guidelines, are warranted.

5. **The plan must include an opinion of city/town legal counsel certifying that the plan and its requirements have been legally adopted and are enforceable by the city/town.**



## ***GUIDELINES FOR IMPLEMENTING LOCAL SEPTIC MANAGEMENT PLANS (OPTION B)***

### ***Introduction***

Under the Community Septic Management Program, communities may choose to develop a *Local Septic Management Plan (LSM)* which identifies, monitors, and addresses the proper operation, maintenance, and upgrade of septic systems in a comprehensive manner. Unlike a Community Inspection Plan, a Local Septic Management plan does not meet the requirements of 310 CMR 15.301(4)(c). As a result, septic systems covered by an LSM plan must be inspected prior to property transfer as required by Title 5.

At a minimum, an LSM plan must include, but is not limited to, the following elements:

- (a) Identification and prioritization of areas containing systems warranting more regular monitoring and maintenance and/or upgrade, based on existing and new information and data, as appropriate (e.g., voluntary inspections);
- (b) Development of a DEP approved data base system for tracking the inspection of septic systems and whether failed systems are being upgraded in accordance with the time frames outlined in Title 5; and
- (c) Development of requirements and a schedule for periodic pumping and other routine maintenance of systems covered by the program.

Once the Project Approval Certificate/Project Regulatory Agreement (PAC/PRA) is issued to the community and the loan agreement with the Water Pollution Abatement Trust is finalized, the community may begin the activities under its Septic Management plan. Activities should include:

- A. Creation of an administrative structure to manage the program (administrative tasks may be delegated to a regional planning agency or contractor or shared among communities),
- B. Prioritization of environmentally sensitive or threatened areas,
- C. Public Notification,
- D. Priority Lists,
- E. Homeowner Selection Criteria for loans,
- H. Development of Betterment Agreements,
- I. Project administration for repair of septic systems (procurement, funding and oversight), and
- J. Administration of loan repayment.

#### ***A. Program Administration***

Administrative responsibilities and tasks for the program should be defined as a part of local program development. Subcontracting for the oversight of the program or specific program tasks to a separate entity, such as a regional planning agency, county government, or a private consultant is permitted. Participating communities are responsible for preparing and processing the legal agreements and contracts to procure such services, when necessary. A formal Request for Services or Request for Responses (RFR) may be necessary to procure services from private contractors. The Town Counsel, City Solicitor, or Chief Procurement Officer should be consulted to ensure compliance to applicable state laws.

### B. Prioritization of Environmentally Sensitive or Threatened Areas

The Board of Health, together with other community officials, should identify and prioritize environmentally sensitive or threatened areas. All such areas presently or potentially impacted by failed, substandard or poorly sited septic systems should be identified using a numerical ranking system established by the municipality. The most seriously impacted areas shall be ranked number one, and so on in descending order, until all areas are ranked. Similar priority areas may be afforded equal ranking.

Each community must determine the level of community and citizen involvement necessary to establish environmental priorities. Keep in mind that because of funding limitations only the higher priority areas in a community are likely to receive the initial funding under the Community Septic Management Program.

### C. Public Notification

Public awareness and support of the Community Septic Management Program is likely to be an important to the success of the program in the community. It is the responsibility of each community to inform homeowners of the goals of the in their town/city and the availability of financial assistance to homeowners that need it.

Notice of the Program can be provided in the following manner:

- Notices in local newspapers (through legal and other advertisements, press releases, newspaper articles and letters to the editor),
- Discussions during public meetings,
- Public access cable television shows,
- Local commercial radio and television shows,
- Direct mailings to homeowners in priority areas,
- Adding program brochures along with municipal utility bills,
- Postings in heavily trafficked public places (town hall, community center, library, etc.).

Each community is responsible for notifying the public that loan applications will be received during a specified time. The notice should state the period for which applications will be accepted, areas within the town that are eligible for funding (if applicable), and the contacts for information within the Board of Health or other designated agency or administrator. DEP recommends that each community establish an annual time period for accepting applications (e.g. January 15 to February 15.) Applications received after the date can be put on a waiting list. Some communities have found that preliminary applications, those requesting only name, address and telephone number, are more successful than detailed loan applications, at least prior to establishing project priority lists. Interest in the program will vary from community to community. In some communities the local program will not require much effort to attract customers. Others will need an extensive marketing campaign.

The process for receipt of applications and record keeping should be established. Bear in mind that any personal financial information of applicants should be protected and kept in a secure filing system. Suggested Application Forms are provided in the appendices of this manual. Cities and towns may use or modify these forms. To avoid the appearance of arbitrariness, applicants must be informed of the criteria for awarding betterment loans well in advance of the award selection.

### D. Determining Priorities

The Board of Health or its consultants should make an approximate determination of the number of septic systems that can be repaired with the available program funds. Applications should be screened for location in priority areas and ranked according to reestablished criteria. Applicants whose property poses equal environmental or public health problems should be ranked on the basis of income and funding needs. Betterment loans cannot be awarded to any person or family with a gross taxable income in excess of \$150,000 prior to DEP approval. Properties in the community known to pose a current and direct threat to public health and the environment may also be afforded a higher priority in the ranking system. If there are not enough applications for properties in the priority area(s), the board of health can choose to extend the time to apply or award betterment loans based on date of the filing of the application. These criteria should be established prior to making betterment awards to avoid the appearance of arbitrariness.

### E. Priority Lists

After the application deadline has passed, a priority list may be prepared. A ranking of applications for assistance, based on previously established criteria should be made. Communities may wish to develop a “scoring” approach that awards extra “points” to those applicants in previously established environmental priority areas. Applicants with equal scores may achieve priority by an earlier application date. Communities may consider income when scoring otherwise equally ranked applications.

The final Priority List may include the following information:

- ✧ Name of applicant,
- ✧ Address of applicant,
- ✧ Environmentally sensitive area (Yes/No)?; If yes, identify the area ranking,
- ✧ Type of project (repair of septic system, shared system, sewer hookup, etc.),
- ✧ Estimated project cost/betterment amount.

Steps to creating a group of projects to receive Betterment Loans can be as follows:

- ✧ Establish deadline for applications.
- ✧ Rank project according to environmental impact.
- ✧ Apply level of funding to the list of projects to establish a cut off on the priority list.
- ✧ Reserve 10% for contingency.
- ✧ Certify noncompliance with Title 5.
- ✧ Create a waiting list from remaining pool of projects to rank project for future funding
- ✧ To bypass projects selected for funding, use the waiting list to choose the next highest rank project.

### F. Homeowner Selection

After the Priority List is finalized, municipalities can offer to enter into Betterment Loan Agreements with homeowners on the priority list. When communities issue an offer to enter into a Betterment Agreement with a homeowner, the offer should contain a strict time limit for response. The offer should explain that there is a waiting list and request that the Board of Health or its administrator be advised immediately if the homeowner is no longer interested in obtaining a Betterment Loan. It is strongly advised that a “grace period” be built in so that otherwise qualified applicants are not denied funding because of unforeseen circumstances (e.g. illness, vacation, etc.) Once the grace period has expired without a Betterment Agreement being created, the homeowner should be notified in writing advising the homeowner that he or she has been moved from the projects to be funded list to the waiting list. After this notice, the Priority List may be revised to ‘move up’ one or more homeowners from the Extended List.



Once an offer to enter into a Betterment Agreement is accepted, copies of the relevant Betterment Documents should be provided to the homeowner. The Program Administrator should be prepared to answer questions regarding what costs are eligible for funding, when and how money will be made available and what documentation must be provided to satisfy the program legal requirements. Setting timetables and deadlines is necessary to ensure that Betterment Agreements are promptly executed and that septic system repair and upgrade projects are commenced and completed on time.

The program administrator should review each form carefully to ensure that the homeowner provides all of the required information. Keep in mind that Betterment Agreements work like construction loans: money is disbursed to cover costs actually incurred to perform the design, repair or upgrade work. The total actual costs will not be determined until the project is complete. The Betterment Agreement forms provide that funding may be available for site investigation, design and repair or upgrade of a septic system.

It may be useful for the first few projects to have the City Solicitor or Town Counsel review the legal requirements to ensure that the forms are executed in compliance with Massachusetts law and that a valid Betterment lien is established. However, it is not likely that each Betterment Agreement will require legal review.

### G. Elderly Deferrals

The Board of Health can enter into Deferral and Recovery Agreements (DRAs) with eligible homeowners. Such agreements allow the homeowner to postpone payment of the betterment provided that the provisions of the applicable statute are complied with. The provisions include a requirement that the homeowner be eligible for a real estate tax exemption under clause 41A of Section 5 of Chapter 59 of the General Laws. The Board of Health must forthwith record at the registry of deeds a statement (notice) of the Agreement in order for it to be effective against third parties. The statute provides that if the applicant qualifies for entry into a DRA, the Board of Health shall grant it. However, a new application for a DRA must be filed each year with the Board. In addition, the Board must annually advise the Board of Assessors of the charges to be deferred.



Before advising homeowners that entry into a DRA is available, the Board of Health must verify that the town has accepted the provisions of Massachusetts General Laws (M.G.L.) Chapter 80 §13B at a town meeting or by vote of the City Council. Ask the Town Clerk or Town Counsel to verify whether the town has in fact accepted this statute. A majority vote is necessary to accept the provisions of the statute.

Chapter 59 sets out the following requirements for eligibility to enter into a DRA under Chapter 80 §13B:

#### A. Age and Status:

- I. Owner is single or, if married, the owner's spouse is not an owner. Owner must be 65 years or older by July 1 in the year in which application for the agreement is made or;
- II. Owner and spouse are joint owners. Either spouse must be 65 years or older by July 1 of the year in which application is made.

#### B. Ownership and Occupancy:

The applicant must have owned and occupied as a domicile any real property in Massachusetts (including the present property) for five (5) years. Massachusetts must have been the applicant's domicile for the preceding ten (10) years.

#### C. Gross Income:

Gross income from all sources in the calendar year preceding the year in which application is made may not exceed \$20,000.00. A town may adopt a higher maximum qualifying gross income amount but such amount may not exceed \$40,000.00.

A surviving spouse inheriting the property must have occupied it or other real property in Massachusetts for five (5) years. The surviving spouse who otherwise qualifies may continue to defer payment of the betterment. However, the total apportioned and deferred betterment payments (and taxes if applicable), together with interest accrued, may not exceed fifty (50%) percent of the owner's interest in the assessed value of the property.

Anyone having a legal or beneficial interest in the property (including a lender holding a mortgage) must approve of the Deferral and Recovery Agreement. The Deferral and Recovery Agreement form contains a section for such persons or entities to sign off.

Payment of a deceased spouse's deferred betterment charges shall not be required during the life of a surviving spouse who inherits the property and who enters into a DRA.

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Important! The community remains responsible for repayment of monies loaned by the Trust. If repayment by the homeowner of the costs associated with septic system betterment agreements is to be deferred, adequate planning for alternative means of repayment to the Water Pollution Abatement Trust must be made.

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## II. Program Costs, Homeowner Repayment and SRF Loan Repayment

### General

The Community Septic Management Program anticipates that private contractors will perform repairs and upgrades of failed septic systems. All design professionals (Professional Engineers and Registered Sanitarians), site investigators (i.e. soil evaluators) and construction contractors must have the qualifications and licenses required by Massachusetts law and carry adequate liability and other appropriate insurance. All work must conform to the requirements of 310 C.M.R. 15.00 (Title 5) and any applicable requirements of the state plumbing and building codes and other applicable laws and regulations. All required permits and licenses must be obtained in connection with repair and upgrade projects performed pursuant to the program. Prevailing wages are not required to be paid.



The steps to be undertaken to ensure that the work is performed adequately are described in Section 5.

### A. Administrative Costs

All communities must submit an administrative budget prior to final approval of the project. Eligible costs may be drawn down out of the preloan assistance grant. The Board of Health should work with the treasurer to ensure that requisitions for administrative costs, as well as other program costs, are handled promptly and efficiently and documented appropriately. Proceeds of the Trust loan (not to exceed 2.5% of the loan amount) may be used for local administrative costs and other costs of issuance related to the Trust loan.

### B. Eligible Betterment Project Costs

Betterment Agreements made pursuant to M.G.L. c. 111 §127B ½ can fund septic system repair and upgrade projects performed by the homeowner. Funds may be used for all costs necessary to repair or replace a failed septic systems by renovating the existing system; hook-up to existing sewers; or replacing traditional septic systems with an alternative system approved pursuant to Title 5.

The following costs are eligible for funding under the Program:

- (a) Performing soil and percolation tests and other necessary site analyses;
- (b) Specification of the Failed System components to be repaired, replaced and/or upgraded;
- (c) Design of the system or components thereof to be repaired, replaced and/or upgraded;
- (d) Obtaining all applicable federal, state and local permits and approvals required to complete the work;
- (e) Seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;

- (f) Minimizing any disruption of utility service, and reasonably restoring the property to as near its original condition as practicable;
- (g) Engaging such other services and procuring such other materials as, within the reasonable discretion of the Board of Health, shall be necessary to complete the project in a good and workmanlike manner; and
- (h) Professional services for project oversight and management.

Other costs, directly or indirectly related to the project may be eligible. Before the commencement of a project, the Board of Health or its administrator and the homeowner should agree upon a scope of work. In the event that unanticipated circumstances arise such as the discovery of a boulder, ledge or other subsurface condition, the board may increase the loan sum provided that the work is reasonably related to the accomplishment of the project.

#### C. Homeowner Repayment of Betterment Loans

The Board or its administrator together with the municipal treasurer and accountant must set up a separate account for each Betterment project. After all betterment loan funds have been disbursed to a homeowner, a final accounting must be made. The Board of Health must certify the total amount funded for the project to the municipal assessor. The assessor, in turn, commits for collection to the tax collection the total project amount. In general betterment loans, together with accrued interest, are repaid through the Community's tax collection. The DOR/Division of Local Services accounting and collection requirements are described in a DOR Bulletin dated August 1997. More information can be found in the resource section of the Appendices.

#### D. Repayment of SRF Loan

Each municipality must authorize borrowing funds from the Massachusetts Water Pollution Abatement Trust through town meeting or city council vote. A vote of  $\frac{2}{3}$  of the members voting is necessary. Once borrowing authorization has been obtained, the municipality can seek DEP's approval of the municipality's Community Inspection Plan or Local Septic Management Plan. After DEP approval of the Local Plan, the chief executive officer of the municipality can execute a Loan Agreement with the Trust. The Loan Agreement describes the terms and conditions of the SRF loan made by the Trust to the municipality. Each community assumes full responsibility for repaying monies borrowed from the Trust. However, the repayment obligation is secured with the betterment agreements made with homeowners. DEP recommends that the Board of Health and/or its consultants meet with the municipal finance team, the town collector/treasurer, accountant, and assessor, to ensure the smooth implementation of the local program and appropriate fiscal accounting. Communities will commence repayment approximately two years after the loan agreement is made. The municipality need only repay monies actually drawn down to fund betterment loans.

The Community Septic Management Program anticipates that communities will charge homeowners either two percent (2%) or five percent interest (5%) on Betterment Loans at the option of the community.

*Interest accrued on Betterment Loans may be used for future administrative costs. Principal and interest payments are credited to a special 'receipt reserved' account reserved for future project costs. The repayments are not to be credited to the community's general fund account. Monies repaid to the community may be 'reloaned' to fund additional betterment projects provided that the local plan is reauthorized by the Town Meeting or City Council on an annual basis.*

The treasurer and accountant prepare a quarterly report detailing betterment loan activity and anticipated project funding for the next quarter. The report is provided to the Trust and DEP. The loan agreement between the Trust and the community will provide a Final Disbursement Date by which all SRF loan funds must be expended for homeowner septic repairs or administrative costs.

## SECTION 3. PROGRAM APPLICATION AND INSTRUCTIONS

### 1. General Information (see application form on next page)

A-G. For the Community/Applicant - Provide the name and address of the Applicant that will undertake the Project. List the name, title, telephone number and fax number of the contact person for the Project.

For the Program Administrator - If the Applicant has or will be contracting with another entity (public or private) to assist it in the Project administration, provide the same information for the Program Administrator.

H. Identify the Applicant's Department of Revenue ("DOR") identification number (i.e., the ID number used for all state revenue aid programs).

### 2. Type of Assistance

Identify the applicable financing option and Loan amount: - \$200,000;  
Select one of the Community repayment options (5, 10, 15 or 20 years).

### 3. Local Authorization and appropriation

The Applicant must demonstrate by means of a local authorization appropriation that it has sufficient approval to borrow funds to cover project costs.

### 4. Project Description

Statement of Program Objectives: The Applicant must include and highlight any updated information relevant to the project, particularly proposed changes to the project budget and schedule.

### 5. Certification

The authorized representative of the Applicant must sign the Application certification. The Applicant must attach a local resolution designating by title the official (e.g., Mayor, City or Town Manager, Chairman of the Board of Sewer Commissioners, Board of Selectmen) to act as the representative of the Applicant to sign for, accept, and take whatever action is necessary relative to the Project.

In addition the community will have to fill out a form for the Authority to File. The city council will generally name the authorized representative for the city. An action by town meeting will name the appropriate town body, such as the board of selectmen or the board of health, which will, in turn, name the authorized representative for the town. If the Authority to File statement identifies an office rather than an individual, the Applicant must submit a certified statement naming the individual currently in office.

The Authority to File statement must also be certified, either by a certification at the bottom of the statement or by submitting a separate certification. A sample form for Certifying the Authority to File may be obtained from your regional coordinator.

Finally, in the event the authorized official is replaced while the project is still active, the Applicant must submit a certified statement naming the new incumbent and the effective date of his or her appointment.

# Application

## 1. General Information

1. *For the Community/Applicant*

A. Community/Applicant:

\_\_\_\_\_

B. Street

\_\_\_\_\_

C. City, State, Zip Code

\_\_\_\_\_

D. Contact Person

\_\_\_\_\_

E. Title

\_\_\_\_\_

F. Telephone Number

( ) \_\_\_\_\_

G. Fax Number

( ) \_\_\_\_\_

H. Department of Revenue Identification Number

\_\_\_\_\_

2. *For the Administrating Entity:*

A. Administrating Entity

\_\_\_\_\_

B. Street

\_\_\_\_\_

C. City, State, Zip Code

\_\_\_\_\_

D. Contact Person

\_\_\_\_\_

E. Title

\_\_\_\_\_

F. Telephone Number

( ) \_\_\_\_\_

G. Fax Number

( ) \_\_\_\_\_

H. Dept. of Revenue Identification Number

\_\_\_\_\_

## 2. Terms of Loan Assistance

A. (\$200,000)

B. Repayment Period: 5 years \_\_\_ 10 years \_\_\_ 15 years \_\_\_ 20 years

## 3. Local Appropriation

Attach a certified copy of town meeting or city council vote, as applicable.

## 4. Project Description

Statement of Program Objectives For (a) or (b): Attach a copy of the Local Septic Management Plan or Community Inspection Plan, as approved by DEP.

The Applicant must include and highlight any updated information relevant to the Project, particularly proposed changes to the Project budget and schedule.

## 5. Certification

In submitting this Application for Loan assistance under the Local Septic Management Program, the Applicant certifies to the Department of Environmental Protection ("DEP") as follows:

"To the best of my knowledge and belief the information provided by the Applicant in this Application is true and correct, and the documentation submitted by the Applicant is complete and responsive to the Application and has been duly authorized by the governing body of the Applicant.

The applicant further assures DEP that it possesses the legal authority to apply for the Loan, and to finance and implement the proposed Project. A resolution, motion, or similar action has been duly adopted or passed as an official act of the Applicant's governing body, authorizing the filing of this Application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the Applicant to act on behalf of the Applicant in connection with this Application and to provide such additional information as may be required to receive Loan assistance."

\_\_\_\_\_  
Authorized Representative (Type)

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## SECTION 4. BETTERMENT AGREEMENTS M.G.L. c.111 § 127B ½

The original Betterment Law, M.G.L. Chapter 80, defines a Betterment Assessment as “a charge imposed on real property ... which receives a benefit ... from a public improvement made by ... order of a board of officers of the commonwealth, a county, city, town or district.” Municipalities pay for improvements such as roads, sidewalks and sewer lines by traditional betterments. The innovative use of the betterment concept in the Betterment Bill, M.G.L. c. 111 §127B ½, (See Section 8) was inspired by the concept that in many towns septic systems serve as the wastewater disposal and treatment system in lieu of public sewers. By using a financing and repayment mechanism similar to the one used to construct public sewer improvements, a town can protect community water resources by providing financial assistance to homeowners and accelerating the pace of septic system repairs and upgrades.

Unlike traditional betterments, the betterment established under M.G.L. c. 111, §127B ½ is created through the agreement of the town and the homeowner. The Betterment Agreement provides an outline of the rights and responsibilities of the town and the homeowner in connection with the repair, replacement, or upgrade by the town or by the owner of the homeowner’s septic system. The basic elements of the Betterment Agreement are:

- ★ The town agrees to provide financial assistance to the homeowner to repair, replace, and/or upgrade the septic system or to do the work on the homeowner’s behalf.
- ★ If the homeowner performs the work, the homeowner agrees to repay, with interest, any money advanced by the town over an agreed upon period of time.
- ★ If the town contracts to perform the work, the homeowner agrees to repay the town’s costs, with interest, over an agreed upon period of time.
- ★ The town establishes an account, similar to a loan, which will be paid on the homeowner’s real estate tax bill.
- ★ The town may obtain a first priority “municipal lien” on the homeowner’s property if the repayments are not made on time.
- ★ Even if the town contracts to perform the work, the septic system remains the property of the homeowner.

