

Kansas Water Pollution Control Revolving Loan Fund  
FFY 2010 (10/30/09 to 04/08/11)  
Loan Application Package – March 21, 2011

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Please note all of the enclosed forms are available to you in electronic format (PDF) at <http://www.kdheks.gov/muni/index.htm>. If you have any questions regarding these forms please contact Brenda Diegel at (785) 296-4262 / [bdiegel@kdheks.gov](mailto:bdiegel@kdheks.gov).

# **TAB 1**

**Sequence / Statute / Regulations**

KANSAS WATER POLLUTION CONTROL REVOLVING  
LOAN FUND SEQUENCE OF EVENTS

A. **Preliminary Engineering Report** (The applicant is encouraged to submit these items to KDHE for review and approval of the technical aspects of the project prior to submitting the KWPCRF funding application)

1. Facility Plan (K.A.R. 28-16-134(a)(2) per Minimum Standards and 40 CRF 35.2030(b) (K.A.R. 28-16-110(e)), including detailed Sludge Management Plan (K.A.R. 28-16-120), I/I Study (K.A.R. 28-16-121), I/A Study (K.A.R. 28-16-122), Open Space (K.A.R. 28-16-123), WQM Plan (K.A.R. 28-16-125)
2. Inter-municipal Agreement (If Applicable) (State Law)
3. Application for wastewater treatment facility operating permit (If applicable, this is required by KDHE permit program)
  - a. Discharging facilities - NPDES application
  - b. Non-discharging facilities - KWPC application
4. Five Year Capital Improvements Plan (K.A.R. 28-16-124). This requirement applies if the applicant has prepared a CIP, if not, this can be addressed in the Facility Plan.

B. **Pre-Application / Environmental Clearance / Public Participation**

1. Public Participation:
  - a. Public Meeting (15 day notice requirement) - Record of Minutes, Copy of Advertisement, List of Persons Attending (K.A.R. 28-16-136)
  - b. Public Hearing (30 day notice requirement) - Record of Minutes, Copy of Advertisement, List of Persons Attending (K.A.R. 28-16-136)
  - c. The completed form "Applicant Assurance of Public Participation for Kansas Water Pollution Control Revolving Loan Fund Projects" is submitted with the KWPCRF funding application
2. Intergovernmental Review Comments on Facility Plan (K.A.R. 28-16-137 and SRF Guidance)

## C. **Application and Supporting Documents**

1. Application
  - a. Resolution Designating Authorized Representative of Applicant
  - b. Engineers Estimate of Costs - all contracts and total project costs (K.A.R. 28-16-134(a)(3)). This can be included in the Facility Plan.
  - c. Completed Loan Application Form (K.A.R. 28-16-134(a)(1))
  - d. Draft Preliminary Plan of Operation (K.A.R. 28-16-134(a)(4)) including:
    1. Project Construction Schedule
    2. Payments Schedule
    3. Project Certification Criteria
    4. Annual Operating Cost Projection for 5 Years
    5. Description of Financial Management System
    6. Projected Revenue to cover OM&R and loan repayments
  - e. Financial Capability Submittal showing dedicated source of revenue for repayments (K.A.R. 28-16-115)
    1. Separate Form - Binding Assurance signed by Authorized Representative that adequate financial resources will be available for O&M during life of project (K.A.R. 28-16-135)
    2. Include Ineligible Cost: Amount and Source of Funds as Loan cannot pay for land, easements, or private I/I correction (SRF Guidance)
  - f. Draft User Charge System (K.A.R. 28-16-128). The existing user charge ordinance must be submitted, and a proposed draft ordinance with new user charges as required for the project.
2. Supporting Documents
  - a. Compliance Report - Civil Rights Act, EPA Form 4700-4 (Rev. 1-90) (SRF Guidance, App. F.)
  - b. Sewer Use Ordinance ( K.A.R. 28-16-127). The existing sewer use ordinance must be submitted for review or the KDHE / EPA model ordinance can be submitted as a draft.
  - c. Copy of Engineering Contracts for Planning and Design (If Municipality wishes to include costs in the loan). See also the KWPCRF Procurement Policy.

- d. Draft Construction Phase Engineering Contract (K.A.R. 28-16-134). Scope of Services to Include: Construction Phase Services, Inspection, User Charge Ordinance Adoption, Final Plan of Operation, Project Performance Services, Start-up Services, Operation and Maintenance Manual with Sludge Management Plan. See also the KWPCRF Procurement Policy.
- e. Plans and Specifications (K.A.R. 28-16-134(a)(3)). See also the KWPCRF Procurement Policy
  1. Real Property Acquisition Assurance (signed by Authorized Representative)
  2. Certificate of Ownership of Construction Site and Easements (signed by City Attorney)
  3. Value Engineering Study (Applicable if the total project exceeds \$10,000,000.00) (K.A.R. 28-16-129)
  4. HUD Flood Insurance (If Applicable) (SRF Guidance)

**D. Post Application / Loan Agreement**

1. **Action by KDHE**

The Draft Loan Agreement is sent to Municipality, Engineer and City Attorney for review and includes the draft Opinion of Counsel, Draft Ordinance Designating Applicant Approval to sign the Loan Agreement, and Draft Excerpt of Minutes of Meeting by Governing Body of Applicant.
2. **Action by Loan Recipient**

A Comments/Response letter is forwarded to KDHE from Municipality, Engineer, and/or City Attorney the regarding Draft Loan Agreement Documents.
3. When all comments and questions are resolved by the City Attorney, City Attorney provides a letter to KDHE accepting the Draft Loan Agreement. The date of the letter by the City Attorney becomes the "Effective Date" of the Loan Agreement.
4. Final Loan Agreement including the loan interest rate and repayment schedule is developed and signed by KDHE and forwarded to Municipality for Signature.
  - a. City Attorney executes Opinion of Counsel regarding Loan Agreement
  - b. Municipality enacts Resolution/Ordinance Designating Applicant Approval to sign Loan Agreement and publishes Resolution/Ordinance in official city newspaper
  - c. Signature of Loan Agreement by Authorized Representative
  - d. City Clerk completes Excerpt of Minutes of Meeting by Governing Body of Applicant
  - e. Complete package returned to KDHE

5. Municipality completes project in accordance with schedule in Appendix C and other terms and conditions of Loan Agreement including construction procurement, project construction, Final Plan of Operation, Operational and Maintenance Manual (if required), adoption of the new Sewer Use Ordinance( if required), adoption of the new User Charge Ordinance, one year project performance, and other end-of-project certifications.
6. When the project is complete and after final inspections, all deficiencies resolved, all project costs paid, project performance certification and other end-of-project certifications are completed, the loan recipient must request the loan amount be reduced to the actual final cost of the project.
7. The required Audit Reports are submitted to KDHE annually when completed, during the design and construction of the project, as loan funds are spent.

Chapter 65--PUBLIC HEALTH  
Article 33--WATER POLLUTION CONTROL

**65-3321. Definitions.** As used in K.S.A. 65-3321 through 65-3329:

(a) "Fund" means the Kansas water pollution control revolving fund established by K.S.A. 65-3322 of this act.

(b) "Municipality" means any city, county, township, sewer district, improvement district, or other political subdivision of the state, or any combination thereof, which is authorized by law to construct, operate, and maintain wastewater treatment works.

(c) "Wastewater treatment works" means any treatment works, as defined in the federal act, which is publicly owned.

(d) "Project" means the acquisition, construction, improvement, repair, rehabilitation, or extension of a wastewater treatment works.

(e) "Project costs" means all costs or expenses which are necessary or incident to a project and which are directly attributable thereto.

(f) "Federal act" means the federal clean water act as amended by the federal water quality act of 1987.

(g) "Administrator" means the administrator of the United States environmental protection agency.

(h) "Secretary" means the secretary of health and environment.

**History:** L. 1988, ch. 320, §§ 1; July 1.

**65-3322. Kansas water pollution control revolving fund established; use of moneys credited to fund; interest earned transferred from general fund; fund subject to post audit.** (a) There is hereby established in the state treasury a fund to be maintained in perpetuity and to be known as the Kansas water pollution control revolving fund. The fund shall consist of:

(1) Amounts awarded or otherwise made available to this state under the federal act for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) the proceeds, if any, derived from the sale of bonds issued by the Kansas development finance authority for the purposes of the fund to the extent provided in any agreement entered into by the secretary and the authority;

(4) amounts of repayments made by municipalities of loans received under K.S.A. 65-3321 through 65-3329, and amendments thereto, together with payments of interest thereon, in accordance with agreements entered into by such municipalities and the secretary;

(5) amounts earned on moneys in the fund; and

(6) amounts contributed or otherwise made available by any public or private entity for use in effectuating the purposes of the fund.

(b) Subject to the conditions and in accordance with requirements of the federal act and the provisions of K.S.A. 65-3321 through 65-3329, and amendments thereto, the fund may be used only:

(1) To make loans to municipalities for payment of all or a part of project costs;

(2) to carry out planning for wastewater treatments works;

(3) for implementation of nonpoint source pollution control programs;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the Kansas development finance authority if, and to the extent that, the proceeds of the sale of such bonds are deposited in the fund;

(5) as a source of revenue or security for the payment of principal and interest on bonds issued by the Kansas development finance authority pursuant to the provisions of K.S.A. 65-163d through 65-163U, and amendments thereto;

- (6) to earn interest on moneys in the fund;
- (7) to make grants to qualifying projects as authorized by the federal appropriation act of 1996 (P.L. 104-134), in accordance with the rural communities hardship grants program implementation guidelines (Federal Register, March 20, 1997);
- (8) to make grants to qualifying projects as authorized by the consolidated appropriations act of 2001 (P.L. 106-554), in accordance with the wet weather water quality act of 2000; and
- (9) for the reasonable costs, in amounts not to exceed 4% of all amounts awarded to the state for the fund under title VI of the federal act, of administering the fund and conducting activities under K.S.A. 65-3321 through 65-3329, and amendments thereto, and for reasonable costs after amounts cease to be awarded by the federal government under title VI of the federal act, as determined by the secretary, of administering the fund and conducting activities under K.S.A. 65-3321 through 65-3329, and amendments thereto. Such costs shall be identified annually in development of the intended use plan as described in K.S.A. 65-3325, and amendments thereto.
- (c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas water pollution control revolving fund interest earnings based on:
- (1) The average daily balance of moneys in the Kansas water pollution control revolving fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.
- (d) All payments and disbursements from the fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary. All payments and disbursements from the fund, and beginning and ending balances thereof, shall be subject each year to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated.

**History:** L. 1988, ch. 320, §§ 2; L. 1992, ch. 272, §§ 6; L.1996, ch. 253, §§14;L. 2001, ch. 70, §§ 1;July 1.

**65-3323. Powers and duties of secretary of health and environment.** The secretary shall administer the provisions of K.S.A. 65-3321 through 65-3329, shall be responsible for administration and management of the fund, and is hereby authorized to:

- (a) Enter into agreements with the administrator, which agreements shall include but not be limited to the specific requirements of the federal act;
- (b) establish jointly with the administrator a schedule of payments under which the administrator will pay to the state the amounts made available under the federal act;
- (c) accept amounts paid to the state in accordance with the schedule of payments and cause such amounts to be deposited in the state treasury and credited to the fund;
- (d) enter into binding commitments for the provision of loans in accordance with the requirements of the federal act and the provisions of K.S.A. 65-3321 through 65-3329;
- (e) review applications of municipalities for loans and select the projects for which loans will be made available each year;
- (f) provide the administrator, the governor and the legislature with the annual report prepared in accordance with K.S.A. 65-3328 and with copies of the audit required under K.S.A. 65-3322; and
- (g) adopt rules and regulations necessary for effectuation of the provisions of K.S.A. 65-3321 through 65-3329.

**History:** L. 1988, ch. 320, §§ 3; July 1.

**65-3324. Project priority list; development; loans available to municipalities having population of 5,000 or less.** (a) The secretary shall develop a priority system for projects, establish ranking criteria therefor, review applications of municipalities for loans, and prepare an annual project priority list. The project priority list shall be in conformance with applicable provisions of the federal act and shall include a description of each project, the purpose, cost and construction schedule therefor, and the municipality to be served or benefitted thereby. After preparation of the project priority list, the secretary shall select from such list the projects for which loans

will be made available.

(b) In performing the functions and duties required by subsection (a), the secretary shall ensure that a fair proportion, at least but not limited to 10%, of the total dollar amount of loans to be made available to municipalities from the fund in each year will be made available for projects of municipalities having a population of 5,000 or less. In the event the municipalities to which this subsection applies are unable to utilize the total amount made available under this subsection, the secretary is authorized to make the unused amount available for projects of other municipalities on the project priority list.

**History:** L. 1988, ch. 320, §§ 4; July 1.

**65-3325. Intended use plan; preparation.** After providing for public comment and review each year, the secretary shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- (a) The project priority list;
- (b) a list of activities, if any, for which the fund is authorized to be used under subsection (b)(3) of K.S.A. 65-3322;
- (c) a description of the short- and long-term goals and objectives of the fund;
- (d) information on the projects and activities to be supported, including a description thereof, terms of loans to be provided, and municipalities to be served or benefitted;
- (e) assurances and specific proposals for meeting the requirements of the federal act; and
- (f) the criteria and method established for the provision of loans to be made from the fund.

**History:** L. 1988, ch. 320, §§ 5; July 1.

**65-3326. Application for loan; form; agreements with municipality; contents; repayment; effect of failure of municipality to enter into agreement; assistance to municipality.** (a) Municipalities which desire the provision of a loan under K.S.A. 65-3321 through 65-3329 shall submit an application therefor to the secretary. Applications shall be in such form

and shall include such information as the secretary shall require and shall be submitted in a manner and at a time to be determined by the secretary.

(b) The secretary may enter into agreements with any municipality for the provision of a loan thereto for payment of all or a part of project costs and any municipality may enter into such an agreement and may accept such loan when so authorized by its governing body. The purposes of the loan to be provided, the amount thereof, the interest rate thereon, and the repayment terms and conditions thereof, all of which may vary among municipalities, shall be included in the agreements. Loans shall be provided at or below market interest rates and may be provided interest free. All such agreements shall require that municipalities establish a dedicated source of revenue for repayment of the loans as provided in K.S.A. 65-3327. Such agreements shall further provide that repayment of any loan received shall begin not later than one year after completion of the project and that such loan shall be repaid in full no later than 20 years thereafter.

(c) In the event any municipality to which a loan is made available under K.S.A. 65-3321 through 65-3329 fails to enter into an agreement with the secretary for the provision of such loan in accordance with the requirements of such statutes, the secretary is authorized to make the amount of the loan available for one or more other projects on the project priority list.

(d) The secretary shall provide any municipality, upon its request, with technical advice and assistance regarding a project or an application for a loan for the payment of all or a part of project costs.

**History:** L. 1988, ch. 320, §§ 6; July 1.

**65-3327. Repayment of loans; dedicated revenue sources; user charges; failure of municipality to meet repayment terms; project accounts; repayment from federal grants; loan not part of bonded indebtedness.** (a) The dedicated source of revenue for repayment of the loans may include service charges, connection fees, special assessments, property taxes, grants or any other source of revenue lawfully available to the municipality for such purpose. In order to ensure repayment by municipalities of the amounts of loans provided under K.S.A. 65-3321 through 65-3329, and amendments thereto, the secretary, after consultation

with the governing body of any municipality which receives a loan, may adopt charges to be levied against users of the project. Any such charges shall remain in effect until the total amount of the loan, and any interest thereon, has been repaid. The charges shall, insofar as is practicable, be equitably assessed and may be in the form of a surcharge to the existing charges of the municipality. The governing body of any municipality which receives a loan under K.S.A. 65-3321 through 65-3329, and amendments thereto, shall collect any charges established by the secretary and shall pay the moneys collected therefrom to the secretary in accordance with procedures established by the secretary.

(b) Upon the failure of a municipality to meet the repayment terms and conditions of the agreement, the secretary may order the treasurer of the county in which the municipality is located to pay to the secretary such portion of the municipality's share of the local ad valorem tax reduction fund as may be necessary to meet the terms of the agreement, notwithstanding the provisions of K.S.A. 79-2960 and 79-2961 and amendments thereto. Upon the issuance of such an order, the municipality shall not be required to make the tax levy reductions otherwise required by K.S.A. 79-2960 and 79-2961 and amendments thereto.

(c) Municipalities which are provided with loans under K.S.A. 65-3321 through 65-3329, and amendments thereto, shall maintain project accounts in accordance with generally accepted government accounting standards.

(d) Municipalities which receive a grant and an allowance under the federal act with respect to project costs for which a loan was provided under K.S.A. 65-3321 through 65-3329, and amendments thereto, shall promptly repay such loan to the extent of the allowance received under the federal act.

(e) Any loans received by a municipality under the provisions of K.S.A. 65-3321 through 65-3329, and amendments thereto, shall be construed to be bonds for the purposes of K.S.A. 10-1116 and 79-5028, and amendments thereto, and the amount of such loans shall not be included within any limitation on the bonded indebtedness of the municipality.

**History:** L. 1988, ch. 320, §§ 7; L. 1990, ch. 66, §§ 43; L. 1991, ch. 195, §§ 1; April 18.

**65-3328. Annual report.** The secretary shall prepare an annual report describing how the state has met the goals and objectives for the previous year as identified in the intended use plan prepared pursuant to K.S.A. 65-3325. The secretary shall submit the annual report to the administrator, the governor, and the legislature.

**History:** L. 1988, ch. 320, §§ 8; July 1.

**65-3329. Activities of department of health and environment under act and issuance of bonds by Kansas development finance authority under act approved for purposes of K.S.A. 74-8905.** The activities of the department of health and environment in administering and performing the powers, duties and functions prescribed by the provisions of K.S.A. 65-3321 through 65-3329 and providing for the payment of the matching grant requirements under the federal act from the proceeds of revenue bonds issued for such purpose by the Kansas development finance authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. The provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto.

**History:** L. 1988, ch. 320, §§ 9; July 1.

**Kansas Water Pollution Control Revolving Fund Regulations**

**28-16-110. Definitions.**

For the purposes of the regulations in this article, the following words, terms and phrases are defined as follows:

(a) “Best practicable waste treatment technology (BPWTT)” means a cost-effective technology that can treat wastewater, including combined sewer overflows and nonexcessive infiltration and inflow, to meet the applicable provisions of Kansas water supply and sewage statutes, K.S.A. 65-161 to 65-171x; water pollution control statutes, K.S.A. 65-3301 to 65-3313; and the federal clean water act as amended on or before January 1, 1989, 33 USC 1251 *et seq.*

(b) “Department” means the Kansas department of health and environment.

(c) “Equivalency” means that portion of the Kansas water pollution control revolving fund which was directly made available by the federal government.

(d) “Equivalency project” means that portion of the project cost which is funded from the equivalency portion of the Kansas water pollution control revolving fund.

(e) “Facilities planning” means the necessary plans and studies directly related to the project financed from the Kansas water pollution control revolving fund. The content of a facilities plan shall be as described in the federal register 40 CFR 35.2030(b), as in effect on January 1, 1989.

(f) “Infiltration” means water other than sewage that enters a sewerage system from the ground through defective pipes, pipe joints, connections, or manholes.

(g) “Excessive infiltration” means the quantity of flow which is more than 120 gallons per capita per day or the quantity of infiltration which could be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. Flow rates more than 120 gallons per capita per day when justified by water use records are not considered to be excessive infiltration.

(h) “Inflow” means water other than sewage that

enters a sewerage system. Inflow does not include infiltration.

