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Department of Natural Resources
Bureau of Community Financial Assistance
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Financial Assistance Agreement
Clean Water Fund Program
Form 8700-214 rev 05/11

STATE OF WISCONSIN CLEAN WATER FUND PROGRAM

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF WAUKESHA

\$15,583,127

FINANCIAL ASSISTANCE AGREEMENT

Dated as of July 8, 2015

This constitutes a **Financial Assistance Agreement** under the State of Wisconsin's Clean Water Fund Program. This agreement is awarded pursuant to ss. 281.58 and 281.59, Wis. Stats. The purpose of this agreement is to award financial assistance from the Clean Water Fund Program. This agreement also discloses the terms and conditions of this award.

This agreement is only effective when signed by authorized officers of the municipality and an authorized officer of the State of Wisconsin Department of Natural Resources and the State of Wisconsin Department of Administration.

The Department of Natural Resources and the Department of Administration may rescind or terminate this agreement if the municipality fails to comply with the terms and conditions contained within. Any determination or certification made in this agreement by the Department of Natural Resources or the Department of Administration is made solely for the purpose of providing financial assistance under the Clean Water Fund Program.

Municipal Identification No. 67291
Clean Water Fund Program Project No. 4062-99

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WITNESSETH:

WHEREAS, this is a FINANCIAL ASSISTANCE AGREEMENT (the "FAA"), dated July 8, 2015, between the STATE OF WISCONSIN Clean Water Fund Program (the "CWFP"), by the Department of Natural Resources (the "DNR") and the Department of Administration (the "DOA"), acting under authority of ss. 281.58 and 281.59, Wis. Stats., as amended (the "Act"), and the City of Waukesha, a municipality within the meaning of the Act, duly organized and existing under the laws of the State of Wisconsin (the "Municipality"); and

WHEREAS, the United States, pursuant to the Federal Water Quality Act of 1987 (the "Water Quality Act"), requires each state to establish a water pollution control revolving fund to be administered by an instrumentality of the state before the state may receive capitalization grants for eligible projects from the United States Environmental Protection Agency (the "EPA"), or any successor which may succeed to the administration of the program established by Title VI of the Water Quality Act; and

WHEREAS, the State of Wisconsin has, pursuant to ss. 281.58 and 281.59, Wis. Stats., established the CWFP to be used in part for purposes of the Water Quality Act; and

WHEREAS, the State of Wisconsin has, pursuant to s. 25.43, Wis. Stats., established a State of Wisconsin Environmental Improvement Fund which includes the CWFP; and

WHEREAS, DNR and DOA have the joint responsibility to provide CWFP financial assistance to municipalities for the construction of eligible wastewater pollution abatement projects, all as set forth in the Act; and

WHEREAS, the Municipality received a state fiscal year 2014 loan for CWFP Project No. 4062-04 on June 25, 2014, for \$33,000,000 to partially cover costs for a project (the "Project") with total eligible costs expected to exceed \$48,000,000; and

WHEREAS, the CWFP provided the state fiscal year 2014 loan for CWFP Project No. 4062-04 with the intention of providing additional financing for the Project in a fiscal year following state fiscal year 2014;

WHEREAS, the Municipality has submitted to DNR an application for state fiscal year 2015 financial assistance (the "Application") for the additional funds needed for the Project, and DNR has approved the Application and determined the Application meets the criteria for Project eligibility based on water quality and public health requirements established in applicable state statutes and regulations; and

WHEREAS, DNR has determined that the Municipality and the Project are eligible for financial assistance pursuant to s. 281.58(7)(b), Wis. Stats.; and

WHEREAS, DOA has determined the CWFP will provide the additional financial assistance to the Municipality by making a loan assigned CWFP Project No. 4062-99 (the "Loan") under s. 281.59(9), Wis. Stats., for the purposes of that subsection; and

WHEREAS, the Municipality has pledged the security, if any, required by DOA, and the Municipality has demonstrated to the satisfaction of DOA the financial capacity to ensure sufficient revenues to operate and maintain the Project for its useful life and to pay debt service on the obligations it issues for the Project; and

WHEREAS, the Municipality certifies to the CWFP that it has created a dedicated source of revenue, which may constitute taxes levied by the Municipality for repayment of the Loan; and

WHEREAS, approval of facility plans or engineering reports, and Plans and Specifications for the Project has been obtained by the Municipality from DNR subject to the provisions of applicable State environmental standards set forth in law, rules, and regulations;

NOW, THEREFORE, in consideration of the promises and of the mutual representations, covenants, and agreements herein set forth, the CWFP and the Municipality, each binding itself, its successors, and assigns, do mutually promise, covenant, and agree as follows:

ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. Definitions The following capitalized terms as used in this FAA shall have the following meanings:

"Act" means ss. 281.58 and 281.59, Wis. Stats., as amended.

"Application" means the written application of the Municipality dated March 23, 2015, for financial assistance under the Act.

"Bonds" means bonds or notes issued by the State pursuant to the General Resolution, all or a portion of the proceeds of which shall be applied to make the Loan.

"Business Day" means any day on which State offices are open to conduct business.

"Clean Water Act" means the federal Clean Water Act, 33 U.S.C. §§1250 et seq., as amended.

"CWFP" means State of Wisconsin Clean Water Fund Program, established pursuant to ss. 281.58 and 281.59, Wis. Stats., and managed and administered by DNR and DOA.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions.

"DNR" means the State of Wisconsin Department of Natural Resources and any successor entity.

"DOA" means the State of Wisconsin Department of Administration and any successor entity.

"EPA" means the United States Environmental Protection Agency or any successor entity that may succeed to the administration of the program established by Title VI of the Water Quality Act.

"FAA" means this Financial Assistance Agreement, which provides a Loan assigned CWFP Project No. 4062-99 to supplement the loan provided for the Project under state fiscal year 2014 CWFP project no. 4062-04.

"Fees and Charges" means the costs and expenses of DNR and DOA in administering the CWFP.

"Final Completion" means the Project construction is complete, DNR or agents thereof have certified that the Project was constructed according to DNR approved Plans and Specifications and that the facilities are operating according to design, and DNR has completed all necessary Project closeout procedures.

"Financial Assistance Agreement" means this Financial Assistance Agreement between the CWFP by DNR, DOA, and the Municipality, as the same may be amended from time to time in accordance with Section 6.04 hereof.

"General Resolution" means the Clean Water Revenue Bond General Resolution adopted by the State of Wisconsin Building Commission, as such may from time to time be amended or supplemented by Series Resolutions or Supplemental Resolutions in accordance with the terms and provisions of the General Resolution.

"Loan" means the loan or loans made by the CWFP to the Municipality pursuant to this FAA.

"Loan Disbursement Table" means the table, the form of which is included as Exhibit C hereto, with columns for inserting the following information:

- (a) amount of each disbursement,
- (b) date of each disbursement,
- (c) the series of Bonds from which each disbursement is made,
- (d) principal amounts repaid, and

(e) outstanding principal balance.

"Municipal Obligation Counsel Opinion" means the opinion of counsel satisfactory to DOA, issued in conjunction with the Municipal Obligations, stating that:

(a) the FAA and the performance by the Municipality of its obligations thereunder have been duly authorized by all necessary actions by the governing body of the Municipality, and the FAA has been duly executed and delivered by the Municipality;

(b) the Municipal Obligations have been duly authorized, executed, and delivered by the Municipality and sold to the CWFP;

(c) each of the FAA and the Municipal Obligations constitutes a legal, valid, and binding obligation of the Municipality, enforceable against the Municipality in accordance with its respective terms (provided that enforceability thereof 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 that its enforcement may also be subject to the exercise of judicial discretion in appropriate cases);

(d) the Municipal Obligations are secured as to payment of principal, interest, and redemption price by the pledged revenues as set forth therein;

(e) interest on the Municipal Obligations is not included in gross income of the owners thereof for federal income taxation purposes under existing laws, regulations, rulings, and judicial decisions;

(f) the Municipal Obligations are not "arbitrage bonds" within the meaning of Section 148 of the Code and the arbitrage regulations; and

(g) the Municipal Obligations are not "private activity bonds" as defined in Section 141(a) of the Code.