Betterment Agreements are the tools used by towns to provide financial assistance to homeowners. DEP recommends that Boards of Health work closely with the municipal treasurer and assessor before entering into agreements with homeowners to ensure that the Betterment Agreements are consistent with program requirements.

The Betterment Agreement specifies that the Board of Health make a finding that the homeowner’s septic system exhibit one or more of the failure criteria set forth in Title 5. It is not necessary for the Board to condemn the homeowner’s property or issue an eviction order. However, the Board retains its powers under M.G.L. c. 111 §127B should the need to exercise those powers arise. For example, the Board continues to have authority to order an emergency or interim repair of a failing septic system.

After the finding is made, the Board must enter an order requiring that work be accomplished to bring the system into compliance with Title 5. The order can be satisfied either by the homeowner, using financial assistance provided by the town or by the town itself on the homeowner’s behalf. Notice of the Betterment Agreement is to be recorded at the Registry of Deeds to provide public notice of the existence of an agreement affecting the property. If the homeowner determines, after the site investigation or after receipt of the construction bids, that he or she is unwilling to proceed with construction, the order can be revoked. The homeowner must still repay all advanced money and costs to the town. In addition, the homeowner is still required, pursuant to Title 5, to repair or upgrade the septic system within the parameters set by the regulation (i.e. timeframes, maximum feasible compliance).

If the homeowner is performing the work, the Board of Health will approve the project by issuing a Disposal System Construction Permit and take the steps outlined in the Betterment Agreement (Owner to Procure and Contract) form. The model forms provide a framework for ensuring that costs are controlled, competent work is performed and completed, unexpected contingencies are handled promptly, and insurance is in place in the event of an accident. Both homeowner and contractor are held accountable to complete the project.

The Betterment Bill statute makes the homeowner liable for the repayment of all direct and indirect expenses incurred by the Board of Health in connection with the repair, replacement and/or upgrade of the septic system.

The recent revisions to the Betterment Bill eliminate the need to obtain and record an estimate of costs. However, some homeowners may discover that the proposed construction costs (even with low interest rate financing) exceed their reasonable ability to repay the town. Therefore both Betterment Agreement forms provide that until construction commences, the homeowner is not under an obligation to proceed with the construction phase of the project. Once construction commences, however, the homeowner agrees to expeditiously complete the project and to use reasonable efforts to ensure that the contractor completes their obligations as well.

Because unknown subsurface conditions may substantially increase the project costs, DEP recommends that a contingency reserve of up to 10% of the project costs be budgeted. The homeowner is obligated to repay only that part of the reserve actually drawn down to complete the project. Once the project is complete, any remaining reserve amounts can be released for use on other projects.

M.G.L. c. 111 §127B ½ makes it possible to “roll-over” the personal obligation to repay the town for Betterments from the original homeowner to subsequent owners. The effect of the law is to release the homeowner from the personal liability for repayment when a purchaser agrees to assume the liability. A written release should be provided to the homeowner within a reasonable time after request. The Betterment Agreement forms detail the steps to accomplish the roll over and the conditions under which rollovers may occur.

The law provides that the municipal lien securing any payment due shall arise *“on the day immediately following the due date of [the betterment] assessment or apportioned part of such assessment.”* If the apportioned payment is made in a timely manner, no betterment lien attaches to the property. Betterments under M.G.L. c. 111 §127B ½ operate in the manner comparable to sewer assessments under M.G.L. 83. Assessments under M.G.L. 83 also do not become liens until the day immediately following the due date of the assessment. Just like sewer assessments, it can be expected that lenders will require payment only of amounts due at the time the owner (or buyer) grants a mortgage.



A property subject to a betterment under M.G.L. c. 111 §127B ½ may be sold or mortgaged free of liens even though remaining betterment payments will come due in the future. This aspect of the law facilitates the transfer of properties improved with betterments by permitting the betterment to be amortized over the entire original term of the betterment agreement even if the property is conveyed to a new owner. As a result, property owners that experience financial hardship as a result of complying with Title 5 may have the full benefit of the financial assistance provided using betterments.

If a betterment lien arises, it jumps ahead of an existing mortgage and other liens. Because of this feature of the law, lenders will want to know exactly how much is outstanding on the betterment account so that an escrow can be established and collected along with the monthly mortgage payment.

After the project is complete the total amount of financial assistance or total costs of the town incurred in connection with the project must be provided to the homeowner and certified to the Assessor. The Assessor will, in turn, take the required steps to include the yearly charge for the project in the homeowner’s tax bill. As funds are repaid to the town, they are to be deposited into the special revenue account. The funds may then be used for additional septic system betterment projects.

The forms provided are intended to assist Boards of Health create Betterment Agreements with homeowners. The forms may be modified to suit particular circumstances and meet the needs of the town and homeowner. Boards of Health are encouraged to seek the input of municipal officials and others with experience providing assistance to homeowners and overseeing repair and upgrade projects.

## ***SECTION 5. PROJECT MANAGEMENT USING BETTERMENT AGREEMENTS***

### Betterment Agreement

Betterment Agreement projects anticipate that funding will occur in a single payment or design services and on a periodic basis for construction services and materials. The Betterment Agreement specifies that installment payments shall be made on the following basis:

(A) In the event the owner seeks a contractor to perform field work and preparation of plans for the project, the owner is advised to solicit three estimates for the necessary field work and plan preparation from registered professional engineers or registered sanitarians and submit to the City/Town the owner's choice of an engineer or sanitarian. The Board of Health may approve a payment not to exceed the amount of the selected estimate. A payment for field work and plan preparation can be made by check payable jointly to the owner and the engineer or sanitarian upon presentation and approval of the invoices.

(B) The contractor must allow the homeowner 30 days for the remittance of all invoices charged to the betterment project. In a payment request, the contractor shall give notice to the owner specifying the cost incurred for the payment requested. Such notice shall consist of a detailed request describing the value of the completed items of work. The City/Town may issue a check payable jointly to the owner and contractor, such check shall be forwarded by City/Town to the owner.

(C) Prior to making an installment payment, the Board of Health may cause the project to be inspected to verify that the work items described in the request have been actually completed. In any case, the contractor shall provide verification that the work referred to in the installment request has been completed in accordance with the approved plans.

(D) Prior to paying the final installment, the contractor shall provide verification that all work has been completed in accordance with the approved plans, including a sworn statement that all materialmen, subcontractors and employees have been paid for work on or materials supplied for the project and the Board of Health shall have issued a Certificate of Compliance for the project.

The Board of Health is responsible for submitting Form DMS T5-1000 (see Appendices) to DEP as betterment agreements are completed to request a payment requisition. Form DMS T5-1000 requires that a brief financial summary of each betterment project be provided. DEP reserves the right to review and audit individual betterment agreements for compliance with the Community Septic Management Program requirements. Based on the amount of completed individual betterments DEP will notify the Trust when the community will require a subsequent loan installment.

The Betterment Agreement specifies that the following items must be present in order for funding of the project to commence:

- (A) Inspection of the Failed System by a representative of Board of Health or by a DEP Certified Septic System Inspector, as deemed necessary by the Board of Health;
- (B) Approval of plans by the Board of Health that were submitted by the owner or contractor. In the event the owner seeks an installment payment to pay for field work and preparation of plans for the project, the owner shall
  - (i) solicit three bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians,
  - (ii) shall submit documentation of these bids to City/Town and
  - (iii) specify the owner's choice of an engineer or sanitarian. The owner must provide a detailed explanation if the proposed engineer or sanitarian is other than the low bidder or if fewer than three bids are submitted. The Board of Health may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to the owner and the engineer or sanitarian and shall be payable upon presentation and approval of the selected bid;
- (C) Submission to Board of Health by the owner of three bids for the project in accordance with the plans from licensed (including, but not limited to, a Disposal System Installer's Permit), insured, septic system contractors, which bids shall contain detailed breakdowns of the cost of the Project by tasks;
- (D) Approval by Board of Health of a contractor for the construction of the project selected by the owner from these bidders. The owner must provide a detailed explanation if the proposed contractor is other than the low bidder or if fewer than three bids are submitted;
- (E) Approval by Board of Health of a project budget based on the bid submitted by the contractor;
- (F) Execution of a construction contract between the owner and the contractor pursuant to the plans and specifications and approved by the Board of Health;
- (G) Issuance by the Board of Health of a Disposal System Construction Permit with respect to the project.

The Board or its administrator together with the municipal treasurer must set up a separate record and accounting for each Betterment project. Once all project funds are disbursed to the homeowner, the Board or its administrator must certify the total amount funded for the project to the municipal assessor. The process for including this amount on the homeowner's tax bill is established in M.G.L. c 44.

## *Septic System Betterment Program Checklist*

- Town establishes priorities for making Betterment Agreements with homeowners.
- Financing for Betterment Projects may be secured through state funding, local appropriation, borrowing, bonding, or a combination of these sources.
- Information on the Betterment Program is disseminated by town officials to the public.
- Homeowners submit applications and petition Board of Health to enter into Betterment Agreements.
- Board of Health reviews applications and develops a list of eligible homeowners.
- Board of Health selects eligible homeowners based on criteria established locally and in accordance with state or local funding program requirements.
- Eligible homeowners and Board of Health develop Betterment Agreements.
- If the homeowner is to perform the work, use Betterment Agreement.
- Board of Health executes Betterment Agreements with homeowners which include findings pursuant to M.G.L. c. 111 and an order to perform work.
- Notice of Betterment Agreement is recorded at the Registry of Deeds.
- Board of Health undertakes its responsibilities under the Betterment Agreement.

## *Using the Betterment Agreement (Homeowner to Procure and Contract)*

- ❑ Homeowner should schedule and conduct site visits with designers.
- ❑ Homeowner should schedule and conduct deep hole and perc tests; coordinates with Board of Health agent and soil evaluator.
- ❑ Homeowner procures written bids for design services.
- ❑ Homeowner selects winning design bid.
- ❑ Homeowner submits winning bid to Board of Health for approval and payment.
- ❑ Design is rendered.
- ❑ Board of Health or agent reviews and approves design and issues Disposal System Construction Permit.
- ❑ If necessary, homeowner schedules and conducts prebid conference with installers.
- ❑ Homeowner procures 3 written bids for system installation/ construction and related work.
- ❑ Homeowner selects winning installer bid.
- ❑ Board of Health or agent reviews and approves winning installer bid, including the construction schedule and budget.
- ❑ Board of Health or Agent receives, reviews and approves all necessary paperwork (DSCP, related permits and approvals [ZBA, ConCom], easement or license agreements from private parties; insurance certificates, etc.).
- ❑ Construction funds are made available by the Town Treasurer.
- ❑ Preconstruction advance is made, if necessary.
- ❑ First construction advance made after requisition (requisition must include contractor and homeowner signatures, affidavits/ lien waivers from subcontractors, copies of interim approvals, etc.).
- ❑ Second construction advance, if necessary.
- ❑ Construction work is completed by contractor.
- ❑ Board of Health or Agent conducts site inspection and issues Certificate of Compliance for System.
- ❑ Final Payment made to contractor after delivery of Certificate of Compliance, all related paperwork (affidavits, lien waivers, etc.). If money is to be withheld from contractor pending additional work, an escrow agreement should be established.
- ❑ Final closeout of project account.
- ❑ Amount paid to homeowner certified to Town Assessor.
- ❑ Betterment assessments repaid through tax collection pursuant to the Betterment Agreement.



**SECTION 6. SAMPLE FORM: BETTERMENT AGREEMENT**

Betterment Agreement  
[Owner contracts for the Work]

This Agreement is entered into by and between \_\_\_\_\_ (the “City/Town”), by its Board of Health and Treasurer, and \_\_\_\_\_ (the “Owner”) this \_\_\_ day of, 200\_.

WHEREAS, the Owner owns residential property, including improvements thereon, known as and numbered \_\_\_\_\_, \_\_\_\_\_, Massachusetts, \_\_\_, (Assessors’ Map \_\_\_, Lot \_\_\_, Block \_\_\_) and described in a deed dated \_\_\_\_\_ and recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_, Page \_\_\_, [filed as Document No. \_\_\_\_\_ with the \_\_\_\_\_ Registry District of the Land Court] (the “Property”); and

WHEREAS, the Owner has petitioned the City/Town to make findings pursuant to M.G.L.c. 111; and

WHEREAS, the Board of Health has made findings, pursuant to M.G.L.c. 111, that the on-site subsurface sewage disposal system serving the Property (the Failed System), exhibits one or more of the failure criteria set forth in Title 5 of the State Environmental Code, 310 CMR 15.000 (Title 5), such findings being made by the Board of Health prior to, or during the course of proceedings conducted pursuant to M.G.L. c. 111, §127B; and

WHEREAS, the Board of Health has adopted an Order requiring the Owner to repair, replace or upgrade the failed system to comply with the requirements of said Title 5; and

WHEREAS, the Owner has, pursuant to M.G.L. c. 111, §127B1/2, applied to the City/Town for financial assistance to repair, replace and/or upgrade the failed system; and

WHEREAS, the City/Town intends to provide financial assistance to the owner in the form of a Betterment Agreement made pursuant to said M.G.L. c. 111, §127B 1/2; and

WHEREAS, the parties intend by this Betterment Agreement to cause the repair, replacement and/or upgrade the failed system to comply with Title 5 and other applicable public health and environmental laws and to complete other work directly or indirectly related thereto (the “project” as described in Paragraph 4 hereof); and

WHEREAS, the parties intend to have the project performed by one or more persons under contract to complete the project (the “contractor(s)”); and

WHEREAS, the public purpose of the project is to protect the public health, safety, welfare and the environment by the repair, replacement and/or upgrade of the failed system.

NOW THEREFORE, the parties, for and in consideration of mutual covenants and other good and valuable consideration, do hereby agree to the terms of this Agreement, as set forth below.

**1. The Agreement**

The City/Town hereby agrees to provide financial assistance in an amount up to \$\_\_\_\_\_ to be advanced from time to time by the City/Town to the owner pursuant to the terms of this Agreement. The owner promises to repay, with interest as set forth herein, all sums provided to owner by the City/Town. Following notice to the owner by the City/Town collector of taxes of the amount of the betterment assessment, an amortization schedule shall be developed and incorporated as an attachment to this Agreement<sup>1</sup>.

Interest on the amounts advanced by the City/Town to owner shall be computed annually at the rate of \_\_\_\_\_ percent (\_\_\_%) per anum on the outstanding principal balance, accruing from the 30th day after the City/Town Assessor commits the betterment assessment to the City/Town collector of taxes. The amount to be repaid shall be included on and paid with the (quarterly, semi-annual, annual) municipal tax bill. Interest amounts due prior to the inclusion of amounts due hereunder on the tax bill shall be paid pursuant to an interim bill.

<sup>1</sup> In cases where the final amount of the betterment has been definitively established at the signing of the Betterment Agreement, the amortization schedule should be developed and incorporated into the Betterment Agreement at the outset.

All outstanding amounts due to the City/Town by owner if not prior paid, shall be due and payable on \_\_\_\_\_ [fill in date of term].

Prepayment in full or in part of all amounts advanced hereunder may be made by the owner without penalty.

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may only be amended or modified by a written modification.

## **2. Installment Payments.**

The City/Town shall make advances of funds to owner and contractor, pursuant to the terms of this Agreement, from time to time to pay for the project. Such advances shall be made solely for the purposes set forth in this Agreement.

The obligation of the City/Town to advance all or any part of the financial assistance for repair, replacement and/or upgrade of the failed system is subject to the following:

- (A) Inspection of the failed system by a representative of Board of Health or by a DEP Certified Septic System Inspector, as deemed necessary by the Board of Health;
- (B) Submission by owner or contractor on behalf of the owner of plans approved by the Board of Health for the project. In the event owner seeks an installment payment to pay for field work and preparation of plans for the project, owner shall (i) solicit a bid or bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians, (ii) shall submit documentation of these bids to City/Town and (iii) specify owner's choice of an engineer or sanitarian. The Board of Health may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to owner and the engineer or sanitarian and shall be payable upon presentation and approval of the selected bid;
- (C) Submission to Board of Health by owner of the bid or bids for the project in accordance with the plans from licensed (including, but not limited to, a Disposal System Installer's Permit), insured, septic system contractors, which bids shall contain detailed breakdowns of the cost of the project by tasks;
- (D) Confirmation by Board of Health that the contractor for the construction of the Project (the "Contractor") selected by owner has a valid Disposal System Installer's Permit in effect for the time period covering the system upgrade financed under this Betterment Agreement;
- (E) Review by Board of Health of a Project Budget based on the bid submitted by the contractor;
- (F) Execution of a construction contract between the owner and the contractor pursuant to the plans and specifications which have been previously approved by the Board of Health;
- (G) Issuance by the Board of Health of a Disposal System Construction Permit with respect to the project.

### **3. Conditions for Payment**

Installment payments of the financial assistance are to be made by the City/Town under the following conditions:

- (A) An installment payment for field work and preparation of plans shall be made to the owner and engineer or sanitarian in accordance with Subsection (B) of Section 2.
- (B) A reasonable time before the date on which any other installment payment is requested to be made, the contractor shall give notice to owner and City/Town specifying the total installment payment requested. Such notice shall consist of a detailed request describing the value of the completed items of work. The amount of the request shall equal the amount of the requested installment. The request shall be accompanied by a sworn certificate of the contractor that all suppliers, subcontractors and employees have been paid for prior work on the project. The City/Town may request the owner to provide further documentation in support of a request for an installment payment. Upon approval of any requested installment payment, the City/Town shall issue a check payable jointly to owner and contractor, which check shall be forwarded by City/Town to owner.
- (C) City/Town may require as a condition of any installment payment that owner submit satisfactory evidence that there are sufficient remaining funds to pay for completion of the project in accordance with the approved plans.
- (D) Prior to making an installment payment, the Board of Health may cause the project to be inspected to verify that the work items described in the request have been actually completed. In any case, the contractor shall provide verification that the work referred to in the installment request has been completed in accordance with the approved plans.
- (E) Prior to paying the final installment, the contractor shall provide verification that all work has been completed in accordance with the approved plans, a sworn certificate that all suppliers, subcontractors and employees have been paid for work on or materials supplied for the project and the Board of Health shall have issued a Certificate of Compliance for the project.

### **4. Scope of Work for Project**

The owner and the contractor, pursuant the Disposal System Construction Permit issued by the Board of Health, shall determine the Scope of the Work necessary to bring the failed system into compliance with Title 5. Such Scope of Work may include, but not be limited to:

- (a) performing soil and percolation tests and other necessary site analyses;
- (b) specification of the failed system components to be repaired, replaced and/or upgraded;
- (c) design of the system or components thereof to be repaired, replaced and/or upgraded;
- (d) obtaining all applicable federal, state and local permits and approvals required to complete the work;
- (e) seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;
- (f) minimizing any disruption of utility service, and reasonably restoring the property to as near its original condition as practicable; and
- (g) engaging such other services and procuring such other materials as shall be reasonably necessary to complete the project in a good and workmanlike manner.

All such work shall be performed pursuant to written contracts and agreements, copies of which shall be incorporated by reference into this Agreement.

#### **5. City/Town's Right to Inspect**

The owner agrees to allow the City/Town, including its Board of Health, Health Agent and other officials, employees and agents to enter onto the property, as is reasonably necessary and upon reasonable notice, to test, examine and inspect the project to verify the completion and adequacy of the work.

#### **6. Covenant Not To Sue**

The owner covenants and agrees not to sue the City/Town for any claims of damage to or loss of property of the owner or others, or for breach of warranty regarding the performance or condition of the project, or for injury, illness or death arising out of the performance of any contractors or agents engaged to perform the Work. This Covenant Not To Sue provision shall have no application to causes of action which may have arisen prior to the execution of this Agreement, or to causes of action that are unrelated to this Agreement, or to causes of action against any person or entity other than the City/Town.

#### **7. Owner's Representations And Warranties To The City/Town**

The owner represents and warrants to the City/Town that:

- (A) Financial Information: The borrower's Affidavit furnished to City/Town by the owner is accurate and complete;
- (B) Title: The owner has good record title to the property, subject only to the Encumbrances of Record;
- (C) Permits and Compliance With Law: The owner has obtained or will obtain all necessary governmental permits for the project. The On-Site Sewage Disposal System for the dwelling on the property, after completion of the project, will comply with all applicable laws, regulations, codes and ordinances, including but not limited to Title 5; and
- (D) Insurance: The owner and contractor have procured or will procure insurance in such forms and in such amounts as shall be satisfactory to the City/Town. Certificates of Insurance shall be attached as Exhibits to this Agreement.

Each of the foregoing representations and warranties in this section shall remain in force until the financial assistance is repaid in full. The owner shall indemnify and hold harmless the City/Town from and against loss, expense, or liability (including costs of defending any claim), directly or indirectly from the falsity, inaccuracy, or breach of any of the above representations and warranties.