(i) “Excessive inflow” means a rainfall-induced flow rate in excess of 275 gallons per capita per day.

(j) “Loan applicant” means any county, city, sewer district, other public agency, or any combination thereof, created by or pursuant to Kansas statutes, filing an application for a loan pursuant to the Kansas water pollution control fund act of 1988.

(k) “Loan agreement” means an executed contract between a loan recipient and the secretary confirming the purpose of the loan, the amount and terms of the loan, the schedule of loan payments and repayments and any other agreed upon conditions set forth by the secretary.

(l) “Minority business enterprise” means a business certified as a minority business enterprise by a state or federal agency based on the authority of state or federal statutes.

(m) “Project” means the scope of work for which a loan is awarded.

(n) “Secretary” means the secretary of Kansas department of health and environment.

(o) “Sewerage” means the removal and treatment of surface water, sewage and other wastewater by sewers, a system of sewers, wastewater treatment processes or any other means such as recycling and reclamation.

(p) “Value engineering” means a cost control technique which uses a systematic approach to identify unnecessarily high costs in a project without sacrificing the reliability or efficiency of the project.

(q) “Women’s business enterprise” means a business certified as a women’s business enterprise by a state or federal agency based on the authority of state or federal statutes.

(r) “Wastewater treatment works” means any device, or system for the storage, treatment, recycling, and reclamation of sewage. These include:

(1) intercepting sewers, outfall sewers, sewage

collection systems, pumping stations, facilities for sewage treatment and disposal of residues resulting from treatment, power and other equipment, their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; and (2) any works, including site acquisition of the land, that will be an integral part of the treatment process or are used for ultimate disposal of residues resulting from treatment. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

**28-16-111. Reserved.**

**28-16-112. Fund use eligibility.**

(a) The fund shall be used only to finance all or any part of the following activities:

(1) loans to loan applicants for the planning, design, and construction of publicly-owned wastewater treatment works; and

(2) loans to loan applicants with taxing authority for the implementation of nonpoint source pollution control management programs developed in conformance with section 319 of the federal clean water act as amended on or before January 1, 1989, 33 USC 1251 *et seq.*

(b) Each project eligible to receive loans shall appear on the project priority list prepared by the department. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-113. Interest rate.**

Each loan shall bear interest for the entire life of the loan at a rate set by the secretary. The secretary may also set fees for servicing the loans. The interest rate together with the servicing fee shall be an amount equal to sixty percent of the previous three months' average "bond buyers 20 bond index" as published on the first Monday of each week of the preceding three months. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3326; effective May 29, 1989.)

**28-16-114. Repayment of loans.**

(a) All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement. Principal and interest

payments shall begin not later than two years after receipt of the first loan installment and in no case later than one year following the completion of the project. Repayment of the loan shall not exceed a 20-year repayment period as agreed upon in the loan agreement. Project completion is defined as initiation of operation or capability to initiate operation.

(b) Prepayment of principal in whole or part may be made in accordance with the terms and conditions of the executed loan agreement. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-115. Dedicated loan repayment source.**

(a) Each loan recipient shall adopt one or more dedicated sources of revenue for repayment of the loan including principal and interest. The dedicated sources of revenue may be in the form of user charges, ad valorem taxes, special tax assessments, another permanent source of revenue or some combination of these sources. Each dedicated source of revenue shall be legally available to the loan recipient over the life of the loan repayment obligation and pledged to the repayment of the loan. Each dedicated source of revenue shall be approved by the secretary.

(b) Each loan recipient shall conduct a revenue source review every fifth year following the date of the loan agreement during the entire life of the loan repayment obligation and shall implement the new revenue rates as approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3326 and 65-3327; effective May 29, 1989.)

**28-16-116. Failure to repay loan on schedule.**

Upon failure of a loan recipient to pay one or more installments of the loan repayment on schedule, the governing body of the loan recipient shall be consulted by the secretary, and thereafter the governing body shall adopt charges, as set by the secretary, to be levied against users of the project. These charges shall remain in effect until the full amount of the loan, including principal and interest, has been repaid. The governing body of each loan recipient shall collect any charges established by the secretary or required by the secretary and shall

expeditiously forward the collected moneys to the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3327; effective May 29, 1989.)

**28-16-117. Double benefits.**

(a) Projects receiving construction grants under the federal clean water act shall not be eligible to receive loans under the Kansas water pollution control revolving fund act for the nonfederal shares of the projects costs.

(b) Loans shall be made only for the publicly owned portion of sewerage projects.

(c) If a project receives a loan for planning, preparation of design and construction documents or both, and subsequently receives a federal grant allowance for the same purposes, the loan recipient shall repay the loan to the extent of the allowance received by not later than 30 days from the receipt of the allowance. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-118. Project eligibility.**

(a) In order to receive a loan, each sewerage facility equivalency project shall comply or be consistent with:

(1) The best practicable waste treatment technology requirements defined in K.A.R. 28-16-110(a);

(2) The facilities planning process defined in K.A.R. 28-16-110(e);

(3) The type of projects described in K.A.R. 28-16-119;

(4) The alternative ultimate waste disposal procedure described in K.A.R. 28-16-120;

(5) The infiltration and inflow requirements described in K.A.R. 28-16-121;

(6) The alternative and innovative treatment provisions described in K.A.R. 28-16-122;

(7) The open space recreation requirement described in K.A.R. 28-16-123;

(8) The capital improvement plan described in K.A.R. 28-16-124; and

(9) The water quality management plan described in K.A.R. 28-16-125.

(b) In order to receive a loan, each nonpoint source pollution control equivalency project shall comply or be consistent with the nonpoint source pollution control management plan described in K.A.R. 28-16-126. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

**28-16-119. Eligible project types.**

(a) An equivalency loan may be granted for:

(1) Projects providing secondary treatment, any part of secondary treatment or any cost-effective alternative to secondary treatment;

(2) Projects providing a treatment process or any part of a treatment process which is more stringent than secondary treatment or cost-effective alternatives;

(3) Other wastewater treatment works;

(4) New interceptors and their appurtenances;

(5) Excessive infiltration or inflow correction projects; or

(6) Other sewerage facility projects, and nonpoint source pollution control management plan implementation projects, and groundwater quality protection projects. These types of projects shall not exceed 20% of equivalency funds, and require the specific designation of the governor.

(b) Any sewerage project or nonpoint source pollution control project may receive a loan from the nonequivalency portion of the Kansas water pollution control revolving fund upon approval of the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and K.S.A. 1988 Supp. 65-3324; effective May 29, 1989.)

**28-16-120. Alternative ultimate disposal.**

Each loan applicant for a sewerage facility project shall evaluate alternative methods and technologies for the reuse or ultimate disposal of treated

wastewater and residue material resulting from the waste treatment process. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-121. Infiltration and inflow.**

Each loan applicant for a sewerage facility project shall demonstrate that: (a) the existing sewage collection systems related to the proposed project are not subject to excessive infiltration or inflow; or

(b) the loan applicant has been implementing an effective ongoing infiltration and inflow reduction program for those sewage collection systems. (Authorized by K.S.A. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-122. Alternative and innovative treatment.**

Each loan applicant for a wastewater treatment project shall demonstrate the consideration of cost effective alternative and innovative wastewater treatment processes and techniques during the planning, selection and design of the project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-123. Open space recreation.**

Each loan applicant shall analyze and document the potential open space and recreation opportunities associated with the project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-124. Capital improvement plan.**

Each loan applicant for a sewerage facility project shall submit to the secretary, with the loan application, a capital improvement financing plan for the applicant's projected sewerage facility needs. The plans shall cover not less than a five-year period and shall be approved by the governing body of the entity. The capital improvement financing plan shall be reviewed and kept current by the governing body during the entire life of the loan repayment obligation. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-125. Water quality management plan.**

Each sewerage facility project eligible for a loan shall be consistent with the applicable water quality management plan, the county-wide wastewater management plan or both, and the loan applicant shall be a designated wastewater management agency within the management plan. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-126. Nonpoint source pollution control management plan.**

Each nonpoint pollution control or groundwater quality protection project shall be consistent with applicable nonpoint pollution source control management planning approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-127. Sewer use ordinance.**

Each loan applicant for a sewerage facility project shall develop, and subsequent to the secretary's approval, adopt a sewer use ordinance or other legally binding document to protect the integrity of the entire wastewater works system by:

(a) requiring the exclusion of excessive infiltration and inflows from the treatment works;

(b) prohibiting toxic concentrations of toxic materials in wastewater introduced into the treatment works; and

(c) prohibiting other pollutants in amounts or concentrations that:

(1) endanger public safety or the physical integrity of the treatment works; or

(2) cause violation of effluent or water quality limitations or cause residue or sludge processing or disposal problems. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-128. User charge system.**

Each loan applicant for a sewerage facility project shall develop, and subsequent to the secretary's

review and approval, adopt a user charge system which shall produce adequate revenues for operation and maintenance of the entire wastewater works, including minor replacement. The user charge system shall be based on either actual use of the wastewater works, ad valorem taxes or a combination of the two. An ad valorem tax may only be used if that form of dedicated user charge had been in place prior to the initiation of the proposed project. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322 and 65-3326; effective May 29, 1989.)

**28-16-129. Value engineering.**

Each loan recipient for a sewerage project shall conduct value engineering during the design phase of the project if the total estimated project cost exceeds \$10 million. The value engineering recommendations shall be implemented to the maximum extent possible as approved by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-130. Project certification.**

Each loan recipient shall certify to the secretary whether the project meets the project's performance standards on the date one year after the initiation of operations of the project. The loan recipient shall be responsible for assuring timely correction and compliance, including recertification in case the initial certification was a negative declaration. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-131. Procurement.**

Each loan recipient shall follow applicable state procurement laws and regulations and procedures established by the secretary. The approval of the secretary is required prior to procurement. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

**28-16-132. Fair labor standards.**

Bidding documents for each wastewater treatment works equivalency project shall include the prevailing wage rates established for the locality by the U.S. department of labor under the federal Davis-Bacon act. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322;

effective May 29, 1989.)

**28-16-133. Small minority and women's business enterprises.**

Each loan recipient for a wastewater treatment works equivalency project shall assure that affirmative steps were taken to utilize small, minority and women's businesses as sources of supplies, construction and services. Affirmative steps shall be documented and submitted to the department. Project-specific goals may be set by the secretary. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

**28-16-134. Projects documents.**

(a) Each loan applicant for a sewerage facility projects shall submit, for the secretary's review and approval, the following documents:

(1) A completed loan application on application forms furnished by the department;

(2) A facilities plan that establishes the need for the project;

(3) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates necessary for competitive bidding, and projected construction and payment schedules;

(4) A plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and projected revenues to operate and maintain the entire facility. Revenue projections shall also include the loan repayment obligations; and

(5) A facility operations manual, which shall be submitted before 90% of the project is completed.

(b) Each loan applicant for a nonpoint source pollution control management plan implementation or groundwater quality protection project shall submit, for the secretary's review and approval, the following documents:

(1) A completed loan application on application forms furnished by the department;

(2) Planning documents or any assessment which establishes the need for the project;

(3) Documents needed to plan the construction of the project.

(4) A plan of operation and maintenance to assure project performance for the design life of the project; and

(5) A binding assurance that adequate financial resources will be available for operation and maintenance of the project during the life of the project. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

**28-16-135. Financial capability.**

As part of the loan application, each loan applicant shall demonstrate and certify to the secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire system of which the proposed project is an integral part. The financial assessment shall cover the life of the loan obligations and consider, as a minimum, changes in economic and population growth, existing in debt obligations, revenues, project costs, and effects on user charge rates. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323; effective May 29, 1989.)

**28-16-136. Public participation.**

Each loan recipient shall conduct a minimum of one public meeting and one public hearing prior to execution of the loan agreement.

(a) A public meeting shall be conducted during the preparation of the facilities plan, nonpoint source pollution control management plan or groundwater quality protection plan to discuss project alternatives. Public notice shall be given not less than 15 days before the public meeting.

(b) Prior to the adoption by the governing body and submission to the secretary for approval of the facilities plan, nonpoint source pollution control management plan or groundwater quality protection plan, a public hearing shall be conducted. Public notice shall be given not less than 30 days before the public hearing. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322;

effective May 29, 1989.)

**28-16-137. Environmental review.**

(a) The Kansas environmental review procedure for the Kansas water pollution control revolving loan program, dated February, 1989 is adopted by reference as the required environmental procedure for an equivalency project.

(b) For an equivalency project, 40 CFR, 6.508(a), 6.511(b) and 6.512 as in effect on July 1, 1988, are adopted by reference.

(c) Those members of the public who participate in the environmental review process shall have the right to appeal the decisions made within that process. All such appeals shall be conducted pursuant to the Kansas administrative procedures act and the act for judicial review set forth in K.S.A. 1988 Supp. 77-501 et seq. and K.S.A. 77- 601 et seq., respectively.

(d) When used in any provision adopted from 40 CFR Part 6, references to "EPA" shall be replaced with the Kansas department of health and environment; "grant" shall be replaced with loan agreement; "grantee" shall be replaced with applicant. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989; amended, T-28-10-17-89, Oct. 17, 1989; amended Dec. 26, 1989.)

**28-16-138. Project accounts.**

Each loan recipient shall maintain project accounts in accordance with or similar to generally accepted government accounting standards defined in the 1988 edition of the Government Accounting, Auditing, and Financial Reporting manual issued by the Government Finance Officers Association. (Authorized by K.S.A. 1988 Supp. 65-3323; implementing K.S.A. 1988 Supp. 65-3322; effective May 29, 1989.)

# **TAB 2**

## **Application**

KANSAS WATER POLLUTION CONTROL REVOLVING FUND  
APPLICATION FOR ASSISTANCE – 13 Pages – March 1, 2011  
FFY 2010 (10/30/09 to 04/08/11)  
Table of Contents

KWPCRF Application for Assistance - General Instructions .....	1 page
Application for SRF Loan Assistance, Application Instructions, and Authorized Rep Resolution (Excel format) .....	3 pages
Part II Assurances (Word / PDF format) .....	2 pages
Part III Budget Information Instructions .....	1 page
Part III Section A - Loan Calculation Sheet / New Projects (Excel format) .....	1 page
Part III Section B - Loan Calculation Sheet / Amendments (Excel format) .....	1 page
Part III Section C - Worksheet for Proposed Method of Funding (Excel format) .....	1 page
Part IV Project Approval Information (Word / PDF format) .....	1 page
Part V Additional Information Requirements (Word / PDF format) .....	2 pages

KANSAS WATER POLLUTION CONTROL REVOLVING FUND  
APPLICATION FOR ASSISTANCE  
General Instructions

Carefully Read and Follow All Instructions

1. **Use of this Application** -- This form is to be used for Kansas Water Pollution Control Revolving Fund Assistance (K.S.A. 1988 Supp. 65-3321 thru 65-3329). This form also is used to request supplemental assistance, and propose amendments to approved agreements.
2. **Submission** -- Submit the original to the Kansas Department of Health and Environment. If an item cannot be answered or does not appear to be relevant to your request, write "NA" for not applicable. When a request is made for supplemental assistance or amendments to an approved loan submit only those pages which are appropriate.
3. **Assistance Regulations** -- Applicants are expected to understand and comply with all loan regulations applicable to the program. These regulations are published in K.A.R. 28-16-110 thru 28-16-138. A copy of these regulations is included in the application guidance package.
4. **State Review** -- The State of Kansas has established procedures for reviewing financial assistance applications in accordance with Executive Order 12372, Intergovernmental Review of Federal Programs. You have been notified of this procedure as presented in the "Notice" dated January 2, 1998.
5. **Completing the Application:**
  - a. This application consists of 5 parts: General Information (Part I); Assurances (Part II); Budget Information (Part III); Project Approval Information (Part IV); and Additional Information Requirements (Part V). Completion of the application requires submission of the additional Part V information.
  - b. Instructions for Part III may be found in this package.
  - c. All dollar amounts requested in this application should be rounded to the nearest dollar.
6. **Project** -- The term "project" as used in this application form refers to the scope of the work for which assistance is awarded.
7. **Pre-application Assistance** -- Prior to formal application submission, pre-application assistance may be obtained from the Kansas Department of Health and Environment

APPLICATION FOR SRF LOAN ASSISTANCE		New	Amendment
Project Number	<b>C20-</b>	Application Type	
<b>1. Legal Applicant / Recipient</b>		<b>2. Type of Applicant / Recipient</b>	
Applicant Name		A. City	
Organization Unit		B. County	
Street / PO Box		C. Other (Specify)	
City		Enter Appropriate Letter	
County			
State / Zip code			
Contact Person Name			
Telephone Number			
<b>3. Title of applicants project</b>			
<b>4. Type of Project</b>			
<b>5. Employer Identification Number</b>			
<b>6. Area of project impact (Names of cities, counties, etc)</b>			
<b>7a. Congressional District / Applicant</b>			
<b>7b. Congressional District / Project</b>			
<b>8. Type of change (if Amendment to the Loan)</b>		<b>Increase dollars</b>	\$ -
		<b>Decrease dollars</b>	\$ -
<b>9. Proposed Funding</b>			
SRF Loan <b>9a.</b>	\$ -	<b>10. Project Start Date</b>	
Applicant <b>9b.</b>	\$ -		
CDBG <b>9c.</b>	\$ -	(Estimated)	
EPA <b>9d.</b>	\$ -	<b>11. Project Duration</b>	
EDA <b>9e.</b>	\$ -		
Other <b>9f.</b>	\$ -	(Months)	
<b>Total</b>	<b>\$ -</b>	<b>12. Date Submitted</b>	
<b>13. Requested Loan Repayment Period ( Must not be over 20 years )</b>			
<b>14. The applicant certifies that: To the best of my knowledge and belief, data in this pre-application / application is true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved</b>		This application was submitted for review in accordance with the KWPCRF Intergovernmental Review Process on: Date	
<b>15.a. Certifying Representative (see Page 3 of 3)</b>		<b>15.b. Signature</b>	
<b>Name</b>			
<b>Title</b>			
<b>Mail completed application to:</b> Kansas Department of Health and Environment Bureau of Water / Attn: Rod Geisler Municipal Programs Section, Suite 420 1000 SW Jackson Street Topeka, KS 66612-1367		<b>If you need assistance please contact:</b> Brenda Diegel Administrative / Finance Section, Suite 420 1000 SW Jackson Street Topeka, KS 66612-1367 785-296-4262 or email bdiegel@kdheks.gov	

**KWPCRF APPLICATION INSTRUCTIONS**

The applicant for KWPCRF financing must complete all shaded items in this application. If an item is not applicable, write "NA" in the space provided. If additional space is needed, insert an asterisk "\*", and attach additional page. An explanation follows for each item:

- |  |   |
|--|---|
| <p>Item</p> <p>1. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.</p> <p>2. "City" includes town, township or other municipality.</p> <p>3. Provide a title of the project.</p> <p>4. Provide a brief summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.</p> <p>5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.</p> <p>6. List only largest unit or units affected, such as county, city, etc.</p> <p>7. The district(s) where most of action work will be accomplished.</p> <p>8. Applies only to an amendment. Fill in the increase request amount or the decrease in funding needed.</p> <p>9. Amount requested or to be contributed by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing loan (an amendment under item 8), indicate only the amount of the change. For decreases, enclose the amount in parentheses. For multiple program funding, use totals and show program breakouts on additional informational page. 9a-amount requested from KWPCRF program. 9b-amount applicant will contribute. 9c-amount from CDBG funding. 9d-Federal EPA money available directly to the city. 9e- Federal Economic Development Assistance money available directly to the City. 9f-amount from any other sources.</p> <p>10. Approximate date project expected to begin (usually associated with estimate date of availability of funding).</p> | <p>11. Estimate number of months to complete project after funds are available.</p> <p>12. Date application submitted to KDHE.</p> <p>13. Requested Loan repayment time period</p> <p>14. Date the project was submitted to interested agencies for Intergovernmental Review in conformance with the NOTICE dated May 3, 2010.</p> <p>15a. Print or type Name and Title of authorized representative of legal applicant.</p> <p>15b. Original signature of authorized representative.</p> |
|--|---|

RESOLUTION OF GOVERNING BODY OF APPLICANT

(Suggested Form for Recipient Use)

RESOLUTION NO. \_\_\_\_\_

Resolution authorizing filing of application with the Kansas Department of Health and Environment for a Loan under the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329).