"Municipal Obligation Resolution" means that action taken by the governing body of the Municipality authorizing the issuance of the Municipal Obligations.

"Municipal Obligations" means the bonds or notes issued and delivered by the Municipality to the CWFP, a specimen copy of which is included in the Municipal Obligations transcript.

"Municipality" means City of Waukesha, a "municipality" within the meaning of the Act, duly organized and existing under the laws of the State, and any successor entity.

"Parallel Cost Percentage" means the proportion of Project Costs eligible for below-market-rate financing relative to the total Project Cost eligible for CWFP financing.

"Parity Obligations" means the Municipality's \$7,455,000 Sewer System Revenue Bonds, Series 2014, dated April 8, 2014; its \$28,893,000 Sewer System Revenue Bonds, Series 2014B, dated June 25, 2014; and any other obligations issued on a parity with the Municipal Obligations pursuant to the restrictive provisions of Section 11 of the Municipal Obligation Resolution.

"Plans and Specifications" means the Project design plans and specifications assigned No. S-2013-0272, approved by DNR on August 1, 2013, as the same may be amended or modified from time to time in accordance with this FAA.

"Progress payments" means payments for work in place and materials or equipment that have been delivered or are stockpiled in the vicinity of the construction site. This includes payments for undelivered, specifically manufactured equipment if: (1) designated in the specifications, (2) it could not be readily utilized or diverted to another job, and (3) a fabrication period of more than 6 months is anticipated.

"Project" means the project first assigned CWFP Project No. 4062-04 by DNR, which: was partially financed through a \$33,000,000 state fiscal year 2014 financial assistance agreement; will be partially financed with this \$15,583,127 state fiscal year 2015 FAA, to which DOA assigned CWFP Project No. 4062-99; is described in the Project Manager Summary Page (Exhibit F); and is further described in the DNR approval letter for the Plans and Specifications, or portions thereof, issued under s. 281.41, Wis. Stats.

"Project Costs" means the costs of the Project that are eligible for financial assistance from the CWFP under the Act, which are allowable costs under the Regulations, which have been incurred by the Municipality, an estimate of which is set forth in Exhibit A hereto and made a part hereof.

"Regulations" means chs. NR 150 and NR 162, Wis. Adm. Code, the regulations of DNR, and ch. Adm. 35, Wis. Adm. Code, the regulations of DOA, adopted pursuant to and in furtherance of the Act, as such may be adopted or amended from time to time.

"Series Resolution" or "Supplemental Resolution" shall have the meaning set forth in the General Resolution.

"Servicing Fee" means any servicing fee that may be imposed by DNR and DOA pursuant to s. 281.58(9)(d), Wis. Stats., which shall cover the estimated costs of reviewing and acting upon the Application and servicing this FAA, and which the Municipality is obligated to pay as set forth in Section 3.04 hereof.

"Sewer Use Ordinance" means the ordinance, or other legislative enactments meeting the requirements of the Regulations, that is enacted and enforced in each jurisdiction served by the Project.

"Sewerage System" means the entire sewer system of the Municipality, specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, transmission, treatment, and disposal of domestic and industrial sewerage and waste.

"State" means the State of Wisconsin.

"Substantial Completion" means the point in time when Project construction has been completed and the treatment process operation has been initiated or is capable of being put into operation, or for collection system or storm water projects or portions of projects that provided little or no treatment, it means the point in time when wastewater or storm water conveyance has been initiated or is capable of being initiated.

"Trustee" means the trustee appointed by the State pursuant to the General Resolution and any successor trustee.

"User Charge System" means a system of charges meeting the requirements of s. NR 162.08, Wis. Adm. Code.

"User Fees" means fees charged or to be charged to users of the Project or the Sewerage System of which the Project is a part pursuant to a User Charge System or otherwise.

"Water Quality Act" means the federal Water Quality Act of 1987, as amended.

"WPDES Permit" means a Wisconsin Pollutant Discharge Elimination System permit issued under ch. 283, Wis. Stats.

Section 1.02. Rules of Interpretation Unless the context clearly indicates to the contrary, the following rules shall apply to the context of this FAA:

- (a) Words importing the singular number shall include the plural number and vice versa, and one gender shall include all genders.
- (b) All references herein to particular articles or sections are references to articles or sections of this FAA.
- (c) The captions and headings herein are solely for convenience of reference and shall not constitute a part of this FAA nor shall they affect its meaning, construction, or effect.
- (d) The terms "hereby", "hereof", "hereto", "herein", "hereunder", and any similar terms as used in this FAA refer to the FAA in its entirety and not the particular article or section of this FAA in which they appear, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this FAA.
- (e) All accounting terms not otherwise defined in this FAA have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles.

ARTICLE II
REPRESENTATIONS

Section 2.01. Representations of the CWFP The CWFP represents and warrants as follows:

- (a) The State is authorized to issue the Bonds in accordance with the Act and the General Resolution and to use the proceeds thereof to provide funds for the making of the Loan to the Municipality to undertake and complete the Project.
- (b) The CWFP has complied with the provisions of the Act and has full power and authority to execute and deliver this FAA and to consummate the transactions contemplated hereby and perform its obligations hereunder.
- (c) The CWFP is not in violation of any of the provisions of the Constitution or laws of the State which would affect its powers referred to in the preceding paragraph (b).
- (d) Pursuant to ss. 281.58 and 281.59, Wis. Stats., the CWFP is authorized to execute and deliver the FAA and to take actions and make determinations that are required of the CWFP under the terms and conditions of the FAA.
- (e) The execution and delivery by the CWFP of this FAA and the consummation of the transactions contemplated by this FAA shall not violate any indenture, mortgage, deed of trust, note, agreement, or other contract or instrument to which the State is a party or by which it is bound, or, to the best of the CWFP's knowledge, any judgment, decree, order, statute, rule, or regulation applicable to the CWFP, and all consents, approvals, authorizations, and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated thereby have been obtained.
- (f) There is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board, or body pending, or, to the knowledge of the CWFP, threatened against or affecting the CWFP, or, to the knowledge of the CWFP, any basis therefor, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or which, in any way, could adversely affect the validity of this FAA or any agreement or instrument to which the State is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

Section 2.02. Representations of the Municipality The Municipality represents, covenants, and warrants as follows:

- (a) The Municipality possesses the legal municipal form of a city under ch. 62, Wis. Stats. The Municipality is located within the State and is a "municipality" within the meaning of the Act, duly organized and existing under the laws of the State, and has full legal right, power, and authority to:
 - (1) conduct its business and own its properties,
 - (2) enter into this FAA,
 - (3) adopt the Municipal Obligation Resolution,
 - (4) issue and deliver the Municipal Obligations to the CWFP as provided herein, and
 - (5) carry out and consummate all transactions contemplated by each of the aforesaid documents.
- (b) The Municipality's Project is a project that is necessary to prevent the applicant from significantly exceeding an effluent limitation contained in its WPDES Permit (compliance maintenance).
- (c) With respect to the issuance of the Municipal Obligations, the Municipality has complied with the Municipal Obligation Resolution and with all applicable laws of the State.

(d) The governing body of the Municipality has duly approved the execution and delivery of this FAA and the issuance and delivery of the Municipal Obligations in the aggregate principal amount of \$15,583,127, and has authorized the taking of any and all action as may be required on the part of the Municipality and its authorized officers to carry out, give effect to, and consummate the transactions contemplated by each of the foregoing.