#### **8. Owner's Obligations.**

During the term of this Betterment Agreement, the owner agrees that the owner shall comply with all of the terms and conditions of this and any related agreement and that the owner shall:

- (A) Completion of Project. Cause the project to be promptly completed in a manner in accordance with the approved plans and with the Project Budget and in compliance with all applicable laws, regulations, codes and ordinances and notify City/Town when the project is complete.
- (B) Records and Cooperation With City/Town. Keep complete records relating to the project, which records shall be available for inspection and copying by the City/Town, and cooperate fully with any audit of the project if so requested by City/Town.
- (C) Performance of Other Obligations. Perform all the owner's obligations and agreements under any present or future mortgage or other Covenant or Agreement which encumbers the property.
- (D) Use of Financial Assistance. The financial assistance is provided for the public purpose of protecting the public health, safety, welfare and the environment. The owner shall use the proceeds of the financial assistance solely for costs included in the project budget and ensure that the proceeds are not used for any other purpose.

### **9. Events Of Default**

The owner shall be in default under this Agreement upon the occurrence of any one or more of the following events:

(A) Sale, Transfer or Assignment Without Approval. The owner assigns or transfers any money advanced or to be advanced hereunder to any person or entity not approved by City/Town.

(B) Cessation of Construction. The owner or contractor ceases construction of the project for more than 30 consecutive calendar days. The Board of Health may waive this event of default upon application of the owner and a demonstration that such cessation occurred because of an Act of God, governmental order or restriction, fire or other casualty, or other causes beyond owner's reasonable control.

(C) False Representations or Warranties. Any representation or warranty made herein shall prove to be false or inaccurate in any material respect.

(D) Breach of an Obligation. The owner defaults in the performance of any of owner's obligations contained herein.

### **10. City/Town's Rights On Default**

Upon owner's default, the City/Town shall have no further obligation to make any further installment payments and all amounts advanced by City/Town to owner shall become immediately due and payable.

### **11. Notice of Betterment Agreement**

Upon execution of this Agreement by the owner and the City/Town a Notice of this Agreement shall be recorded as a betterment and shall be subject to the provisions of M.G.L.c. 80 relative to apportionment, division, reassessment and collection of assessment, abatement and collection of assets, provided however, that the lien which shall arise pursuant to M.G.L. c. 111, §127B 1/2 shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment. The Betterment Lien, if any, shall be deemed to secure all amounts advanced hereunder, together with interest thereon, and shall include costs of collection and reasonable attorneys fees.

### **12. Improvements to the Property**

Any alterations or improvements to the property resulting from the project are the property of the owner, and the City/Town shall bear no responsibility for the condition of the improvement or its maintenance.

### **13. Cancellation of the Agreement by the Owner**

The owner may by written notice to the Board of Health and the Treasurer of the City/Town cancel owner's further obligations for repayment under this Agreement at any time prior to the end of ten (10) calendar days following notice in writing to the City/Town of the owner's proposed successful construction bid, based on the owner's evaluation of the proposed scope and cost estimate of the system upgrade derived from the field work, project design and the successful construction bid. However, in the event of such cancellation, the owner shall remain liable for repayment of all sums advanced by the City/Town to owner pursuant to this Agreement. All sums advanced by the City/Town to owner shall be repaid with interest and within the term set forth in Paragraph 1 hereof. Upon application of the owner, the Board of Health may revoke the Order for Improvements, provided however, that owner shall remain liable to comply with the provisions of Title 5.

### **14. Personal Obligation of the Owner**

In addition to those remedies available to the City/Town regarding the assessment and collection of betterments, the owner shall be personally liable for the repayment of the amounts advanced, plus interest thereon and the total direct and indirect costs incurred by the City/Town in the contemplation and the performance of this Agreement or the project. After written request of owner, in connection with the purchase or transfer of the owner's entire interest in the property, the City/Town shall permit

the assumption of the personal liability hereunder by said purchaser or transferee and shall release the personal liability of the owner. The assumption and release of liability hereunder shall be in writing and shall be executed prior to the purchase or transfer by the owner, the purchaser or transferee and the Treasurer of said City/Town.

**15. Notice**

Any notice required to be given under this Agreement shall be made in writing and shall be delivered by either in-hand delivery or by prepaid, first class mail.

If notice is made to the City/Town, it shall be made to:

Notice shall be deemed given on the day it is hand delivered or three (3) days after the date of posting of first class mail.

**16. Funding for the Agreement**

The obligations of the City/Town are expressly contingent upon funding. In the event that funding for the City/Town's obligation is unavailable, upon notice to the owner, the City/Town may cancel this Agreement and all obligations of the City/Town shall be null and void.

**17. Enforcement of Laws**

Nothing in this Agreement shall be deemed to stop or effect a waiver, or otherwise act as a bar or defense, to any legal proceeding by the City/Town relating to the system or the property.

**18. Severability**

In the event that one or more provisions of this Agreement is deemed unenforceable by a court of competent jurisdiction, the Agreement, except as deemed unenforceable, shall remain in full force and effect.

**19. Governing Law**

This Agreement shall be governed by Massachusetts law.

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 200\_.

City/Town:  
By it's Board of Health:  
\_\_\_\_\_

Owner:  
\_\_\_\_\_

As to interest rate:  
City/Town  
By it's Treasurer:  
\_\_\_\_\_

Approved as to form:  
\_\_\_\_\_  
City Solicitor/Town Counsel

**Exhibits**

- |                             |  |
|-----------------------------|--|
| 1. Designer Contract        | 1. Project Budget                      |
| 2. System Plans and Design  | 2. Certificate(s) of Insurance         |
| 3. Construction Contract(s) | 3. Disposal System Construction Permit |

**SECTION 7. NOTICE OF BETTERMENT AGREEMENT PURSUANT TO M.G.L. c.111§127B 1/2**

THE COMMONWEALTH OF MASSACHUSETTS

.....  
CITY, TOWN OR DISTRICT  
OFFICE OF .....

TO THE REGISTER OF DEEDS OF ..... 20...

NOTICE is hereby provided that the BOARD OF HEALTH of ..... on ..... 20 ....., made findings pursuant to c. 111 s. 127B1/2 and on ..... 20 .... and adopted an order for improvements to be made to the on-site wastewater system serving the property described herein.

The property to be benefited is owned by ..... of .....,  
....., MA, is described on a plan entitled “.....” which is deposited in the office of ..... and is described in a deed dated ..... and recorded with said Deeds in Book ....., Page ..... [filed as Document No. .... with the ..... District of the Land Court](the “Property”). Pursuant to said M.G.L. c. 111 s. 127B 1/2, a Betterment is to be assessed on the Property in an amount to be determined pursuant to the Betterment Agreement of the Owner of the Property and the Board of Health dated .....

BOARD OF HEALTH OF

.....  
CITY, TOWN OR DISTRICT  
.....  
.....  
.....

THE COMMONWEALTH OF MASSACHUSETTS

....., S.S. ...., 20....

Then personally appeared the above named ..... who acknowledged the foregoing to his/her free act and deed and the free act and deed of the ..... Board of Health, before me,

.....  
NOTARY PUBLIC  
MY COMMISSION EXPIRES:

## **SECTION 8. THE BETTERMENT BILL**

### M.G.L.c. 111 §127B½

#### Petition for Findings as to Septic System, Underground Fuel Storage Tank, or Lead Paint; Agreement on Remedial Measures; Responsibility for Costs.

At any time prior to or during the course of proceedings conducted pursuant to section one hundred and twenty-seven B, resulting solely from a residential underground fuel storage tank or the detection of dangerous lead paint levels, as determined under the authority of section one hundred and ninety-four, or in the event the state environmental code pursuant to section thirteen of chapter twenty-one A requires the repair, replacement and/or upgrade of a septic system the owner of a structure used for human habitation may petition the board of health in a city or town to make findings consistent with its authority under this chapter and may enter into an agreement, subject to appropriation, authorizing such board of health or such owner to cause the premises to be properly serviced by a septic system, removal of a residential underground fuel storage tank or to have removed any dangerous levels of lead paint, as determined under the authority of section one hundred and ninety-four, at the owners expense. An owner who enters into such an agreement shall be responsible for all expenses incurred by the board of health, directly or indirectly, or required by the board of health and incurred by the owner for such repairs, replacement and/or upgrade of a septic system, removal of a residential underground fuel storage tank or removal of dangerous levels of lead paint. A notice of such agreement shall be recorded as a betterment and be subject to the provisions of chapter eighty relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, such lien shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment and such assessment may bear interest at a rate determined by the city or town treasurer by agreement with the owner at the time such agreement is entered into between the board of health and the property owner. In addition to remedies available under chapter eighty, the property owner shall be personally liable for the repayment of the total costs incurred by the city or town under this section; provided however, that upon assumption of such personal obligation to a purchaser or other transferee of all of the original owners interest in the property at the time of conveyance and the recording of such assumption, the owner shall be relieved of such personal liability.

Any costs incurred under the provisions of this section may be funded by an appropriation or issuance of debt, provided that any debt incurred shall be subject to the provisions of chapter forty-four and shall not exceed twenty years.

Any appropriation or borrowing by the city or town for purposes contained within this section shall not be included for the purpose of computation of the levy or borrowing limits otherwise imposed upon such city or town by the general laws.

An agreement between an owner and a board of health in a city or town pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in property.

A board of health in a city or town acting pursuant to the provisions of this section shall have the same authority as set forth in section one hundred and twenty-seven B to institute an action for eviction. Any such action by the board of health shall not otherwise impair the rights or obligations of the occupants or owner with respect to each other.

**SECTION 9. PROJECT APPROVAL CERTIFICATE/PROJECT REGULATORY AGREEMENT**

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
THE LOCAL SEPTIC MANAGEMENT PROGRAM

*Project Approval Certificate and Regulatory Agreement*  
**I. Project Approval Certificate**

The Department of Environmental Protection (DEP) of The Commonwealth of Massachusetts (the Commonwealth), in accordance with Section 2 of Chapter 15, Acts of 1996 (the Act), hereby approves the project of Town of \_\_\_\_\_ (the Borrower), developed in accordance with the Department’s Community Septic Management Program Description and Requirements, and hereby certifies to the Massachusetts Water Pollution Abatement Trust (the Trust) the total costs of the project eligible for a Loan from the Trust in the amount of \$200,000, subsidized at a 50% grant equivalency. (See Exhibit A, page 34, for Borrower information, Project budget, completion schedule, and special conditions.)

This Certificate is issued by DEP on the basis of information provided by the Borrower in its application for financial assistance from the Community Septic Management Program. The Borrower has agreed to promptly notify DEP of any material change in the above information, which may be grounds for modification or rescission of this Certificate.

**II. Project Regulatory Agreement**

WHEREAS, DEP has issued the above referenced Project Approval Certificate, and the Department, as authorized under the Act, has allocated funds for loans from the State Revolving Loan Fund (SRF), administered by the Trust to fund local betterment programs; and

WHEREAS, the Borrower has requested that the Trust finance costs of the Project by a loan from the Trust to the Borrower (the Loan), and to evidence the indebtedness to be incurred thereby, the Borrower has executed and delivered a Loan Agreement to the Trust (the “Loan Agreement”); and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as following provisions:

**Section 1. Project Funding**

**1.01** The Borrower agrees with DEP’s determination of eligible Project Costs as set forth in the Project Approval Certificate, and shall seek payment or reimbursement of Project Costs in accordance with such determination.

**Section 2. Disbursement of Loan Proceeds**

**2.01 Disbursements.** Funds will be made available to the Borrower by advance installment payments and in amounts determined by DEP. The Borrower shall expend the full amount of the Loan consistent with the project completion schedule in Exhibit A unless DEP approves an extension of time as provided for in section 3.09 below.

- (a) All requisitions for advance payment shall be submitted by the Borrower in accordance with a form approved by DEP and at a frequency satisfactory to the department.
- (b) Each requisition shall be signed by the authorized officer of the borrower and shall set forth in reasonable detail the amount of advance payment requested. Each requisition shall also include a written certification signed by an Authorized Officer of the Borrower stating that:
  - (i) such payment is for Project Costs and that the obligations specified therein have not been the basis for a prior requisition that has been paid;
  - (ii) no Default as defined hereunder, and no Event of Default as defined in the

Loan Agreement, has occurred and is continuing and no event or condition exists which, after notice or lapse of time or both, would become a Default hereunder or Event of Default under the Loan Agreement; and  
(iii) the payment requested by the requisition will be for Project Costs to be or already authorized under a betterment agreement between the Borrower and system owner, and that no advance funds shall be disbursed to the system owner until such betterment agreement has been executed between the Borrower and the system owner.

**2.02 Loan Monitoring.** In addition, as a precondition to receiving and retaining any advance payments under this Agreement, the Borrower shall submit *“The Analysis of the Homeowner Septic Repair Special Revenue Account Quarterly Report”* (the Report) no later than fifteenth day of July, October, January, and April. The report requires the Borrower to provide information on the status of advance payments and to account for any actual and planned disbursements to system owners based on executed betterment agreements for each quarter ending September 30, December 31, March 30, and June 30. Both the Treasurer and senior accountant of the Borrower shall sign each Report. Reports must be mailed or hand delivered to the Title 5 Coordinator assigned to your loan by DEP’s Regional Office.

(a) Each system upgrade completed shall be evidenced by the submission of the Certificates of Compliance issued by the board of health documenting that the upgrade of each failed septic system financed by the Loan and the underlying betterment agreement between the Borrower and the system owner has been completed in compliance with 310 CMR 15.000 (Title 5).

(b) If requested by DEP, the Borrower shall submit further documentation in support of a report or a requisition.

**2.03 Program Completion.** Completion of the Program shall be evidenced by the filing with DEP of a certificate (the “Project Completion Certificate”) signed by an Authorized Officer of the Borrower stating that the project (i.e., the Borrower’s betterment program) has been completed and performed in accordance with the requirements of this Regulatory Agreement and the Loan Agreement. Such Project Completion Certificate shall be accompanied by a final report and any remaining Certificates of Compliance issued by the board of health documenting that the upgrade of each failed septic system financed by the Loan has been completed in compliance with 310 CMR 15.000 (Title 5).

### **Section 3. General Conditions and Covenants of the Borrower**

**3.01** The Borrower shall comply with all state statutes, regulations and requirements applicable to the Project, including, but not limited to the requirements of Title 5, M.G.L.c.111, §127B½, and with DEP’s approval of the project and its Community Septic Management Program Description and requirements.

**3.02** The Department and/or the State Auditor or his or her designee, shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data which pertain to the performance of the provisions and requirements of this Regulatory Agreement. In addition, the Borrower shall give DEP access to the project site at reasonable times and upon reasonable notice to the Borrower by DEP.

**3.03** The Borrower shall retain all records relating to the project for seven (7) years after project completion, or until any litigation, appeal, claim, or audit that is begun before the end of the seven-year period is completed and resolved, whichever is longer.

**3.04** The Borrower shall maintain project accounts in accordance with generally accepted government accounting standards.

**3.05** The Borrower shall comply with the Civil Rights Act of 1964, 42 USC s.2000(a) et seq., as amended, and all Executive Orders and regulations promulgated thereunder. A Nondiscrimination in Employment form shall be signed and delivered to DEP.



3.06 The Borrower shall comply with the provisions set forth in Executive Order 237 (or in any successor Executive Order) for the use of minority and woman business enterprises (M/WBEs) in all construction, service and supply contracts related to the project.

3.07 The Borrower shall furnish information and otherwise cooperate with the Department in any evaluation pursuant to the Massachusetts Environmental Policy Act, M.G.L.c. 30, §61 et seq. (MEPA). The Borrower shall implement all mitigation measures required in connection with the review processes under MEPA.

3.08 The Borrower shall obtain, and comply with, all state permits and approvals required for the Project, and is solely responsible for the administration and successful completion of the Project.

3.09 The Borrower shall promptly notify DEP in writing whenever the Borrower has good reason to believe that: (1) the project costs which it will incur will be substantially less than those previously approved in the loan, as set forth in the Project Budget in Exhibit A; or (2) the Borrower will be unable to meet the schedule set forth in the Project Schedule in Exhibit A and/or requisition the full amount of the Loan. DEP shall not be obligated to certify, nor the Trust to pay for, project costs incurred in excess of the Loan amount unless DEP has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount. DEP reserves the right to rescind its approval, in whole or in part, should the borrower fail to commit to executed betterment agreements, the full amount of the initial installment received by the borrower within six months of the executed loan agreement. DEP may, at its discretion, grant an extension to the program deadline in cases where the Borrower has demonstrated that its failure to requisition the full Loan amount was justified under the circumstances and that the Borrower will complete the project and requisition the remaining Loan amount in a timely manner.

3.10 The Borrower shall implement the project in accordance with the requirements of 310 CMR 15.000 and DEP's approval of the project and its Community Septic Management Program Description and Requirements. In doing so, the local betterment program component of its Comprehensive Community Septic Management Program must also take into account the financial needs of low and moderate-income homeowners in the following manner:

---

*The upgrade of septic systems having the greatest environmental impact should receive funding preference. However, in the event that the upgrades are of equivalent environmental priority, funding should first be allocated to upgrade the system owned by a low or moderate-income homeowner, as defined by the Massachusetts Housing Finance Agency ("MHFA").*

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3.11 Use of Betterment Agreement(s): DEP and the Trust have developed the following model Betterment Agreements for use under the Community Septic Management Program:

- Betterment Agreement (when the homeowner is contracting to do the upgrade of the failed septic system).

The Borrower is not precluded from modifying or supplementing the terms of these model Betterment Agreements, provided that any such changes are consistent with the model Betterment Agreements and the Borrower retains the language of the following provisions of the model Betterment Agreements:

In Betterment Agreement : (1) The Agreement (with the flexibility noted therein - see n.1); (2) Installment Payments (the Borrower has the discretion to specify additional procurement requirements - e.g., minimum no. of bids or BOH approval of construction contract); (3) Conditions for Payment; (5) Right to Inspect; (7) Owner's Representations and Warranties to City/Town; (8) Owner's Obligations; (9) Events of Default; (13) Cancellation of the Agreement by the Owner; and (14) Personal Obligation of the Owner.

3.12 DEP may suspend or terminate payments to the Borrower under the loan agreement in instances where it determines that there is probable cause to believe that the loan agreement was obtained on the basis of fraud, deceit, or illegality or that the Borrower has failed to comply with the terms of the Loan Agreement.

3.13 DEP's approval of this project for SRF loan assistance does not constitute a state sanction or approval of any changes or deviation from established water quality standards, criteria, and implementation dates or from dates established by applicable enforcement proceedings.

3.14 The Borrower shall provide DEP representatives with access to the project whenever it is in preparation or progress, including obtaining, through the underlying betterment agreements, the consent of the septic system owners to provide such access to DEP.

3.15 The Borrower shall comply with the special conditions set forth in Exhibit A.

#### **Section 4. Default/Remedies for Default**

4.01 Default. The Borrower shall have committed a Default under this Regulatory Agreement if the Borrower shall fail to perform and observe any covenant, agreement or condition on its part provided in this Regulatory Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the Borrower by DEP; provided if such failure cannot be remedied within such thirty (30) day period, it shall not constitute a Default hereunder if corrective action satisfactory to DEP is instituted by the Borrower within such period and diligently pursued until the failure is remedied.

4.02 Remedies for Default. If a default shall occur, and be continuing hereunder, DEP may, in its sole discretion, take one or more of the following measures to the extent necessary to remedy the default:

- (a) DEP may postpone approval of requisitions submitted pursuant to Section 2 or direct the Trust to cancel all or any part of the Loan not yet disbursed to the Borrower; or
- (b) DEP may rescind approval of any requisition previously approved but not yet acted upon by the Trust; or
- (c) DEP may direct the Trust to declare an Event of Default under the Loan Agreement.

#### **Section 5. Miscellaneous**

5.01 Notices. All notices, consents, certificates and other communications hereunder shall be sufficiently given when delivered by hand or courier or photocopied or mailed by registered or certified mail, postage prepaid, addressed as set forth in Exhibit A or to such further or different address provided by any of the parties.

5.02 Assignments. The Borrower shall not assign this Regulatory Agreement, or any of the rights or obligations hereunder, without the prior written consent of DEP and the Trust.

5.03 Severability. In the event that any court of competent jurisdiction shall hold any provisions of this Regulatory Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

5.04 Amendment. This Regulatory Agreement may not be amended, modified or changed in any respect except in writing and signed by the parties hereto. No such amendment, modification or change to this Regulatory Agreement (other than an amendment to Sections 2 and 4 and Exhibit A of such Regulatory Agreement) which, in the reasonable opinion of the Trust (expressed in a certificate of an Authorized Officer of the Trust delivered to DEP and the Borrower prior to the execution and delivery of such amendment, modification or change), would materially and adversely affect the rights and obligations of the Trust under the Loan Agreement shall be effective without the prior written consent of the Trust, which consent shall not be unreasonably withheld. A copy of any proposed amendment, modification or change to the applicable sections of the Regulatory Agreement shall be delivered to the Trust by DEP not less than ten (10) days prior to the date of execution and delivery thereof.