WHEREAS under the terms of the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329), the State of Kansas has authorized the making of the loans to authorized applicants to aid in the construction of specific public projects,

NOW, THEREFORE, be it resolved by \_\_\_\_\_  
(Governing Body of Applicant)

1. That \_\_\_\_\_ be and he/she is hereby authorized to execute and  
(Designate Official)  
file an application on behalf of \_\_\_\_\_ with the Kansas Department  
(Legal Name of Applicant)  
of Health and Environment for a loan to aid in the construction of \_\_\_\_\_  
(Brief Project Description)

2. That \_\_\_\_\_, \_\_\_\_\_ be and  
(Name of Authorized Representative) (Title)

he/she is hereby authorized and directed to furnish such information as may be reasonably requested in connection with the application which is herein authorized, to sign all necessary documents on behalf of the applicant, to furnish such assurances as may be required by law or regulation, and to receive payment on behalf of the applicant.

CERTIFICATE OF RECORDING OFFICER

The undersigned, duly qualified and acting \_\_\_\_\_ of the  
(Title of Officer)

\_\_\_\_\_, does hereby certify:  
(Legal Name of Applicant)

That the attached resolution is a true and correct copy of the resolution adopted at a legally convened meeting of the \_\_\_\_\_ held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_;

(Name of Governing Body of Applicant)  
and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Recording Officer)

\_\_\_\_\_  
(Title of Recording Officer)

(Seal)  
If applicant has an official seal, impress here.

PART II  
ASSURANCES

As authorized representative of

---

*Name of Municipality*

I certify that

---

*Name of Municipality*

agrees to comply with the laws, regulations, policies and conditions relating to the Kansas Water Pollution Control Revolving Loan Fund funding for this project. I also certify that

---

*Name of Municipality*

Administrative Requirements

1. Has the legal, institutional, managerial and financial capability to ensure adequate construction, and operation and maintenance (including replacement) of the wastewater treatment works, and has analyzed the local share of the costs of the proposed wastewater treatment facilities, including the financial impact on the residents of the service area.
2. Will give the State, and the Comptroller General of the United States through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the loan; and will maintain project accounts in accordance with or similar to generally accepted government accounting standards defined in the 1988 edition of the Government Accounting, Auditing, and Financial Reporting Manual issued by the Government Finance Office Association in accordance with K.A.R. 28-16-138.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or gives the appearance of personal or organizational conflict of interest.
4. Will ensure that the facilities under its ownership, lease or supervision used to accomplish the project are not listed on EPA's list of Violating Facilities and will notify the State of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by EPA.
5. Has not violated any Federal, State, or local law pertaining to fraud, bribery, graft or collusion.

Programmatic Requirements

6. Will require the facility to be designed to comply with the "American National Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped", Number A117-1-196. Will obtain approval by the State of the final design drawings and specifications before the project is advertised for bidding. Will complete the project in accordance with the application, approved facility plan, and approved plans and specifications. Will submit to the State for approval any project changes. Will not enter into construction subagreements or other subagreements until it meets the applicable conditions of K.A.R. 28-16-131 regarding procurement.
7. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications per K.A.R. 28-16-55 and Water Quality Policy Memorandum No. 2-78 dated January 18, 1978 and will furnish progress reports and such other information as the State may require.
8. Will operate and maintain the publicly owned treatment works in accordance with the minimum standards as required by the state and local agencies for the maintenance and operation of such facilities; and in accordance with the National Pollutant Discharge Elimination System (NPDES) permit or the Kansas Water Pollution Control (KWPC) permit.

9. Will initiate procurement action for building all significant elements of the project and will diligently pursue completion of the project. Will assure the treatment works for which this application is requesting funds are made operational according to the project schedule within the Loan Agreement.
10. Will pay the applicant's share of project costs and obtain the necessary non-State project funds.

Statutory Requirements

11. Will comply with the provisions of Executive Order 11988 relating to evaluation of potential effects of any actions in a floodplain and Executive Order 11990 relating to minimizing harm to wetlands.
12. Will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
13. Will comply, or have already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs (see 40 CFR Part 4). These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
14. Will comply with the Age Discrimination Act (P.L. 94-135) and the Rehabilitation Act of 1973 (P.L. 93-112).
15. Will assist the State to assure compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.), and the Historic Sites Act.
16. Will comply with Section 13 of the Federal Water Pollution Control Act of 1972 (P.L. 92-500), which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program under the Act.
17. Will comply with all applicable requirements of all other Federal laws, State laws, executive orders, policies and regulations governing this program.

CERTIFICATION

I certify that I am duly authorized representative of the within-named legal entity, and that I have read and understand these requirements and assurances.

---

*Name of Legal Entity*

*Name and Title of Duly Authorized Representative*

---

*Signature*

*Date*

Note: A copy of your governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. See page 3 of 3 of KWPCRF Application for Loan Assistance.

## INSTRUCTIONS

### Part III - Budget Information for KWPCRLF Application Parts I, II, IV and V are Self-Explanatory

Part III consists of three Sections: Section A, used to calculate the loan for new projects; Section B, used to amend an existing loan; and Section C, used to exhibit the proposed method of financing the non-EPA funding of project costs. In both Sections A and B you are required to consider costs which are not eligible for Loan funding, i.e., land and easements. Other costs may not be allowed depending on relationship to the KWPCRLF project. If this application includes Force Account work, the costs should be included in the appropriate item.

**The applicant is encouraged to seek KDHE assistance in determining what types of costs are not eligible for loan funding.**

#### **Section A and B, Loan Amount Calculation Sheets, Cost Classification:**

**Item 1** - Enter estimated amounts needed to cover administrative and legal expenses. Allowable administrative expenses do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with certain services in support of the loan project (e.g., review of contracts, including the loan agreement).

**Item 2** - Enter estimated site and right-of-way acquisition costs (this includes purchase, lease, and/or easements).

**Item 3** - Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

**Item 4 a.** - Enter past cost of planning, if to be included in the loan amount.

**Item 4 b.** - Enter past cost of design services, if to be included in loan amount.

**Item 4 c.** - Enter estimated engineering fees related to construction (this includes startup services and preparation of project performance work plan).

**Item 4 d.** - Enter estimated engineering inspection costs (not including project performance reviews and startup costs).

**Item 4 e.** - Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

**Item 5.** - Enter estimate costs of site preparation and restoration which are not included in the basic construction contract.

**Item 6.** - Enter estimated costs of demolition and removal of existing structures which are not included in the basic construction contract.

**Item 7.** - Enter estimated cost of the contract to construct the facility.

**Item 8.** - Enter estimated cost of office, shop, laboratory, and safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

**Item 9.** - Enter estimated miscellaneous costs.

**Item 10.** - Enter total of lines 1 through 9.

**Item 11.** - Enter estimated cost of interest during construction. (Consult KDHE for advise in determining this cost).

**Item 12.** - Enter estimated contingency costs. (Consult KDHE for percentage of the estimated construction cost [line 7 of calculation sheet] to use.)

**Item 13.** - Enter total of lines 10, 11 and 12.

**Item 14.** - Enter total from line 13(c).

**Part III, Section C** - Worksheet for Proposed Method of Financing Non-EPA Funding.

**Item 1** - List the source(s) of funds (other than KWPCRLF funds) which will be used to pay project costs.

**Item 2 - 4** - Self explanatory.

**Part III Budget Information Construction****Section A Loan Calculation Sheet for New Projects**

<b>Cost Classification</b>	<b>Total Cost</b>	<b>Non Allowable Cost</b>	<b>Loan Allowable</b>
1. Administrative and legal expenses	\$ -	\$ -	\$ -
2. Land, structure, rights-of-way, appraisal services, and related costs	\$ -	\$ -	\$ -
3. Relocation expenses and payments to individuals, businesses and farm operations	\$ -	\$ -	\$ -
4. Engineering fees	\$ -	\$ -	\$ -
4a. Planning	\$ -	\$ -	\$ -
4 b. Design	\$ -	\$ -	\$ -
4 c. Basic Construction	\$ -	\$ -	\$ -
4 d. Inspection	\$ -	\$ -	\$ -
4 e. Other engineering fees	\$ -	\$ -	\$ -
5. Site work	\$ -	\$ -	\$ -
6. Demolition and removal	\$ -	\$ -	\$ -
7. Construction	\$ -	\$ -	\$ -
8. Equipment	\$ -	\$ -	\$ -
9. Miscellaneous	\$ -	\$ -	\$ -
10. Subtotal	\$ -	\$ -	\$ -
11. Interest During Construction	\$ -	\$ -	\$ -
12. Contingencies	\$ -	\$ -	\$ -
13. Total Project Costs	\$ -	\$ -	\$ -
14. Total State Funding	-----	-----	\$ -

**Part III Budget Information Construction**

**Section B Loan Calculation Sheet for Amendments**

Cost Classification	Costs per last Loan Agreement		Adjustments (+) or (-)		Revised Request	
	Total	Allowable	Total	Allowable	Total	Allowable
1. Administrative and legal expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2. Land, structure, rights-of-way, appraisal services, and related costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3. Relocation expenses and payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4. Engineering fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4a. Planning	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4 b. Design	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4 c. Basic Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4 d. Inspection	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4 e. Other engineering fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5. Site work	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6. Demolition and removal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7. Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8. Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9. Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10. Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11. Interest During Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12. Contingencies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13. Total Project Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14. Total State Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**Part III Budget Information**

**Section C Worksheet for Proposed Method of Financing Non-State Funding**

1. Additional funds (other sources). If funds from another Agency will be used to match the KWPCRLF loan, you must submit evidence that such use is authorized							Column B Non State Funds
a. Source(s) (e.g., FmHA, HUD, EDA, DOD, etc.)							
b. Catalog of Federal Domestic Assistance No. (CFDA) if applicable							
c. Grant Amount.....							\$ -
d. Grant Approved		Requested			Date		
e. Loan Amount.....							\$ -
f. Loan Approved		Requested			Date		
g. User funding for capital costs (e.g., from major Federal facility discharging to project							\$ -
h. Funds Received		Requested			Date		
2. Applicant funds							\$ -
(Your Financial Capability Demonstration(FCD), included under Part V.4 may be referenced instead of completing lines a - g. If the FCD is referenced, enter only the total and date of funding.)					Date		Loan Recipient source of funding
a. Securities.....						\$ -	
b. Mortgages.....						\$ -	
c. Appropriations (by Applicant).....						\$ -	
d. Bonds.....						\$ -	
e. Tax levies.....						\$ -	
f. Noncash (explain).....						\$ -	
g. Other (explain).....						\$ -	
h. Funds Secured		Expected			Date		
i. Total.....							\$ -
3. Other non-State funds							
a. Source							
b. Funds Received		Requested			Date		
c. Amount.....							\$ -
4. Total Non-State Funding (total of column B).....							\$ -

**PART IV -- PROJECT APPROVAL INFORMATION**

1.a. If the proposed project is located in an area covered by an approved comprehensive plan, does the project conform with the plan?			
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
b. Origin of plan (Check one or more, as appropriate):		c. Location of Plan	
<input type="checkbox"/> State <input type="checkbox"/> Local <input type="checkbox"/> Regional			
2. If the assistance requested will serve a Federal installation, provide:			
a. Name of Federal installation		b. Federal population benefiting from project	
3. If the project for which assistance is requested will be on Federal land or installation, provide:			
a. Name of installation	b. Percent of Project	c. Location	
4. If the project for which assistance is requested has caused, or will cause, the displacement of any individual, family, business, or farm, provide number of:			
a. Individuals	b. Businesses	c. Families	d. Farms
5. If any Federal or State grant for a Step 1 (planning) and/or Step 2 (design) has been previously received, indicate if for (Check one):			
<input type="checkbox"/> Step 1 Only		<input type="checkbox"/> Step 2 Only	
<input type="checkbox"/> Step 1 and Step 2		Enter grant #	
6. Indicate if project is in a designated special flood hazard area: (If answer is "Yes", see item 11 of "Assurance.")			
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
7. If applicant has obtained the necessary land, indicate if by:			
<input type="checkbox"/> Leasehold interest		<input type="checkbox"/> Fee simple title	
<input type="checkbox"/> Other (Specify)			
8. Was a debarred or suspended entity used in planning or design? (See 40 CFR Part 32)			
<input type="checkbox"/> Yes		<input type="checkbox"/> No	

**Part V – Additional Information Requirements****Application Requirements for KWPCRLF Financing**

Applications must include the following information. Please check or provide a date, in the appropriate column for each document and attach all required documents in the order indicated. Regulations applicable to loans are cited in the description of documents, and referenced below.

An application must be submitted for each proposed project. Each application and related requirement must be submitted to KDHE, must be complete, and must relate to a project which has been given funding priority by KDHE. If any required information has been furnished with an earlier application, the applicant must submit an additional copy with each application.

The basic application must meet the regulatory requirements, as appropriate. Items 1-17 identify information requirements which apply to all proposed projects.

Prior to completion of an application, applicants should be thoroughly familiar with the KWPCRLF regulations (K.A.R. 28-16-110 through 28-16-138) which apply to this program. If you are uncertain as to whether or not a document is required, or the type of information required, refer to the regulations cited or consult KDHE.

Description of Documents and References	Information Attached	Date Submitted	Not Appl.
1. Facilities plan (Consists of plans and studies which relate directly to treatment works for managing wastewater and residual sludge and which are needed to comply with enforceable requirements. The plan includes an environmental evaluation under K.A.R. 28-16-137 and Kansas Environmental Review Procedures for the Kansas Water Pollution Control Revolving Loan Fund Program – February 1989. K.A.R. 28-16-110(e), -134(a)(2), -110(a), -110(e), -119, -120, -121, -123, and 125.			
2. Intergovernmental Review Comments in Accordance with KDHE “Notice” dated June 2009, copy of advertisements and records of public meeting and public hearing. K.A.R. 28-16-137 and 28-16-136.			
3. EPA Form 4700-4 (Compliance Report) (SRF Guidance)			
4. EPA Form 6600-06 (Rev. 06/208) Certification Regarding Lobbying			

PART V – ADDITIONAL APPLICATION REQUIREMENTS

March 21, 2011

Page 2 of 2

5.	Demonstration of grantee financial and management capability including Binding Assurance form adequate financial resources are available for O & M during the life of the project. K.A.R. 28-16-115, 28-16-135, -114, -116, -117.			
6.	Design drawings and specification K.A.R. 28-16-134(a)(3)			
7.	Project schedule K.A.R. 28-16-134(a)(3)			
8.	Plan of operation K.A.R. 28-16-134(a)(4)			
9.	Sewer use ordinance K.A.R. 28-16-127			
10.	User charge system K.A.R. 28-16-128			
11.	Capital Improvement Plan K.A.R. 28-16-124			
12.	Draft Contract for Construction Engineering Service			
13.	For all real property, including easements required for the project, attach an opinion from a title counsel certifying that sufficient interest or rights to all property have been obtained to ensure undisturbed use and possession for the useful life of the project.			
14.	Information on use of debarred or suspended firms (SRF Guidance)			
15.	Intermunicipal service agreements (if applicable)			
16.	NPDES Permit Application (if applicable)			
17.	Value engineering information (if a project cost is more than \$10 million) K.A.R. 28-16-129			

# **TAB 3**

**Forms and Documents**

Kansas Water Pollution Control Revolving Fund  
FORMS AND DOCUMENTS  
Table of Contents

To be completed and submitted with the application

- EPA Form 4700-4 Preaward Compliance Review Report .....2 pages
- EPA regulations regarding debarment, suspension and other responsibility matters – Subpart C.....3 pages
- EPA Form 5700-49 “Certification Regarding Debarment, Suspension and Other Responsibility Matters”.....2 pages
- EPA Form 6600-06 Certification Regarding Lobbying.....1 page
- Applicant Assurance of Public Participation .....1 page
- Intergovernmental Review Comments/Approvals.....3 pages
- Preliminary Plan of Operation\*\* .....1 page
- Financial Capability Summary including Binding Assurance form .....9 pages
- Currently Adopted Sewer Use Ordinance\*\*
- Currently Adopted User Charge Ordinance\*\*
- Applicant Assurance with Respect to Acquisition of Real Property\* .....1 page
- Certification as to Title to Project Site\* .....2 pages
- Electronic Deposit Form (Optional) .....1 page

Program Information Documents

- O & M Manual Format .....5 pages
- Plan of Operation Format\*\* .....1 page
- User Charge Ordinance Format\*\* .....15 pages
- Model Sewer Use Ordinance Format\*\* .....9 pages
- Environmental Review Procedure .....7 pages
- Project Audit Requirements/A-133 Audit Requirements .....1 page

\*Can be submitted later with final design plans and specifications.

\*\*See also the KWPCRLF Sequence of Events document.

United States Environmental Protection Agency  
Washington, DC 20460

**Preaward Compliance Review Report for  
All Applicants and Recipients Requesting EPA Financial Assistance**

**Note: Read instructions on other side before completing form.**

I.	Applicant/Recipient (Name, Address, State, Zip Code).	DUNS No.
II.	Is the applicant currently receiving EPA assistance?	
III.	List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)	
IV.	List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)	
V.	List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))	
VI.	Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.  a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies.	
VII.*	Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95)  a. Do the methods of notice accommodate those with impaired vision or hearing? b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? c. Does the notice identify a designated civil rights coordinator?	
VIII.*	Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))	
IX.*	Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)	
X.*	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.	
XI*	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.	

**For the Applicant/Recipient**

I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized Official

B. Title of Authorized Official

C. Date

**For the U.S. Environmental Protection Agency**

I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized EPA Official

B. Title of Authorized EPA Official

C. Date

See \*\* note on reverse side.

## Instructions for EPA FORM 4700-4 (Rev. 03/2008)

### General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities.

The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.

Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973.

The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

"Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.

If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."

In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification.

\* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7).

\*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.

Environmental Protection Agency

§ 32.325

~~§ 32.225 How do I know if a transaction in which I may participate is a covered transaction?~~

~~As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.~~

**Subpart C—Responsibilities of Participants Regarding Transactions**

**DOING BUSINESS WITH OTHER PERSONS**

**§ 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 32.305 May I enter into a covered transaction with an excluded or disqualified person?**

- (a) You as a participant may not enter into a covered transaction with an excluded person, unless the EPA grants an exception under § 32.120.
- (b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

**§ 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

- (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions,

and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

- (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the EPA grants an exception under § 32.120.

**§ 32.315 May I use the services of an excluded person as a principal under a covered transaction?**

- (a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

- (b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the EPA grants an exception under § 32.120.