(e) This FAA and the Municipal Obligations have each been duly authorized, executed, and delivered and constitute legal, valid, and binding obligations of the Municipality, enforceable in accordance with their respective terms.

(f) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity before or by any court, public board, or body pending, or, to the knowledge of the Municipality, threatened against or affecting the Municipality, or, to the knowledge of the Municipality, any basis therefor:

(1) affecting the creation, organization, or existence of the Municipality or the title of its officers to their respective offices;

(2) seeking to prohibit, restrain, or enjoin the execution of this FAA or the issuance or delivery of the Municipal Obligations;

(3) in any way contesting or affecting the validity or enforceability of the Municipal Obligation Resolution, the Municipal Obligations, this FAA, or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by this FAA; or

(4) wherein an unfavorable decision, ruling, or finding could adversely affect the transactions contemplated hereby or by the Municipal Obligation Resolution or the Municipal Obligations.

(g) The Municipality is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any agreement or other instrument to which the Municipality is a party or by which it or any of its properties is bound, and no event has occurred that, with the passage of time, the giving of notice, or both, could constitute such a breach or default. The execution and delivery of this FAA, the issuance and delivery of the Municipal Obligations, the adoption of the Municipal Obligation Resolution and compliance with the respective provisions thereof shall not conflict with, or constitute a breach of or default under, any applicable law or administrative regulation of the State or of the United States or any applicable judgment or decree or any agreement or other instrument to which the Municipality is a party, or by which it or any of its property is bound.

(h) The Municipal Obligations constitute validly-issued, legally-binding special obligations of the Municipality secured as set forth therein.

(i) The resolutions of the Municipality accepting the Loan and the Municipal Obligation Resolution have been duly adopted by the Municipality and remain in full force and effect as of the date hereof.

(j) The Municipality has full legal right and authority and all necessary permits, licenses, and approvals (other than such permits, licenses, easements, or approvals which are not, by their nature, obtainable prior to Substantial Completion of the Project) required as of the date hereof to own the Project, to carry on its activities relating thereto, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this FAA.

(k) The Municipality represents that it has not made any commitment or taken any action that shall result in a valid claim for any finders' or similar fees or commitments in respect to the issuance and sale of the Municipal Obligations and the making of the Loan under this FAA.

(l) Each of the facilities constituting a part of the Project is eligible for financing from the CWFP and the estimated cost of the Project is equal to or in excess of the principal amount of the Municipal Obligations. The Project is an eligible project under s. 281.58(7), Wis. Stats. Portions of the Project that are ineligible for financing from the CWFP are listed within the Project Manager Summary Page attached hereto as Exhibit F. The Municipality intends the Project to be and continue to be an eligible Project under the Act during the term of this FAA.

(m) All amounts shown in Exhibit A of this FAA are costs of a Project eligible for financial assistance from the CWFP under the Act. All proceeds of any borrowing of the Municipality that have been spent and are being refinanced with the proceeds of the Loan made hereunder have been spent on eligible Project Costs. All Project Costs are reasonable, necessary, and allocable by the Municipality to the Project under generally accepted accounting principles. None of the proceeds of the Bonds shall be used directly or indirectly by the Municipality as working capital or to finance inventory, as opposed to capital improvements.

(n) The Project is in compliance with all applicable federal, state, and local laws and ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality. The Municipality intends to proceed with due diligence to complete the Project pursuant to Section 4.04 hereof. The Municipality has complied with and completed all requirements of DNR necessary to commence construction of the Project prior to the date hereof.

(o) The Municipality does not intend to lease the Project or enter into a long-term contract for operation of the Project except as set forth in Exhibit D.

(p) The Municipality shall not take or omit to take any action which action or omission shall in any way cause the proceeds of the Bonds to be applied in a manner contrary to that provided in the General Resolution, as the same is in force from time to time.

(q) The Municipality has not taken and shall not take any action, and presently knows of no action that any other person, firm, or corporation has taken or intends to take, that would cause interest on the Municipal Obligations to be includable in the gross income of the owners of the Municipal Obligations for federal income tax purposes. The representations, certifications, and statements of reasonable expectation made by the Municipality as referenced in the Municipal Obligation Counsel Opinion and No Arbitrage Certificate are hereby incorporated by this reference as though fully set forth herein.

(r) Other than (1) "preliminary expenditures" as defined in the Treas. Regs. 26 CFR 1.150-2 in an amount not exceeding 20% of the principal amount of the Municipal Obligations, or (2) a "de minimis" amount as defined in the Treas. Regs. 26 CFR 1.150-2 in an amount not exceeding the lesser of \$100,000 or 5% of the principal amount of the Municipal Obligations, all of the proceeds of the Bonds loaned to the Municipality (other than refunding proceeds, if any) shall be used for Project Costs paid by the Municipality subsequent to a date which is 60 days prior to the date on which the Municipality adopted a reimbursement resolution pursuant to Treas. Regs. 26 CFR 1.150-2, stating its intent to reimburse other funds of the Municipality used to finance the Project, or subsequent to the issuance date of the Municipal Obligations.

(s) The Municipality represents that it has satisfied all the applicable requirements in s. 281.58, Wis. Stats., and ch. NR 162, Wis. Adm. Code.

(t) The Municipality has adopted a rate, charge, or assessment schedule that will generate annually sufficient revenue to pay the principal of and interest on the Municipal Obligations.

(u) The Municipality is in substantial compliance with all conditions, requirements, and terms of financial assistance previously awarded through the federal construction grants program and the Wisconsin Fund construction grants program, and the CWFP.

(v) The Municipality has met all terms and conditions contained within, and has received DNR approval for the Municipality's Plans and Specifications for the Project described in the definitions hereof.

(w) The Municipality represents that it has submitted to DNR a bid tabulation for the Project, with a recommendation to DNR for review and concurrence. The expected or actual Substantial Completion date of the Project is April 24, 2016.

(x) The Municipality acknowledges that s. 281.59(11)(b), Wis. Stats., and the General Resolution provide that if the Municipality fails to repay the Loan when due, the State shall recover amounts due the CWFP by deducting those amounts from any State payments due the Municipality.

This means that the following State payments would have been subject to this deduction:

	Transportation	State-shared	Total
2013	\$2,564,536.80	\$1,498,952.96	\$4,063,489.76
2014	\$2,622,471.67	\$1,499,994.75	\$4,122,466.42

The amount of State payments anticipated for this year, among others, and as changed or modified from time to time, that are subject to this deduction are:

2015	\$2,827,631.25	\$1,496,518.69	\$4,324,149.94
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These are not the entire amounts of State aid distributed to the Municipality. Other State aid is subject to intercept on failure of the Municipality to make full Loan payments due the CWFP.

The Municipality acknowledges that s. 70.60, Wis. Stats., and the General Resolution, provide that if the Municipality fails to repay the Loan when due, the State shall recover amounts due the CWFP by adding a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located.

(y) The Municipality acknowledges that the State reserves the right upon default by the Municipality hereunder to have a receiver appointed to collect User Fees from the operation of the Municipality's Sewerage System or, in the case of a joint utility system, to bill the users of the Municipality's Sewerage System directly.

(z) The representations of the Municipality in the Application are true and correct as of the date of this FAA and are incorporated herein by reference as if fully set forth in this place.

(aa) There has been no material adverse change in the financial condition or operation of the Municipality or the Project since the submission date of the Application.