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

5.06 Applicable Law. This Regulatory Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth.

IN WITNESS WHEREOF, the Department and the Borrower have caused this Regulatory Agreement to be executed by their duly Authorized Officers the day and year first above written.

DEPARTMENT OF ENVIRONMENTAL PROTECTION:

By \_\_\_\_\_  
Steven J. McCurdy  
Program Director  
Division of Municipal Services

BORROWER:

By \_\_\_\_\_  
Authorized Officer



***PAC/PRA EXHIBIT A***  
***LOCAL SEPTIC MANAGEMENT PROGRAM***

A. General Information

For the community/applicant

Community/Applicant:

Street:

City, State, Zip:

Contact Person:

Title:

Telephone:

Fax:

B. Budget

Title 5 Betterment Loans \$200,000

C. Project Completion Schedule

D. Special Conditions

For the Administrating Entity

Administrating Entity:

Street:

City, State, Zip:

Contact Person:

Title:

Telephone:

Fax:

## SECTION 10. STATE REVOLVING FUND PROCEDURES

Each municipality participating in the Community Septic Management Program will enter into a State Revolving Fund (SRF) loan with the Massachusetts Water Pollution Abatement Trust (the Trust). The SRF serves as the source of funds for making betterment loans to homeowners and for project administration. The funds are loaned on the basis of a 50% grant equivalency. The grant equivalency is the Commonwealth's method of describing the level of subsidy provided to lower the interest rate incurred by the municipality. As a result of this interest rate subsidy, the municipality will incur no interest charge during the term of the SRF loan.

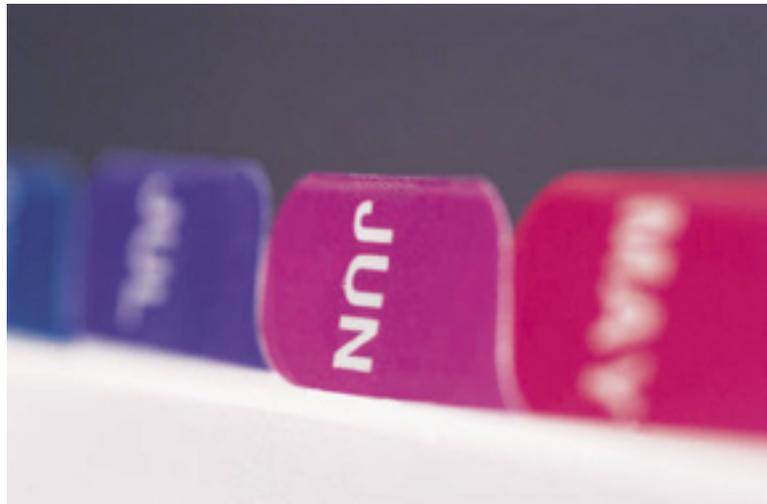
To be eligible to enter into an SRF loan, each municipality must obtain the authorization required by the terms of the loan. In most towns, a 2/3 vote of the town meeting authorizes the borrowing. In other towns and cities, a 2/3 vote of the City Council, Town Council or Board of Aldermen must occur. After this vote, the chief executive of the town (Mayor, Town Manager, Chairman of the Board of Selectmen) may sign the Loan Agreement and related documents. The Loan Agreement and its attachments and certifications propose the basic legal terms and conditions of the SRF loan. This standard form agreement is provided by the Trust. In addition, the municipality will execute a Loan Questionnaire and a Borrower's Closing Certificate to evidence the SRF loan. The municipality will issue notes or bonds (as required by the Trust) and must supply the Trust with a legal opinion from the municipality's Bond Counsel. Samples of each of the documents are provided in the appendices.

Once the legal documents have been executed and returned to the Trust, the municipality may requisition SRF loan funds. Payment requisitions must be made on the DEP/Department of Municipal Services (DMS) T5-1000 form. The forms should be executed by the municipal treasurer and health official (or the persons who have been provided with authority to execute the forms). The forms are then forwarded to the DEP Regional Coordinator assigned to the municipality (See the Contact section of the appendices). The Coordinator will forward the requisition request to the DEP/DMS contact person and to the Trust. Payment requisitions may be made in amounts sufficient to cover anticipated funding needs for up to three months. Disbursements will be made by wire transfer only.

The municipal treasurer and accountant will be required to make an annual report to the Division of Local Services. (See appendices for forms). This report will summarize the financial aspects of Local Septic Management Program activity. During the fiscal year, copies of the quarterly report must be forwarded to the DEP Regional Coordinator and to the Trust.

The Division of Local Services has provided a bulletin to define the municipal accounting procedures for funds received by municipalities from the Trust and the funds repaid by homeowners who have obtained financial assistance through betterment loans. For more information, go to: <http://www.dls.state.ma.us/publ/bullidx.htm>. Once at the site, you will go to the reference section, and search for the bulletin, "Title 5 Betterment Loan Program — Accounting", through the UMAS, Special Revenue Fund section.

The Program establishes a timeframe during which betterment loans may be made to homeowners from the initial SRF loan. As a result, the municipality will have a sufficient opportunity to commence collections from homeowners. Operation of the program will require that the municipal accountant have an appropriate cash management strategy in place. Department of Revenue and Division of Local Services field representatives have been trained to provide assistance to municipal officials responsible for oversight and financial management of Local Septic Management Programs.





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**DEPARTMENT OF ENVIRONMENTAL PROTECTION - REGIONAL CONTACTS**

Current Department of Environmental Protection contacts for information, updates, technical assistance, and guidance related to the Community Septic Management Program:

<p><b><u>NORTHEAST/METRO BOSTON REGION</u></b> Nihar Mohanty One Winter Street Boston, MA 02108 Tel: (617) 654-6515 Fax: (617) 292-5851 email: <a href="mailto:Nihar.Mohanty@state.ma.us">Nihar.Mohanty@state.ma.us</a></p>	<p><b><u>SOUTHEAST REGION</u></b> Pamela Truesdale 20 Riverside Drive Lakeville, MA 02347 tel: (508) 946-2881 fax: (508) 947-6557 email: <a href="mailto:Pamela.Truesdale@state.ma.us">Pamela.Truesdale@state.ma.us</a></p>
<p><b><u>CENTRAL REGION</u></b> Joanne Kasper-Dunn 627 Main Street Worcester, MA 01608 tel: (508)-767-2763 fax: (508) 792-7621 email: <a href="mailto:joanne.kasper@state.ma.us">joanne.kasper@state.ma.us</a></p>	<p><b><u>WESTERN REGION</u></b> Deirdre Cabral 436 Dwight Street, Suite 402 Springfield, MA 01103 tel: (413) 755-2148 fax: (413) 784-1149 email: <a href="mailto:deirdre.cabral@state.ma.us">deirdre.cabral@state.ma.us</a></p>

**DEPARTMENT OF ENVIRONMENTAL PROTECTION - BOSTON RESOURCES**

For specific information on state revolving fund loans, financing and other funding related issues  
For information on SRF loan administration and project management, payments forms and draw down requests:

<p>Margaret Mansfield One Winter Street Boston, MA 02108 tel: (617) 292-5943 fax: (617) 292-5850 email: <a href="mailto:Margaret.Mansfield@state.ma.us">Margaret.Mansfield@state.ma.us</a></p>
<p>Stephen Hawko One Winter Street Boston, MA 02108 tel: (617) 292-5741 fax: (617) 292-5850 email: <a href="mailto:Stephen.Hawko@state.ma.us">Stephen.Hawko@state.ma.us</a></p>

*Massachusetts Water Pollution Abatement Trust*

For information on the status of wire transfers, disbursements of funds from the Trust, loan repayment information and copies of legal documents (loan agreement, loan amortization, etc.):

Mass. Water Pollution Abatement Trust  
One Ashburton Place, Room 1207  
Boston, MA 02108

Nancy Parrillo, Chief Financial Officer  
tel: (617) 367-9333 ext 508  
fax: (617) 227-1773

Keith McCarthy  
tel: (617) 367-9333 ext 521

*Department of Revenue/Division of Local Services*

The Department of Revenue/Division of Local Services provides information and technical assistance to cities and towns in matters regarding municipal finance. The Division has published the *“Guide to Financial Management for Town Officials”* which provides an excellent introduction for municipal officials in municipal finance. The DOR regularly publishes Informational Guidance, Bulletins, Regulations and other materials on its web site: <http://www.dls.state.ma.us/dor2.htm>.

For more information regarding financial accounting for the Community Septic Management Program and related issues contact:

Division of Local Services  
ATTN: Director of Accounts  
Box 9569  
Boston, MA 02114  
Tel: (617) 626 2300  
Fax: (617) 626 2330

DOR/DLS field representatives in each region are available to assist local officials comply with the fiscal accounting and reporting requirements for the Program.

*Infoline, Hotlines*

Serving more than 18,000 callers a year, DEP’s InfoLine is a one-stop source for business people, consultants, lawyers and municipal officials who need:

- Answers to general DEP Questions,
- Permit Application Kits,
- Compliance Fee Assistance,
- DEP Seminar Information,
- Referrals to Technical Experts,
- Policies and Guidance Documents,
- Environmental Education Materials, and
- Access to the MCP Hotline for information on waste site cleanup regulations.

DEP’s InfoLine and the Regional Service Centers are both a part of DEP’s commitment to making it easier for you to understand and comply with the environmental rules.

**From area code 617 and 781 and outside Massachusetts:**

(617) 338-2255 (TDD: 617-574-6868)

**From area codes 413, 508 and 978:**

1-800-462-0444 (TDD: 1-800-298-2207)

By Email: [infoline@state.ma.us](mailto:infoline@state.ma.us)

**Title 5 Hotline:**

Title 5 (Septic Systems): 1-800-266-1122 or (617) 292-5886.

**GIS Assistance**

To obtain GIS maps, data layers, general information and assistance in setting up GIS tools for the Community, information on ArcView (GIS Data Visualization Tool), general training to interested groups on what GIS can do.

Department of Environmental Protection One Winter Street 8th Floor Boston, MA 02108 Tel: (617) 292-5575 Fax: (617) 556-1049	Executive Office of Environmental Affairs 100 Cambridge Street 9th floor Boston, MA 02108 Tel: (617) 626-1000 Fax: (617) 626-1249
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**Consumer Protection Information**

Office of the Attorney General  
200 Portland Street  
Boston, MA 02114  
tel: (617) 727 2200 ext 3200

**Consumer Information Hotline:**

(617) 727 8400

**Regulations**

The State House Bookstore maintains a wide variety of publications, regulations and useful documents. A catalog of materials available at the Bookstore is available.

Secretary of the Commonwealth Room 116, State House Boston, MA 02133 tel: (617) 727-2834 fax: (617) 973-4858	Secretary of the Commonwealth Western Office 436 Dwight Street Springfield, MA 01103 (413) 784-1376
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Massachusetts Sites:

Massachusetts State Government	<a href="http://www.mass.gov">http://www.mass.gov</a>
Department of Environmental Protection	<a href="http://www.mass.gov/dep">http://www.mass.gov/dep</a>
DEP's Division of Municipal Services	<a href="http://www.mass.gov/dep/brp/mf/cwsrf.htm">http://www.mass.gov/dep/brp/mf/cwsrf.htm</a>
Department of Revenue	<a href="http://www.dls.state.ma.us/dor2.htm">http://www.dls.state.ma.us/dor2.htm</a>
Department of Public Health	<a href="http://www.mass.gov/dph">http://www.mass.gov/dph</a>

Other sites of interest:

EPA's Office on Water	<a href="http://www.epa.gov/ow/">http://www.epa.gov/ow/</a>
MA Association of Health Boards	<a href="http://www.mahb.org">http://www.mahb.org</a>
MA Association of Health Officers	<a href="http://www.mhoa.com">http://www.mhoa.com</a>

Relevant information, forms and updates about the Community Septic Management Program will be posted from time to time on DEP's web site.

National Small Flows Clearinghouse

West Virginia University  
P.O. 6064  
Morgantown, WV 26506-6064  
Tel: (800) 624-8301  
Fax: (304) 293-4191  
web: [http://www.nesc.wvu.edu/nsfc/nsfc\\_index.htm](http://www.nesc.wvu.edu/nsfc/nsfc_index.htm)

The National Small Flows Clearinghouse (NSFC) provides information, referrals, training and technical assistance for small communities to aid in solving wastewater problems. NSFC is sponsored by grants from the US Environmental Protection Agency. The Clearinghouse publication 'Small Flows' provides information in an easy-to-understand format and is available free of charge by mail or through the Internet.

## Regional Planning Agencies

Regional Planning Agencies offer a wide variety of services to the communities in their regions. Issues pertaining to economic development, land use, transportation, air and water quality, housing and others may be the subject of planning initiatives by RPAs. Planning agency staff can offer assistance in diverse areas such as GIS, creating and administering Local Inspection and Local Management Plans, and other tasks related to the implementation of the Community Septic Management Program.

Information on planning agencies and services may be obtained from:

<p>Metropolitan Area Planning Council 60 Temple Place Boston, MA 02111 tel: (617) 451-2770 fax: (617) 482-7185</p>	<p>Montachusett Regional Planning Commission Town Hall 173 Main Street Groton, MA 01450 tel: (978) 448-1111</p>
<p>Berkshire Cty. Regional Planning Comm'n. 1 Fenn Street Pittsfield, MA 01201 tel: (413) 442-1521</p>	<p>Nantucket Planning &amp; Economic Devel. Commission 4 North Water Street Nantucket, MA 02554 tel: (508) 228-7237</p>
<p>Cape Cod Commission 3225 Main Street Barnstable, MA 02630 tel: (508) 362-3828</p>	<p>Northern Middlesex Council of Gov'ts 115 Thorndike Street Lowell, MA 01852 tel: (508) 454-8021</p>
<p>Central Mass. Regional Planning Comm'n. 35 Howard Street Worcester, MA 01609 tel: (508) 756-7717</p>	<p>Old Colony Planning Council 70 School Street Brockton, MA 02401 tel: (508) 583-1833</p>
<p>Franklin Council of Gov'ts./Planning Dept. 425 Main Street Greenfield, MA 01301 tel: (413) 774-2251</p>	<p>Pioneer Valley Planning Commission 26 Central Street W. Springfield, MA 01089 tel: (413) 781-6045</p>
<p>Martha's Vineyard Commission P.O. Box 1447 Oak Bluffs, MA 02557 tel: (508) 693-3453</p>	<p>Southeastern Regional Planning and Economic Development District 88 Broadway Taunton, MA 02780 tel: (508) 824-1367</p>
<p>Merrimack Valley Planning Commission 160 Main Street Haverhill, MA 01830 tel: (978) 374-0519</p>	

# *SAMPLE APPLICATION*

## TOWN OF MIDDLEBORO

### COMMUNITY SEPTIC MANAGEMENT PROGRAM

#### **General**

The Town of Middleboro has received approval by Town Meeting vote to enact the Community Septic Management Program. This septic system replacement program, provided through the Department of Environmental Protection (DEP), makes available a loan to homeowners in our community, whom lie within an environmental sensitive area, as outlined herein. To qualify you must have a failed septic system and lie within an environmental sensitive area. A failed septic system should have a certification, stating such, issued by a DEP approved system inspector.

#### **Eligible Items**

The loan will consist of combining all costs associated with septic system repair, replacement or upgrading. This includes property line determination, soil evaluation, septic system design and general construction and installation. The Town of Middleboro or designee will determine any ancillary items that may be required eligible.

#### **Loan Terms**

The loan's terms will be a five percent loan, to be paid back over \_\_\_\_ (15 or 20) years. Payment will be twice yearly with your real estate tax bill.

The loan will be secured as a betterment assessment against your property. The betterment assessment may be paid off at any time, or when you sell your home, without penalty. You will be expected to make payment upon receipt of the first tax bill received, after the Board of Health for the completed issues the Certificate of Compliance and accepted Title 5 designed and installed septic system.

#### **Environmentally Sensitive Areas**

The Town of Middleboro has determined that the following areas are environmentally sensitive areas. The Town has designated a plan or map, entitled \_\_\_\_\_-, to provide an outline of environmental sensitive areas. Other areas, not outlined on the map at this point in time, shall be determined by the Town, on a case by case basis, until finalization of environmentally sensitive areas are completed.

1. Wood Pond Area
2. Areas within Zone II of the Town's ground water wells.
3. Areas within 100 feet of any stream, river or waterway
- 4.
- 5.
- 6.

The Town may designate specific environmentally sensitive areas as having a higher priority than others, based on the number of applicants that are received.

#### **Application Process**

Should you, as a resident and homeowner of the Town of Middleboro qualify, then complete the attached application and submit to \_\_\_\_\_ the Town Manager's Office. You will be notified of your eligibility. You should be aware that the Town might exhaust available monies, made available by DEP. If so, then you may be placed on a waiting or 'Priority List', until additional monies become available.

## Public Meeting

There will be a public meeting on \_\_\_\_\_ at Town Hall. The purpose of this public meeting will be to explain the program and answer any questions that you, the homeowner may have.

## The Process

Upon approval by the Town of Middleboro of your application, you will be expected to sign a Betterment Agreement with the Town of Middleboro. The Betterment Agreement outlines the terms of the loan and what is expected of both parties. Have your lawyer review the Agreement, if you find it necessary.

Once the agreement is signed, then you may proceed with one of two choices.

You may elect to obtain bids from engineers and/or general contractors (vendors) on your own. It is recommended that you obtain at least three bids. This will allow you to obtain the most cost effective price. It is up to you, the homeowner to select the choice that you feel most comfortable with. It does not necessarily have to be the lowest bidder. You will enter into a signed contract with either vendor. You may want to consider having the design engineer serve as the inspector of the general contractor's work and coordinator of submitting bills to Town Hall.

If you choose this option, engineers and general contractors will be expected to submit bills to you twice. You will be expected to review the bill, approve it and forward it to \_\_\_\_\_ at Town Hall.

A joint check will be issued by the Town with your name and the vendor's name to you. You will be expected to sign the check and give it to the vendor, if you approve their work. Upon completion of the engineering evaluation and design and the general construction, the Board of Health will inspect and issue a Certificate of Compliance for the septic system. This is the end of the project. A final check may be issued to the engineer and general contractor, provided that all work has been performed satisfactorily.

# **COMMUNITY SEPTIC MANAGEMENT PROGRAM**

## **BETTERMENT LOANS**

### **HOMEOWNER PACKAGE**

Dear Homeowner:

This package provides information for you, the homeowner, to apply for a septic system betterment loan. This loan is provided, through the Department of Environmental Protection at a five percent (5%) interest rate for a period of 5, 10, 15, or 20 years. There is no credit check required, although all of your real estate taxes, water bill or any other municipal account should be paid and up to date. The loan process is reviewed and approved by the Board of Health and you will be notified within two weeks (2) of your standing.

Attached are various documents for your review. These documents are outlined as follows:

#### ***Application:***

This application must be completed and submitted to the Board of Health that will confirm your interest in the program.

#### ***Homeowner Checklist For Engineering Design:***

This checklist contains a series of queries to ask an engineer, septic system inspector or a soil evaluator. These disciplines are necessary to initially inspect (System Inspector), perform a soil evaluation and percolation test (Soil Evaluator) and design a septic system (Civil or Sanitary Engineer). All must be certified and licensed by the Commonwealth of Massachusetts. Ask to see their license or certification.

#### ***Homeowner Checklist for A General Contractor:***

This checklist allows you to question a general contractor whom may be bidding on the Board of Health approved septic system design plans.

#### ***Betterment Agreement:***

The betterment agreement is the signed agreement between you, the homeowner and our community. This agreement may be reviewed by your lawyer when provided to you by our Board of Health. The agreement allows our community to provide you money to pay for the work that is agreed upon.

#### ***Draft Contract for the Engineer***

#### ***Draft Contract for the General Contractor***

**LOCAL SEPTIC MANAGEMENT PROGRAM**

**APPLICATION FORM**

**COMMUNITY OF (YOUR TOWN/CITY)**

Homeowner Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (W) \_\_\_\_\_

Phone: (H) \_\_\_\_\_

General Information

	<u>YES</u>	<u>NO</u>
1. Has your septic system been failed by a certified inspector?		
1a. Does your system need to be pumped more than four (4) times per year?		
2. Have you had a soil evaluation test and/or engineering plans for your system completed (or in process)?		
3. Have you received estimates for engineering work? Have you received general contractor (installation) work?		
4. Can your property lot lines be determined, so that the proposed septic system and soil adsorption system be located without infringing on your neighbor's property?		
5. Are you in an environmentally sensitive area? (Check plan) Name of area: _____ No. _____		
6. Can you be connected to our community's existing sewerage collection system?		
7. If known, please provide information of the type and costs of the repairs: Needs: a. New soil absorption system (SAS) b. Entire new system c. Repairs done to parts of system d. Want connection to our community's existing sewer system 1. Engineering soil evaluation and design \$ _____ 2. Estimated costs of repair, replacement, or connection \$ _____ 3. Contingency amount (20%) \$ _____ Total Loan Estimate \$ _____		

I, we will agree to sign a betterment/loan agreement with the Town of \_\_\_\_\_, to pay for the required costs associated with the septic system repair, and am aware that these costs will be treated as a municipal lien on my property tax bill.