**§ 32.320 Must I verify that principals of my covered transactions are eligible to participate?**

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

**§ 32.325 What happens if I do business with an excluded person in a covered transaction?**

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

**§ 32.330****§ 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 32.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY  
TIER PARTICIPANTS

**§ 32.335 What information must I provide before entering into a covered transaction with the EPA?**

Before you enter into a covered transaction at the primary tier, you as the participant must notify the EPA office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 32.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 32.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

**§ 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?**

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 32.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to

**40 CFR Ch. I (7–1–06 Edition)**

enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

**§ 32.345 What happens if I fail to disclose information required under § 32.335?**

If we later determine that you failed to disclose information under § 32.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

**§ 32.350 What must I do if I learn of information required under § 32.335 after entering into a covered transaction with the EPA?**

At any time after you enter into a covered transaction, you must give immediate written notice to the EPA office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.335.

DISCLOSING INFORMATION—LOWER TIER  
PARTICIPANTS

**§ 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

**§ 32.360 What happens if I fail to disclose the information required under § 32.355?**

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we

**Environmental Protection Agency****§ 32.425**

may pursue any available remedies, including suspension and debarment.

**§ 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by § 32.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.355.

**Subpart D—Responsibilities of EPA Officials Regarding Transactions**

**§ 32.400 May I enter into a transaction with an excluded or disqualified person?**

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 32.120.

**§ 32.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 32.120.

**§ 32.415 What must I do if a Federal agency excludes the participant of a principal after I enter into a covered transaction?**

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate, and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 32.120.

**§ 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 32.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.425 When do I check to see if a person is excluded or disqualified?**

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.



Waste Water Project Number  
C20

United States Environmental Protection Agency  
Washington, DC 20460

## **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

---

Typed Name & Title of Authorized Representative

---

Signature of Authorized Representative

Date

---

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

This form has been adopted for use as a Kansas Water Pollution Control Revolving Fund document

## Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

### **Where To Submit**

A prospective prime contractor for construction or modification of Waste Water Treatment facilities or support system must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

### **How To Obtain Forms:**

KDHE will provide the certification form, instructions and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors. The form and instructions are also available in an electronic media by contacting KDHE at the address below:

Additional copies/assistance may be requested from:

Kansas Department of Health and Environment  
Bureau of Water / Municipal Programs  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
(Telephone: 785/296-4262)  
(Email: [bdiegel@kdheks.gov](mailto:bdiegel@kdheks.gov))

The EPA instructions have been modified for use in the Kansas Revolving Loan Programs

EPA Form 5700-49 (11-88)

\_\_\_\_\_  
EPA Project Control Number

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature and Date of Authorized Representative

APPLICANT ASSURANCE OF PUBLIC PARTICIPATION  
FOR KANSAS WATER POLLUTION CONTROL  
REVOLVING LOAN FUND PROJECTS

I hereby certify that with reference to Wastewater Treatment Project Number:

\_\_\_\_\_:

\_\_\_\_\_(a) A public meeting was conducted during the preparation of the facilities plan, non-point source pollution control management plan or groundwater quality protection plan to discuss project alternatives. Public notice was given not less than 15 days before the public meeting.

\_\_\_\_\_(b) Prior to the adoption by the governing body and submission to the secretary for approval of the facilities plan, non-point source pollution control management plan or groundwater quality protection plan, a public hearing was conducted. Public notice was given not less than 30 days before the public hearing. Attached is a copy of the advertisement, record or minutes and list of persons attending.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant

Kansas Water Pollution Control Revolving Loan Fund  
(Wastewater Collection and Treatment)

**NOTICE**

Intergovernmental Review Process

As part of the application process for project financing by the Kansas Water Pollution Control Revolving Loan Fund, the Kansas Department of Health and Environment (KDHE) must prepare an "environmental clearance document" in accordance with K.A.R. 28-16-137. It is the responsibility of the potential loan recipient for a wastewater improvement project to obtain the necessary clearance/ comments from the necessary agencies involved in the intergovernmental review process. Copies of the written clearance/comments are then provided to KDHE, Bureau of Water, Municipal Programs Section.

The Agencies listed on the attached "Distribution List" must be contacted, in writing, for clearance/comment. **Note** - this Distribution List is updated as required to reflect changes in personnel and mailing addresses, and the most recent version can be obtained by calling (785) 296-5525. The interested agencies must be provided a completed copy of the KWPCRLF Application form (blank copy attached) and a brief description and location of the project (see page 2 for additional details on information to be provided). The transmittal letter / form should request review and clearance of the project and specify a deadline for response, generally within 30 days.

When all clearances/comments have been received or the allowable review time has expired, copies of all letters requesting clearances and all responses can be submitted to KDHE - Attn: Rod Geisler, Municipal Programs Section.

(The Kansas Department of Health and Environment also administers the Kansas Public Water Supply Revolving Loan Fund to provide low interest loan financing for drinking water distribution and treatment. For further information regarding the KPWSRLF contact KDHE, Public Water Supply Section, 785/296-0735.)

**Suggested Information to be Provided for  
Environmental Evaluations of Proposed Wastewater  
Treatment Projects**

1. A narrative description of the project including the collection system improvements and/or treatment facilities to be constructed, the rated capacity of the facility, expected effluent discharge volume, the primary receiving water body, and the expected effluent quality.
2. A site map (USGS is acceptable) showing the location of the treatment facility and the effluent discharge location. If a lagoon treatment facility is proposed, a rough layout map of the lagoon itself should also be provided.
3. The exact location (county name and legal description) of the site, the present land use and predominant vegetation type(s) at the new plant site under consideration.

Example:       The preferred alternative would be located in what is presently a wheat field, approximately 200 feet from an oxbow of Blackbird Creek. The oxbow is surrounded by a 50 foot-wide band of mature riparian timber of mixed species.

4. Environmental information such as any existing Environmental Assessments or Impacts Statements, proximity to any known sensitive fish or wildlife habitats (if known). Examples of wildlife habitats include: a) Wetlands, b) State or Federal Wildlife refuges or recreation areas, c) Critical habitats for threatened or endangered species, d) Mature riparian timber, e) Streams designated "Class I" by the U.S. Fish and Wildlife Service, f) Native Prairie tracts.

## DISTRIBUTION LIST

*Federal Agencies:*

Mr. Mike LeValley  
U.S. Dept. of the Interior  
Fish & Wildlife Service  
Ecological Services/  
Partners for Fish & Wildlife  
2609 Anderson Avenue  
Manhattan, Kansas 66502-2801

District Engineer  
Tulsa District  
Corps of Engineer, 1645 S. 101 E. Ave.  
Tulsa, Oklahoma 74128

OR

Attn: Regulatory Branch  
K. C. District – COE  
700 Federal Building  
Kansas City, Missouri 64106-2896

Mr. Eric B. Banks  
State Conservationist  
Natural Resource Conservation Service  
760 S. Broadway  
Salina, Kansas 67401

It is strongly recommended you contact the Kansas City District COE - Regulatory Branch by telephone @ (816) 389-3990 to insure the submittal is directed to the correct COE office. It is also strongly recommended you contact Mr. Mike LeValley of USF&WL @ (785) 539-3474, Ext. 14 for this same reason.

*State Agencies:*

Mr. Keith Sexson, Asst. Secretary  
Kansas Dept. Of Wildlife & Parks  
Environmental Services Section  
512 SE 25th Avenue  
Pratt, Kansas 67124-8174

Dr. Edward Martinko  
Kansas Biological Survey  
University of Kansas  
2041 Constant Avenue  
Lawrence, Kansas 66047

Mr. Doug Louis  
Kansas Corp. Commission  
Wichita Office  
130 S. Market - 2nd Floor  
Wichita, KS 67202

Mr. Tracy Streeter, Director  
Kansas Water Office  
901 S. Kansas Ave.  
Topeka, Kansas 66612-1249

Mr. David W. Barfield, Chief Eng.  
Kansas Dept. Of Agriculture  
Division of Water Resources  
109 SW 9th Street  
Topeka, Kansas 66612

Kansas Geological Survey  
Rex Buchanan  
The University of Kansas  
1930 Constant Avenue  
Lawrence, Kansas 66047-3724

Jennie A. Chinn, Executive Director  
Kansas St. Historical Society  
6425 SW 6th Avenue  
Topeka, Kansas 66615

Mr. Greg Foley  
Executive Director  
State Conservation Commission  
109 SW 9th Street  
Topeka, Kansas 66612

Ms. Donna Fisher  
Kansas Department of Health & Environment  
1000 SW Jackson Street, Suite 400  
Topeka, KS 66612

*Regional Planning Commission (if applicable):*

Mr. Doug McKinney, Executive Director  
North Central Reg. Planning Comm.  
109 North Mill  
Beloit, Kansas 67420

Mr. John Schlegel, Director  
Wichita-Sedg. Co. Metrop. Area Plann.  
City Hall - 10<sup>th</sup> Floor  
455 N. Main  
Wichita, Kansas 67202-1688

Mr. David A. Warm  
Executive Director  
Mid-America Reg. Council  
600 Broadway  
300 Rivergate Center  
Kansas City, MO 64105

Ms. Linda Weldon, Executive Dir.  
Southeast KS. Reg. Planning Comm.  
PO Box 664  
Chanute, Kansas 66720-0664

Tom Bliss, Executive Director  
Mo-Kan Regional Council  
224 North 7<sup>th</sup> Street  
St. Joseph, MO 64501

David Thurbon, Director  
Topeka - Planning Dept.  
620 SE Madison  
Topeka, Kansas 66607

Mr. Randy Hrabe, Executive Director  
NW Kansas Planning & Develop. Comm.  
Box 248  
Hill City, Kansas 67642

Mr. Bill Bolin, Exec. Director  
South Central KS. Economic Dev. Dist.  
200 West Douglas Avenue, Suite 710  
Wichita, Kansas 67202-3075

PLAN OF OPERATION FORMAT

The Plan of Operation (POO) Format is to be used to develop both the Preliminary Plan of Operation (PPOO) and the Final Plan of Operation (FPOO) for Kansas Water Pollution Control Revolving Loan Fund Projects as required by K.A.R. 28-16-13(a)(4). The Plan of Operation must include/discuss the following subjects:

1. General Information

Name of Project: \_\_\_\_\_ Project No. C20 \_\_\_\_\_

Project Consulting Engineer: \_\_\_\_\_

Design Flow Capacity of Plant: \_\_\_\_\_

Brief Description of Designed Treatment Process: \_\_\_\_\_

\_\_\_\_\_

2. Chronological summary of implementation dates.
3. Staffing and training.
4. Records and reports.
5. Laboratory control.
6. Process control and "fine tuning" procedures.
7. Safety.
8. Emergency operating plan.
9. Maintenance management.
10. Operation and maintenance manual.
11. Sewer maintenance program.
12. O&M budget and ordinance development.
13. Startup provisions and operating training.
14. Project performance criteria.
15. Project construction schedule.
16. Estimated construction payment schedule.
17. Projections of annual operating costs (operation, maintenance, and replacement) for next 5 year period.
18. Description of existing Financial Management System of wastewater utility.



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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**Kansas Water Pollution Control Revolving  
Loan Fund - Financial Capability  
Information**

As a pre-requisite to receipt of low interest financing from the KWPCRLF, K.A.R. 28-16-135 requires ...”each loan recipient shall demonstrate and certify to the Secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire system...”. Development of applicable operation, maintenance, and replacement costs is required by K.A.R. 28-16-128 and is submitted within the draft user charge system. The “demonstration” of financial capability is addressed within the body of this document, and the “certification” of the applicant is included at the end of this document.

This information will be reviewed simultaneously by technical, financial, and legal staff in several State offices. Please answer all questions even if you believe you have provided certain information elsewhere in the application. Additional information may be requested by KDHE beyond the items requested in these forms. K.A.R. 28-16-114, 28-16-115 and 28-16-116 are also referenced for your information on these subjects.



# Financial Capability Summary Foldout

## A Simplified Approach



Your community may be planning to construct, operate, and/or manage a wastewater treatment system or other community facilities. Before a long-term commitment is made there are many questions which need to be addressed. If you are applying for EPA construction grant assistance, you must demonstrate to the satisfaction of your State (or EPA for non-delegated States) that your community has the legal, institutional, managerial, and financial capability to construct and support the planned system (please refer to the summary of financial requirements for EPA construction grants).

Whether you expect to obtain funding assistance or plan to go it alone, it is critical that your community's resources are analyzed in light of the commitment being considered. This foldout provides an approach to analyzing financial capability, and is intended to be used by the local officials who are best acquainted with their community: town manager, public works director, planner, budget officer, or clerk. A more comprehensive analytical approach may be found in EPA's Financial Capability Guidebook.

## Certification of Financial Capability

Your community must certify that it has the capability to finance and manage the proposed facility.

The answers to the preceding questions will provide useful information regarding the cost of the proposed facility, how it will be financed, and what this means in terms of costs to the typical household user. In order to evaluate effectively the true impact of the proposed treatment system, however, this information must be viewed within the overall context of the community's financial capability, which is the measure of its existing financial condition, financial resources, legal constraints, and local public policy.

Listed below are additional elements relating to a community's overall financial condition and its ability to pay the local costs of constructing and operating the treatment system. These factors should be considered before signing the financial and management capability certification.

- reasonableness of population projections relative to historic trends (if new population growth is needed to help finance the proposed system)
- total current outstanding indebtedness
- state finance laws and legal debt limits
- historical trends in your community's revenue sources (e.g., changes in taxable assessed property valuation with respect to population)
- current bond rating and its historical trend

If your community would have difficulty financing the proposed project, it should consider alternative methods of financing to mitigate the adverse impacts, re-evaluate the project alternative and scope, or consider staging implementation to spread out financing to future users. When certifying your project, the community should be fully satisfied that both the users and the community as a whole have the capability to finance and manage the facility as proposed.

## Statement of Certification

I hereby certify that we have analyzed the local share of the costs of the proposed wastewater treatment facilities, including their financial impact on this community and the residents of the service area. As a result of these analyses, I have found that we have the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, maintenance, and replacement of the wastewater treatment works.

---

(Signature of elected official or officer authorized to commit funding)

Name:

Title:

Location:

## To the Users of this Foldout

As a community official, your goal is to provide a level of service which will meet your community's needs and which your constituents can afford. It is important to consider wastewater alternatives in light of what is needed to do the job, the cost impacts on the community and the users, and the ability to manage the system.

There are alternatives for small community wastewater management that may be less costly and more appropriate than centralized conventional treatment technologies (see EPA foldout "Less Costly Wastewater Treatment for Your Town"). Analysis of the technical aspects should be augmented by an evaluation of the financial and management consequences for the community. During the planning process the following questions should be addressed:

1. What is proposed in the facilities plan?
2. What roles and responsibilities will local governments have?
3. How much will the facilities cost at today's prices?
4. How will construction, operation and maintenance of the facilities be financed?
5. What are the annual costs per household?

The process of developing the answers to these questions will help you assess which alternative is the best for your community from a technical, financial, and management viewpoint, and once a plan is selected, will help you show whether your community has the financial and management capability to construct, operate, and maintain the facilities.

The information requested on this foldout provides the basic data needed to demonstrate financial capability in accordance with the Financial and Management Capability Policy. Sources for this data include the facilities plan, community financial records, planning and/or engineering studies. While some preliminary analysis may be required to develop the information requested, the foldout is designed to be self-explanatory and easily completed by local personnel.

Your state will review this information and must approve it before they recommend that a construction grant be awarded. The level of detail provided by the state review will depend on how your project compares to a screening procedure that states must establish to identify projects that may encounter financial difficulties. The state will focus its attention on these projects to ensure that any financial problems are resolved prior to construction. You should contact your state as early as possible to find out if your project has been identified by the screening procedure.

## Financial Capability-Summary

Note: The information requested in this foldout is intended to be self-explanatory. If further analysis is needed, please refer to EPA's Financial Capability Guidebook. After completion, copies of these sheets can be distributed at a public hearing as a basis for community decision making; they may also be submitted with the application for an EPA construction grant as a means of fulfilling the financial capability demonstration requirement.

Agency \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Telephone \_\_\_\_\_ Contact \_\_\_\_\_

## A What is Proposed in the Facilities Plan?

- |   |  |
|---|--|
| <p>1. The proposed facilities will be:</p> <p>_____ new _____ expansion _____ upgrade</p>   | <p>4. The facilities will serve (give percentages):</p> <p>Residents now on sewers: _____ %</p> <p>Residents now on onsite systems: _____ %</p> <p>Existing commercial/industrial users: _____ %</p> <p>Anticipated residential growth: _____ %</p> <p>Anticipated commercial/industrial growth: _____ %</p> |
| <p>2. What type of system is planned?</p> <p>Treatment: _____</p> <p>_____</p> <p>Collection: _____</p> <p>_____</p>  | <p>5. Current population now on sewers: _____</p> <p>Current population of proposed service area: _____</p> <p>Design population (year _____): _____</p>   |
| <p>3. Entities to be served:</p> <p>_____ Municipality(ies): _____</p> <p>_____ County: _____</p> <p>_____ Sewer District(s): _____</p> <p>_____ Industry(ies): _____</p> | <p>6. Average annual growth rate over last ten years (consult Bureau of Census data, or State planning office): _____ %</p> <p>Anticipated annual growth rate _____ %</p>  |

## B. What Roles and Responsibilities Will Local Governments Have?

Cooperative arrangements between participating entities may be required to meet the management needs of the wastewater system. If this project is a part of regional facilities, an intergovernmental agreement may be required to establish terms of cost allocation, financing, and management responsibilities.

7. What agency(ies) will:

Own the facilities: \_\_\_\_\_

Operate/manage the system: \_\_\_\_\_

Finance the construction: \_\_\_\_\_

8. If capital and O, M, & R costs are to be shared, give agency names and % shares:

\_\_\_\_\_ %

\_\_\_\_\_ %

\_\_\_\_\_ %

9. Agreements have been established between the operating agency and:

\_\_\_\_\_ Participating Agencies

\_\_\_\_\_ Industry(jes)

\_\_\_\_\_ Other \_\_\_\_\_

10. The participating agencies have reviewed:

\_\_\_\_\_ Wastewater facilities plan

\_\_\_\_\_ Population projections

11. A sewer use ordinance has been established which,

\_\_\_\_\_ Requires developed areas to connect to the system.

\_\_\_\_\_ Prohibits discharge of toxic substances to the system.

\_\_\_\_\_ Establishes connection and extension policies.

\_\_\_\_\_ Other \_\_\_\_\_

## C. How Much Will The Facilities Cost At Today's Prices?

The following figures are tell estimated costs for construction (includes construction related costs) and operation and maintenance of the proposed facilities. Dollar amounts should be obtained from the facilities plan or consulting engineer and updated to reflect today's prices. In some cases, costs of local collection lines or other non-systemwide facilities may be borne by only a portion of the users, and should be separately accounted for in calculating total facilities costs, financing methods, and household costs (column b). If all costs will be shared among all users, only the systemwide costs must be calculated (column a).