ARTICLE III
LOAN PROVISIONS

Section 3.01. Loan Clauses

- (a) Subject to the conditions and in accordance with the terms of this FAA, the CWFP hereby agrees to make the Loan, and the Municipality agrees to accept the Loan. As evidence of the Loan made to the Municipality, the Municipality hereby agrees to sell to the CWFP Municipal Obligations in the aggregate principal amount of \$15,583,127. The CWFP shall pay for the Municipal Obligations in lawful money of the United States, which shall be disbursed as provided in this FAA.
- (b) Prior to disbursement, Loan proceeds shall be held by the CWFP or by the Trustee for the account of the CWFP. Earnings on undisbursed Loan proceeds shall be for the account of the CWFP. Loan proceeds shall be disbursed only upon submission by the Municipality of disbursement requests and approval thereof as set forth in Section 3.06 hereof.
- (c) The Loan shall bear interest at the rate of two and 254/1000ths percent (2.254%) per annum, and interest shall accrue and be payable only on Loan proceeds actually disbursed, from the date of disbursement until the date such amounts are repaid. A description of how the interest rate was determined is included in the Project Manager Summary Page (Exhibit F).
- (d) The Municipal Obligation shall include the Loan Disbursement Table (Exhibit C). The actual dates of disbursements shall be reflected as part of the Municipal Obligations. DOA shall make entries as each disbursement is made and as each principal amount is repaid; the CWFP and the Municipality agree that such entries shall be mutually binding.
- (e) Upon Final Completion of the Project, DOA may request that the Municipality issue substitute Municipal Obligations in the aggregate principal amount equal to the outstanding principal balance of the Loan.
- (f) The Municipality shall deliver, or cause to be delivered, a Municipal Obligation Counsel Opinion to the CWFP concurrently with the delivery of the Municipal Obligations.

Section 3.02. Loan Amortization Principal and interest payments on the Loan (and on the Municipal Obligations evidencing the Loan) shall be due on the dates set forth in Exhibit B of this FAA. The payment amounts shown on Exhibit B are for informational purposes only and assume the full amount of the Loan is disbursed to the Municipality on July 8, 2015. It is understood that the actual amount of the Municipality's Loan payments shall be based on the actual date and amount of Loan disbursements for the Project. Notwithstanding the foregoing or anything in the Municipal Obligations, the Loan shall be for no longer than twenty (20) years from the date of this FAA, and shall mature and be fully amortized not later than twenty (20) years after the original issue date of the Municipal Obligations. Repayment of principal on the Loan shall begin not later than twelve (12) months after the expected or actual Substantial Completion date of the Project.

Section 3.03. Type of Municipal Obligation and Security The Municipality's obligation to meet annual debt service requirements shall be a revenue obligation evidenced by issuance of revenue bonds pursuant to s. 66.0621, Wis. Stats., in an amount not to exceed \$15,583,127. The security for the Municipality's obligation shall be a pledge of revenues to be derived from the Municipality's Sewerage System, and the Municipality shall agree that if revenues from the Sewerage System are insufficient to meet annual debt service requirements, the Municipality shall purchase sewerage services in amounts sufficient to meet annual debt service requirements as provided in and set forth in Section 9 of the Municipal Obligation Resolution. The annual revenues net of all current expenses shall be equal to not less than the annual principal and interest requirements on the Municipal Obligations, any Parity Obligations, and any other debt obligations payable from the revenues of the Sewerage System then outstanding, times the greater of (i) 110 percent or (ii) the highest debt service coverage ratio required with respect to Parity Obligations or any other debt obligations payable from the revenues of the Sewerage System then outstanding. As of the date of this FAA, the required debt service coverage ratio is 125

percent; however, this percentage is subject to change as outlined in the prior sentence. The Loan is also secured as provided in Section 3.08 hereof.

Section 3.04. Other Amounts Payable The Municipality hereby expressly agrees to pay to the CWFP:

(a) such Servicing Fee as the CWFP may impose pursuant to s. 281.58(9)(d), Wis. Stats., which shall be payable in semiannual installments on each interest payment date; such a Servicing Fee shall be imposed upon the Municipality after approval of a future Biennial Finance Plan by the State of Wisconsin Building Commission which contains a Servicing Fee requirement, schedule, and amount; and

(b) the Municipality's allocable share of the Fees and Charges as such costs are incurred; allocable share shall mean the proportionate share of the Fees and Charges based on the outstanding principal of the Loan.

Amounts paid by the Municipality pursuant to this Section 3.04 shall be deposited in the Expense Fund established pursuant to the General Resolution.

Section 3.05. Sale and Redemption of Municipal Obligations

(a) Municipal Obligations may not be prepaid without the prior written consent of the CWFP. The CWFP has sole discretion to withhold such consent.

(b) The Municipality shall pay all costs and expenses of the CWFP in effecting the redemption of the Bonds to be redeemed with the proceeds of the prepayment of the Municipal Obligations. Such costs and expenses may include any prepayment premium applicable to the CWFP and any investment losses incurred or sustained by the CWFP resulting directly or indirectly from any such prepayment.

(c) Subject to subsection (a), the Municipality may prepay the Loan with any settlements received from any third party relating to the design or construction of the Project.

(d) Prepayments of the Municipal Obligations shall be applied pro rata to all maturities of the Municipal Obligations.

Section 3.06. Disbursement of Loan Proceeds

(a) Each disbursement request shall be delivered to DNR. Each request must contain invoices or other evidence acceptable to DNR and DOA that Project Costs for which disbursement is requested have been incurred by the Municipality.

(b) The CWFP, through its agents or Trustee, plans to make disbursements of Loan proceeds on a semimonthly basis, upon approval of each disbursement request by DNR and DOA. Such approval by DNR and DOA may require adjustment and corrections to the disbursement request submitted by the Municipality. The Municipality shall be notified whenever such an adjustment or correction is made by DNR or DOA.

(c) Disbursements made to the Municipality are subject to pre- and post-payment adjustments by DNR or DOA.

(1) If the Loan proceeds are not yet fully disbursed, and CWFP funds were previously disbursed for non-CWFP funded Project Costs, the CWFP shall make necessary adjustments to future disbursements.

(2) If the Loan proceeds are fully disbursed, including disbursements for non-CWFP funded Project Costs, the Municipality agrees to repay to the CWFP an amount equal to the non-CWFP funded Project Costs within 60 days of notification by DNR or DOA. The CWFP shall then apply the amount it receives as a Loan prepayment.

(d) The CWFP or its agent shall disburse Loan proceeds only to the Municipality's account by electronic transfer of funds. The Municipality hereby covenants that it shall take actions and provide information necessary to facilitate these transfers.

(e) Disbursement beyond ninety-five percent (95%) of the principal amount of the Loan, unless otherwise agreed to by DNR and DOA pursuant to a written request from the Municipality, may be withheld until:

(1) DNR is satisfied that the Project has been completed in accordance with the Plans and Specifications, DNR has approved all change orders relating to the Project, and DNR has determined that the Project is in compliance with the Municipality's WPDES Permit;

(2) the Municipality certifies to DNR its acceptance of the Project from its contractors;

(3) DNR certifies in writing to DOA the Municipality's compliance with all applicable requirements of this FAA; and

(4) the Municipality certifies in writing to DNR its compliance with the Davis-Bacon wage rate requirements; certification must be as prescribed on Exhibit G.

(f) The following IRS Regulation applies to project expenditures. IRS Regulation 1.148-6(d)(1)(iii), which states, in part, "An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service".

Section 3.07. Remedies

(a) If the Municipality:

(1) or any authorized representative is not complying with federal or state laws, regulations, or requirements relating to the Project, and following due notice by DNR the Project is not brought into compliance within a reasonable period of time; or

(2) is not complying with or is in violation of any provision set forth in this FAA; or

(3) is not in compliance with the Act or the Regulations;

then DNR may, until the Project is brought into compliance or the FAA non-compliance is cured to the satisfaction of DNR or DOA, impose one (1) or more of the following sanctions:

(i) Progress payments or disbursements otherwise due the Municipality of up to 20% may be withheld.

(ii) Project work may be suspended.

(iii) DNR may request a court of appropriate jurisdiction to enter an injunction or afford other equitable or judicial relief as the court finds appropriate.

(iv) Other administrative remedies may be pursued.