This loan is contingent on the Town determining that my property lies within an environmentally sensitive area that is deemed to be fundable by the town for that fiscal year.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Property Owner)

<u>Board of Health Use Only:</u>	
Project Number _____	
Environmental Area Number _____	Env. Area Priority No. _____
Date Accepted _____	Priority List No. _____

# ***BROCHURE FOR HOMEOWNERS***

## ***DRAFT***

### ***INTRODUCTION***

The \_\_\_\_\_ of \_\_\_\_\_ Board of Health has received funding approval from the Commonwealth of Massachusetts - Department of Environmental Protection to prepare and administer a septic system repair program. This program, referred to as the MA Title 5 Betterment Loan Program, will enable our community to provide financial assistance to homeowners living in environmentally sensitive areas, whom have failed septic systems. Through this program, the engineering and general construction costs associated with connection to an existing sewer main, or replacement or upgrade of a failed septic system can be provided as a low interest loan, to you, the homeowner. The loan will be paid back to the \_\_\_\_\_ with payment of your real estate tax bill. After reviewing this brochure, should you elect not to participate in this Program, please review another brochure the Board of Health or DEP has available. This brochure describes the “Homeowner Septic System Repair Program”, which is a program administered by the Massachusetts Housing Finance Agency (MHFA).

#### **The Betterment Law**

Under a revised state law, every town and city in Massachusetts has the option of providing upfront financing for residential cesspool or septic system repairs, replacements or upgrades for failed septic systems. This is done in much the same way many communities currently undertake public works improvements, such as the paving of roads and the installation of sewer or water mains. The Betterment Law allows a community to create a loan fund that must be authorized by \_\_\_\_\_ vote. The loan fund pays for Board of Health approved repairs to septic systems. The Community recovers those costs by assessing annual betterments on those individual homeowners property tax bills that benefit by the improvement.

#### **Financial Assistance Terms**

Financial Assistance consists of a five percent (5%) loan, that you, the homeowner pays back twice a year, with each real estate tax payment. Loan repayment terms may be over 10 or 20-year time periods, depending on costs of the septic system repair. Loans may be paid back early, without penalty.

#### **Elderly Deferral**

Elderly homeowners, with gross incomes of \$20,000 or less, may request a deferred payment loan. This type of loan does not have to be repaid back to our community, until the property is sold or transferred. The authority to have a deferred payment loan program must be specifically approved by \_\_\_\_\_ vote. Loans may be paid back early, without penalty.

#### **Community Yearly Program**

Each fiscal year, the Board of Health will provide a number of loans to homeowners located in environmentally sensitive areas. The number of homeowners provided loans would be based on available money and the priority of that particular environmental area. Your application will be kept on file, regardless of whether you qualify that particular year. Notice will be provided yearly, of homeowners standing, through the issuance of a priority list. Priorities of environmentally sensitive areas will be based on environmental concerns, such as the proximity of the failed septic system to our community’s water supply, surface waters, wetlands or coastal waters.

#### **General Assistance**

Once you have been determined to be eligible for a loan, the Board of Health will prepare a Betterment Loan Agreement for your execution. Upon completion of the loan agreement, the Board of Health is prepared to offer service in one of two ways, in order to complete the project. You may decide to control the project yourself or with an informed family member. You may select either an engineer for design of the septic system and/or a general contractor to install the septic system improvements from the Board of Health’s pre-approved list. All bills incurred for the work are submitted to the Board of Health for payment.

#### **For Further Information**

For further information on this program, please contact \_\_\_\_\_ at () - \_\_\_\_\_.

## *LOCAL SEPTIC MANAGEMENT HOMEOWNER CHECKLIST*

### ENGINEERING SERVICES

#### *Design Questions to Ask an Engineer Prior to Completing a Contract*

This checklist will assist you, the homeowner, in asking an engineer, who is proposing to evaluate and design a septic system improvement for you, appropriate questions that should assist you in determining their suitability to perform the work.

#### A. General Questions

1. Have you performed septic system design work (under the new Title 5 regulations issued by the Commonwealth in 1996) that has been approved by our communities Board of Health or other regulating Department?
2. When was the last year and how many septic systems have you submitted and received approval for by our Board of Health?
3. Do you have a current professional registration (civil or environmental) engineering registration provided by the Commonwealth of Massachusetts Engineering Board of Registration? Can you provide a copy for our records?
4. Will you provide up to three most recent references for your work, from local communities homeowners?
5. Are you insured and do you carry professional liability insurance as required by the Commonwealth of Massachusetts and professional standards, as provided by the American Association of Professional Engineers?

### SYSTEM INSPECTOR

#### B. Initial Location and Inspection of the Septic System

There are numerous septic system inspectors, licensed by the DEP - Commonwealth of Massachusetts. These inspectors are not necessarily engineers, and may be a cost effective alternative to hiring an engineering firm to perform the inspection.

1. We had (or haven't had) our septic system located and inspected. The inspector deemed that the system has failed and under Title 5 criteria, must be replaced. Will you review this inspection and ensure us that the Commonwealth's Title 5 regulations do indeed, require replacement of the entire system or a part of the system?
2. Our septic system has not been inspected, but we are having problems. Will you locate and sketch out the location and present system design and perform an inspection and provide options for us to consider, as outlined under the Title 5 regulations?
3. Will you or a subcontractor perform the inspection?

### ENGINEERING DESIGN OF SEPTIC SYSTEM

#### C. Design Questions

There are two components of septic system design. The first consists of noting where your property lines may be so that test holes can be dug. These holes will locate your soil adsorption system, which handles the fluid part of septic wastes.

The first part also includes actually digging the test holes with a backhoe, performing a soil examination and 'perc' test and then submitting the results to you, the homeowner, and the Board of Health.

This part of design does not have to be performed by a professional engineer, but can be done by a certified soil evaluator (certified by the Commonwealth of Massachusetts). The results of the soil examination are submitted to the Board of Health and You, the homeowner. The homeowner can then submit the results to a chosen registered professional engineering firm for design purposes.

These questions can be asked to either the professional design engineer or a chosen certified soil evaluator.

1. Will you charge us for determining where our property lines are located, or use general field work as determined from meeting with us today, as part of your design estimate?
2. If you cannot determine from our provided plans, or locations of known property bounds, drill holes, stakes or other property line markings, what will be your limits to determine property lines for location of the septic system components and soil adsorption system?

3. How will the soil examination (percolation test) be performed, by you or a subcontractor? Will you be present to show the subcontractor where to dig the holes for location of the soil adsorption system? Do the subcontractor and the heavy machine operator work directly for you, and do they carry the necessary liability insurance?
4. Will they be responsible for calling Dig Safe, if required?
5. Will the dug holes and tractor (tire) damages be filled in, graded and seeded or left in the general construction state of disrepair?
6. When the soil examination is completed, will you submit a copy to the Board of Health, our chosen design engineer and us?
7. How will billing be performed? We may request that billing be performed in the following manner:

Number / Description	Percent of Cost
----------------------	-----------------

1. Provide a written estimate for all phases of the proposed work:

*Inspection of System*

a. Initial Inspection, location of system and written evaluation

1. Inspection and location	25%
----------------------------	-----

2. Written and signed evaluation	75%
----------------------------------	-----

*Soil Evaluation and Percolation Testing*

2. a. Location of Lot Lines with side line stakes

b. Onsite backhoe for soil test with successful percolation test and soil examination

c. Written report and confirmation of submittal to Local BOH of certified test	75%
--	-----

d. Completion of backyard grading and cleanup	25%
---	-----

3. Engineering Design

a. Site visit and write up of estimate

b. Survey work for plan of work

c. Review of soil evaluation test and opinion to us of the type of systems that could be installed, along with price estimates for each one.

d. Draft plans for review and approval of approved septic system.

(We will provide permit fee for submittal to our Board of Health at that time)

e. Final plans submitted to Board of Health and a bill from you.	60%
--	-----

f. Board of Health approves the plan and we receive four copies for our use.

Written specifications will be included with plans	40%
--	-----

4. Engineering Oversight of Construction

a. Hourly charge for inspection of contractor's work.

b. Estimate of total time estimated for inspection and maximum costs

c. Time to provide written change orders on site, to be included with hourly charge.

d. Billing to be done per inspection, with 10 days to pay.

# *LOCAL SEPTIC MANAGEMENT PROGRAM*

## *HOMEOWNER CHECKLIST*

Questions to ask a General Contractor Prior to Agreeing to a Contract

This checklist will assist you, the homeowner, in asking a general contractor questions, prior to signing a written agreement, for the improvement or installation of a septic system or a sewage connection.

### A. General Questions

1. How many installations have you performed, under the old Title 5 regulations and under the new Title 5 regulations, and, how long have you been in business?
2. How many have been done in our Town/City over the past two (2) years?
3. Would you say the Board of Health and its agent has been satisfied with your work 100% of the time?
4. Are there any septic systems that you have worked on, or are presently working on, that have not been completed? If so, why not?
5. How long will it be before you provide a written estimate, if we provide a set of plans and written specifications right now?
6. If your written estimate is submitted, based on our provided plans and written specifications, how long will it be before you show up on the job?
7. Will you break down the pay estimate in phases as outlined below:

<b>Item</b>	<b>Description</b>	<b>% of Total</b>
a.	Submit a written estimate and if accepted, a contract.	
b.	Drop off materials and bring a machine to start digging	
c.	Complete Installation of any required septic system components	
d.	Complete the soil adsorption system	
e.	Obtain a successful inspection from the Board of Health	80%
f.	Cover over the system to grade	
g.	Seed and loam as required	20%

8. Will you provide us three references of homeowners of your last three jobs?
9. Do you carry insurance? If so, does it consist of:
  - a. Property Liability
  - b. Vehicle Liability
  - c. Workers Comp (unless self employed)
10. How long will our toilets, dishwasher, sinks, etc. be off line (can't be used)?
11. How long will this job take from start until completion?

# Forms

Sample Town Meeting/City Council Article and Vote	a
Payment Requisition	i
Form DA91	ii
Final Report	iv
DOR Form	vi
Sample Loan Agreement	vii
Sample Loan Questionnaire	xxv
Local Bond Counsel Legal Opinion	xxx
<i>(back to Appendices)</i>	

**Massachusetts Water Pollution Abatement Trust  
Community Septic Management Program  
Department of Environmental Protection**

These sample forms are for guidance purposes only. The Applicant's bond counsel should be consulted to determine the exact form of authorization required and which local body or official must approve the terms of borrowing and the forms of documentation.

**Sample Town Meeting/City Council Article and Vote**

To see if the Town/City will vote to appropriate a sum of money for the purpose of financing the following water pollution facility projects: repair, replacement and/or upgrade of septic systems, pursuant to agreements with Board of Health and residential property owners, including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws; to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise, or to take any other action relative thereto.

**Vote**

Voted: that \$\_\_\_\_\_ is appropriated for the purpose of financing the following water pollution abatement facility projects: repair, replacement and/or upgrade of septic systems, pursuant to agreements with the Board of Health and residential property owners, including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws; that to meet this appropriation the Treasurer with the approval of the Board of Selectmen or City Council is authorized to borrow \$\_\_\_\_\_ and issue bonds or notes therefore under M.G.L. c.111, s.127B ½ and/or Chapter 29C of the General Laws; that project and financing costs shall be repaid by the property owners, in accordance with those agreements, but such bonds or notes shall be general obligations of the Town/City; that the Treasurer with the approval of the Board of Selectmen or City Council is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the projects or for the financing thereof; and that the Board of Selectmen, Board of Public Works, City Council, or other appropriate local body or official is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the projects and to take any other action necessary to carry out the projects.

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 DIVISION OF MUNICIPAL SERVICES  
 COMMUNITY SEPTIC MANAGEMENT PROGRAM  
**PAYMENT REQUISITION**

SECTION I: LOAN INFORMATION LOAN No. _____	REQUEST NO. _____
LEGAL NAME AND ADDRESS OF BORROWER: _____	PAYABLE TO: _____
	PAYMENT METHOD: Wire Transfer
	Acct. #:

SECTION II: ADVANCE REQUEST  
 We request an advance of \$\_\_\_\_\_ to be used to finance the upgrade of failed septic systems, through betterments, in accordance with the Program. This advance is requested in anticipation of the financial requirements of projects under this program for the next three months. We understand that we must make monthly accounting reports of these advance funds using Section III below.

SECTION III: ADVANCE ACCOUNTING PROJECT NUMBER	APPROVED PROJECT COSTS	PREVIOUS REQUEST \$	THIS REQUEST \$
<i>Advance</i>			
<i>Totals</i>			

ADVANCE RECONCILIATION

Amount Advanced: \$ \_\_\_\_\_  
 Advance Expended: \$ \_\_\_\_\_  
 Advance Balance: \$ \_\_\_\_\_

SECTION IV: CERTIFICATION OF THE BORROWER:

(i) Such payment is for Project Costs and the obligations specified herein have not been the basis for a prior requisition that has been paid.

(ii) No Default as defined in the Regulatory Agreement, and No Event of Default as defined in the Loan Agreement, has occurred and is continuing and no event or condition exists which, after notice or lapse of time or both, would become a Default hereunder or Event of Default under the Loan Agreement.

(iii) The payment requested by this requisition will be for Project Costs to be or already authorized under a betterment agreement between the Borrower and a system owner, and that no advance funds shall be disbursed to the system owner until such betterment agreement has been executed between the Borrower and the system owner.

Treasurer: _____	Date: _____	DMS Director Signature	Date
Authorized Health Official	Date: _____		



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection – Division of Municipal Services  
 Form DA91  
 Analysis of Homeowner Septic Repair Special Revenue Account

\_\_\_\_\_  
 City/Town of

\_\_\_\_\_  
 Quarter ended (date)

Note: File by 15<sup>th</sup> of month following end of quarter with:

Mass. Water Pollution Abatement Trust  
 ATTN: Treasurer  
 One Ashburton Place, Room 1207  
 Boston, MA 02108

MA DEP  
 ATTN: Regional Coordinator  
 [Western, Central, Southeast, or  
 Northeast]

Important:  
 When filling  
 out forms on  
 the computer,  
 use only the tab  
 key to move  
 your cursor -  
 do not use the



A. Balance from previous report:  $\frac{\$}{\text{Amount}}$  \_\_\_\_\_

B. Advances from WPAT  $\frac{\$}{\text{Amount}}$  \_\_\_\_\_  
 Date \_\_\_\_\_

C. Disbursements to or for homeowners (carry total  
 amount forward from schedule on next page)  $\frac{\$}{\text{Amount}}$  \_\_\_\_\_

D. Other allowable costs (describe on attachment):  $\frac{\$}{\text{Amount}}$  \_\_\_\_\_

E. Ending balance (A+B-C-D):  $\frac{\$}{\text{Amount}}$  \_\_\_\_\_

E. Plan for disbursements during next quarter:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

\_\_\_\_\_  
 Treasurer

\_\_\_\_\_  
 Auditor or Accountant



City/Town of \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Analysis of Homeowner Septic Repair Special Revenue Account

FINAL REPORT

Mass. Water Pollution Abatement Trust ATTN: Treasurer Room 1207, One Ashburton Place Boston, MA 02108	Mass. Div. of Local Services ATTN: Director of Accounts Box 9569 Boston, MA 02205-5490	Mass. Dept. of Environmental Protection ATTN: Regional Coordinator [Western, Central, Southeast, or Northeast]
--	--	---

- A. Total advances from WPAT (excluding pre-loan assistance payments) \$
- B. Total disbursements to homeowners (complete the attached table) \$
- C. Pre-loan financial assistance received (maximum \$20,000) \$
- D. Pre-loan assistance spent (management plan, loan administration etc.): \$
- E. Ending Balance: LOANS (A - B) \$
- F. Ending Balance: PRE-LOAN ASSISTANCE (C-D) \$

G. Number of septic systems repaired/upgraded/replaced (provide copies of Certificates of Compliance) \_\_\_\_\_

Number of homes connected to sewers \_\_\_\_\_

*This is to certify that the above referenced project has been completed in accordance with the scope of work identified in the Statement of Program Objectives. As required by the project Regulatory Agreement all copies of the homeowner's Certificate of Compliance funded with Community Septic Management Funds have been forwarded to DEP along with the attached final report. All homeowner Betterments have been recorded by the Registry of Deeds and the appropriate tax collecting office has been notified of the pending assessments.*

Completed by: \_\_\_\_\_

\_\_\_\_\_  
Treasurer Auditor or Accountant  
City/Town of \_\_\_\_\_



City/Town of \_\_\_\_\_

Fiscal year ended June 30,

Analysis of Loans from WPAT for Homeowner Septic Repair<sup>1</sup>

Massachusetts Division of Local Services

Attn: Director of Accounts

Box 9569

Boston, MA 02114

Note: File with Analysis of Special Revenue Account for quarter ended June 30.

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A.	<i>Balance from previous report</i>		\$
B.	Notes or Bonds issued to Trust		\$
	Date	Amount	
C.	Collections from regular tax billing <sup>2</sup>		\$
	Date	Amount	
	August 1		
	November 1		
	February 1		
	May 1		
D.	Lump sum collections		\$
	Date	Name	Amount
E.	Principal payments to Trust		\$
	Date	Amount	
	August 1		
	February 1		
F.	Balance on June 30, 20_____		\$

---

Completed by:

\_\_\_\_\_ Treasurer

\_\_\_\_\_ Accountant or Auditor

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<sup>1</sup> Form DA 92

<sup>2</sup> Principal (and interest if Town Meeting or City Council vote so provides)

Loan No: T5-97-1019-B

Date of Authorization : February 4, 2002

Borrower: Town of Wareham

Sample

MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST

COMMUNITY SEPTIC MANAGEMENT PROGRAM

LOAN AGREEMENT

LOAN AGREEMENT, dated as of the date indicated above (the "Agreement"), by and between the Massachusetts Water Pollution Abatement Trust (together with its successors and assigns, the "Trust"), an instrumentality of The Commonwealth of Massachusetts (the "Commonwealth"), and the political subdivision or public instrumentality of the Commonwealth indicated above (together with its successors and assigns, the "Borrower"):

WITNESSETH:

WHEREAS, the Trust is organized and exists under Chapter 29C of the General Laws of the Commonwealth (the "Enabling Act") to assist Local Governmental Units in the Commonwealth to initiate, acquire, construct, improve, maintain and operate Water Pollution Abatement Projects; and

WHEREAS, pursuant to the Enabling Act, the Trust is authorized to make loans to Local Governmental Units in the Commonwealth to finance or refinance costs of Water Pollution Abatement Projects and Local Governmental Units are authorized to contract with the Trust with respect to such loans and to issue Local Governmental Obligations to evidence their obligations to repay such loans; and

WHEREAS, in order to implement the financing programs authorized by the Enabling Act the Trust adopted on March 4, 1993, a resolution currently entitled "Amended and Restated Resolution Authorizing and Establishing a Water Pollution Abatement and Drinking Water Project Financing Program" (as heretofore or hereafter amended and supplemented in accordance with its terms, the "Program Resolution"); and

WHEREAS, the Borrower has developed a community septic management program, constituting a Water Pollution Abatement Project within the meaning of the Enabling Act, to assist eligible homeowners to upgrade failing septic systems and otherwise to comply with the requirements of 310 CMR 15.000 et seq. ("Title 5") through underlying betterment agreements with such homeowners (collectively, the "Project"); and

WHEREAS, the Department of Environmental Protection of the Commonwealth (the "Department") and the Borrower have executed and delivered a Project Approval Certificate and Regulatory Agreement pertaining to the Project (as more fully identified in Schedule A hereto, the "Project Regulatory Agreement"); and

WHEREAS, the Trust has heretofore approved a loan (the "Loan") from the Trust to the Borrower to finance or refinance costs of the Project in an aggregate amount not to exceed the Initial Loan Obligation set forth in Schedule C attached hereto (the "Initial Loan Obligation") and, to evidence the indebtedness to be incurred thereby, the Trust and the Borrower have duly authorized the execution and delivery of this Agreement and, pursuant to the Applicable Bond Act (as herein defined), the Borrower has duly authorized the issuance and delivery to the Trust of its obligations (as more fully described herein, the "Local Governmental Obligations") in an aggregate principal amount equal to the Initial Loan Obligation; and

WHEREAS, the Loan will be funded by the Trust from the proceeds of bonds issued by the Trust in accordance with the Enabling Act and under and pursuant to the Program Resolution and a Water Pollution Abatement and Drinking Water Project Bond Resolution (Pool Program) to be adopted by the Trust prior to the Closing Date (as herein defined) (the "Bond Resolution"); and

WHEREAS, in anticipation of the closing of the Loan as herein provided, the Trust will finance or refinance costs of the Project incurred by the Borrower prior to the completion of the Project from the proceeds of a temporary loan (the "Interim Loan") to the Borrower to be funded by the Trust from amounts held in the Clean Water Program Account in the Interim Loan Fund under the Program Resolution that are legally available for such purpose;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

**Section 1.** Definitions. All capitalized, undefined terms used in this Agreement shall have the same meanings given such terms in the Recitals hereto or in Section 1 of the Enabling Act. In addition, the following words and phrases shall have the following meanings:

"Applicable Bond Act" means the general or special laws of the Commonwealth identified in Schedule A attached hereto;

"Authorized Officer" means the officer or officers of the Borrower, the Trust or the Department, as the case may be, identified in Schedule A attached hereto;

"Bonds" means the Pool Program Bonds issued by the Trust to fund the Loan, as more fully described in the Bond Resolution;

"Bond Trustee" means State Street Bank and Trust Company and its successors and assigns as Bond Trustee under the Bond Resolution;

"Business Day" means any day other than a Saturday, a Sunday or any other day on which banks doing business in the Commonwealth are authorized or required to be closed for business;

"Closing Date" means (i) the date set forth in Schedule A hereto, (ii) such earlier date as may be mutually agreed upon by the Trust and the Borrower, or (iii) such later date as may be designated by the Trust by written notice delivered to the Borrower not less than thirty (30) days prior to such later date, which later date shall be not later than three (3) years after the date of the Interim Loan Note;

"Code" means the Internal Revenue Code of 1986, as amended, and all Treasury Regulations promulgated thereunder to the extent applicable to the Loan, the Bonds or the Local Governmental Obligations;

"Commonwealth Assistance Contract" means the Amended and Restated Agreement for Contract Assistance dated as of September 1, 1999, between the Commonwealth and the Trust, as amended to the date hereof and as hereafter amended in accordance therewith, and the Contract Assistance Determination, if any, applicable to the Loan issued thereunder;

"Contract Assistance Payments" means amounts, if any, provided to the Trust by the Commonwealth in accordance with Section 6 of the Enabling Act and the Commonwealth Assistance Contract; except as otherwise provided herein, for purposes of this Agreement Contract Assistance Payments shall mean the amounts, if any, applicable to each Loan Repayment Date, and to each Scheduled Loan Repayment due on such date, set forth in the column labeled "Loan Subsidy Amounts - Contract Assistance Payments" in Schedule C attached hereto, as such schedule may be amended from time to time in accordance herewith;

"Debt Service Fund" means the Debt Service Fund established under the Bond Resolution;

"DEP Regulations" means the regulations of the Department applicable to the Program appearing in 310 CMR 44.00 as such regulations may be amended from time to time, including, without limitation, the Department's Community Septic Management Program Description and Requirements as amended and supplemented from time to time;

“Equity” means amounts held in or for the credit of the Clean Water Equity Fund under the Program Resolution as more fully described in the Program Resolution and the Equity Allocation Certificate;

“Equity Allocation Certificate” means the certificate of the Trust with respect to the Loan delivered to the Program Trustee pursuant to Section 205 of the Program Resolution;

“Equity Earnings” means earnings derived from the investment or deposit of Equity allocable to the Loan to the extent provided in the Equity Allocation Certificate; except as otherwise provided herein, for purposes of this Agreement Equity Earnings shall mean the amounts applicable to each Loan Repayment Date, and to each Scheduled Loan Repayment due on such date, set forth in the column labeled “Loan Subsidy Amounts - Equity Earnings” in Schedule C attached hereto, as such schedule may be amended from time to time in accordance herewith;

“Event of Default” means any of the events or circumstances specified in Section 9(a) of this Agreement;

“Federal Act” means Title VI of the Federal Water Pollution Control Act (Pub. L. 92-500, commonly known as the Clean Water Act), as amended by the Federal Clean Water Act of 1987 (Pub. L. 100-4), as the same may be further amended from time to time, and all regulations of the United States Environmental Protection Agency applicable thereto as amended from time to time;

“Fiscal Year” means the period beginning on July 1 in any year and ending on June 30 in the next succeeding year;

“Grant Equivalency Percentage” shall mean the amount set forth in Schedule A attached hereto;

“Interim Loan” shall have the meaning given such term in Section 3 hereof;

“Interim Loan Note” shall have the meaning given such term in Section 3 hereof;

“Interim Loan Disbursement Date” means each day on which proceeds of the Interim Loan may be disbursed to the Borrower from the Interim Loan Project Account in accordance with Section 4 hereof and the Project Regulatory Agreement;

“Interim Loan Project Account” means the account allocable to the Interim Loan established in the Interim Loan Fund under and pursuant to the Program Resolution in accordance with Section 3 hereof;

“Investment Obligations” shall have the meaning given such term in the Bond Resolution;

“Loan Prepayments” means all payments made by or for the account of the Borrower which reduce or eliminate the principal balance due on the Loan and the Local Governmental Obligations by reason of the prepayment of all or any part of the principal prior to the due date thereof;

“Loan Principal Obligation” means, at any time of calculation, the aggregate unpaid principal amount of the Loan, which amount shall equal the Initial Loan Obligation less all Scheduled Loan Repayments and all Loan Prepayments on account of the principal amount of the Loan then or theretofore made or provided for by or for the account of the Borrower and received by or for the account of the Trust;

“Loan Repayments” means, as the context requires, the Scheduled Loan Repayments or the Net Loan Repayments payable by the Borrower hereunder;

“Loan Repayment Dates” means February 1 and August 1 of each year (commencing on the first such date indicated on Schedule C attached hereto) or, if any such day is not a Business Day, the next succeeding Business Day;

“Loan Subsidy Amounts”, except as otherwise provided in this Agreement, means the amounts, if any, applicable to each Loan Repayment Date, and to each Scheduled Loan Repayment due on such date, set forth in

the column labeled “Loan Subsidy Amounts” in Schedule C attached hereto, as such schedule may be amended from time to time in accordance herewith;

“Local Bond Counsel” means an attorney or firm of attorneys (who may be counsel to any party hereunder) of nationally recognized standing in connection with the issuance of obligations similar to the Local Governmental Obligations, selected by the Borrower and satisfactory to the Trust;

“Net Loan Repayments” means the payments to be made by the Borrower in repayment of the Loan and the Local Governmental Obligations, and the interest, if any, payable thereon, which payments shall be made on the Loan Repayment Dates set forth in Schedule C attached hereto and in the amounts on each Loan Repayment Date (determined as provided in Section 4 hereof) set forth in the column labeled “Net Loan Repayments” in said Schedule C payable on such date (as such schedule may be amended from time to time in accordance herewith);

“Program” means the financial assistance program of the Trust established pursuant to the Enabling Act as more fully described in the Program Resolution;

“Program Trustee” means State Street Bank and Trust Company and its successors and assigns as Program Trustee under the Program Resolution;

“Project Cost” or “Costs” means any cost of the Project approved by the Department for payment or reimbursement from proceeds of the Interim Loan, as more fully described in the Project Regulatory Agreement;

“Scheduled Loan Repayments” means the fixed payments payable in repayment of the Loan and the Local Governmental Obligations, and the interest payable thereon, which payments shall be due on the Loan Repayment Dates and in the amounts set forth in the column labeled “Scheduled Loan Repayments” in Schedule C attached hereto (as such schedule may be amended from time to time in accordance herewith).

**Section 2.**                    Representations. (a) The Borrower represents and warrants to the Trust as follows:

- (i) The Borrower is a Local Governmental Unit as defined in the Enabling Act with full legal right and authority under the Enabling Act and the Applicable Bond Act to authorize, execute and deliver this Agreement and the Project Regulatory Agreement, to execute, issue and deliver the Interim Loan Note and the Local Governmental Obligations, to undertake the Project, and to carry out and consummate all transactions contemplated by the foregoing;
- (ii) The Borrower has duly and validly authorized the execution and delivery or adoption of this Agreement, the Project Regulatory Agreement, the Interim Loan Note and the Local Governmental Obligations and all approvals, consents and other governmental proceedings necessary for the execution and delivery of any of the foregoing or required to make them the legally binding obligations of the Borrower that they purport to be in accordance with their terms have been obtained or made;
- (iii) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or, to the knowledge of the Authorized Officers of the Borrower executing this Agreement, threatened seeking to restrain or enjoin the execution and delivery or adoption of this Agreement, the Project Regulatory Agreement, the Interim Loan Note or the Local Governmental Obligations or the carrying out of the Project; or contesting or affecting the validity of this Agreement, the Project Regulatory Agreement, the Interim Loan Note or the Local Governmental Obligations or the power of the Borrower to assess and collect taxes, rates and charges to pay all Loan Repayments hereunder; and neither the corporate existence of the Borrower nor the title to office of any Authorized Officer of the Borrower executing this Agreement, the Project Regulatory Agreement, the Interim Loan Note or the Local Governmental Obligations is being contested;
- (iv) The authorization, execution and delivery or adoption of this Agreement, the Project Regulatory Agreement, the Interim Loan Note and the Local Governmental Obligations, and performance of each thereof, will not

constitute a breach of, or a default under, any law, ordinance, resolution, agreement, indenture or other instrument to which the Borrower is a party or by which it or any of its properties is bound;

- (v) This Agreement and the Loan are, and when executed and delivered the Interim Loan Note and the Local Governmental Obligations will be, valid general obligations of the Borrower, for the payment of which its full faith and credit are and will be pledged, enforceable in accordance with their terms and the terms of the Enabling Act and the Applicable Bond Act, and payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Interim Loan Note and the Local Governmental Obligations.
- (b) The Trust represents and warrants to the Borrower as follows:
- (i) The Trust has the full legal right and authority under the Enabling Act to adopt and perform the Program Resolution and the Bond Resolution, to authorize, issue, execute, deliver and perform the Bonds and to authorize, execute, deliver and perform this Agreement;
- (ii) The Trust has duly and validly adopted the Program Resolution and has duly and validly authorized the execution of this Agreement; at or prior to the Closing Date the Trust will duly and validly adopt the Bond Resolution and duly and validly authorize the execution and delivery of the Bonds; and all approvals, consents and other governmental proceedings necessary for the adoption of the Program Resolution and the Bond Resolution and the execution and delivery and performance of the Bonds and this Agreement or required to make them the legally binding obligations of the Trust that they purport to be in accordance with their terms have been or at or prior to the Closing Date will be obtained or made;
- (iii) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body is pending or, to the knowledge of the Authorized Officers of the Trust executing this Agreement, threatened seeking to restrain or enjoin the adoption or performance of the Program Resolution or the Bond Resolution or the execution and delivery and performance of the Bonds or this Agreement or contesting or affecting the validity thereof or hereof; and neither the existence of the Trust nor the title to office of any Trustee of the Trust or any Authorized Officer of the Trust executing this Agreement is being contested;
- (iv) The adoption of the Program Resolution and the Bond Resolution and the authorization, execution and delivery of the Bonds and this Agreement, and performance of each thereof, will not constitute a breach of, or a default under, any law, resolution, agreement, indenture or other instrument to which the Trust is a party or by which it is bound; and
- (v) The Program Resolution is, and when adopted or executed and delivered the Bond Resolution, this Agreement and the Bonds will be, valid obligations of the Trust, enforceable in accordance with their terms and the terms of the Enabling Act.

**Section 3.** The Interim Loan. (a) Subject to the availability to the Trust of moneys for such purpose, the Trust (upon not less than ten (10) Business Days prior notice from the Borrower) agrees to provide the Interim Loan to the Borrower to pay or provide for the eligible Costs of the Project prior to its completion and the Closing of the Loan and (i) incurred by the Borrower on and after the date of execution and delivery by the Borrower of this Agreement or (ii) incurred by the Borrower prior to the date of its execution and delivery of this Agreement and either (x) paid by the Borrower from the proceeds of notes or other obligations issued by the Borrower in anticipation of the Loan, or (y) paid by the Borrower from other moneys available to the Borrower under a valid declaration of official intent to reimburse such payment from the proceeds of the Loan. The Interim Loan shall be evidenced by a note (the "Interim Loan Note") issued by the Borrower to the Trust pursuant to the Applicable Bond Act in form and substance satisfactory to the Trust and otherwise as hereinafter provided. The Interim Loan and the Interim Loan Note, when executed and delivered, shall be a general obligation of the Borrower payable as to principal and interest (to the extent

not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Interim Loan.

- (b) The Interim Loan Note shall be dated the date of its execution and delivery by the Borrower, shall mature and be payable on the Closing Date for the Loan, without interest thereon, and shall be in principal amount equal to the aggregate amount of proceeds thereof from time to time disbursed to or for the account of the Borrower (as evidenced by a disbursement schedule appearing on the Interim Loan Note), not exceeding the Initial Loan Obligation set forth in Schedule C hereto (or such lesser amount as shall equal the total eligible Costs of the Project approved by the Department at the date of the Closing of the Loan).
- (c) Upon execution and delivery by the Borrower of the Interim Loan Note, the Trust shall direct the Program Trustee to establish under the Program Resolution a separate account for the Project designated “Interim Loan Project Account - (Name of Borrower) Project No. \_\_\_\_\_” (an “Interim Loan Project Account”), to be held and maintained in accordance herewith, with the Federal Act and with the Program Resolution. Subject to the availability to the Trust of moneys for such purpose, the Trust shall deposit or cause the Program Trustee to deposit from time to time in the Interim Loan Project Account amounts (representing proceeds of the Interim Loan) sufficient in amount and time of deposit to satisfy each requisition for payment or reimbursement of Costs of the Project submitted to the Trust by the Borrower as provided in Section 4 hereof.
- (d) Notwithstanding anything herein to the contrary, the obligation of the Trust to make and fund the Interim Loan is expressly conditional upon the receipt by the Trust of the following, each in form and substance satisfactory to the Trust:
- (i) Copies, certified by an Authorized Officer, of all governmental proceedings of the Borrower authorizing the Loan and the Interim Loan and the execution and delivery of this Agreement, the Project Regulatory Agreement, the Interim Loan Note and the Local Governmental Obligations;
- (ii) A certificate or certificates of Authorized Officers of the Borrower confirming the representations and warranties of the Borrower in Section 2 hereof;
- (iii) A certificate or certificates of Authorized Officers of the Borrower as to the due authorization, execution and delivery of this Agreement, the Project Regulatory Agreement and the Interim Loan Note and to the further effect that (x) none of the foregoing instruments have been amended or supplemented since their date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable, or which under the terms of the applicable instrument may be executed and delivered or adopted by the Borrower without the consent of the Trust or the Department) or repealed and that each such instrument remains in full force and effect as of such date, and (y) as of such date, no Event of Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, shall have happened and shall be continuing under this Agreement or the Project Regulatory Agreement;
- (iv) The Interim Loan Note duly executed by Authorized Officers of the Borrower;
- (v) An opinion of Local Bond Counsel to the effect that this Loan Agreement, the Project Regulatory Agreement and the Interim Loan Note, and the execution and delivery thereof, have been duly authorized by the Borrower in accordance with the Applicable Bond Act; this Loan Agreement and the Project Regulatory Agreement have been duly and validly executed and delivered by the Borrower and each constitutes a valid and binding obligation of the Borrower enforceable in accordance with its terms and the terms of the Enabling Act and the Applicable Bond Act; the Interim Loan Note has been duly and validly executed by or on behalf of the Borrower and delivered to or upon the order of the Trust in accordance with this Agreement and the Applicable Bond Act; and the Interim Loan Note constitutes a valid and binding general obligation of the Borrower enforceable in accordance with its terms and payable as to principal, premium, if any, and

not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Interim Loan.

- (b) The Interim Loan Note shall be dated the date of its execution and delivery by the Borrower, shall mature and be payable on the Closing Date for the Loan, without interest thereon, and shall be in principal amount equal to the aggregate amount of proceeds thereof from time to time disbursed to or for the account of the Borrower (as evidenced by a disbursement schedule appearing on the Interim Loan Note), not exceeding the Initial Loan Obligation set forth in Schedule C hereto (or such lesser amount as shall equal the total eligible Costs of the Project approved by the Department at the date of the Closing of the Loan).
- (c) Upon execution and delivery by the Borrower of the Interim Loan Note, the Trust shall direct the Program Trustee to establish under the Program Resolution a separate account for the Project designated "Interim Loan Project Account - (Name of Borrower) Project No. \_\_\_\_\_" (an "Interim Loan Project Account"), to be held and maintained in accordance herewith, with the Federal Act and with the Program Resolution. Subject to the availability to the Trust of moneys for such purpose, the Trust shall deposit or cause the Program Trustee to deposit from time to time in the Interim Loan Project Account amounts (representing proceeds of the Interim Loan) sufficient in amount and time of deposit to satisfy each requisition for payment or reimbursement of Costs of the Project submitted to the Trust by the Borrower as provided in Section 4 hereof.
- (d) Notwithstanding anything herein to the contrary, the obligation of the Trust to make and fund the Interim Loan is expressly conditional upon the receipt by the Trust of the following, each in form and substance satisfactory to the Trust:
- (i) Copies, certified by an Authorized Officer, of all governmental proceedings of the Borrower authorizing the Loan and the Interim Loan and the execution and delivery of this Agreement, the Project Regulatory Agreement, the Interim Loan Note and the Local Governmental Obligations;
- (ii) A certificate or certificates of Authorized Officers of the Borrower confirming the representations and warranties of the Borrower in Section 2 hereof;
- (iii) A certificate or certificates of Authorized Officers of the Borrower as to the due authorization, execution and delivery of this Agreement, the Project Regulatory Agreement and the Interim Loan Note and to the further effect that (x) none of the foregoing instruments have been amended or supplemented since their date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable, or which under the terms of the applicable instrument may be executed and delivered or adopted by the Borrower without the consent of the Trust or the Department) or repealed and that each such instrument remains in full force and effect as of such date, and (y) as of such date, no Event of Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, shall have happened and shall be continuing under this Agreement or the Project Regulatory Agreement;
- (iv) The Interim Loan Note duly executed by Authorized Officers of the Borrower;
- (v) An opinion of Local Bond Counsel to the effect that this Loan Agreement, the Project Regulatory Agreement and the Interim Loan Note, and the execution and delivery thereof, have been duly authorized by the Borrower in accordance with the Applicable Bond Act; this Loan Agreement and the Project Regulatory Agreement have been duly and validly executed and delivered by the Borrower and each constitutes a valid and binding obligation of the Borrower enforceable in accordance with its terms and the terms of the Enabling Act and the Applicable Bond Act; the Interim Loan Note has been duly and validly executed by or on behalf of the Borrower and delivered to or upon the order of the Trust in accordance with this Agreement and the Applicable Bond Act; and the Interim Loan Note constitutes a valid and binding general obligation of the Borrower enforceable in accordance with its terms and payable as to principal, premium, if any, and

- Section 5.**                    The Loan. (a) On the terms and conditions provided herein and in the Project Regulatory Agreement, the Trust hereby agrees to make the Loan to the Borrower, and the Borrower agrees to accept the Loan, in an aggregate principal amount equal to the outstanding principal amount of the Interim Loan on the Closing Date, after credit for any proceeds of the Interim Loan returned to the Trust on or before such date pursuant to Section 4(d) hereof. On the Closing Date the Trust shall apply the proceeds of the Loan to the payment of the principal of the Interim Loan in full.
- (b)                    On or prior to the Closing Date the Trust shall file the Equity Allocation Certificate with the Program Trustee allocating Equity to the Loan in an amount sufficient to provide Equity Earnings hereunder in the amounts and on the dates set forth in Schedule C attached hereto, as such schedule may be amended from time to time in accordance herewith.
- (c)                    As evidence of the Loan made to the Borrower, the Borrower agrees to issue and deliver to the Trust on the Closing Date the Local Governmental Obligations in aggregate principal amount equal to the principal amount of the Loan. Subject to Section 11 hereof, the Local Governmental Obligations shall be issued in such form as shall be approved by the Trust and shall be payable on the Loan Repayment Dates and in the aggregate amounts as to principal and interest corresponding to the Scheduled Loan Repayments required hereunder with respect to the Loan. Except as otherwise provided in Section 6 hereof, the Loan Principal Obligation, and the corresponding principal amount of the Local Governmental Obligations, shall mature and bear interest in the amounts for each Scheduled Loan Repayment specified in Schedule C attached hereto.
- (d)                    Each Scheduled Loan Repayment made by or for the account of the Borrower hereunder, whether by direct payment to the Trust by the Borrower, or by application of Loan Subsidy Amounts as provided herein, shall satisfy the corresponding obligation of the Borrower to pay the principal and interest, if any, then due on the Local Governmental Obligations as the same become due on the applicable payment dates therefore, and each payment of principal and interest made by the Borrower on the Local Governmental Obligations shall satisfy the obligation of the Borrower to pay the corresponding Loan Repayment then due hereunder.
- (e)                    Except as otherwise provided in the Local Governmental Obligations, the obligation of the Borrower to pay on each Loan Repayment Date the Scheduled Loan Repayments then due in accordance with this Agreement and the principal and interest, if any, then due on the Local Governmental Obligations is a general obligation of the Borrower payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Local Governmental Obligations.