12. Estimated Construction Costs:

Treatment Plant

Interceptor Sewers

Pump Stations/Force mains

Collection Sewers

On-site Systems

Land Acquisitions

Construction-Related Costs

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

(a) Systemwide

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Total (a) \$ \_\_\_\_\_**

(b) Non-Systemwide

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

13. Estimated Annual Operation, Maintenance, and Replacement (O, M, & R) costs for system:

Labor \$ \_\_\_\_\_

Utilities \$ \_\_\_\_\_

Materials \$ \_\_\_\_\_

Outside \$ \_\_\_\_\_

Equipment Replacement \$ \_\_\_\_\_

Miscellaneous

Annual O, M, & R (new facilities): (a) \$ \_\_\_\_\_

Existing O, M, & R (carried over): (b) \$ \_\_\_\_\_

Services Total O, M, & R: © \$ \_\_\_\_\_

D. How Will the Facilities be Financed?

14. Amount to be Financed	(a) Systemwide	(b) Non-Systemwide
Total Construction Costs:	(12a) \$ _____	(12b) \$ _____
( - ) EPA funding	_____	_____
( - ) State funding:	_____	_____
( - ) Other Grants	_____	_____
( - ) Cash on Hand (e.g., _____)	_____	_____
Local Share	(a) \$ _____	(b) \$ _____

15. Long-term financing for local costs (consult capital recovery table to estimate annual payments):

Financing Method	Amount	Interest Rate	Term of Maturity	Annual Debt Payment
G.O. Bond	\$ _____	% _____	Yrs _____	\$ _____
Rev. Bond	\$ _____	% _____	Yrs _____	\$ _____
Loan	\$ _____	% _____	Yrs _____	\$ _____
Other	\$ _____	% _____	Yrs _____	\$ _____
<b>Total</b>				\$ _____
How much of this total is for systemwide costs?				15a \$ _____
How much of this total is for non-systemwide costs?				15b \$ _____

16. Total Estimated Annual Costs:

Existing Debt Service:	\$ _____
Systemwide Debt Service (1 5a):	+ \$ _____
Total Annual O, M, & R (1 3c):	+ \$ _____
a. Total Systemwide Costs:	= \$ _____
b. Non-Systemwide Costs (1 5b):	\$ _____

17. Sources of Funding for Annual Wastewater Facilities Costs

User Charges	\$ _____
Property Taxes	\$ _____
Other (_____)	\$ _____
Connection Fees:	\$ _____
Surcharges:	\$ _____
Total Estimated Annual Revenue:	\$ _____

## E. What are the Annual Costs Per Household?

The average annual costs per household for wastewater service are not necessarily the same as the rates you will establish. The cost to a "typical" household consists of a share of the residential system cost (O, M, & R and debt service). Some households may have additional non-systemwide costs (Sec. C above) and/or one-time costs for house laterals and connection fees which should be added to the estimated annual household costs.

18. Systemwide annual cost per household:

○	Total systemwide costs (16a):	\$	
( - )	Non-residential share of total:		
=	Residential share of total:		
÷	Existing households to be served:		
=	Average annual systemwide cost per household:	\$	

19. Non-systemwide household cost:

○	Annual non-systemwide costs (16b):	\$	
÷	Number of properties affected:		
=	Non-systemwide cost per household:		
( + )	Annualized one-time house-hold cost (laterals, etc.): (use capital recovery table to estimate annual amount)		
( + )	Average annual systemwide cost per household:		
=	Total non-systemwide household cost:		

To calculate annual debt service payments, multiply the amount to be financed by the appropriate factor in the capital recovery table. This method can also be used to annualize one-time household costs such as house laterals and connection fees.

## Capital Recovery Table<sup>1</sup>

	Rate of Interest			
Length of Original Maturity	2.5 percent	3.0 percent	3.5 percent	4.0 percent
10	.1143	.1172	.1202	.1233
15	.0808	.0838	.0868	.0899
20	.0641	.0672	.0704	.0736

<sup>1</sup> See: Eugene L. Grant and W. Grant Ireson, Principles of Engineering Economy (New York: The Ronald Press Company, 1970). Table E provides compound interest factors at various rates.

## Summary of financial Requirements for EPA Construction Grants

In order to receive construction grant funding for a wastewater facility, your community must:

**Demonstrate the financial and management capability needed to build and operate the facility.**

The demonstration entails answering five questions (see previous page) regarding the project and how it will be financed; executing an inter-municipal service agreement if necessary (see below); and submitting a signed statement certifying that your community can finance and manage the system. (Financial and Management Capability Policy; 40 CFR 35.2030 and .2104)

**Submit an intermunicipal service agreement.**

This agreement is needed if more than one town is participating in the project. This agreement must include: the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the allocation system will be administered. The requirement for this agreement can be waived by the Region or delegated State under certain conditions. (40 CFR 35.2107)

**Submit a draft plan of operation.**

This plan outlines all the steps needed to ensure successful start-up and efficient operation of the plant. The draft plan must discuss development of: an instruction manual for running the plant, a program to follow in case of emergencies, e.g., power outages or severe weather; personnel training; an adequate budget; reports on how well the plant operates; and a program of routine operating and maintenance procedures. (40 CFR 35.2106)

**Develop a user charge system.**

This system must produce enough revenue for proper operation and maintenance of the plant, pump stations and collection system, and for replacement of equipment when it wears out. It must be based either on actual use, ad valorem (property) taxes or a combination of the two. It must also include a financial management system which accurately accounts for revenues generated by the user charge system and expenses for operation, maintenance, and replacement of the treatment system. (40 CFR 35.2122, .2140 and .2208)



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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**BINDING ASSURANCE**  
**FOR KANSAS WATER POLLUTION CONTROL**  
**REVOLVING LOAN FUND PROJECTS**

I hereby certify in accordance with K.A.R. 28-16-135 that the referenced Wastewater Treatment Project No. \_\_\_\_\_ that applicant has the capability to cover the costs of operation and maintenance (including replacement) of the entire system, of which the proposed project is an integral part, and will continue to provide this capability for the life of the project.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant

APPLICANT ASSURANCE WITH RESPECT TO ACQUISITION  
OF REAL PROPERTY INCLUDING EASEMENTS

FOR KANSAS WATER POLLUTION CONTROL REVOLVING  
LOAN FUND PROJECTS

Please check the appropriate spaces(s) and provide any appropriate explanation.

I hereby certify that with reference to Wastewater Treatment Project No. \_\_\_\_\_ :

\_\_\_\_\_ All necessary real property has been acquired and Certificate as to  
Title to Project Site (March 21, 2011) is attached.

\_\_\_\_\_ Bonafide options have been taken on all necessary real property.

\_\_\_\_\_ Formal condemnation proceedings have been initiated for  
necessary real property.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant

CERTIFICATION AS TO TITLE TO PROJECT SITE

Project No.:

I \_\_\_\_\_, Attorney at Law representing the \_\_\_\_\_, as title counsel, do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (including collection lines, interceptors, outfalls, treatment plants, and appurtenances) of the water pollution control facilities identified as Project No. \_\_\_\_\_, to be constructed and maintained in and upon such site or sites.

2. That, if not previously submitted, I am attaching a legal description of the site or sites on which the treatment facility is to be constructed. (Descriptions of rights of way and easements for sewer lines are not required, but such rights of way and easements are covered by this title opinion.)

3. That I have examined the deed records of the county or counties in which such project is to be located and, in my opinion, the applicant has a legal and valid fee simple title to the site of the project, including necessary easements and rights of way; or such other interest, less than fee simple and fully described below, including terms as to duration or termination, sufficient to assure undisturbed use and possession for the purposes of construction and operation of the project; and in the case of projects serving more than one municipality, that the participating communities have such interests or rights sufficient to assure their undisturbed utilization of the project.

4. That if initiation of negotiations for acquisition of site and/or easements occurred after April 1, 1989, said acquisition was conducted in compliance with 49 CFR Part 24; including that:

(Place a checkmark in the box beside as many of the following statements as are appropriate. At least one statement must be checked; it is possible that all three statements could be applicable. You must be able to certify to A. if the statements in B. and/or C. do not apply to all acquisitions for the project.)

- A. Property was appraised by a qualified appraiser in accordance with nationally recognized appraisal standards; review appraisal was conducted, also by a qualified individual; and both were performed prior to initiation of negotiations;
- B. Certain parcels and/or easements were donated; and the donor, after being fully informed of their rights under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, waived their right to appraisal; and said waivers are on file with the municipality;
- C. Certain parcels and/or easements were, based on a review of available data, determined to have a fair market value of \$10,000 or less; and therefore no appraisals were conducted for those properties.

Note: Items 1, 2, 3 and 5 apply in all cases. Item 4 may or may not be applicable to the KWPCRF project. If Item 4 is applicable, then at least one statement – A., B., or C. – must be checked.

5. That any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded wherever necessary.

6. Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Attorney at Law

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

March 21, 2011

KANSAS REVOLVING LOAN FUND  
ELECTRONIC DEPOSIT  
INFORMATION SHEET

An electronic deposit form DA-130 (04-09) is required by the Department of Administration (D of A) to allow payments to be made by wire transfer. To request the DA-130 please contact:

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785-296-4262  
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## OPERATION AND MAINTENANCE MANUAL FORMAT

This Operation and Maintenance Manual Format is presented for use in the Kansas Water Pollution Control Revolving Loan Fund program in conformance with K.A.R. 28-16-134(a)(5). The following subjects and topics, applicable to the actual Loan project being constructed, must be addressed in the text of the O&M Manual. The Consultant is encouraged to call KDHE to discuss scope and applicability of this requirement.

### I. INTRODUCTION - Manual User Guide

#### A. Operation and Managerial Responsibility

1. Operator responsibilities defined
2. Manager responsibilities
3. List of available training
4. List of recommended publications
5. List of publications furnished facility

#### B. Process Type Description

1. Type of treatment process
  - a) Brief description of major process
  - b) Brief description of individual units
2. Flow pattern with diagram

### II. PERMITS AND STANDARDS

#### A. Treatment requirements/effluent limitations

#### B. List of permits affecting facility (including NPDES, Corps of Engineers Section 10/404, etc.)

1. Permit number and renewal date
2. Permit requirements/regulations of permitting agency
3. Reporting procedure for spills

### III. DESCRIPTION, OPERATION, AND CONTROL OF PROJECT FACILITIES

#### A. For each unit process, general coverage of the following:

1. Description, function, flow routing and design process removal efficiency; with the following specifics related to sludge:
  - a) Estimated sludge production in pounds/day, tons/year and gallons/day and percent solids at start up and at design capacity for each applicable process unit.
  - b) Sludge storage should state total volume, total days storage and at what percent solids.
  - c) Other issues as required by KDHE in development of a "Sludge Management Plan"
2. Listing of major components and mechanical equipment
3. Relationship to adjacent units
4. Methods of control
5. Discussion of common operating problems and control
6. Start-up procedures
7. Emergency shut-down procedures

- B. For each unit process, specific coverage of the following:
  - 1. Normal operation (valve positions, sludge depths, etc.)
  - 2. Alternate operation modes
  - 3. Emergency operations/failsafe features
- C. Sludge Hauling and Application Equipment
- D. Sludge Disposal Method and Final Disposal Location

IV. PERSONNEL

- A. Staffing And Training Plan
  - 1. Supervision
  - 2. Administration
  - 3. Operation
  - 4. Maintenance
  - 5. Total personnel
  - 6. Annual training
  - 7. Laboratory training needs
- B. Qualifications
  - 1. Training
  - 2. Skills required
  - 3. Experience
  - 4. Certification required
- C. Certification
  - 1. Copy State rules and regulations
  - 2. Certification requirements, this facility

V. LABORATORY TESTING

- A. Outline of sampling and testing program, discussion of purpose
- B. Discussion of laboratory results, expected ranges and process control adjustments from test results
- C. Provision of sample laboratory worksheet, instructions, and test results forms
- D. Recommended list of laboratory references
- E. Laboratory equipment, supplies and chemicals inventory

VI. RECORDS

- A. General - importance of record keeping
- B. Facility construction records
- C. Sample, daily operating log of process operations, instructions
- D. Sample, monthly operating report to State Agency, instructions
- E. Sample, annual report format
- F. Operating cost record keeping system recommendations
- G. Personnel record system recommendations
- H. Emergency conditions; bypass reports, permit violations, etc.
- I. Maintenance and laboratory, if not provided elsewhere

VII. MAINTENANCE

- A. Conceptual Description of Maintenance Program
- B. Equipment Record System
  - 1. Equipment numbering system
  - 2. Equipment catalog (configuration list)
  - 3. Maintenance record cards, instructions
  - 4. Nameplate data cards, all major equipment
  - 5. List of warranted equipment, warranty provisions
- C. Miscellaneous Maintenance Records
- D. Planning and Scheduling
  - 1. Normal preventive maintenance schedule provided
  - 2. Lubrication schedule, lubricant list
  - 3. Emergency, corrective maintenance
  - 4. Work order system and sample forms
- E. Storeroom and Inventory System
  - 1. Recommended list of spare parts
  - 2. Procedures; stockroom inventory, sample forms and records
- F. Special tool list, toolroom control
- G. Maintenance personnel staffing requirements
- H. System for cost accounting and budgeting
- I. Recommended list outside contract maintenance tasks, firms

VIII. EMERGENCY OPERATING AND RESPONSE PLAN

- A. Objectives
- B. Vulnerability analysis
- C. Mutual aid list
- D. Emergency equipment list
- E. Records preservation
- F. List of industrial sources (including monitoring and response system)
- G. Police/fire coordination
- H. Personnel assignment in detail
- I. Readiness/emergency response center
- J. Emergency/operating plan

IX. SAFETY

- A. Importance of safety program
- B. Content
  - 1. Emergency phone list
  - 2. Safety equipment list
  - 3. Sewer hazards
  - 4. Electrical hazards
  - 5. Mechanical equipment hazards
  - 6. Explosion and fire hazards
  - 7. Bacterial infection
  - 8. Chlorine hazards
  - 9. Oxygen deficiency/gases
  - 10. Laboratory hazards
  - 11. Process chemicals handling
  - 12. List of references
- C. Periodic safety program review
- D. Accident report form

X. UTILITIES

- A. List of utility suppliers
  - 1. Electrical
  - 2. Telephone
  - 3. Natural gas
  - 4. Water
  - 5. Fuel oil
- B. Capacities, limitation, responsibility coordination

XI. ELECTRICAL SYSTEM

- A. Power source description
- B. Distribution system
- C. Control and monitoring system
- D. Emergency procedures

XII. APPENDIX

- A. Schematics
- B. Valve indices
- C. Sample forms
- D. Process chemicals/source
- E. Detailed design criteria
- F. Equipment suppliers
- G. Manufacturer's manuals
- H. Sources; service & parts
- I. As-built drawings
- J. Approved shop drawings
- K. Dimension prints
- L. Construction photos
- M. Warranties, bonds
- N. State O&M inspection form
- O. EPA Form 7500-5
- P. Sewer use ordinance
- Q. Industrial; ordinance/control
- R. Pretreatment controls/ordinances
- S. Piping color code
- T. Protective coating list
- U. Sewer maintenance program
- V. Map of collection system and lift stations
- W. Recommended references

PLAN OF OPERATION FORMAT

The Plan of Operation (POO) Format is to be used to develop both the Preliminary Plan of Operation (PPOO) and the Final Plan of Operation (FPOO) for Kansas Water Pollution Control Revolving Loan Fund Projects as required by K.A.R. 28-16-13(a)(4). The Plan of Operation must include/discuss the following subjects:

1. General Information

Name of Project: \_\_\_\_\_ Project No. C20 \_\_\_\_\_

Project Consulting Engineer: \_\_\_\_\_

Design Flow Capacity of Plant: \_\_\_\_\_

Brief Description of Designed Treatment Process: \_\_\_\_\_

\_\_\_\_\_

2. Chronological summary of implementation dates.
3. Staffing and training.
4. Records and reports.
5. Laboratory control.
6. Process control and "fine tuning" procedures.
7. Safety.
8. Emergency operating plan.
9. Maintenance management.
10. Operation and maintenance manual.
11. Sewer maintenance program.
12. O&M budget and ordinance development.
13. Startup provisions and operating training.
14. Project performance criteria.
15. Project construction schedule.
16. Estimated construction payment schedule.
17. Projections of annual operating costs (operation, maintenance, and replacement) for next 5 year period.
18. Description of existing Financial Management System of wastewater utility.

ORDINANCE NO. \_\_\_\_\_

An ordinance establishing a user charge system in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, to provide funds needed to pay for (operation and maintenance) (all) expenses associated with the City's wastewater treatment works

WHEREAS, the City of \_\_\_\_\_, \_\_\_\_\_, has constructed wastewater treatment works; and

WHEREAS, the City must pay (the operation and maintenance) (all) expenses associated with said treatment works and charge the users of said treatment works accordingly;

NOW, THEREFORE, BE IT ORDAINED BY THE Council/Commission, of the City of \_\_\_\_\_, that the following user charge system be established:

#### ARTICLE I

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the [City] to collect charges from all users who contribute wastewater to the [City's] treatment works. The proceeds of such charges so derived will be used for the purpose of (operating and maintaining the) (operating, maintaining and retiring the debt for such) public wastewater treatment works.

#### ARTICLE II

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

Section 1: "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter (mg/l).

Section 2: "Normal Domestic Wastewater" shall mean wastewater that has a BOD concentration of not more than \_\_\_\_\_ mg/l and a suspended solids concentration of not more than \_\_\_\_\_ mg/l (and any other pollutant, [specify], concentration of not more than \_\_\_\_\_ mg/l).

Section 3: "Operation and Maintenance" shall mean all expenditures during the useful life of the treatment works for materials, labor, utilities, and other items which are necessary for managing and maintaining the treatment works to achieve the capacity and performance for which such works were designed and constructed.

Section 4: "Replacement" shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

Section 5: "Residential Contributor" shall mean any contributor to the [City's] treatment works whose lot, parcel of real estate, or building is used for domestic dwelling purposes only.

Section 6: "Shall" is mandatory; "May" is permissive.

Section 7: "SS" (denoting Suspended Solids) shall mean solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering.

Section 8: "Treatment Works" shall mean any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions improvement, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

Section 9: "Useful Life" shall mean the estimated period during which a treatment works will be operated.

Section 10: "User Charge" shall mean that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of the wastewater treatment works.

Section 11: "Water Meter" shall mean a water volume measuring and recording device, furnished and/or installed by the [City] of \_\_\_\_\_ or furnished and/or installed by a user and approved by the [City] of \_\_\_\_\_.

### ARTICLE III

Section 1: The user charge system shall generate adequate annual revenues to pay costs of (annual operation and maintenance including replacement) (annual operation and maintenance including replacement and costs associated with debt retirement of bonded capital associated with financing the treatment works) which the [City] may by ordinance designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance including replacement of the treatment works shall be established by this ordinance.

Section 2: That portion of the total user charge collected which is designated for operation and maintenance including replacement purposes as established in Article IV, shall be deposited in a separate non-lapsing fund known as the Operation, Maintenance and Replacement Fund and will be kept in two primary accounts as follows:

a. An account designated for the specific purpose of defraying operation and maintenance costs (excluding replacement) of the treatment works (Operation and Maintenance Account).

b. An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works (Replacement Account). Deposits in the replacement account shall be made (at least annually, [specify]) from the operation, maintenance and replacement revenue in the amount of \$\_\_\_\_\_ annually.

Section 3: Fiscal year-end balances in the operation and maintenance account and the replacement account shall be carried over the same accounts in the subsequent fiscal year, and shall be used for no other purposes than those designated for these accounts. Monies which have been transferred from other sources to meet temporary shortages in the operation, maintenance and replacement fund shall be returned to their respective accounts upon appropriate adjustment of the user charge rates for operation, maintenance and replacement. The user charge rate(s) shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed.

(NOTE: If the municipality is unable to meet any of the above accounting and fund control requirements due to conflicts with existing local bond covenants, state law(s) or other constraints, a statement from the municipality's legal representative citing the reason(s) for such inability to comply and the municipality's proposed alternative method(s) of complying with the intent outlined in Sections 2 and 3 of Article III must be submitted.)