(b) If the Municipality fails to make any payment when due on the Municipal Obligations or fails to observe or perform any other covenant, condition, or agreement on its part under this FAA for a period

of thirty (30) days after written notice is given to the Municipality by DNR, specifying the default and requesting that it be remedied, the CWFP is provided remedies by law and this FAA. These remedies include, but are not limited to, the following rights:

- (1) Pursuant to s. 281.59(11)(b), Wis. Stats., DOA shall place on file a certified statement of all amounts due the CWFP under this FAA. DOA may collect all amounts due the CWFP by deducting those amounts from any State payments due the Municipality, or add a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located under s. 70.60, Wis. Stats.
- (2) Pursuant to s. NR 162.18(1), Wis. Adm. Code, DNR may: declare the unpaid Loan balance due and immediately payable; increase the interest rate on the unpaid balance of the Loan to the market interest rate in effect on the date the FAA was executed; or immediately terminate the FAA and disburse no additional funds, if the Loan has not been fully disbursed.
- (3) The CWFP may, without giving bond to the Municipality or anyone claiming under it, have a receiver appointed for the CWFP's benefit of the Project and the Municipality's Sewerage System and of the earnings, income, rents, issues, and profits thereof, with such powers as the court making such appointment shall confer. The Municipality hereby irrevocably consents to such appointment.
- (4) In the case of a joint utility system, the CWFP may bill the users of the Municipality's system directly.
- (5) The CWFP may enforce any right or obligation under this FAA, including the right to seek specific performance or mandamus, whether such action is at law or in equity.

Section 3.08. Security for the Loan In accordance with the terms of the Municipal Obligation Resolution:

- (a) as security for the Loan hereunder, the Municipality hereby pledges the revenue to be derived from the Municipality's Sewerage System (which is a dedicated source of revenue); and
- (b) other than as already pledged to the outstanding Parity Obligations, the Municipality shall not pledge the revenues, except as provided in Section 11 of the Municipal Obligation Resolution, to be derived from the Municipality's User Charge System or other revenues pledged under Section 3.08(a) above to any person other than the CWFP, unless the revenues pledged to such other person meet the highest debt coverage ratio then applicable to the Municipality.

Section 3.09. Effective Date and Term This FAA shall become effective upon its execution and delivery by the parties hereto, shall remain in full force and effect from such date and shall expire on such date as the Municipal Obligations shall be discharged and satisfied in accordance with the provisions thereof.

ARTICLE IV
CONSTRUCTION OF THE PROJECT

Section 4.01. Insurance The Municipality agrees to maintain property and liability insurance for the Sewerage System and Project that is reasonable in amount and coverage and that is consistent with prudent municipal insurance practices for the term of the Loan. The Municipality agrees to provide written evidence of insurance coverage to the CWFP upon request at any time during the term of the Loan.

In the event that the Sewerage System or Project is damaged or destroyed, the Municipality agrees to use the proceeds from its insurance coverage either to repay the Loan or to repair or replace the Sewerage System.

Section 4.02. Construction of the Project The Municipality shall construct the Project, or cause it to be constructed, to Final Completion in accordance with the Application and the Plans and Specifications. The Municipality shall proceed with the acquisition and construction of the Project in conformity with law and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of Plans and Specifications that alter the cost of the Project, use of space, scope, or functional layout, as may be previously approved by DNR.

Section 4.03. Performance Bonds The Municipality shall provide, or cause to be provided, performance bonds assuring the performance of the work to be performed under all construction contracts entered into with respect to the Project. All performance bonds required hereunder shall be issued by independent surety companies authorized to transact business in the State.

Section 4.04. Completion of the Project

(a) The Municipality agrees that it shall undertake and complete the Project for the purposes and in the manner set forth in this FAA and in accordance with all federal, state, and local laws, ordinances, and regulations applicable thereto. The Municipality shall, with all practical dispatch and in a sound and economical manner, complete or cause to be completed the acquisition and construction of the Project, and do all other acts necessary and possible to entitle it to receive User Fees with respect to the Project at the earliest practicable time. The Municipality shall obtain all necessary approvals from any and all governmental agencies prior to construction which are requisite to the Final Completion of the Project.

(b) The Municipality shall notify DNR of the Substantial Completion of the Project. The Municipality shall cause to be prepared as-built plans for the Project at or prior to completion thereof.

(c) The Municipality shall take and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently and in accordance with the terms of the contracts including, without limitation, the correcting of defective work.

(d) Upon Final Completion of the Project in accordance with the Plans and Specifications, the Municipality shall:

- (1) certify to DNR its acceptance of the Project from its contractors, subject to claims against contractors and third parties;
- (2) complete and deliver to DNR the completed Contract Utilization of Disadvantaged Business Enterprises (DBE) form attached hereto as Exhibit E of this FAA;
- (3) obtain all required permits and authorizations from appropriate authorities, if any, for operation and use of the Project; and
- (4) submit to DNR an Operation and Maintenance Manual Certification Checklist.

Section 4.05. Payment of Additional Project Costs

(a) In the event of revised eligibility determinations, cost overruns, and amendments exceeding the Loan amount, the CWFP may allocate additional financial assistance to a Project. The allocation of additional financial assistance may be in the form of a loan at less than the market interest rate, which is established pursuant to the Act and Regulations. The allocation of additional financial assistance shall depend upon availability of funds and present value subsidy, pursuant to the Act and the Regulations.

(b) In the event that Loan proceeds are not sufficient to pay the costs of the Project in full, the Municipality shall nonetheless complete the Project and pay that portion of the Project Costs as may be in excess of available Loan proceeds, and shall not be entitled to any reimbursement therefor from the CWFP, or the owners of any bonds, except from the proceeds of additional financing which may be provided by the CWFP pursuant to an amendment of this FAA or through a separate FAA.

Section 4.06. No Warranty Regarding Condition, Suitability, or Cost of Project Neither the CWFP, DOA, DNR, nor the Trustee makes any warranty, either express or implied, as to the Project or its condition or that it shall be suitable for the Municipality's purposes or needs, or that the proceeds of the Loan shall be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, Plans and Specifications, or other documents, or the inspection of Project construction by DNR does not relieve the Municipality of its responsibility to properly plan, design, build, and effectively operate and maintain the Project as required by laws, regulations, permits, and good management practices. DNR or its representatives are not responsible for increased costs resulting from defects in the Plans and Specifications or other Project documents. Nothing in this section prohibits a Municipality from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

ARTICLE V
COVENANTS

Section 5.01. Application of Loan Proceeds The Municipality shall apply the proceeds of the Loan solely for Project Costs.

Section 5.02. Operation and Maintenance; Equipment Replacement Fund

(a) After completion of the Project, the Municipality shall:

(1) at all times operate the Project or otherwise cause the Project to be operated properly and in a sound and economical manner, including proper training of personnel;

(2) maintain, preserve, and keep the Project or cause the Project to be maintained, preserved, and kept in good repair, working order, and condition; and

(3) periodically make, or cause to be made, all necessary and proper repairs, replacements, and renewals so that at all times the operation of the Project may be properly conducted in a manner that is consistent with the requirements of the WPDES Permit. The Municipality shall not, without the approval of DNR, discontinue operation of or sell or otherwise dispose of the Sewerage System, except for portions of the Sewerage System sold or otherwise disposed of in the course of ordinary repair and replacement of parts so long as the Loan is outstanding.

(b) The Municipality shall establish an equipment replacement fund according to s. NR 162.08, Wis. Adm. Code, and maintain the equipment replacement fund as a separate fund of the Municipality. All User Fees or other revenues specifically collected for the equipment replacement fund shall be deposited into the equipment replacement fund and used for replacement and major repair of equipment necessary for the operation of the Sewerage System. Annual deposits shall be made to the equipment replacement fund in amounts sufficient to meet the equipment replacement itemized schedule developed by the Municipality or the percentage schedule option. The Project Manager Summary Page (Exhibit F) shall specify the required annual deposit or required minimum balance/percentage.