- Section 6.**                    Loan Repayments. (a) Except as otherwise provided in this Section 6, the Loan Principal Obligation shall be repaid by the Borrower, and Scheduled Loan Repayments on account of such Loan Principal Obligation and interest, if any, thereon shall be payable by the Borrower, on the Loan Repayment Dates and in the amounts set forth in Schedule C attached hereto. All Loan Repayments payable on the Loan, and all Loan Subsidy Amounts, if any, applied on account of such Loan Repayments as hereinafter provided, shall be received and applied solely as permitted by the Federal Act and as provided herein, in the Bond Resolution and the Program Resolution. All Loan Repayments made by the Borrower hereunder, and all Loan Subsidy Amounts, if any, applied on account of such Loan Repayments, shall be applied, first, to the interest, if any, then due and payable on the Loan and, second, to the principal amount of the Loan then due and payable hereunder. Any portion of a Loan Repayment not paid in full when due shall bear interest hereunder until paid at twelve percent (12%) per annum.
- (b)                    Notwithstanding the provisions of Paragraph (a) of this Section 6, but subject to the provisions of Paragraphs (c), (e) and (i) of this section, on each Loan Repayment Date the Trust shall apply, and the Borrower shall receive, as a credit against the Scheduled Loan Repayment then payable on the Loan, the Loan Subsidy Amounts allocable to such Loan Repayment Date set forth in Schedule C attached hereto, as such schedule may be amended from time to time as provided in this Section 6. The Trust shall provide the

Borrower with written notice of each Loan Repayment due hereunder not less than ten (10) Business Days in advance of the applicable Loan Repayment Date (provided failure by the Trust to provide such notice or any defect therein shall not diminish the obligation of the Borrower to pay such Loan Repayment in the amount and at the time provided herein). Not less than five (5) Business Days prior to each Loan Repayment Date, the Borrower shall pay to the Bond Trustee for the account of the Trust, by wire transfer to such account or otherwise in such manner as the Trust may from time to time designate to the Borrower, the Net Loan Repayment then due on the Loan set forth in Schedule C attached hereto, as such schedule may be amended from time to time as provided in this Section 6. Subject to Paragraphs (c), (e) and (i) of this Section 6, payment on or before a Loan Repayment Date of the Net Loan Repayment payable on such date as aforesaid shall constitute full satisfaction of the obligation of the Borrower to pay on such Loan Repayment Date the Scheduled Loan Repayment otherwise payable on such date in accordance with Paragraph (a) of this Section 6. The Trust and the Borrower acknowledge and agree, subject to Paragraph (j) of this Section 6, that the schedule of Net Loan Repayments set forth in Schedule C hereto results in the Loan, after consideration of the Loan Subsidy Amounts to be applied to the obligations of the Borrower thereon, being the financial equivalent of a grant to the Borrower in an amount not less than the percentage of the eligible Project Costs to be funded by the Loan equal to the Grant Equivalency Percentage set forth in Schedule A hereto.

(c) The Borrower acknowledges that the ability of the Trust to establish the schedule of Net Loan Repayments for the Loan set forth in Schedule C hereto is dependent, in part, upon the application of Equity Earnings to the payment of debt service on the Bonds as provided in the Bond Resolution and in the amounts and at the times set forth in the Equity Allocation Certificate. The Trust and the Borrower further acknowledge that the Borrower is, and assent to the Borrower's status as, a third-party beneficiary with respect to all Investment Obligations from which Equity Earnings allocable to the Loan are to be derived by the Trust pursuant to the Bond Resolution and the Program Resolution. The Borrower further acknowledges that if (x) the obligor on any Investment Obligation from which the Trust expects to derive Equity Earnings allocable to the Loan shall default in any payment due on such Investment Obligation or (y) an Event of Default specified in Section 9(a)(i) hereof shall occur and be continuing and amounts allocable to the Loan held under the Bond Resolution or the Program Resolution are applied by the Bond Trustee to pay all or a portion of the principal or redemption price of, and interest on, the Bonds that would otherwise have been paid through application as provided in the Bond Resolution of the Loan Repayments due and unpaid hereunder, such default or application may reduce the amount of Equity Earnings thereafter available under the Bond Resolution to be applied to pay debt service on the Bonds. If at any time the Trust shall determine that a deficiency will exist in the Debt Service Fund on a Loan Repayment Date due to a reduction in Equity Earnings upon the occurrence of either of the foregoing circumstances, the Trust shall promptly furnish the Borrower with written notice of such deficiency and the resulting increase in the Net Loan Repayments payable hereunder and shall amend Schedule C hereto to reflect such increase. The amount of any increase in any Net Loan Repayment shall be paid by the Borrower on the scheduled Loan Repayment Date therefore (as shown in Schedule C hereto) or, if later, within five (5) Business Days of receipt by the Borrower of notice of an increase in such Loan Repayment.

(d) If Contract Assistance Payments are expected to be received by the Trust with respect to the Loan (as indicated in Schedule C attached hereto), the Trust and the Borrower acknowledge that the Borrower has entered into this Agreement in part in reliance upon the undertakings of the Commonwealth provided in the Commonwealth Assistance Contract to provide such Contract Assistance Payments to the Trust to be applied as provided in the Bond Resolution to pay a portion of the debt service payable on the Bonds and thereby to reduce the Scheduled Loan Repayments otherwise payable by the Borrower on the Loan as provided herein. In such a case, the Trust and the Borrower further acknowledge that the Borrower is, and assent to the Borrower's status as, a third-party beneficiary with respect to such provisions of the Commonwealth Assistance Contract, and the Trust represents and warrants to the Borrower that the Commonwealth Assistance Contract provides (or on or before the Closing Date will provide) for the payment to the Trust by the Commonwealth of Contract Assistance Payments allocable to the Loan in the amounts and payable on or before the dates set forth in Schedule C attached hereto. The Trust further warrants and agrees that so long as the Loan is outstanding all Contract Assistance Payments, if any, payable on account of the Loan under the Commonwealth Assistance Contract shall be applied by the Trust solely to the provision of Loan Subsidy Amounts hereunder or otherwise as provided herein and in the Bond Resolution.

- (e) Notwithstanding the foregoing provisions of this Section 6, the Borrower expressly acknowledges that any obligation of the Trust to apply Contract Assistance Payments as provided herein is limited solely to the Contract Assistance Payments allocable to the Loan actually paid to the Trust by the Commonwealth. The Trust agrees to comply with the provisions of the Commonwealth Assistance Contract as they pertain to the Trust and to make timely demand to the Commonwealth for the payment of any Contract Assistance Payments allocable to the Loan thereunder at the times and in the manner provided therein and herein. The Trust further agrees to diligently enforce the provisions of the Commonwealth Assistance Contract and to pursue any and all remedies available to it thereunder and under the Enabling Act upon any failure of the Commonwealth to comply with the provisions of the Commonwealth Assistance Contract. Notwithstanding the foregoing, any failure by the Commonwealth to provide Contract Assistance Payments (if any) in the amounts and at the times contemplated by this Agreement and the Commonwealth Assistance Contract shall not diminish the obligation of the Borrower to repay the Loan and the interest, if any, thereon in the amounts and at the times provided herein and in the Local Governmental Obligations. If at any time the Trust shall determine that a deficiency will exist in the Debt Service Fund on a Loan Repayment Date due to a default by the Commonwealth under the Commonwealth Assistance Contract, the Trust shall promptly furnish the Borrower with written notice of such deficiency and the resulting increase in the Net Loan Repayment next payable hereunder and shall amend Schedule Chereto to reflect such increase. The amount of any increase in such Net Loan Repayment shall be paid by the Borrower on the scheduled Loan Repayment Date therefore (as shown on Schedule C hereto) or, if later, within five (5) Business Days of receipt by the Borrower of notice of such increase as aforesaid.
- (f) When and to the extent that any default described in Paragraph (c) of this Section 6 by the obligor on any Investment Obligation shall be cured, or when and to the extent that any default described in Paragraph (e) of this Section 6 by the Commonwealth shall be cured, and, in either case, when the Trust or the Borrower shall recover amounts from such obligor or the Commonwealth on account of such default which amounts are not otherwise required to be applied to the payment of debt service on the Bonds in accordance with the Bond Resolution, the amounts so received (net of any costs to the Trust in recovering the same including reasonable attorneys fees) shall be promptly paid by the Trust to the Borrower (or retained by the Borrower, as the case may be) to the extent of any increased Net Loan Repayments made by the Borrower on account of such defaults as provided in Paragraph (c) or (e) of this Section 6, as applicable.
- (g) The Borrower further acknowledges that the Department, in the exercise of its audit procedures under the Project Regulatory Agreement, may reclassify certain Project Costs paid from amounts deposited in the Interim Loan Project Account as ineligible for financial assistance under Section 6 of the Enabling Act. In such event, unless the Borrower shall elect to repay such amount to the Interim Loan Project Account as hereinafter provided, on and after the date of such determination by the Department, Loan Subsidy Amounts shall cease to be applied hereunder on that portion of the Loan Principal Obligation (determined on a Pro-Rata Basis as hereinafter defined) equal to the amount of such ineligible Project Costs. As used in this Paragraph (g), the term "Pro-Rata Basis" means the portion of each Scheduled Loan Repayment allocable to the principal amount of the Loan payable hereunder subsequent to the date of a determination by the Department as described in this Paragraph (g) as is equal, as nearly as practicable, to the ratio by which the amount of ineligible Project Costs paid from the applicable Project Account bears to the total Loan Principal Obligation then outstanding. Upon any such occurrence the Trust shall recalculate the Loan Subsidy Amounts, if any, thereafter available with respect to the Loan, and the Loan Repayments payable thereon, shall certify such amounts to the Borrower and shall amend Schedule C attached hereto to reflect the reduced Loan Subsidy Amounts, if any, and the increased Loan Repayments thereafter payable hereunder, and shall surrender the Local Governmental Obligations to the Borrower in exchange for amended or substitute Local Governmental Obligations reflecting such change in Loan Repayments. Notwithstanding the foregoing, within thirty (30) Business Days of receipt by the Borrower from the Department or the Trust of written notice that an amount of Project Costs paid from the Interim Loan Project Account has been determined by the Department pursuant to the Regulatory Agreement to be ineligible for Loan Subsidy Amounts hereunder the Borrower may (and shall upon demand of the Department with respect to any such amount determined by the Department to be ineligible for funding under the Federal Act) repay such amount to the Trust for redeposit in the Interim Loan Project Account and the amount so repaid shall be deemed to not have been disbursed from the Interim Loan Project Account for ineligible Project Costs for purposes of this Paragraph

(g). Unless then or thereafter applied to eligible Project Costs in accordance with Section 4 hereof, such amount shall be applied as provided in Section 4(d) hereof.

(h) Notwithstanding anything herein or in the Project Regulatory Agreement to the contrary, all amounts received by the Borrower on or after the Closing Date in repayment or prepayment of the obligations of homeowners under underlying betterment agreements made in connection with the Project shall be applied by the Borrower either (i) to assist eligible homeowners to upgrade failing septic systems and otherwise to comply with Title 5 through additional betterment agreements with homeowners, or (ii) to pay or provide for all or a portion of the Loan Repayments due on the Loan hereunder or (iii) to prepay all or a portion of the Loan Principal Obligation as provided in Section 7(b) hereof.

(i) Notwithstanding any provision of this Agreement to the contrary, the Borrower and the Trust acknowledge and agree that this Agreement has been executed and delivered by the parties hereto prior to the sale of the Bonds incorporating in Schedule C hereto a schedule of Loan Repayments calculated on the basis of estimated interest rates on the Bonds and estimated Loan Subsidy Amounts based thereon. On the Closing Date for the Loan the Trust will amend Schedule C hereto (and deliver to the Borrower a copy thereof) to incorporate a schedule of Loan Repayments calculated on the basis of the actual interest rates on the Bonds determined upon their sale and a final schedule of Loan Subsidy Amounts, provided that (i) the first Loan Repayment Date on which the Borrower will be required to make a Loan Repayment to the Trust hereunder will be no earlier than the August 1 next following the Closing Date, and (ii) the Grant Equivalency Percentage of the Loan calculated on the basis of such final schedule of Loan Repayments shall be no less than the Grant Equivalency Percentage set forth in Schedule A hereto.

**Section 7.** Loan Prepayments. (a) Except as provided in this Section 7, the Loan Principal Obligation shall not be subject to prepayment by the Borrower prior to maturity without the prior written consent of the Trust.

(b) The Loan Principal Obligation, and the corresponding principal amount of the Local Governmental Obligations, shall be subject to prepayment at the option of the Borrower in whole or in part upon not less than sixty (60) days' prior written notice to the Trust at any time on and after that date on which a corresponding principal amount of Bonds is subject to redemption at a prepayment price equal to the Loan Principal Obligation so prepaid, plus interest, if any, accrued to the date of prepayment, plus an amount equal to any costs of the Trust (including without limitation redemption premium, if any, and interest payable on the Bonds net of any Loan Subsidy Amounts available to the Trust to pay the same) incurred in connection with any corresponding redemption of a principal amount of Bonds allocable to the Loan.

(c) Loan Subsidy Amounts available hereunder shall not be subject to acceleration upon prepayment of the Loan and no Loan Subsidy Amounts not then or theretofore payable hereunder shall be available hereunder to be applied to any such prepayment.

**Section 8.** Closing. The obligation of the Trust to fund the Loan on the Closing Date is expressly conditional upon the receipt by the Trust on or before the Closing Date of the following, each in form and substance satisfactory to the Trust:

(i) A certificate or certificates of Authorized Officers of the Borrower confirming as of the Closing Date the representations and warranties of the Borrower in Section 2 hereof;

(ii) A certificate of Authorized Officers of the Borrower as to the due authorization, execution and delivery of the Local Governmental Obligations and to the effect that (x) this Agreement, the Project Regulatory Agreement and the Local Governmental Obligations have not been amended or supplemented since their date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable, or which under the terms of the applicable instrument may be executed and delivered or adopted by the Borrower without the consent of the Trust or the Department) or repealed and that each such instrument remains in full force and effect as of the Closing Date, and (y) as of the Closing Date, no Event of

Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, shall have happened and shall be continuing under this Agreement or the Project Regulatory Agreement;

- (iii) An opinion of Local Bond Counsel to the effect that the Local Governmental Obligations, and the execution and delivery thereof, have been duly authorized by the Borrower in accordance with the Applicable Bond Act; the Local Governmental Obligations have been duly and validly executed by or on behalf of the Borrower and delivered to or upon the order of the Trust in accordance with this Agreement and the Applicable Bond Act; and the Local Governmental Obligations constitute valid and binding general obligations of the Borrower enforceable in accordance with their terms and payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Local Governmental Obligations (in rendering the foregoing opinion, such counsel may take an exception on account of bankruptcy, insolvency and other laws affecting creditors' rights generally and to the exercise of judicial discretion in accordance with general equitable principles);
- (iv) The Local Governmental Obligations, in such denominations and registered to such registered owners, as the Trust shall designate pursuant to Section 11 hereof; and
- (v) Such further instruments, certificates and opinions as the Trust or its counsel may reasonably request to confirm as of the Closing Date the truth and accuracy of the statements made herein by the Borrower and compliance as of the Closing Date by the Borrower with the provisions hereof and of the Project Regulatory Agreement, the Enabling Act, the Applicable Bond Act and the Federal Act.

**Section 9.**                    Particular Covenants of the Borrower. The Borrower covenants and agrees as follows:

- (a)                    The Borrower is duly authorized under the Enabling Act, the Applicable Bond Act and all other applicable law to authorize the execution and delivery of this Agreement, the Project Regulatory Agreement, the Interim Loan Note and the Local Governmental Obligations, to accept the Loan, to undertake the Project and to perform and consummate all transactions contemplated by the foregoing. For so long as the Loan shall be outstanding, the Borrower shall comply with the provisions hereof and the Project Regulatory Agreement and all provisions of law applicable to the Loan, the Project, the Interim Loan Note and the Local Governmental Obligations, including without limitation the Enabling Act, the Applicable Bond Act, the Federal Act and the DEP Regulations, and shall take all actions necessary to fulfill its obligations hereunder and under any of the foregoing.
- (b)                    The Borrower shall apply the proceeds of the Interim Loan solely to the payment or reimbursement of Project Costs, or to the refinancing of the same as provided in the Project Regulatory Agreement, or as otherwise provided herein and in the Project Regulatory Agreement.
- (c)                    So long as any Bonds shall be outstanding and unpaid, the Borrower agrees that it shall not take, or permit to be taken, any action or actions that would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code or that would cause any Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code, or that would otherwise cause any amounts payable with respect to the Bonds to become included in gross income for federal income tax purposes; the Borrower further agrees that it shall take all actions, and shall maintain all records and accounts, required by any provision of applicable law, necessary to comply with, or necessary to permit the Trust to comply with, the provisions of Section 148(f) of the Code.
- (d)                    For so long as the Interim Loan or the Loan shall be outstanding, the Borrower shall maintain all records and accounts pertaining to the Interim Loan and the Loan and the Project for such period and as otherwise required by the Federal Act, the DEP Regulations and the Project Regulatory Agreement and shall furnish to the Trust and the Department all reports thereon at the times and in the form required by the

Federal Act, the DEP Regulations and the Project Regulatory Agreement or as otherwise reasonably requested by the Trust or the Department. The Borrower shall permit the Trust or any party designated by it upon reasonable prior notice to the Borrower to make copies of any accounts, books and records of the Borrower pertaining to the Project, the Interim Loan, the Loan, the Interim Loan Note or the Local Governmental Obligations.

- (e) If any Event of Default described in clause (i) of Paragraph (a) of Section 9 hereof shall occur and be continuing, the Borrower shall promptly upon request of the Trust provide such information to the Trust as shall be necessary for the Trust to exercise the rights provided in Section 11 of the Enabling Act with respect to the Local Aid Distributions of the Borrower.
- (f) For so long as the Interim Loan or the Loan shall be outstanding, the Borrower shall duly observe and comply with the additional covenants and conditions, if any, set forth in Schedule B attached hereto.

**Section 10.** Defaults and Remedies. (a) The occurrence of any of the following events shall constitute, and is herein defined to be, an Event of Default under this Agreement, the Interim Loan Note and the Local Governmental Obligations:

- (i) if the Borrower shall fail to pay when due all or any part of any Loan Repayment payable hereunder; provided that a failure by the Borrower to pay the amount of any increase in any Net Loan Repayment payable hereunder as described in Paragraph 6(c) and in Paragraph 6(e) hereof shall not constitute an Event of Default hereunder unless such failure shall continue for a period of five (5) Business Days after receipt by the Borrower from the Trust of written notice of such increase as provided in Paragraph 6(c) or Paragraph 6(e), as applicable;
- (ii) if the Borrower shall fail to perform and observe any other covenant, agreement or condition on its part provided in this Agreement or in the Interim Loan Note or the Local Governmental Obligations and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the Borrower by the Trust; provided if such failure cannot be remedied within such thirty (30) day period, it shall not constitute an Event of Default hereunder if corrective action satisfactory to the Trust is instituted by the Borrower within such period and diligently pursued until the failure is remedied;
- (iii) if any representation or warranty made by or on behalf of the Borrower in this Agreement shall prove to have been incorrect or to be misleading in any material respect as and when made;
- (iv) if (x) an order, judgment or decree is entered by a court of competent jurisdiction (a) appointing a receiver, trustee, or liquidator for the Borrower, (b) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (c) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within sixty (60) days from the date of entry of the order, judgment or decree or (y) the Borrower (a) admits in writing its inability to pay its debts generally as they become due, (b) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (c) makes an assignment for the benefit of its creditors, (d) consents to the assumption by any court of competent jurisdiction under any law for the relief of debtors of custody or control of the Borrower or (z) legislation shall be enacted by the Commonwealth (a) appointing a receiver or trustee for the Borrower, or (b) assuming custody or control of the Borrower, or (c) providing for a moratorium upon the payment of the principal of or interest on the Interim Loan or the Loan;
- (v) if the Borrower shall fail to pay when due (whether at maturity or upon redemption or acceleration or otherwise) any principal of or interest on any indebtedness of the Borrower for borrowed money, other than the Interim Loan, the Loan, the Interim Loan Note and the Local Governmental Obligations and indebtedness described in Chapter 40D of the General Laws of the Commonwealth; and

- (vi) if a Default shall occur under the Project Regulatory Agreement (as defined therein) and the Department shall request that the Trust declare an Event of Default under this Agreement.
- (b) In addition to its other remedies provided herein, if an Event of Default specified in clause (i) or clause (iv) of Paragraph (a) of this Section 9 shall occur and be continuing, the Trust may proceed to enforce its rights hereunder and under the Interim Loan Note or the Local Governmental Obligations by exercise of the following remedies in such order of priority as the Trust shall determine in its discretion:
- (i) the Trust may apply to such default any and all Loan Subsidy Amounts allocable to the Loan then or thereafter held or received by the Trust;
- (ii) the Trust may exercise the rights provided in Section 11 of the Enabling Act with respect to the Local Aid Distributions of the Borrower;
- (iii) the Trust may apply to such default any or all amounts allocable to the Borrower then on deposit in the Interim Loan Project Account; or
- (iv) by notice to the Borrower the Trust may declare the Loan Principal Obligation of the Interim Loan or the Loan, as applicable, and all Scheduled Loan Repayments payable on the Loan, and the corresponding principal amount of the Interim Loan Note or the Local Governmental Obligations, as applicable, to be immediately due and payable and, upon such declaration, the Loan Principal Obligation and all interest, if any, accrued thereon shall be and become immediately due and payable, anything herein or in the Interim Loan Note or the Local Governmental Obligations to the contrary notwithstanding; provided that upon any such declaration there shall be no acceleration in any Loan Subsidy Amounts payable hereunder or in accordance herewith, all such Loan Subsidy Amounts to be payable thereafter solely in accordance with the schedule therefore set forth in Schedule C hereto, as amended from time to time in accordance herewith, and then only to the extent provided in this Agreement.
- (c) If an Event of Default specified in clause (vi) of Paragraph (a) of this Section 9 shall occur and be continuing, the Trust shall, if directed by the Department, exercise on behalf of the Department any and all remedies available to the Department upon a Default under the applicable Project Regulatory Agreement.
- (d) Notwithstanding anything herein to the contrary, if any Event of Default hereunder shall occur and be continuing, the Trust may proceed to protect its rights hereunder, and may seek to compel compliance by the Borrower with the terms and provisions hereof and of the Interim Loan Note and the Local Governmental Obligations, by suit or suits in equity or at law, for the specific performance of any covenant, term or condition hereof, or in aid of the execution of any power herein granted, and, except as herein limited, may exercise any other right or remedy upon such default as may be granted to the Trust under the Enabling Act, the Applicable Bond Act or under any other applicable provision of law.
- (e) During the continuance of an Event of Default, the Trust shall apply all amounts received upon the exercise of its rights and remedies hereunder as follows and in the following order:
- (i) to the payment of the reasonable and proper charges (including attorneys' fees) of the Trust and the Department incurred in the exercise of any right or remedy hereunder or under the Project Regulatory Agreement;
- (ii) to the payment and satisfaction of all interest then due and unpaid hereunder upon any defaulted Loan Repayments as provided in Section 6(a) hereof; and
- (iii) to the payment and satisfaction of the Interim Loan or to the payment and satisfaction of all Loan Repayments then due and unpaid hereunder, as applicable, as such Loan Repayments may be adjusted as provided in Section 6 hereof, and, if the amount available is not sufficient to pay all Loan Repayments then

due and payable hereunder, first to the payment of the portion of the Loan Repayments due and unpaid representing interest on the Loan and second to the portion of the Loan Repayments due and unpaid representing the principal of the Loan and, in either case, ratably in order of the due dates thereof.