#### ARTICLE IV

##### (Actual Use Rate Structure)

Section 1: Each user shall pay for the services provided by the [City] based on his use of the treatment works as determined by water meter(s) acceptable to the [City].

Section 2: For residential contributors, monthly user charges will be based on average monthly water usage during the months of January, February and March. If a residential contributor has not established a January, February and March average, his monthly user charge shall be the median charge of all other residential contributors.

(NOTE: The use of a winter quarter or winter month average as a basis for calculating user charges is recommended because this procedure charges for water actually reaching the sewer and does not include water used for consumptive purposes such as lawn sprinkling and car washing.)

For industrial and commercial contributors, user charges shall be based on water used during the current month. If a commercial or industrial contributor has a consumptive use of water, or in some other manner uses water which is not returned to the wastewater collection system, the user charge for that contributor may be based on a wastewater meter(s) or separate water meter(s) installed and maintained at the contributor's expense, and in a manner acceptable to the [City].

Section 3: (Reference is made to Appendix A of this ordinance.)

The minimum charge per month shall be \$ \_\_\_\_\_. In addition, each contributor shall pay a user charge rate for operation and maintenance including replacement of \$ \_\_\_\_\_ per 1000 gallons of water (or wastewater) as determined in the preceding section (and an additional \$ \_\_\_\_\_ per 1000 gallons of water (or wastewater) for debt retirement).

Section 4: (Reference is made to Appendix A of this ordinance.)

For those contributors who contribute wastewater, the strength of which is greater than normal domestic sewage, a surcharge in addition to the normal user charge will be collected. The surcharge for operation and maintenance including replacement is:

\$ \_\_\_\_\_ per pound BOD

\$ \_\_\_\_\_ per pound SS

\$ \_\_\_\_\_ per pound Other Pollutant(s) (Specify)

Section 5: Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the [City's] treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance, or replacement of the treatment works, shall pay for such increased costs. The charge of each such user shall be as determined by the responsible plant operating personnel and approved by the [Council/Commission].

Section 6: The user charge rates established in this article apply to all users, regardless of their location, of the [City's] treatment works.

ARTICLE IV  
(Flat Rate Structure)

(NOTE: If constructed properly, a user charge system based upon flat rate charges may be acceptable under certain circumstances. It may be acceptable for cities that do not have water meters. For administrative ease it may also be acceptable for communities of generally less than 1,000 population where there is little variation among users in volume and strength of wastewater discharged to the treatment works.)

Section 1: (Reference is made to Appendix A of this ordinance.)

The following classes of users and charges to those users are hereby established:

Class I: Residential Users: Single Family Contributors

\$ \_\_\_\_/month for operation and maintenance, including replacement

(\$ \_\_\_\_/month for debt service)

Class II: Light Commercial/Institutional Users: Non-residential users which contribute between \_\_ gpd and

\_\_\_\_gpd of less than or equal to normal domestic strength wastewater.

\$ \_\_\_\_/month for operation and maintenance, including replacement

(\$ \_\_\_\_/month for debt service)

Class III: Heavy Commercial Users: Non-residential users which contribute more than

\_\_\_\_gpd of less than or equal to normal domestic strength wastewater.

\$ \_\_\_\_/month for operation and maintenance, including replacement

(\$ \_\_\_\_/month for debt service)

Class IV: Heavy Institutional Users: (Schools)

\$ \_\_\_\_/month for operation and maintenance, including replacement

(\$ \_\_\_\_/month for debt service)

Class V: Extra Strength Users: (NOTE: It may be necessary to establish a separate class for users which contribute greater than normal domestic strength wastewater. Charges to these users will be calculated commensurate with their flow and pollutant contributions using a similar procedure to that found in Appendix A addressing the development of an actual use rate structure. Therefore, the municipality will have a "mixed" user charge system).

The charge to users which contribute greater than normal domestic strength wastewater will be:

\$ \_\_\_\_\_/1000 gallons

\$ \_\_\_\_\_/pound BOD

\$ \_\_\_\_\_/pound SS

\$ \_\_\_\_\_/pound Other Pollutant(s)

Section 2: Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the [City's] treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance, or replacement of the treatment works, shall pay for such increased costs. The charge to each such user will be as determined by the responsible plant operating personnel and approved by the [Council/Commission].

Section 3: The user charge rates established in this article apply to all users, regardless of their location, of the [City's] treatment works.

#### ARTICLE V

(NOTE: Billing periods other than monthly are acceptable. Longer billing periods may be preferable, particularly for smaller communities using flat rate structures so that billing costs can be kept to a minimum. Article IV for a flat rate structure and its corresponding Appendix A uses a monthly charge for illustration purposes only.)

(NOTE: Late payment criteria and penalties are outlined in Article V. The criteria and penalties shown are for illustration purposes only. The municipality may use whatever criteria and penalties it deems appropriate.)

Section 1: All users shall be billed monthly. Billings for any particular month shall be made within thirty days after the end of that month. Payments are due when the billings are made. Any payment not received within thirty days after the billing is made shall be delinquent.

Section 2: A late payment penalty of 10 percent of the user charge bill will be added to each delinquent bill for each thirty days of delinquency. When any bill is thirty days in default, rendition of water and/or sewer service to such premises shall be discontinued until such bill is paid following due notice and opportunity for hearing.

ARTICLE VI

Section 1: The [City] will review the user charge system (at least every two years, [specify]) and revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance including replacement and that the system continues to provide for the proportional distribution of operation and maintenance including replacement costs among users and user classes. (If a flat rate system of charges is utilized, any excess revenues collected from a class of users shall be credited to that class for the next year and its rates will be adjusted accordingly.)

Section 2: The [City] will notify each user at least annually, in conjunction with a regular bill, of the rate being charged for operation, maintenance including replacement of the treatment works.

ARTICLE VII

This ordinance shall be in full force and effect from and after its passage and approval.

Passed by the [Council/Commission] of the [City] of \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPENDIX "A" TO USER CHARGE ORDINANCE  
 Actual Use Rate Structure (Metered)

(NOTE: The charges developed in this ordinance and appendix follow Model Nos. 1 and 2 of Appendix B to 40 CFR 35, dated September 27, 1978. It would also be acceptable to develop charges using Model No. 3, the quantity/quality formula, outlined in the referenced federal regulations.)

This appendix presents the methodology to be used in calculating user charge rates and surcharges and illustrates the calculations followed in arriving at the first year's user charges and surcharges. The unit costs established in this appendix are based on estimates of expenses and loadings. The actual expenses and loadings that occur may differ from these estimates and certainly they will change as time passes. Therefore, the unit costs must be reestablished whenever necessary to reflect actual expenses and loadings. Once the system is in use, the expenses and loadings can be determined from operating records and the unit costs can be adjusted based on these figures.

1. Expenses: The total annual expenses associated with the treatment works, as defined in Article II, Section 8, are estimated as follows:

<u>Item</u>	<u>Annual Expense</u>
Billing and Collection	_____
Administrative	_____
Power	_____
Labor (including fringe benefits)	_____
Material Costs	_____
Replacement Costs (See Appendix B)	_____
(Debt Service)	_____
Other	_____
TOTAL	=====

2. Allocation of Expenses: The total operation and maintenance including replacement expense is allocated to the appropriate pollutants in the following manner. (NOTE: If debt service allocation is to be addressed in this ordinance, it may be allocated in the same manner or it may be allocated in any other manner that the municipality desires.)

Annual \$ to Treat Annual Flow	=	% annual cost allocated to flow x (total annual O & M budget minus billing and collection)
Annual \$ to Treat Annual BOD	=	% annual cost allocated to BOD x (total annual O & M budget minus billing and collection)
Annual \$ to Treat Annual SS	=	% annual cost allocated to SS x (total annual O & M budget minus billing and collection)
Annual \$ to Treat Annual Other	=	% annual cost allocated to pollutant x (total annual Pollutant (Specify) O & M budget minus billing and collection)

(NOTE: The billing and collection expense is deducted from the total O & M budget at this point because each user will pay the same for this expense per billing period. See paragraph 5 below. In some situations other appropriate expenses may be handled in the same manner.)

3. Loadings:

The initial hydraulic loading is estimated to be \_\_\_\_\_ gal/year.

The initial BOD loading is estimated to be \_\_\_\_\_ pounds/year.

The initial SS loading is estimated to be \_\_\_\_\_ pounds/year.

The initial other pollutant loadings is estimated to be \_\_\_\_\_ pounds/year.

4. Unit Costs:

Initial unit cost for flow in \$/gallons	=	$\frac{\text{annual \$ to treat annual flow}}{\text{Estimated annual hydraulic loading}}$
Initial unit cost for BOD in \$/pound	=	$\frac{\text{annual \$ to treat annual BOD}}{\text{Estimated annual BOD loading}}$
Initial unit cost for SS in \$/pound	=	$\frac{\text{annual \$ to treat annual SS}}{\text{Estimated annual SS loading}}$
Initial unit cost for other pollutants	=	$\frac{\text{annual \$ to treat other annual pollutants}}{\text{Estimated annual other pollutant loading}}$ in \$/pound

The unit costs for BOD, SS and Other Pollutants are to be inserted in Article IV, Section 4, of the ordinance.

5. Minimum Charge:

Annual billing and collection cost	=	\$ _____
Annual cost to treat infiltration/inflow (assumed clear water) = unit cost to treat flow x annual infiltration/inflow	=	\$ _____
TOTAL Annual Minimum Cost	=	\$ _____
Minimum Charge/User/Billing Period	=	\$ _____

This minimum charge/user/billing period is to be inserted in Article IV, Section 3, of the ordinance.

(NOTE: The above procedure allocates the cost of transporting and treating infiltration/inflow according to the number of users. Other acceptable means of distributing this cost include allocation based on flow volume of the users or allocation based on the land area of the users.)

6. Residential User Unit Charge: The residential user unit charge is calculated as follows using the pollutant concentrations defining normal domestic wastewater in Article II, Section 2, of this ordinance.

Residential unit charge = unit flow charge

+ (unit BOD charge)(BOD<sub>ND</sub>)(.00834)

+ (unit SS charge)(SS<sub>ND</sub>)(.00834)

where: Residential unit charge is in \$/1000 gal

Unit flow charge is in \$/1000 gal from paragraph 4

Unit BOD charge is in \$/lb BOD from paragraph 4

Unit SS charge is in \$/lb SS from paragraph 4

BOD<sub>ND</sub> is the normal domestic BOD strength in milligrams per liter (mg/l) as defined in Article II, Section 2, of the ordinance

SS<sub>ND</sub> is the normal domestic SS strength in mg/l as defined in Article II, Section 2 of the ordinance and .00834 is a unit conversion factor.

This total residential unit charge is to be inserted in Article IV, Section 3, of the ordinance.

An example calculation of a residential charge for a resident of the [City] of \_\_\_\_\_ follows:

7. Extra Strength Users: For users who contribute wastewater that has greater strength than normal domestic wastewater, the user charge will be calculated as follows:

Total monthly charge to extra strength user =  
charge to residential user + surcharge for BOD (if appropriate) + surcharge for SS (if appropriate)  
+ surcharge for other pollutant (if appropriate).

Total monthly charge to extra strength user =  
minimum charge +v (residential unit charge)  
+v (unit BOD charge)(BOD<sub>ES</sub> - BOD<sub>ND</sub>)(.00834)  
+v (unit SS charge)(SS<sub>ES</sub> - SS<sub>ND</sub>)(.00834)  
+ and so on for any other appropriate pollutant(s) (Specify).

where: Total monthly charge to extra strength user is in dollars  
Minimum charge is in dollars as calculated in paragraph 5

v is the volume of wastewater in 1000 gallons discharged by the extra strength user during the month

Residential unit charge is in \$/1000 gal as calculated in paragraph 6

Unit BOD charge is in \$/lb BOD from paragraph 4

Unit SS charge is in \$/lb SS from paragraph 4

BOD<sub>ES</sub> is the average BOD concentration in milligrams per liter (mg/l) contributed by the extra strength user during the month

SS<sub>ES</sub> is the average SS concentration in mg/l contributed by the extra strength user during the month

BOD<sub>ND</sub> is the normal domestic BOD strength in mg/l as defined in Article II, Section 2, of the ordinance

SS<sub>ND</sub> is the normal domestic SS strength in mg/l as defined in Article II, Section 2, of the ordinance

and .00834 is a unit conversion factor.

An example user charge calculation for an extra strength user of the [City] of \_\_\_\_\_ treatment works follows:

APPENDIX "A" TO USER CHARGE ORDINANCE  
 (Flat Rate Structure)

(NOTE: This methodology assumes that all users contribute less than or equal to normal domestic strength wastewater. As indicated in the note under Class V in Article IV, Section 1, of the ordinance, if a high strength user exists, it will be necessary for the municipality to develop a "mixed" user charge system.)

This appendix presents the methodology to be used in calculating user charge rates and illustrates the calculations followed in arriving at the first year's user charges. The charges established in this appendix are based on estimates of expenses and loadings. The actual expenses and loadings that occur may differ from these estimates and certainly they will change as time passes. Therefore, the user charges must be reestablished whenever necessary to reflect actual expenses and loadings. Once the system is in use, the expenses and loadings can be determined from operating records and the user charges can be adjusted based on these figures.

1. Expenses: The total annual expenses associated with the treatment works defined in Article II, Section 8, are estimated as follows:

<u>Item</u>	<u>Annual Expense</u>
Billing and Collection	_____
Administrative	_____
Power	_____
Labor (including fringe benefits)	_____
Material Costs	_____
Replacement Costs (See Appendix B)	_____
(Debt Service)	_____
Other	_____
TOTAL	=====

2. Loadings:

The initial hydraulic loading is estimated to be \_\_\_\_\_ gal/year.

(NOTE: For administrative ease, the annual hydraulic loading to the wastewater treatment plant may be assumed to be four times the winter quarter water usage for the municipality from both public and private water supplies. By using winter quarter water usage, residential users will not be charged for consumptive use of water during the summer months. The difference between actual total wastewater flow at the wastewater treatment plant and the actual total potable water used by users of the municipality is infiltration/inflow. By calculating a unit flow charge based on the total annual water usage and the total annual budget, the cost of transporting and treating infiltration/inflow is being distributed according to flow volume of the users. This approach is shown because of its ease of administration and because infiltration/inflow tends to be less significant in municipalities where flat rate structures are acceptable because of the collection system size, age of the collection system, and type of treatment generally employed in these municipalities. Other acceptable means of distributing the cost of transporting and treating infiltration/inflow include allocation based on the number of users or allocation based on the land area of the users.)

3. Unit Cost:

The initial unit cost for flow in \$/gallons =  $\frac{\text{total annual budget}}{\text{total annual flow}}$

(NOTE: If debt service is to be addressed in this ordinance, it may be allocated in the same manner or it may be allocated in any other manner that the municipality desires)

4. Establishment of User Classes:

User	Number of Users	Average Monthly Water Used per User	Total Annual Water Used	Cumulative Usage per Class
Residential Class				
Residential	XX	XXX	<u>XXX</u>	<u>XXX</u>
Light Commercial/ Institutional				
Filling Station	XX	XXX	XXX	
Bank	XX	XXX	XXX	
Drive In	XX	XXX	XXX	
Bowling Alley	XX	XXX	XXX	
Church	XX	XXX	<u>XXX</u>	XXX
Heavy Commercial				
Car Wash	XX	XXX	XXX	
Restaurant	XX	XXX	XXX	
Laundromat	XX	XXX	<u>XXX</u>	XXX
Heavy Institutional				
School	XX	XXX	<u>XXX</u>	<u>XXX</u>
TOTAL				<u>XXX</u>

(NOTE: The establishment of various user classes is dependent, of course, on the particular users discharging to the grantee's treatment works. The classes must be established such that the individual users within a single user class do not vary significantly in volume or strength of wastewater contributed to the treatment works.)

5. Calculation of charges to users in each user class:

Monthly charge per user in a particular user class =  $\frac{(\text{cumulative class usage})(\text{unit cost})}{(\text{number of users in class})}$  (12)

where: Monthly charge per user is in dollars

Cumulative class usage is in gallons from paragraph 4

Unit cost is in \$/gallon from paragraph 3

Number of users in class is from paragraph 4, and

12 is a conversion factor.

Actual user charges for each user class are to be inserted in Article IV, Section 1, of the ordinance.

Actual calculations for each user class follow:



SAMPLE CALCULATION OF ANNUAL REPLACEMENT REVENUE TO BE COLLECTED

I.	Today's Replacement Cost	<u>5 Years</u>	<u>10 Years</u>	<u>15 Years</u>	<u>20 Years</u>
	Air Blowers	\$8,000.00	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
	Grinders/Shredder		6,000.00		6,000.00
	Primary Clarifiers Drive Mech.		2,000.00		2,000.00
	Intermediate Clarifiers Drive Mech.		2,000.00		2,000.00
	Raw Sewage Pumps		5,000.00		5,000.00
	Intermediate Lift Pumps		5,000.00		5,000.00
	Humus Return Pump		3,000.00		3,000.00
	Backwash Pump		3,000.00	7,500.00	3,000.00
	Chlorination Equipment			8,000.00	
	Sludge Pump				
		<u>\$8,000.00</u>	<u>\$34,000.00</u>	<u>\$23,500.00</u>	<u>\$34,000.00</u>
II.	Future Replacement Cost (Assumed 5% Inflation)				
		<u>Cost at:</u>			
	Present Cost (Interest Factor)	<u>5 Years</u> (1.28)	<u>10 Years</u> (1.63)	<u>15 Years</u> (2.08)	<u>20 Years</u> (2.65)
	\$ 8,000 (5-Year Equipment Cycle)	\$10,240.00	\$13,040.00	\$16,640.00	\$21,200.00
	\$26,000 (10-Year Equipment Cycle)	N/A	43,380.00	N/A	68,900.00
	\$15,500 (15-Year Equipment Cycle)	<u>N/A</u>	<u>N/A</u>	<u>32,240.00</u>	<u>N/A</u>
	Future Replacement Costs	\$10,240.00	\$55,420.00	\$48,880.00	\$90,100.00
III.	How Much is Needed Annually?				
	Future Replacement Costs	\$10,240.00	\$55,420.00	\$48,880.00	\$90,100.00
	SFF-5 Yrs., 6% (.177)(\$10,240)= \$1,812	<u>-10,240.00</u>	<u>-10,240.00</u>	<u>-10,240.00</u>	<u>-10,240.00</u>
		-0-	\$45,180.00	\$38,640.00	\$79,860.00
	SFF-10 Yrs., 6% (.076)(\$45,180)= \$3,434		<u>-45,180.00</u>	<u>-19,368.00</u>	<u>-19,368.00</u>
			-0-	\$19,272.00	\$60,492.00
	SFF-15 Yrs., 6% (.043)(\$19,272)= \$ 829			<u>-19,272.00</u>	<u>- 4,676.00</u>
				-0-	\$55,816.00
	SFF-20 Yrs., 6% (0.27)(\$55,816)= <u>\$1,507</u>				<u>-55,816.00</u>
					-0-
	Total Annual Replacement Revenue <u>\$7,582</u> to be collected				<u><u>-0-</u></u>

APPENDIX "B" TO USER CHARGE ORDINANCE  
 Sample Replacement Schedule

Years From Treatment Works In Operation	Replacement Item	Replacement Account		
		Expenditure	Income	Balance
			(UC+Interest)	
1	N/A	-0-	7582 + 0	7,582
2	N/A	-0-	7582 + 455	15,619
3	N/A	-0-	7582 + 937	24,138
4	N/A	-0-	7582 + 1448	33,168
5	Air Blowers	10,240	7582 + 1990	32,500
6	N/A	-0-	7582 + 1950	42,032
7	N/A	-0-	7582 + 2522	52,136
8	N/A	-0-	7582 + 3128	62,846
9	N/A	-0-	7582 + 3771	74,199
10	Air Blowers Grinders/Shredder Primary Clarifiers Drive Mech. Intermediate Clarifiers Drive Mech. Raw Sewage Pumps Intermediate Lift Pumps Humus Return Pump Backwash Pump	55,429	7582 + 4452	30,813
11	N/A	-0-	7582 + 1849	40,244
12	N/A	-0-	7582 + 2415	50,241
13	N/A	-0-	7582 + 3014	60,837
14	N/A	-0-	7582 + 3650	72,069
15	Air Blowers Backwash Pump Sludge Pump	48,880	7582 + 4324	35,095
16	N/A	-0-	7582 + 2106	44,783
17	N/A	-0-	7582 + 2687	55,052
18	N/A	-0-	7582 + 3303	65,937
19	N/A	-0-	7582 + 3956	77,475
20	Air Blowers Grinders/Shredder Primary Clarifiers Drive Mech. Intermediate Clarifiers Drive Mech. Raw Sewage Pumps Intermediate Lift Pumps Humus Return Pump Backwash Pump	90,100	7582 + 4649	- 394

THE MODEL ORDINANCE

AN ORDINANCE REGULATING THE USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS, PRIVATE SEWAGE DISPOSAL, THE INSTALLATION AND CONNECTION OF BUILDING SEWERS, AND THE DISCHARGE OF WATERS AND WASTES INTO THE PUBLIC SEWER SYSTEM(S): AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF: IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, STATE OF \_\_\_\_\_.