Section 5.03. Compliance with Law At all times during construction of the Project and operation of the Sewerage System the Municipality shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, permits, and approvals, and with this FAA, including without limitation, the Act, the Regulations, and the WPDES Permit.

Section 5.04. Public Ownership The Municipality shall at all times retain ownership of the Project and the Sewerage System of which it is a part.

Section 5.05. Establishment of Project Accounts; Audits

(a) The Municipality shall maintain Project accounts in accordance with generally accepted accounting principles (GAAP) and directions issued by the CWFP. Without any request the Municipality shall furnish to DOA, as soon as available and in any event within two hundred (200) days after the close of each fiscal year, a copy of the audit report for such year and accompanying GAAP-based financial statements for such period as examined and reported by such independent certified public accountants of recognized standing selected by the Municipality and reasonably satisfactory to DOA, whose reports shall indicate that the accompanying financial statements have been prepared in conformity with GAAP.

(b) The Municipality shall maintain a separate account that reflects the receipt and expenditure of all CWFP funds for the Project. All Loan proceeds shall be credited promptly upon receipt thereof and shall be reimbursement for or expended only for Project Costs. The Municipality shall permit any authorized representative of DNR or DOA, or agents thereof, the right to review or audit all records relating to the Project or the Loan, and shall produce, or cause to be produced, all records relating to any work performed under the terms of this FAA for examination at such times as may be designated by any of them or their authorized representatives, and shall permit extracts and copies of the Project records to be made by them or their authorized representatives, and shall fulfill information requests by them or their authorized representatives.

Section 5.06. Records The Municipality shall retain all files, books, documents, and records relating to construction of the Project for at least three years following the date of Final Completion of the Project, or for longer periods if necessary due to any appeal, dispute, or litigation. All other files and records relating to the Project shall be retained so long as this FAA remains in effect. As-built plans for the Project shall be retained for the useful life of the Project.

Section 5.07. Project Areas The Municipality shall permit representatives of DNR access to the Project and related records at all reasonable times, include provisions in all contracts permitting such access during construction and operation of the Sewerage System, and allow extracts and copies of Project records to be made by DNR representatives.

Section 5.08. Engineering Inspection The Municipality shall provide competent and adequate inspection of all Project construction under the direction of a professional engineer licensed by the State. The Municipality shall direct such engineer to inspect work necessary for the construction of the Project and to determine whether such work has been performed in accordance with the Plans and Specifications. Any such work not in accordance with the Plans and Specifications shall be remedied, unless such noncompliance is waived by DNR.

Section 5.09. Tax Covenants

(a) The Municipality covenants and agrees that it shall not take any action or omit to take any action, which action or omission would result in the loss of the exclusion of the interest on any Municipal Obligations now or hereafter issued from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code or any successor provision.

(b) The Municipality shall not take any action or omit to take any action, which action or omission would cause its Municipal Obligations to be "private activity bonds" within the meaning of Section 141(a) of the Code or any successor provision.

(c) The Municipality shall not directly or indirectly use or permit the use of any proceeds of the Bonds (or amounts replaced with such proceeds) or any other funds or take any action or omit to take any action, which use or action or omission would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or any successor provision. The Municipality hereby further covenants to ensure that all amounts actually received by such Municipality from the CWFP are advanced to the entity submitting the invoice (or to reimburse the Municipality) to which each amount relates within three business days and that all amounts actually received by such Municipality from the CWFP shall not be invested in any interest-bearing account.

(d) The Municipality shall not use (directly or indirectly) the proceeds of the Bonds in any manner that would constitute an "advance refunding" within the meaning of Section 149(d)(5) of the Code or any successor provision.

Section 5.10. User Fee Covenant

(a) The Municipality hereby certifies that it has adopted and shall charge User Fees with respect to the Project in accordance with applicable laws and the Act and in amounts such that revenues of the

Municipality with respect to the Project shall be sufficient, together with other funds available to the Municipality for such purposes, to pay all costs of operating and maintaining the Project in accordance with this FAA.

(b) The Municipality covenants that it shall adopt and shall adequately maintain for the design life of the Project a system of User Fees with respect to the Project in accordance with s. NR 162.08, Wis. Adm. Code. The Municipality covenants that it shall review the User Charge System at least every two years and shall revise and charge User Fees with respect to the Project such that the revenues and funds described in paragraph (a) shall be sufficient to pay the costs described in paragraph (a).

Section 5.11. Notice of Impaired System The Municipality shall promptly notify DNR and DOA in the case of any material damage to or destruction of the Project or any part thereof, or actual or threatened proceedings for the purpose of taking or otherwise affecting by condemnation, eminent domain, or otherwise, all or a part of the Sewerage System, any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or agency, or any other event which may impair the ability of the Municipality to construct the Project or operate the Sewerage System or set and collect User Fees as set forth in Section 5.10.

Section 5.12. Hold Harmless The Municipality shall save, keep harmless, and defend DNR and DOA and all their officers, employees, and agents, against any and all liability claims, and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the construction, occupancy, use, service, operation, or performance of work in connection with the Project, acts, or omissions of the Municipality's employees, agents, or representatives.

Section 5.13. Nondiscrimination Covenant

(a) In connection with the Project, the Municipality agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. This provision shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Municipality agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provision of the nondiscrimination clause.

(b) The Municipality shall incorporate into all Project contracts which have yet to be executed the following provision: "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability, or national origin. The contractor further agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor further agrees to take affirmative action to ensure equal employment opportunities for persons with disabilities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause."

Section 5.14. Employees The Municipality or its employees or agents are not employees or agents of the DNR or DOA for any purpose, including worker's compensation.

Section 5.15. Adequate Funds The Municipality shall have sufficient funds available to repay the Loan. The Municipality shall have sufficient funds available when construction of the Project is completed to ensure effective operation and maintenance of the Project for purposes constructed.

Section 5.16. Management The Municipality shall provide and maintain competent and adequate management, supervision, and inspection at the construction site to ensure that the completed work conforms

with the Plans and Specifications. The Municipality shall furnish progress reports and such other information as DNR may require.

Section 5.17. Reimbursement Any payment made under the Loan to the Municipality in excess of the amount determined by final audit to be due the Municipality shall be reimbursed to DOA within 60 days after DNR or DOA provides a notice of overpayment.

Section 5.18. Unpaid User Fees The Municipality shall, to the fullest extent permitted by law, take all actions necessary to certify any unpaid User Fees to the county treasurer in order that such unpaid User Fees will be added as a special charge to the property tax bill of the user.

Section 5.19. Sewer Use Ordinance The Municipality shall comply with the provisions of the Sewer Use Ordinance as certified in the Application. The Municipality covenants that it shall comply with and enforce all provisions of the Sewer Use Ordinance, as established pursuant to the Act and Regulations.

Section 5.20. Rebates The Municipality agrees to pay to the CWFP any refunds, rebates, credits, or other amounts received for Project Costs that have already been funded by the CWFP. The CWFP shall then apply the amount it receives as a Loan prepayment.

Section 5.21. Maintenance of Legal Existence

(a) Except as provided in par. (b), the Municipality shall maintain its legal existence and shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another legal entity.

(b) A Municipality may consolidate with or merge into any other legal entity, dissolve or otherwise dispose of all of its assets or substantially all of its assets, transfer all or substantially all of its assets to another legal entity (and thereafter be released of all further obligation under this FAA and the Municipal Obligations) if:

- (1) the resulting, surviving, or transferee legal entity is a legal entity established and duly existing under the laws of Wisconsin;
- (2) such resulting, surviving, or transferee legal entity is eligible to receive financial assistance under the Act;
- (3) such resulting, surviving, or transferee legal entity expressly assumes in writing all of the obligations of the Municipality contained in this FAA and the Municipal Obligations and any other documents the CWFP deems reasonably necessary to protect its environmental and credit interests; and
- (4) the CWFP shall have consented in writing to such transaction, which consent may be withheld in the absolute discretion of the CWFP.