- (f) No remedy conferred upon or reserved to the Trust is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient.

**Section 11.** Assignment, Transfer and Exchange. (a) The Borrower acknowledges that the Trust will pledge and assign this Agreement or all or part of its rights hereunder, and the right, title and interest of the Trust in and to all or part of the Loan and Loan Repayments hereunder to the Bond Trustee in accordance with the Bond Resolution, and in connection with any such assignment may transfer to the Bond Trustee the Loan and any or all Loan Repayments and the Local Governmental Obligations attributable thereto, and the Borrower by its execution and delivery of this Agreement expressly consents to any such assignment and transfer.

- (b) In connection with any assignment by the Trust provided herein, the Borrower further agrees to deliver the Local Governmental Obligations to the Trust on the Closing Date, or on any date thereafter when Local Governmental Obligations may be assigned, exchanged or transferred in accordance with their terms and the terms of this Agreement, in such denominations, registered to such owners, in one or more series, and otherwise in such form and tenor as the Trust may request to evidence the Loan made, and the Loan Repayments payable, hereunder, separately or as a whole, or in part one or in part the other, or in any combination thereof, provided that the aggregate principal amount payable on the Local Governmental Obligations shall not exceed the Loan Principal Obligation payable hereunder on the Loan plus interest, if any, accrued and to accrue thereon as provided therein and herein.

- (c) Except as hereinabove provided, so long as any Event of Default shall not have occurred hereunder and be continuing, the Trust shall not assign this Agreement or the Interim Loan or the Loan made hereby, or transfer or sell the Interim Loan Note or the Local Governmental Obligations, without the prior written approval of the Borrower.

- (d) The Borrower may not assign this Agreement or the Interim Loan, the Loan, the Interim Loan Note or the Local Governmental Obligations, or any of its rights or obligations hereunder or thereunder, without the express prior written consent of the Trust.

**Section 12.** Action by Parties. Where this Agreement shall provide for any direction, consent, approval or other action to be taken or made by the Borrower, the Trust or the Department hereunder, such direction, consent, approval or other action shall be sufficiently taken or made for all purposes of this Agreement if taken or made by Authorized Officers of the Borrower, the Trust or the Department, as the case may be.

**Section 13.** Notices. All notices, consents, certificates and other communications hereunder shall be sufficiently given when delivered by hand or courier or photocopied or mailed by registered or certified mail, postage prepaid, addressed to the Addresses for Notice set forth in Schedule A attached hereto or to such further or different address as any of the parties hereto or the Department may designate in writing to the other notice parties indicated in said Schedule A.

**Section 14.** Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 15.** No Right of Set-Off. By their execution and delivery of this Agreement, the Trust and the Borrower agree that, except as otherwise provided in this Agreement, neither the Trust nor the Borrower shall have any right to set-off and apply any amount at any time held, and other indebtedness at any time owing, by the Trust or the Commonwealth to or for the account of the Borrower, or by the Borrower to or for the account of the Trust or the Commonwealth, as applicable, against any and all of the obligations of the Borrower or the Trust, as applicable, now or hereinafter existing under this Agreement.

**Section 16.** Amendment of Agreement and Other Instruments Except as expressly provided herein with respect to the amendment of Schedule A, Schedule B and Schedule C hereto, this Agreement, the Interim Loan Note and the Local Governmental Obligations may not be amended, modified or changed in any respect except in writing signed by the parties hereto. No such amendment, modification or change of this Agreement which, in the reasonable opinion of the Department (expressed in a certificate of an Authorized Officer of the Department delivered to the Trust prior to the execution and delivery of such amendment, modification and change by the Trust) materially and adversely affects the rights and obligations of the Department under the Project Regulatory Agreement, shall be effective until the Department shall have consented in writing thereto. The Trust shall deliver a copy of any such proposed amendment, modification or change of this Agreement to the Department at least ten (10) days prior to the execution and delivery thereof by the Trust.

**Section 17.** Term. The term of this Agreement shall be from the date of execution and delivery hereof by the parties hereto until all Scheduled Loan Repayments payable hereunder shall have been paid in full or provision for the payment thereof shall have been duly provided for in accordance with this Section 17.

**Section 18.** Execution in Counterparts This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 19.** Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

**Section 20.** Further Assurances. The Borrower shall, at the request of the Trust, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, covenants and agreements granted or made or intended to be granted or made by this Agreement, the Interim Loan Note and the Local Governmental Obligations.

**Section 21.** Prior Agreements. Except as otherwise provided herein, this Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties hereto in respect hereof.

IN WITNESS WHEREOF, the Trust and the Borrower have caused this Agreement to be executed by their duly Authorized Officers the day and year first above written.

MASSACHUSETTS WATER POLLUTION  
ABATEMENT TRUST

By \_\_\_\_\_  
Authorized Officer  
Title: Chief Financial Officer

BORROWER

By \_\_\_\_\_  
Authorized Officer  
Title:

- A. Project Regulatory Agreement - Number and Date: T5-97-1019-B
- B. Applicable Bond Act: M.G.L. Ch. 111, Sec. 127B½ and M.G.L. Ch 29C (the “Project”)
- C. Authorized Officers:
- a) Of the Trust: The Chairman and Vice Chairman of the Trust (and each designee thereof pursuant to M.G.L. Ch.30 §6A) and the Executive Director and Treasurer of the Trust.
  - b) Of the Borrower: Mr. Dale Zacamy, Treasurer  
Town of Wareham  
54 Marion Road  
Wareham, MA 02571
  - c) Of the Department: The Commissioner, the Deputy Commissioner and the Deputy Assistant Commissioner for Financial and Construction Management of the Department.
- D. Grant Equivalency Percentage: 50%
- E. Closing Date: December 31, 2003
- F. Addresses for Notices:
- To the Trust: Massachusetts Water Pollution Abatement Trust  
1 Ashburton Place  
12th Floor  
Boston, MA 02108  
Attention: Executive Director
- To the Borrower: Mr. Dale Zacamy, Treasurer  
Town of Wareham  
54 Marion Road  
Wareham, MA 02571
- To the Department: Department of Environmental Protection  
One Winter Street  
2nd Floor  
Boston, MA 02108  
Attention: Commissioner

Initial Loan  
Obligation: \$ \_\_\_\_\_

Schedule of Loan Repayments

<u>Date</u>	<u>Scheduled Loan Repayments</u>	<u>Loan Subsidy Amounts</u>	<u>Net Loan Repayments</u>
	<u>Interest</u>	<u>Equity Earnings Payments</u>	<u>Contract Assistance</u>
	<u>Principal</u>	<u>Total</u>	<u>Principal</u>
		<u>Total</u>	<u>Interest</u>
			<u>Total</u>

**COMMUNITY SEPTIC MANAGEMENT PROGRAM**  
**SAMPLE      LOAN QUESTIONNAIRE      SAMPLE**

Note: The following information must be provided to the Trust with respect to the Borrower's proposed community septic management loan program under M.G.L. Ch. 111, Sec. 127B 1/2 and M.G.L. Ch. 29C (the "Project"). All questions should be completed other than those which are not applicable to the Borrower, the Loan or the Project (if such is the case, indicate "NA"). If certain information requested is unavailable attach an explanation.

If you have any questions on this form please contact your bond counsel or the Trust at 367-9333, Attention: Nancy E. Parrillo, Chief Financial Officer (Extension 508).

\*      \*      \*

A.      GENERAL

1.      Name of Local Governmental Unit: Town of Leicester
2.      Chief Financial Officer:

        Name:  
        Address:

        Telephone:  
        Fax:  
        E-mail Address:

3.      Bond Counsel:  
        Attention:  
        Address:

        Telephone:  
        Fax:

4.      Financial Advisor:  
        Attention:  
        Address:

        Telephone:  
        Fax:

5.      Wire Transfer Instructions for Loan Disbursements:

        Bank:  
        Account No.  
        ABA No.

B. THE PROJECT

1. This Questionnaire pertains to a Loan to be issued by the Massachusetts Water Pollution Abatement Trust to finance or refinance Eligible Costs of the community septic management loan program identified in the following Project Approval Certificate and Regulatory Agreement between the Borrower and the Department of Environmental Protection:

PAC/PRA No. \_\_\_\_\_

Option: (1) \_\_\_\_\_ (2) \_\_\_\_\_

Initial Loan Obligation: \$ \_\_\_\_\_

2. Description of the Project: For purposes of this Questionnaire the Trust assumes that the Borrower's Project is solely the implementation of a community septic management loan program to assist owner-occupants of residential (1 to 4 family) real property pursuant to betterment agreements to upgrade failing septic systems to comply with the requirements of 310 CMR 15.000 et seq. ("Title 5"). The Trust also assumes that the Borrower will implement the Project in accordance with Title 5 and the Department's approval of the Project and its Community Septic Management Program Description and Requirements. If the Project includes any other components or undertakings by the Borrower not described by the foregoing, or the improvement of any other kind of property, please explain:

3. Have any loan/betterment disbursements ("Project Costs") to homeowners been made/ incurred to date? Yes \_\_\_\_\_ No \_\_\_\_\_

(a) If Yes, provide details regarding number of betterment agreements, amount disbursed, etc.

(b) If No, state estimated date of commencement of loan/betterment disbursements to homeowners: \_\_\_\_\_

4. If loan/betterment disbursements have commenced:

(a) To date, what has been the source of funds to pay Project Costs (check all that apply):

- (i) BAN proceeds \_\_\_\_\_
- (ii) Revenue cash \_\_\_\_\_
- (iii) Bond proceeds \_\_\_\_\_
- (iv) Other (specify) \_\_\_\_\_

(b) State date of first payment of Project Costs:

(c) If any Project Costs were paid from revenue cash (even if later reimbursed from borrowed funds), indicate:

(i) Date the Borrower took some form of official action indicating intent to borrow funds to reimburse the Borrower for these Project Costs \_\_\_\_\_  
\_\_\_\_\_. (Please attach a copy of the vote, resolution or other instrument indicating such official action).

(ii) Purpose, amounts and dates of expenditures, if any, made before official action:

<u>Purpose</u>	<u>Amount</u>	<u>Date</u>
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5. Will any portion of the proceeds of the Loan be used to pay (or reimburse the Borrower for the payment of) non-capitalized costs (e.g., salaries, utilities, supplies or other administrative costs including interest on debt)? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, describe the nature and amount of these costs.

### C. REFINANCING OF INDEBTEDNESS

1. Will any proceeds of the Loan be applied to repay any outstanding BAN's or other temporary indebtedness with respect to the Project other than an Interim Loan from the Trust? Yes \_\_\_\_\_ No \_\_\_\_\_. Will any proceeds of the Loan be applied to refund, refinance or otherwise pay debt service on any bonds or other long-term indebtedness with respect to the Project? Yes \_\_\_\_\_ No \_\_\_\_\_. (If the answer to both of the foregoing questions is No, skip to Paragraph (D) below.)

2. Are there any outstanding BAN's or other temporary indebtedness that will be repaid from proceeds of the Loan? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, provide the following information separately for each issue of BAN's or other temporary debt to be repaid in whole or in part from the proceeds of the Loan:

(a) Principal amount outstanding:

(b) Issue date (original issue date in the case of temporary debt issued to repay prior temporary debt):

(c) Maturity Date:

(d) Is the temporary debt prepayable prior to maturity? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, when?

(e) Was the temporary debt issued for purposes in addition to the payment of costs of the Project? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, what portion of the principal amount of the debt was issued for Project Costs?

(f) If the principal amount of the temporary debt outstanding issued to pay Project Costs is greater than the Initial Loan Obligation of the Loan, what is source of funds to repay the remaining temporary debt?

(g) Do any proceeds of the temporary debt remain unexpended? Yes \_\_\_\_\_ No \_\_\_\_\_ If Yes, how much?

(h) To what use or purpose have investment earnings on the proceeds of the temporary debt been applied? Debt Service \_\_\_\_\_; Project Costs \_\_\_\_\_;

Other (specify): \_\_\_\_\_. What is the total estimated amount of investment earnings?

3. Has any long-term indebtedness (bonds, loans, etc.) been issued or incurred to pay Project Costs? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, does the Borrower expect to refund or refinance any portion of this indebtedness with proceeds of the Loan? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, provide the following information separately for each issue of bonds or other long-term indebtedness to be refunded or refinanced:

(a) Principal amount outstanding:

(b) Issue date (original issue date in the case of a series of refundings):

(c) Maturity dates and interest rates (attach schedule):

(d) Redemption provisions including optional and mandatory (i.e., sinking fund) redemption dates and amounts and redemption prices (attach schedule):

(e) Were the bonds or other long-term debt issued for purposes in addition to the payment of costs of the Project (or repayment of BAN's issued for that purpose)? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, what portion of the principal amount of the debt outstanding was issued for Project Costs?

(f) Do any proceeds of the bonds or other long-term debts remain unexpended? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, how much?

(g) Were any proceeds of the bonds or other long-term debt invested following issuance? Yes \_\_\_\_\_ No \_\_\_\_\_. If Yes, to what purpose were the earnings applied? Debt Service \_\_\_\_\_; Project Costs \_\_\_\_\_; Other (specify): \_\_\_\_\_. What is the total estimated amount of investment earnings?

#### D. LITIGATION

1. Is any action, suit, proceeding, inquiry or investigation before or by any court, public board or other body presently pending or, to your knowledge, threatened, against or affecting the Borrower seeking to restrain or enjoin the execution and delivery by the Borrower of the Loan Agreement or the issuance and delivery of the Borrower's Interim Loan Note or Local Governmental Obligations to evidence and secure the Interim Loan or the Loan or challenging any proceeding of the Borrower with respect to the Interim Loan or the Loan or the Project, or contesting or affecting the validity or enforceability of the Interim Loan or the Loan or any such proceedings? Yes \_\_\_\_\_ No \_\_\_\_\_.

If Yes, attach a detailed description of the litigation or other proceeding or claim and indicate below the name, address and telephone number of your counsel for these purposes.

2. Is any litigation or other proceeding pending or, to your knowledge, threatened against or affecting the Borrower which, if determined adversely to the Borrower, would likely result, either individually or in the aggregate, in final judgments which would materially adversely affect the ability of the Borrower to repay the Interim Loan or the Loan? Yes \_\_\_\_\_ No \_\_\_\_\_.

If Yes, attach a detailed description of the litigation, proceeding or other claim and indicate below the name, address and telephone number of your counsel for these purposes.

To the best of my knowledge and belief, the information set forth above is correct and complete as of the date hereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chief Financial Officer of Borrower

Name (print): \_\_\_\_\_

Title (print): \_\_\_\_\_

COMMUNITY SEPTIC MANAGEMENT PROGRAM  
FORM OF LOCAL BOND COUNSEL LEGAL OPINION

(Date of Interim Loan Note)

Massachusetts Water Pollution Abatement Trust  
Boston, Massachusetts

Re: \$ \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, Massachusetts  
Interim Loan Note

We have examined the law, a certified copy of proceedings and other papers relating to the issue by the \_\_\_\_\_ of \_\_\_\_\_, Massachusetts (the "Borrower") of a \$ \_\_\_\_\_ zero percent Interim Loan Note (the "Note") dated \_\_\_\_\_, \_\_\_\_\_ under Chapter 29C and Chapter 111, Section 127B ½, of the General Laws of The Commonwealth of Massachusetts (collectively the "Acts") and a vote/loan order of the \_\_\_\_\_ passed \_\_\_\_\_, \_\_\_\_\_. The Note is being issued by the Borrower to evidence and secure its obligations to repay an interim loan made to the Borrower by the Massachusetts Water Pollution Abatement Trust (the "Trust") under the Loan Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Loan Agreement") between the Borrower and the Trust.

We have also examined the Note and the Loan Agreement as executed and an executed copy of the Project Approval Certificate and Regulatory Agreement dated as of \_\_\_\_\_, \_\_\_\_ (the "Project Regulatory Agreement"), between the Borrower and the Department of Environmental Protection of The Commonwealth of Massachusetts, relating to the community septic management loan program described in the Loan Agreement and the Project Regulatory Agreement.

On the basis of this examination we are of opinion, as of the date hereof and under existing law, as follows:

(1) The Loan Agreement and the Project Regulatory Agreement have been duly authorized, executed and delivered by the Borrower in accordance with the Acts and each constitutes a valid and binding obligation of the Borrower enforceable in accordance with its terms.

(2) The Note has been duly authorized, executed and delivered by the Borrower in accordance with the Loan Agreement and the Acts and constitutes a valid and binding general obligation of the Borrower enforceable in accordance with its terms and payable as to principal and interest (to the extent not paid from other sources) from taxes which may be levied [without limitation as to rate or amount] upon all taxable property within the territorial boundaries of the Borrower [, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of The Commonwealth of Massachusetts].

The rights of the registered owner of the Note and the enforceability thereof and of the Loan Agreement and the Project Regulatory Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

Low interest loans are also available for septic repairs through the Massachusetts Housing Finance Agency (MHFA) and their bank loan program for homeowners. Information on this program and a list of participating banks may be accessed through the website at: <http://www.mhfa.com>

*Similarities and Differences between Community Septic Management Program(CSMP) and the Mass. Housing Finance Agency Homeowner Septic Repair Loan Program (MHFA Bank Program)*

<b>Community Septic Management Program (CSMP or Title 5 Betterment Program)</b>	<b>Homeowner Septic Repair Loan Program (MHFA Bank Loan Program)</b>
<p>The focus of this program is on protecting environment. Under this program a community identifies environmentally sensitive areas it wants to protect and proactively seeks out homeowner participation to eliminate pollution caused by failed septic systems.</p>	<p>The focus of this program is to offer loans to homeowners who may not readily qualify under CSMP. It is also useful for homeowners who need access to cash in a hurry. It is also useful for homeowners in a community that has chosen not to participate in CSMP.</p>
<p>The interest rates are subsidized by DEP funds.</p>	<p>The interest rates are subsidized by DEP funds.</p>
<p>The loans under this program are not based on household income. The loans may be offered at 2% or 5%. Generally, there is no cost associated with applying for loan (unless local authorities decide otherwise)</p>	<p>The loans are income based. The interest rate depends on the household income. The rates could be 0%, 3% or 5%. There is cost associated with borrowing (application fee.)</p>
<p>These loans generally do not take into consideration the homeowner’s credit.</p>	<p>Under this program loans are made after taking homeowner’s credit into consideration.</p>
<p>Since this program is community based, there is a real opportunity at the community level to explore alternatives and take a leadership role in solving difficult problems. Areas that have been neglected in the past due to the lack of funding and/or attention can be addressed under this program. The idea of local people solving local problems can be fully implemented under this framework.</p>	
<p>Shared systems, innovative solutions are possible and are encouraged (where applicable) under this program. The loans may be made available to non-owner occupied homes (vacation homes).</p>	<p>The funding under this program is limited to owner occupied units.</p>
<p>Elderly Deferrals are possible under this program. Board of Health must verify that the town has “accepted” the provisions of General Laws Chapter 80 s.13B at the Town meeting or by vote of the City Council. A majority vote is necessary to accept the provisions of the statute.</p>	<p>0% loans are available to homeowners who have fixed incomes (usually \$28,500 or less depending on the MHFA’s market area and number of members in a household) AND whose systems are deemed as eminent health hazards.</p>