Be it ordained by the Mayor and Council/Commission of the City of \_\_\_\_\_, State of \_\_\_\_\_, as follows:

ARTICLE I

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

- Sec. 1. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.
- Sec. 2. "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.
- Sec. 3. "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.
- Sec. 4. "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.
- Sec. 5. "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.
- Sec. 6. "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
- Sec. 7. "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
- Sec. 8. "Person" shall mean any individual, firm, company, association, society, corporation, or group.
- Sec. 9. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

- Sec. 10. "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle, greater than one-half (½) inch (1.27 centimeters) in any dimension.
- Sec. 11. "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
- Sec. 12. "Sanitary Sewer" shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.
- Sec. 13. "Sewage" shall mean a combination of the water-carried wastes from residents, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.
- Sec. 14. "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.
- Sec. 15. "Sewage Works" shall mean all facilities for collecting, pumping, treating and disposing of sewage.
- Sec. 16. "Sewer" shall mean a pipe or conduit for carrying sewage.
- Sec. 17. "Shall" is mandatory; "May" is permissive.
- Sec. 18. "Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.
- Sec. 19. "Storm Drain" (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
- Sec. 20. "Superintendent" shall mean the [Superintendent of Sewage Works and/or of Water Pollution Control] of the [city] of [ ], or his authorized deputy, agent, or representative.
- Sec. 21. "Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.
- Sec. 22. "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.
- Sec. 23. "Hearing Board" shall mean that Board appointed according to provision of Article [ ]. (This section to be included only if optional article entitled "Hearing Boards" is made a part of the ordinance.)

## ARTICLE II

- Sec. 1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the [city] of [ ], or in any area under the jurisdiction of said [city], any human or animal excrement, garbage, or other objectionable waste.
- Sec. 2. It shall be unlawful to discharge to any natural outlet within the [city] of [ ], or in any area under the jurisdiction of said [city], any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.
- Sec. 3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.
- Sec. 4. The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the [city] and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the [city], is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within [ninety (90) days] after date of official notice to do so, provided that said public sewer is within [one hundred (100) feet 30.5 meters] of the property line.

## ARTICLE III

- Sec. 1. Where a public sanitary or combined sewer is not available under the provisions of Article II, Section 4, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.
- Sec. 2. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the [Superintendent]. The application for such permit shall be made on a form furnished by the [city], which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the [Superintendent]. A permit and inspection fee of [ ] dollars shall be paid to the [city] at the time the application is filed.
- Sec. 3. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the [Superintendent]. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the [Superintendent] when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within [ ] hours of the receipt of notice by the [Superintendent].
- Sec. 4. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of [ ]. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than [ ] square feet (square meters). No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- Sec. 5. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Article III, Section 4, a direct connection shall be made to the public sewer in compliance with this ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
- Sec. 6. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the [city].

- Sec. 7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.
- Sec. 8. When a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

#### ARTICLE IV

- Sec. 1. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the [Superintendent].
- Sec. 2. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the [city]. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the [Superintendent]. A permit and inspection fee of [ ] dollars for a residential or commercial building sewer permit and [ ] dollars for an industrial building sewer permit shall be paid to the [city] at the time the application is filed.
- Sec. 3. All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the [city] from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- Sec. 4. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
- Sec. 5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the [Superintendent], to meet all requirements of this ordinance.
- Sec. 6. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the [city]. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- Sec. 7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- Sec. 8. No permit shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

- Sec. 9. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the [city], or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the [Superintendent] before installation.
- Sec. 10. The applicant for the building sewer permit shall notify the [Superintendent] when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the [Superintendent] or his representative.
- Sec. 11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the [city].

#### ARTICLE V

- Sec. 1. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.
- Sec. 2. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the [Superintendent]. Industrial cooling water or unpolluted process waters may be discharged on approval of the [Superintendent], to a storm sewer, combined sewer, or natural outlet.
- Sec. 3. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
- (a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
  - (b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer.
  - (c) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
  - (d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

- Sec. 4. No permit shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the [Superintendent] that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the [Superintendent] will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:
- (a) Any liquid or vapor having a temperature higher than one hundred fifty (150)°F (65°C).
  - (b) Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150)°F (0 and 65°C).
  - (c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the [Superintendent].
  - (d) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
  - (e) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the [Superintendent] for such materials.
  - (f) Any waters or wastes containing phenols or other taste- or odor- producing substances, in such concentrations exceeding limits which may be established by the [Superintendent] as necessary, after treatment of the composite sewage, to meet the requirements of State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
  - (g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the [Superintendent] in compliance with applicable State and Federal regulations.
  - (h) Any waters or wastes having a pH in excess of [9.5].
  - (i) Materials which exert or cause:
    - (1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate).
    - (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
    - (3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
    - (4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

- (j) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (k) Any waters or wastes having (1) a 5-day BOD greater than 300 parts per million by weight, or (2) containing more than 350 parts per million by weight of suspended solids, or (3) having an average daily flow greater than 2 percent of the average sewage flow of the [city], shall be subject to the review of the [Superintendent]. Where necessary in the opinion of the [Superintendent], the owner shall provided, at his expense, such preliminary treatment as may be necessary to (1) reduce the biochemical oxygen demand to 300 parts per million by weight, or (2) reduce the suspended solids to 350 parts per million by weight or (3) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the [Superintendent] and no construction of such facilities shall be commenced until said approvals are obtained in writing.

Sec. 5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4 of this Article, and which in the judgement of the [Superintendent], may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the [Superintendent] may:

- (a) Reject the wastes,
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers,
- (c) Require control over the quantities and rates of discharge, and/or
- (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 10 of the Article.

If the [Superintendent] permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the [Superintendent], and subject to the requirements of all applicable codes, ordinances and laws.

Sec. 6. Grease, oil, and sand interceptors shall be provided when, in the opinion of the [Superintendent], they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the [Superintendent], and shall be located as to be readily and easily accessible for cleaning and inspection.

Sec. 7. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

Sec. 8. When required by the [Superintendent], the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the [Superintendent]. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

- Sec. 9. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hours composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples.)
- Sec. 10. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the [city] and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the [city] for treatment, subject to payment therefore, by the industrial concern.

#### ARTICLE VI

- Sec. 1. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

#### ARTICLE VII

- Sec. 1. The [Superintendent] and other duly authorized employees of the [city] bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this ordinance. The [Superintendent] or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.
- Sec. 2. While performing the necessary work on private properties referred to in Article VII, Section 1 above, the [Superintendent] or duly authorized employees of the [city] shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the [city] employees and the [city] shall indemnify the company against loss or damage to its property by [city] employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Article V, Section 8.
- Sec. 3. The [Superintendent] and other duly authorized employees of the [city] bearing proper credentials and identification shall be permitted to enter all private properties through which the [city] holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

ARTICLE VIII

- Sec. 1. Any person found to be violating any provision of this ordinance except Article VI shall be served by the [city] with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- Sec. 2. Any person who shall continue any violation beyond the time limit provided for in Article VIII, Section 1, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding [\$100] dollars for each violation. Each 24-hour period in which any such violation shall continue shall be deemed a separate offense.
- Sec. 3. Any person violating any of the provisions of this ordinance shall become liable to the [city] for any expense, loss, or damage occasioned the [city] by reason of such violation.

ARTICLE IX

- Sec. 1. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- Sec. 2. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

ARTICLE X

- Sec. 1. This ordinance shall be in full force and effect from and after its passage, approval, recording, and publication as provided by law.
- Sec. 2. Passed and adopted by the [Council/Commission] of the [city] of \_\_\_\_\_, State of \_\_\_\_\_ on the \_\_\_\_ day of [Month], [Year], by the following vote:

Ayes \_\_\_\_\_:namely  
Nays \_\_\_\_\_:namely

Approved this \_\_\_\_\_ day of \_\_\_\_\_,

(Signed) \_\_\_\_\_, (Mayor)

Attest:

(Signed) \_\_\_\_\_, (Clerk)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
Division of Environment

KANSAS ENVIRONMENTAL REVIEW PROCEDURE  
FOR  
THE KANSAS WATER POLLUTION CONTROL REVOLVING LOAN PROGRAM

Mark Parkinson  
GOVERNOR

Roderick L. Bremby  
SECRETARY

John W. Mitchell  
Director, Division of Environment

Karl Mueldener  
Director, Bureau of Water

I. Authority

This procedure was developed under the authority of K.S.A. 65-3323 and K.A.R. 28-16-137 and implements K.S.A. 65-3322 and K.A.R. 28-16-137. For further guidance throughout this document, reference is made to 40 CFR Part 6 as in effect January 1, 1989.

II. Purpose

The purpose of this document is to establish Kansas Department of Health and Environment's (KDHE) policies and procedures for the identification and analysis of the environmental impacts of projects to be provided using financial assistance from the Kansas Water Pollution Control Revolving Fund (KWPCRF).

III. Definitions

1. "Applicant" means any individual, agency or entity which has filed an application for loan assistance under the Kansas Water Pollution Control Revolving Fund Act.
2. "Categorical exclusion" means an exemption from the substantive environmental review requirements of this environmental review procedure granted by KDHE based on the requirements of Chapter VI of this document.
3. "Environmental review" means the process whereby an evaluation is conducted by KDHE to determine whether a proposed project financed from the KWPCRF may have a significant impact on the environment and therefore require preparation of an Environmental Impact Statement (EIS).
4. "Environmental information document" means any written analysis prepared by a loan applicant describing the environmental impacts of a proposed project. This document shall include sufficient information necessary to prepare an environmental assessment.
5. "Environmental impact statement" (EIS) means a document prepared by KDHE to discuss any significant adverse effect on the environment resulting from a proposed KWPCRF project. An EIS also includes potential mitigation measures.
6. "Finding of no significant impact" (FNSI) means a document issued by KDHE following its determination based on the findings of the environmental assessment that an EIS will not be prepared in accordance with Chapters VII and X of this document.

IV. Applicability

This environmental review procedure shall result in either the issuance of a categorical exclusion, a finding of no significant impact, or the preparation of an environmental impact statement, and applies to KWPCRF projects at any one of the following project completion stages:

1. Approval of a facilities plan or an amendment to the plan;
2. Loan award for a project where significant change has occurred in the project or its environmental impact since prior compliance with this review procedure;
3. More than 5 years elapsed between the dates of the environmental review and the loan application; and
4. Loan award for a project when or where project documentation were completed prior to filing a loan application.

V. Public and Other Agency Involvement

1. General

KDHE will involve the public in the environmental review process in accordance with program regulations and agency policies on public participation.

2. Publication of notice of intent for an EIS.

Following a KDHE decision to prepare an EIS, appropriate notifications to interested and affected members of the public will be given and the notice of intent will be published in the Kansas Register.

3. Public meetings or hearings.

Appropriate public meetings or hearings will be conducted by KDHE following the completion of a draft EIS. The draft EIS will be made available to the public at least 30 days in advance of the meeting or hearing.

4. Finding of no significant impact.

A FNSI document will afford the same public review opportunity as an EIS which will not be shorter than 30 days. KDHE will consider comments submitted on the FNSI before approval of a loan.

5. Record of decision (ROD).

KDHE will disseminate the ROD to those parties which commented on the EIS.

6. Categorical exclusion.

An applicant who files for and receives a determination of categorical exclusion shall publish a notice indicating the determination of eligibility in the local official newspaper and indicate the availability of the supporting documentation for public inspection.

VI. Categorical Exclusions

Projects which do not have a significant effect on the quality of the human environment may be exempted from substantive environmental review requirements. Environmental information documents (EID) and/or environmental impact statements will not be prepared for excluded projects. Such projects may include:

1. Projects which do not affect the degree of treatment or capacity of the existing facility;
2. Infiltration and inflow corrections;
3. Replacement projects of existing mechanical equipment or structures;
4. Upgrading of existing treatment processes and minor expansion of existing treatment works projects in communities with less than 10,000 population; and,
5. Projects using on-site disposal techniques for communities with less than 10,000 population.

VII. Environmental Review Process

KDHE's environmental review process for loan projects under the KWPCRF Act will use an interdisciplinary team approach and will include the following actions:

1. Review of facilities plans.

A facilities plan shall include adequate environmental information documentation for preparing an environmental assessment.

2. Environmental assessment (EA).

The EA process will include the analyzing of all potentially significant environmental impacts including:

- a) description of the existing environment;
- b) description of the future environment with and without the proposed loan project;
- c) purpose and need for the project including population projection;
- d) comparative analysis of feasible alternatives to the project, the analysis should list the proposed project as one of the alternatives and consider, if applicable to the project, the following:
  - i) flow and waste reduction measures included infiltration/inflow considerations;
  - ii) pretreatment requirements;
  - iii) water conservation measures;
  - iv) alternative locations, capacities, and construction planning;
  - v) alternative waste management techniques: pretreatment, no discharge, treatment and discharge, wastewater reuse, land application, and individual systems;
  - vi) alternative sludge management techniques;
  - vii) more efficient operation and maintenance;
  - viii) energy reduction measures;
  - ix) multi-use including recreation, other open space, and environmental education considerations; and,
  - x) environmental consequences of the alternatives including mitigating measures of adverse environmental effects.

The alternatives shall be ranked with respect to present value of costs; direct, indirect and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements;

- e) requirements for irretrievable commitments of resources to the entire project including mitigation of adverse environmental effects.

3. FNSI/EIS determination.

a) Conditions for producing a FNSI.

When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any potential significant adverse environmental impacts, a FNSI will be issued. The EA will be part of the FNSI document.

b) Conditions requiring an EIS.

1. The project would significantly affect the existing land use or the growth and/or distribution of population.
2. The project is not consistent with local land use plan or policy.
3. The project would have significant adverse effects on or be located in wetlands.
4. The project would significantly affect threatened and endangered species or their habitats or be located in the habitat.
5. The project would induce changes that significantly:
  - i) displace population;
  - ii) alter the character of existing residential area;
  - iii) adversely affect a flood plan; or
  - iv) adversely affect significant amounts of important farm land or agricultural operations on this land.
6. The project would have significant adverse effects on park lands, preserves, other public lands or on areas of recognized scenic, recreational archeological or historic value.
7. The project would have a significant adverse effect upon local ambient air quality, noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.
8. The project is highly controversial.

VIII. Environmental Impact Statement Preparation

The following steps will be followed by KDHE in preparation of an EIS:

1. Issuance of a notice of intent to prepare an EIS.
2. Determination of the scope of the EIS. This process will include a scoping meeting with the applicant and parties potentially affected by the project.
3. Determination of the appropriate format of the EIS.
4. Determination of the need for and the procedure of coordinating the EIS process with other environmental review and/or consultation requirements.
5. Development of an agency review plan, a public participation plan, and a schedule and distribution process for the draft and final EIS documents.

IX. Record of Decision (ROD) and Identification of Mitigating Measures

After a final EIS has been issued, KDHE will prepare and issue the ROD in conjunction with the approval of the project. The ROD will include identified mitigating measures as loan conditions derived from the EIS process and will be widely distributed to all interested parties involved in the EIS process. The provisions of the Kansas Administrative Procedure Act (1988 Supp. 77-501 et seq) shall apply for adjudicative intervention during the deliberation of an ROD.

X. Public Participation

The following minimum public participation will be included in the environmental review process:

1. One public meeting during the preparation of the facilities plan to discuss alternatives.
2. One public hearing prior to the formal adoption of a facilities plan.
3. An EIS process will follow its specific public participation plan in addition to 1 and 2 above.

XI. Coordination of an Environmental Review

The environmental review procedure will be coordinated with all appropriate entities including, but not limited to:

1. Dept. of Agriculture - Division of Water Resources;
2. Kansas Biological Survey;
3. State Conservation Commission;
4. Kansas Corporation Commission;
5. Kansas Geological Survey;
6. Kansas Water Office;
7. Department of Wildlife and Parks;
8. Kansas State Historical Society;
9. Others as appropriate such as Local Planning Agencies;
10. U.S. Fish and Wildlife Service;
11. U.S. Soil Conservation Service;
12. U.S. Corps of Engineers; and,
13. U.S. Environmental Protection Agency.

The coordination of an environmental review will be integrated to include, in a practicable manner, considerations of the effects or potential effects of the following federal and state laws and federal Executive Orders:

1. Historic Sites Act of 1935 regarding landmarks;
2. National Historic Preservation Act (1966), the Archaeological and Historic Preservation Act of 1974 and Executive Order 11593 regarding historic and archaeological data;
3. Executive Order 11990 regarding wetlands;
4. Executive Order 11988 regarding floodplains;
5. Wild and Scenic River Act regarding wild and scenic rivers;
6. Farmland Protection Policy Act regarding preservation of prime farmland;

7. Endangered Species Act regarding threatened or endangered species. consultation with Fish and Wildlife required where habitat of such a species is impacted;
8. Fish and Wildlife Coordination Act to protect fish and wildlife resources;
9. Natural and scientific areas as designated by the Natural and Scientific Areas Advisory Board;
10. Outstanding natural resource waters of unique significance as listed in K.A.R. 28-16-28(c); and
11. Wildlife areas as designated pursuant to K.A.R. 23-8-1.

KDHE's response to public and agency comments received during the environmental review procedure will be incorporated in the final FNSI or ROD.