Section 5.22. Wage Rate Requirements The Municipality represents that it shall comply with Section 513 of the Federal Water Pollution Control Act (33 USC 1372), which requires that all laborers and mechanics employed by contractors and subcontractors funded directly by or assisted in whole or in part with funding under this Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 31 of title 40, United States Code.

ARTICLE VI
MISCELLANEOUS

Section 6.01. Notices All notices, certificates, or other communications hereunder shall be sufficiently given, and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below:

- (a) Department of Administration
Office of Capital Finance
Clean Water Fund Program
101 East Wilson Street, 10th Floor
Madison, WI 53702-0004
Or
PO Box 7864
Madison, WI 53707-7864
- (b) Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street, 2nd Floor
Madison, WI 53702-0005
Or
PO Box 7921
Madison, WI 53707-7921
- (c) U.S. Bank Corp Trust
Jina Terry EP-MN-WS3T
60 Livingston Avenue
St. Paul, MN 55101-2292
- (d) City of Waukesha
201 Delafield Street
PO Box 1648
Waukesha, WI 53187-1648

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent, by notice in writing given to the others. Any notice herein shall be delivered simultaneously to DNR and DOA.

Section 6.02. Binding Effect This FAA shall be for the benefit of, and shall be binding upon, the CWFP and the Municipality and their respective successors and assigns.

Section 6.03. Severability In the event any provision of this FAA shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

Section 6.04. Amendments, Supplements, and Modifications This FAA may be amended, supplemented, or modified to provide for additional Loans for the Project by the CWFP to the Municipality or for other purposes. All amendments, supplements, and modifications shall be in writing between the CWFP, by DNR and DOA acting under authority of the Act, and the Municipality.

Section 6.05. Execution in Counterparts This FAA may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.06. Applicable Law This FAA shall be governed by and construed in accordance with the laws of the State, including the Act.

Section 6.07. Benefit of Financial Assistance Agreement This FAA is executed, among other reasons, to induce the purchase of the Municipal Obligations. Accordingly, all duties, covenants, obligations, and agreements of the Municipality herein contained are hereby declared to be for the benefit of and are enforceable by the CWFP, its Trustee, or its authorized agent.

Section 6.08. Further Assurances The Municipality shall, at the request of DNR and DOA, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this FAA and the Municipal Obligations.

Section 6.09. Assignment of Municipal Obligations The Municipality hereby agrees that the Municipal Obligations may be sold, transferred, pledged, or hypothecated to any third party without the consent of the Municipality.

Section 6.10. Covenant by Municipality as to Compliance with General Resolution The Municipality covenants and agrees that it shall comply with the provisions of the General Resolution with respect to the Municipality and that the Trustee and the owners of the Bonds shall have the power and authority provided in the General Resolution. The Municipality further agrees to aid in the furnishing to DNR, DOA, or the Trustee of opinions that may be required under the General Resolution.

Section 6.11. Termination This FAA may be terminated in whole or in part pursuant to one or more of the following:

(a) The CWFP and the Municipality may enter into an agreement to terminate this FAA at any time. The termination agreement shall establish the effective date of termination of this FAA, the basis for settlement of termination costs, and the amount and date of payment of any sums due either party.

(b) If the Municipality wishes to terminate all or any part of the Project work unilaterally for which financial assistance has been awarded, the Municipality shall promptly give written notice to DNR. If the CWFP determines that there is a reasonable basis for the requested termination, the CWFP may enter into a termination agreement, including provisions for FAA termination costs, effective with the date of cessation of the Project work by the Municipality. If the CWFP determines that the Municipality has ceased work on the Project without reasonable basis, the CWFP may unilaterally terminate financial assistance or rescind this FAA.

Section 6.12. Rescission The CWFP may rescind this FAA prior to the first disbursement of any funds hereunder if it determines that:

- (a) there has been substantial non-performance of the Project work by the recipient without justification under the circumstances;
- (b) there is substantial evidence this FAA was obtained by fraud;
- (c) there is substantial evidence of gross abuse or corrupt practices in the administration of the Project;
- (d) the Municipality has failed to comply with the covenants contained in this FAA; or
- (e) any of the representations of the Municipality contained in this FAA were false in any material respect.

IN WITNESS WHEREOF, the CWFP and the Municipality have caused this FAA to be executed and delivered as of the date and year first above written.

CITY OF WAUKESHA

By: _____
Shawn N. Reilly
Mayor

Attest: _____
Gina Kozlik
Clerk/Treasurer

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By: _____
Authorized Officer

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: _____
Authorized Officer

EXHIBIT A

PROJECT BUDGET SHEET SUMMARY

CITY OF WAUKESHA
CWFP Project No. 4062-99

Budget Line	Total Project Costs	Ineligible & Non-CWFP Costs	CWFP-Eligible Costs Included in 2014 Loan Agreement*	CWFP-Eligible Costs Included in this 2015 Loan*
Force Account Work	0	0	0	0
Interim Financial Costs	0	0	0	0
Facility Plan Preparation	199,000	199,000	0	0
Plans/Specifications Preparation	2,352,223	8,266	2,343,957	0
Land or Easement Acquisition	0	0	0	0
Engineering/Construction Mgmt.	2,717,427	10,104	1,791,697	915,626
Construction/Equipment	41,786,858	131,630	27,577,327	14,077,901
Contingency	2,090,000	400,000	1,115,400	574,600
Miscellaneous Costs	129,619	0	129,619	0
CWFP Closing Costs	57,000	0	42,000	15,000
TOTAL	49,332,127	749,000	33,000,000	15,583,127

* Total of CWFP financial assistance provided for the Project in the state fiscal year 2014 CWFP financial assistance agreement (4062-04) and the state fiscal year 2015 CWFP FAA (4062-99) = \$48,583,127.

EXHIBIT B

LOAN AMORTIZATION SCHEDULE

INTEREST RATES AND PRINCIPAL REPAYMENT SCHEDULE

COPY

EXHIBIT C

FORM OF LOAN DISBURSEMENT TABLE

<u>Amount of Disbursement</u>	<u>Date of Disbursement</u>	<u>Series of Bonds</u>	<u>Principal Repaid</u>	<u>Principal Balance</u>
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____
\$ _____	_____	_____	\$ _____	\$ _____

COPY

EXHIBIT D

OPERATING CONTRACTS

As of the date of this FAA, the Municipality does not have any contracts with private entities or other governmental units to operate its Sewerage System.

COPY

EXHIBIT E

**ENVIRONMENTAL IMPROVEMENT FUND
CONTRACT UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

MANDATORY PROJECT CLOSEOUT DOCUMENT

Note: This form is authorized by s. NR 162.14(4)(b)4, Wis. Adm. Code. Receipt of this completed form by the Department is mandatory prior to receiving a final disbursement. The information printed on this form is taken from the completed Good Faith Certification Form 8700-294 and MBE/WBE/SBRA Contacts Worksheet Form 8700-294A. Any changes or additions made to the list of prime contractors and DBE subcontractors during the construction must be reflected on this form at closeout. Personal information collected on this form will be used for program administration and must be made available to requesters as required by Wisconsin Open Records Law (s. 19.31 – 19.39, Wis. Stats.).

Municipality Name: City of Waukesha	Project Number: 4062-04 & 4062-99	Total Project Financial Assistance: \$48,583,127
Project Description: Upgrade WW Treatment Facility		
Did the municipality satisfy the MBE/WBE/SBRA requirements? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If no, refer to Exhibit F-Project Manager Summary Page.)		

Construction/Equipment/Supplies Contracts	DBE Type	Type of Product or Service *	Contract Estimate \$	Actual Amount Paid to MBE/WBE/SBRA Firm
				Municipality Completes at Project Closeout
Prime: C.D. Smith Construction, Inc.	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input checked="" type="checkbox"/> N/A	General Constr	\$41,800,000	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
				Total MBE \$ _____
				Total WBE \$ _____
				Total SBRA \$ _____

Professional/Technical Services Contracts	DBE Type	Type of Product or Service *	Contract Estimate \$	Actual Amount Paid to MBE/WBE/SBRA Firm
				Municipality Completes at Project Closeout
Prime: Strand Associates	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input checked="" type="checkbox"/> N/A		\$5,193,277	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Prime: Trilogy Consulting	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input checked="" type="checkbox"/> N/A		\$40,200	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Prime: Giles Engineering	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input checked="" type="checkbox"/> N/A		\$15,748	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Prime: Midwest ESA	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA <input checked="" type="checkbox"/> N/A		\$19,425	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBRA			
				Total MBE \$ _____
				Total WBE \$ _____
				Total SBRA \$ _____

*Type of Product or Service examples: landscaping, trucking, supplies, equipment, paving, concrete, plumbing, electrical, excavating, testing, design, etc.

Name of Person Completing This Form	Email Address	Phone Number
-------------------------------------	---------------	--------------

Certification		
I certify that, to the best of my knowledge and belief, the information provided on this form is complete and correct.		
Name/Title of Municipal Official	Signature	Date Signed

EXHIBIT F

PROJECT MANAGER SUMMARY PAGE

CITY OF WAUKESHA
CWFP Project No. 4062-99

1. **Project Description:** The City of Waukesha is upgrading its wastewater treatment plant. This project includes improvements to, or replacement of, the influent screens and screening washers, grit removal equipment and grit pumps, primary and final clarifiers, aeration blowers, biosolids pumping, the SCADA system, HVAC and mechanicals, site roadways, and digestion and gas handling. These improvements include construction of: a new egg-shaped digester, centrifuge dewatering and dry polymer preparation, an administration building addition with some remodeling, remodeling at the maintenance building, and high voltage electrical power distribution.

This FAA provides financial assistance for the Project described above to cover costs of the Project that were not covered by the financial assistance agreement dated June 25, 2014, for CWFP Project No. 4062-04. The Municipality received a \$33,000,000 state fiscal year 2014 loan for a portion of the costs of the Project, and is receiving this \$15,583,127 Loan to cover the remainder of the \$48,583,127 of eligible Project Costs.

2. **Ineligibles:** The ineligible costs were shown in the CWFP Project No. 4062-04 budget as follows. No additional ineligible costs were identified during preparation of this FAA.

DNR's Urban Nonpoint Source Grant Program provided a grant for a portion of the costs of the engineering and construction of bioretention basins to be constructed at the treatment plant site as part of this Project. The costs covered by that grant are ineligible for CWFP funding; however, the CWFP financial assistance does include the cost share portion of the costs of the bioretention basins. The ineligible costs, which are not included in the financial assistance, are as follows:

Plans and Specifications Preparation: \$8,266
Engineering/Construction Management: \$10,104
Construction/Equipment: \$131,630

In addition, the Municipality included a \$400,000 contingency allowance in the construction contract. The CWFP typically provides a contingency of 5% of the construction line in the project budget but cannot provide contingency funds for a contingency allowance. Therefore, the project manager reduced the contingency line in the budget by \$400,000.

If the Department identifies ineligible Project Costs as the Project progresses, the Department will notify the Municipality.

3. **Other Funding Sources:** The Municipality used municipal funds to pay the \$199,000 cost of the facility plan for the project, shown in the original budget as non-CWFP costs, and is not requesting reimbursement of those costs.

The Municipality received a \$150,000 grant for construction of its bioretention basins on the treatment plant site.

Other costs included in the total project costs that are not included in this Loan but are eligible for CWFP assistance were included in the loan for CWFP Project No. 4062-04 in SFY 2014.

4. Composite Interest Rate for Compliance Maintenance or New/Changed Limits Project:	
Total Eligible Costs	\$15,583,127
Total Requested Costs	\$15,583,127
Parallel Cost Percentage (PCP)	99.50%
<hr/>	
Maximum Subsidized Rate Costs = (Total Eligible Costs X PCP)	\$15,505,211
<hr/>	
Actual Subsidized Rate Costs (Note: Cannot exceed Maximum Subsidized Rate Costs, but may be less if not requesting Total Eligible Costs.)	\$15,505,211
Market Rate Costs = Total Requested Costs – Actual Subsidized Rate Costs	\$77,916

Total Loan Amount = Actual Subsidized Rate Costs + Market Rate Costs	\$15,583,127
Composite Interest Rate = (Actual Subsidized Rate Costs/Total Loan Amount) X 2.250% + (Market Rate Costs/Total Loan Amount) X 3.000%	2.254%

5. Miscellaneous Costs: Miscellaneous costs of \$129,619 were shown in the state fiscal year 2014 project budget as follows. No new miscellaneous costs were added to the Project with this FAA. As shown in the Project Budget Sheet Summary (Exhibit A), CWFP funding totaling \$129,619 is included in the miscellaneous category in the Total SDWLP Program Assistance column to be used for:
 Department of Safety & Professional Services Permit Fees - \$7,610
 HNI Insurance Benefits Advisory HAT Builders Risk Insurance Policy - \$119,759
 KPH Environmental Asbestos Removal - \$2,250
6. Contingency Allowance: The \$1,115,400 Contingency allowance in the 2014 loan agreement column of Exhibit A was five percent of the amount of uncompleted construction work at the time of the first loan closing less \$400,000 for the \$400,000 contingency allowance included in the construction contract, less the contingency amount that was anticipated to be funded (\$574,600) in the second loan for the project. Therefore, \$574,600 is the Contingency allowance in the 2015 Loan column of Exhibit A, bringing the total CWFP amount for contingency to \$1,690,000.
7. Equipment Replacement Fund: The Municipality shall establish an equipment replacement fund according to s. NR 162.08, Wis. Adm. Code, and maintain the equipment replacement fund as a separate fund of the Municipality. The required minimum percentage to be kept in the replacement fund shall be 10% of the mechanical equipment balance shown on the municipality's internal financial document or annual audit (equipment value), resulting in a minimum balance of \$1,558,369. The Municipality has a maximum of three years from the first principal payment on the state fiscal year 2014 project (4062-04), which is May 1, 2016, to achieve the required minimum balance/percentage.
8. DBE Good Faith Effort: The Municipality, its consultants, and its contractor made good faith efforts to obtain DBE participation in the project; however, no DBEs are expected to participate. The Municipality should complete one Exhibit E combining 4062-04 and -99 at the time of project closeout.
9. Use of American Iron and Steel: The plans and specifications for this Project were approved by DNR on August 1, 2013. The Use of American Iron and Steel requirements apply to projects for which the plans and specifications were approved on or after June 10, 2014. Therefore, this Project is exempt from the Use of American Iron and Steel requirements.

EXHIBIT G

WAGE RATE COMPLIANCE CERTIFICATION

**[To Be Prepared on Municipal Letterhead
AFTER PROJECT CONSTRUCTION IS COMPLETE]**

The undersigned officials of the City of Waukesha (the "Municipality") hereby certify that, for all expenditures made for construction of DNR Project No. 4062-99 (the "Project"), the Municipality has met the requirements of the prevailing wage requirement of Davis-Bacon.

The above certification is determined, after due and diligent investigation, to be true and accurate to the best of my knowledge.

By: _____
[Name of Highest Elected Official]

Dated as of: _____

Attest: _____
[Name of Clerk or Secretary]

Dated as of: _____