## Project Audit Requirements / A-133 Audit Requirements

The KWPCRF low interest loan program requires an annual financial audit of the project, the wastewater utility, and/or the loan recipient for any fiscal year loan funds are spent for the project. The following audit requirements are included in the loan agreement:

“(g) **Records and Accounts**

(1) The Municipality shall keep accurate records and accounts for its System (the “System Records”), separate and distinct from its other records and accounts (the “General Accounts”). Such System Records shall be audited annually in accordance with generally accepted auditing standards if the total Disbursement of Loan Proceeds exceed \$25,000 for the Municipality's fiscal year. This audit shall be completed by an independent certified public accountant or firm of independent certified public accountants, or by an independent registered municipal accountant, and may be part of the single agency audit made on the Municipality's General Accounts in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, **Audits of States, Local Governments, and Non-Profit Organizations** as amended in 1996 and 2003 and as may be further amended and revised. Such System Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 270 days of the close of the Municipal Fiscal Year being so audited.

(2) The Municipality shall maintain Project accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association.

(h) **Inspections.** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, including the System Records and General Accounts, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith.

(i) **Financial Information.** The Municipality specifically agrees to provide to KDHE a reasonable number of copies of such financial information and operating data of the Municipality and the System to the extent necessary for KDHE to comply with its continuing disclosure obligations set forth in the SEC Rule and the Pledge Agreement. Such financial information shall be accompanied by an audit report prepared in accordance with the provisions of

*subsection (g)(2)* hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law. Any such requested financial information and operating data shall be supplied to KDHE within 270 days after the end of the Municipal Fiscal Year. Such requirement may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System, unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, un-audited financial information shall be provided to KDHE pending receipt of the audit report. In addition, the Municipality shall provide KDHE with prompt notification of the occurrence of certain material events. For purposes of this paragraph, "material event" shall mean: (a) principal and interest payment delinquencies on any Indebtedness; (b) non-payment related defaults in agreements authorizing any Indebtedness; (c) rating changes on any Indebtedness; (d) adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or (e) unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.”

Project payments for KWPCRF low interest loans may come from many sources including Federal grants, state match bond proceeds, leveraging bond proceeds, and “recycled” monies, or a combination of these sources. If loan payments are \$25,000 or more in a fiscal year, an audit must be prepared and submitted. If the Loan Recipient receives a total of funding from Federal sources of \$500,000 or more in a fiscal year including KWPCRF loan payments from the Federal grant, an A-133 Audit is required. KDHE will notify the loan recipient in the transmittal letter for the Draft Loan Agreement if Federal grant funds will be provided by including the following statement:

“Please note this Loan Agreement is funded with Federal funds. As such, the (City) (County) (Loan Recipient) may be required to conduct an A-133 Audit for the fiscal years when the loan proceeds are spent. Please refer to Federal A-133 Audit requirements presented in Section 3.02(g), (h), and (i) of the Loan Agreement.

KDHE will also notify any Loan Recipient that receives Federal funds in the prior fiscal year by letter in January of the following year of the exact amount of Federal funds paid in the prior fiscal year.

# **TAB 4**

## **Procurement Procedure**



*Mark Parkinson, Governor*  
*John W. Mitchell, Acting Secretary*

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Environment

FROM: Karl Mueldener, P.E.  
Director, Bureau of Water

SUBJECT: Kansas Water Pollution Control Revolving Loan Fund -  
Procurement Procedures (V-4 + D/B)

PURPOSE: To present Department Policy and help clarify the Federal, State, and Local requirements relating to procurement of goods and services in the Kansas Water Pollution Control Revolving Loan Fund Program for the FFY 2010 Federal Funding Program.

BACKGROUND: The State Revolving Loan Fund (SRF) concept was established by Congress in Title VI of the Water Quality Act of 1987 (P.L. 100-4), on February 4, 1987. This Act and the EPA "Final Initial Guidance" dated January 1988 imposed several EPA program requirements related to procurement and construction activities on the SRF projects. The "cross-cutting" Federal Legislation applicable to any Federally funded program impose several requirements as well, and these requirements are presented in the document "Cross-Cutting Federal Authorities: A Handbook on their Applicant in the Clean Water and Drinking Water State Revolving Fund Programs – October 2003". A copy is attached as Appendix J. The Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive; implementing Administrative Regulations K.A.R. 28-16-110 through 28-16-138, and other existing State Laws and regulations related to procurement and construction activities also impose several requirements on the SRF. Specifically, K.A.R. 28-16-131 (attached as Appendix A) requires projects follow applicable State procurement laws and regulations, and gives the Secretary of KDHE the authority to establish procurement procedures. The FFY 2010 Federal Appropriation law requires substantial changes to the SRF programs and procurement actions, also included here. These requirements may change from time to time as Federal and State Legislation is enacted, and this Policy Memorandum will be revised accordingly.

POLICY AND REQUIREMENTS: It shall be the policy of KDHE to impose procurement procedures and requirements on SRF projects as presented in this document. The policy memo is arranged by subject as follows:

Subject

- I. Engineering/Architectural Services
- II. Force Account
- III. Construction Projects
- IV. Small Purchases
- V. Design / Build and Negotiated Procurement
- VI. Recipient Appeals

Attachments

- Appendix A KDHE KWPCRLF Regulations 28-16-131 and 28-16-134(a)(3) – 1 page
- Appendix B-1 Procurement Procedure for Professional Engineering Services – 2 pages
- Appendix B-2 State Engineering and Land Surveying Services  
K.S.A. 75-5801 through 5807 – 6 pages
- Appendix C 40 CFR Part 32 Subpart C – Responsibilities of Participants Regarding  
Transactions including EPA Form 5700-49 – 4 pages
- Appendix D Anti-Lobbying Certification Form – 1 page
- Appendix E-1 Disadvantaged Business Enterprise Participation Information and  
Forms – 8 pages
- Appendix E-2 MBE/Worksheet Standard Form 5700-52A (5/96)  
and Instructions – 5 pages
- Appendix E-3 Applicant Assurance with Respect to Good Faith Efforts for DBE  
Utilization – 1 pages
- Appendix F-1 Specification Review Checklist – Construction – 2 pages
- Appendix F-2 Specification Review Checklist - Small Purchases  
(Supplies, Equipment) – 2 pages
- Appendix F-3 KDHE SRF Construction Contract Assurances - 6 pages
- KDHE SRF Construction Contract Provisions – 30 pages
- Certification of Nonsegregated Facilities
  - Executive Order 11246 Clause, Notice, Specifications
  - Kansas Act Against Discrimination Contract Provisions
  - Act Against Discrimination Contractor and Applicant  
Assurance Form
  - Additional Clauses to be Included in Contract Documents
  - 40 CFR Part 32 Subpart C – Responsibilities of Participants  
Regarding Transactions
  - KDHE Implementation Requirements for DBE Procurement  
Opportunities
  - Certification Regarding Lobbying
  - Wage Rate Requirements Under FY 2010 Appropriations
- Appendix H KDHE Bid Document Review and Approval Checklist – 1 page
- Appendix I EPA Guidance Memorandum “Application of Davis-Bacon Act Wage  
Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and  
Drinking Water State Revolving Fund Assistance Agreements – November  
30, 2009 – 2 pages
- Appendix J Cross-Cutting Federal Authorities: A Handbook on their Application in the  
Clean Water and Drinking Water State Revolving Fund Programs –  
October 2003 – 45 pages

I. Engineering/Architectural Services -

- A. There are no KDHE procurement regulations or required procedures for selecting engineering/architectural services. The loan recipient should use locally established procedures. KDHE suggests the procedures as recommended by the Kansas Consulting Engineers or similar to K.S.A. 75-5801 thru 5807 (attached as Appendices B-1 and B-2) be considered.
- B. KDHE will review engineering contracts for scope only. The loan recipient must clearly indicate the services to be provided by the engineer, as several of the following items are often completed utilizing in-house staff of the loan recipient. Submittal of a contract in draft form for review and approval prior to signature is suggested. The scope of a construction phase engineering services contract must, in general, include project management services, inspection of construction, Final Plan of Operation, User Charge and Sewer Use Ordinance development (if applicable), O & M Manual development, and Project Performance services (project performance services must be provided by the design or construction engineer, and can not be provided directly by the loan recipient).

KDHE does not review the fee or method of payment for engineering service. However, the “percentage of cost of construction” method to determine the engineering fee is strongly discouraged.

- C. The past costs of planning and design can be included in the loan amount based on contracts and billings for the SRF project if the loan recipient so desires, and again there are no required selection procedures.
- D. An engineering contract for construction phase services, including inspection and other required efforts, must be submitted with the SRF Application and must include the following items.
1. 40 CFR Part 32 Subpart C – Responsibilities of Participants Regarding Transactions including EPA Form 5700-49 (Appendix C)
  2. DBE Utilization Effort forms. (Appendix E-1)
  3. Anti-Lobby Certification form (Appendix D)
  4. Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination and State of Kansas Act Against Discrimination Contract Provisions (pages 3 and 4 of Appendix F-3)
  5. Contract Provisions for the Trafficking Victims Protection Act of 2000. The contractor, its employees, sub-contractors, and sub-contractor’s employees under any KWPCRF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the contract or subcontracts under the award.

- E. An engineering contract for planning and/or design services may be submitted with the SRF Application if the loan recipient desires to include the cost of these contracts in the loan. The DBE program requirements do not apply to planning and/or design services, however the forms listed in Item I.D. must be submitted with the construction phase services contract will also cover the planning and/or design services contract.

## II. Force Account -

- A. Construction by force account is discouraged. If the effort is small and easy for the Loan Recipient to do on its own, the Recipient should simply pay for it and save the red tape, additional approvals, and records keeping efforts of a debt financing.
- B. Inspection by force account is also discouraged. KDHE recommends the use of the Engineer for inspection. If a Loan Recipient desires to utilize “in-house” staff through force account, the Recipient must, at a minimum, have a Professional Engineer on staff. The request for KDHE approval must include an estimate of the cost of force account inspection and the qualifications of the inspector as required by K.A.R. 28-16-55 and Water Quality Policy Memorandum No. 2-78 dated January 18, 1978.

## III. Construction Projects -

- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
- B. KDHE policy is to recommend that formal bid opening with formal published advertising always be utilized. This is typically required if estimated cost is over \$200,000. - Reference K.A.R. 28-16-134(a)(3). (Appendix A).
- C. Approval by KDHE is required of technical specifications and bidding requirements through review of plans and specifications prior to advertising for bids. (Bidding requirements and construction general condition recommendations are presented as Appendix F. The KDHE SRF CONSTRUCTION CONTRACT PROVISIONS must be included in the specifications.)
- D. An Engineer’s Estimate of contract cost is required, and must be submitted for all projects and/or contracts prior to advertising for bids. (Reference K.S.A. 13-1017, Class I Cities; References K.S.A. 14-440, Class II Cities; and Reference K.A.R. 28-16-134(a)(3) Attached as Appendix A.).
- E. KDHE will review the design and engineering costs of a specific project for allowability within the KWPCRLF program, and include a description of the allowable portions of the project within the Loan Agreement. Presently, as required by Federal Law the Program does not allow the cost of land for construction of facilities or the cost of either temporary or permanent easements. The cost of repairs and rehabilitation of privately owned portions of the sewerage systems are now allowable for funding by the KWPCRF.

- F. KDHE review and approval of bids is required prior to award. (Reference K.A.R. 28-16-131, attached as Appendix A).
  - G. KDHE will impose the policy requiring award of the lowest responsive, responsible bidder. - Reference K.A.R. 28-16-134(a)(3) (Appendix A).
  - H. KDHE policy will be to continue to request a definite completion time for the project, and the imposition of liquidated damages for delays in completion.
- IV. Small Purchase (Supplies, Equipment) -
- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
  - B. Prior approval by KDHE is required of the technical specification. An Engineer's Estimate is required to be submitted. (Reference 28-16-134(a)(3), attached as Appendix A).
    - 1. If estimate is over \$200,000 – the use of a formal bidding procedure as discussed in Section III. is recommended.
    - 2. If estimate is under \$200,000 – the procurement action may be to solicit and submit three written quotes.
    - 3. KDHE approval is required prior to purchase or award in both cases. (Reference K.A.R. 28-16-131, attached as Appendix A).
  - C. The use of the Small Purchase procedures would prove very difficult with the FFY 2010 Federal procurement requirements applicable to the KWPCRF, and is not recommended.
- V. Design / Build and Negotiated Procurement
- A. Procurement actions are subject to state law, local ordinances and restrictions.
  - B. All KWPCRF procurement requirements and Federal procurement requirements apply.
  - C. The use of a Design/Build Negotiated Procurement process would prove difficult with the FFY 2010 Federal procurement requirements applicable to the KWPCRF, and is not recommended.
  - D. The design / build or negotiated procurement procedures to be utilized must be provided in writing and submitted to KDHE for review. The consulting engineer under contract to the loan recipient cannot also submit a proposal for the design / build contract.
  - E. The City attorney must review the design / build or negotiated procurement procedures and submit written assurance to KDHE the selected procedure is not in violation of any state law, local ordinance or restriction.

VI. Recipient Appeals of KDHE Determinations -

- A. KDHE policy is to have the loan recipient resolve any and all disagreements with their design and construction agents.
- B. A formal process is developed, as follows, to allow the Loan Recipient to appeal a KDHE determination regarding financing the project or allow ability of a project cost which the recipient believes has an adverse affect.
  - 1. KDHE policy is to resolve disagreements at the lowest staff levels in as administratively simple procedures as possible generally within the Municipal Programs Section.
  - 2. The recipient must first approach Municipal Programs Section staff to informally discuss any disagreements with a KDHE determination. Following this, the recipient may then further appeal the issue to the Director of the Bureau of Water. This appeal should be in written form, clearly stating the issue in dispute. A formal written decision will be provided by the Bureau Director.
  - 3. The decision of the Bureau Director can be further appealed to the Director of the Division of Environment. The Director's decision may be in the form of an administrative order. Appeal of an administrative order can be made in conformance with the Kansas Administrative Procedure Act (K.S.A. 1985 Supp. 77-501 through 77-541). Copies of the Administrative Procedure Act are available upon request.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
KWPCRLF Regulations 28-16-131 and 28-16-134(a)(3)

**28-16-131.** Procurement. Each loan recipient shall follow applicable state procurement laws and regulations and procedures established by the secretary. The approval of the secretary is required prior to procurement. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323).

**28-16-134.** Project documents. (a) Each loan applicant for a sewerage facility projects shall submit, for the secretary's review and approval, the following documents:

- (1) A completed loan application on application forms furnished by the Department;
- (2) A facilities plan that establishes the need for the project;
- (3) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates necessary for competitive bidding, and projected construction and payment schedules;
- (4) A plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and project revenues to operate and maintain the entire facility. Revenue projections shall also include the loan repayment obligations, and
- (5) A facility operations manual, which shall be submitted before 90% of the project is completed.
- (6) Each loan applicant for a nonpoint source pollution control management plan implementation or groundwater quality protection project shall submit, for the secretary's review and approval, the following documents:
  - (1) A completed loan application on application forms furnished by the Department;
  - (2) Planning documents or any assessment which establishes the need for the project;
  - (3) Documents needed to plan the construction of the project.
  - (4) A plan of operation and maintenance to assure project performance for the design life of the project; and
  - (7) A binding assurance that adequate financial resources will be available for operation and maintenance of the project during the life of the project. (Authorized by and implementing K.S.A. 1988 Supp. 65-3323).

**LOCAL GOVERNMENT  
PROCUREMENT PROCEDURE  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

From “Kansas Consulting Engineers”

When a local government desires the services of a professional engineer, the procedure used to contract for such services has a great deal to do with how satisfied the government entity will be with the engineer and ultimately with the resulting public works project. Quite frequently the best procedure is simply to negotiate with the firm which has established a prior good relationship with the governing body, particularly if the design professional is qualified for the project under consideration.

There are, however, occasions when the local government will wish to consider several engineering firms; therefore, under these circumstances the procedure below is recommended.

This procurement procedure consists of four major elements: notice, submittals, review of submittals, and negotiations. Each element is discussed in some detail in the following paragraphs:

1. **Notice:** The notice to consultants can be formal or informal depending upon the size and complexity of the project under consideration. It can be done by letter to consultants with whom the local government is familiar, or by publication in newspapers and/or trade journals. The notice should be concise and as brief as possible containing the following information.
  - a. Name of the local government requiring services and the name of a contact person.
  - b. A description and location of the project.
  - c. The deadline for receipt of submittals from interested design professionals.
2. **Submittals:** All interested professional architect/engineers responding to the notice should provide the requested information in a convenient manner. This response should contain all the necessary information and shall also include the following information:
  - a. A statement of the technical approach to be utilized in performing the project.
  - b. A statement of his proposed schedule for accomplishment.
  - c. Facilities, equipment and personnel available for the project.
  - d. Any other supporting material as may be applicable.
3. **Review of Submittals:** The governmental body should establish a review panel to receive and review submittals for the proposed work. The review panel should meet promptly after the deadline date and should review and evaluate all submittals received.

A “short list” comprised of three submittals (if available) should be established and ranked in order of preference. The panel is encouraged to check references of the firms by phone or letter.

The review panel may desire to further examine the experience and qualifications of the “short listed” firms through personal interviews. In such cases, the firms identified by the ranked submittals should be contacted and invited to schedule interviews. Adequate, but specified time should be allowed for this interview.

After the interviews, or when the selection is determined, the top-ranked firms should be invited to negotiate terms and conditions of the contract for professional services.

4. **Negotiations:** The governmental body should undertake to negotiate with the top-ranked firm as soon as possible after the selection has been made.

In the event the governmental body is unable to negotiate a suitable contract with the first-ranked firm, negotiations should be terminated with that firm, and the governmental body should then initiate negotiations with the second-ranked firm. This process should be continued until suitable contractual arrangements with the firm have been satisfactorily consummated. All unsuccessful firms should be so advised by letter.

This procedure has been carefully prepared for the mutual protection of the client and the consultant. It has stood the test of time and is widely accepted as the best for the client and the design professional.

**Article 58 - State Engineering and Land Surveying Services  
K.S.A. 75-5801 through 5807**

**75-5801. State policy.**

The legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services, and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees.

**History:** L. 1977, ch. 287, §§ 1; April 21.

**75-5802. Definitions.**

As used in this act unless the context specifically requires otherwise:

- (a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services.
- (b) "Engineering services" means those services described in subsection (i) of K.S.A. 74-7003 and amendments thereto.
- (c) "Land surveying" means those services described in subsection (j) of K.S.A. 74-7003, and amendments thereto.
- (d) "Agency head" means the chief administrative officer of a state agency, as that term is defined in subsection (3) of K.S.A. 75-3701 and amendments thereto, but shall not include the chief administrative officer of any state institution.
- (e) "Negotiating committee" means a committee designated to negotiate as provided in this act, and consisting of (1) the agency head of the state agency for which the proposed project is planned, or a person designated by such agency head, (2) the secretary of administration, or a person designated by said secretary, and (3) the chief administrative officer of the state institution for which the proposed project is planned, or when the proposed project is not planned for a state institution, the agency head shall designate a second person in lieu of the chief administrative officer of a state institution.
- (f) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency, including development of new or existing programs and preparation of federal grant applications.
- (g) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780 and amendments thereto, or any duly authorized officer or employee of such commission.

**History:** L. 1977, ch. 287, §§ 2; L. 1978, ch. 337, §§ 30; L. 1992, ch. 240, §§ 30; L. 1996, ch. 48, §§ 1; Mar. 28.

**75-5803. Qualification statements of engineering and land surveying firms; annual list of qualified firms; selection of firms from list prepared by state building advisory commission in certain cases; procedure.**

(a) In the procurement of engineering or land surveying services, each agency head which utilizes engineering or land surveying services shall encourage firms engaged in the lawful practice of their profession to annually submit a statement of qualifications and performance data to the agency head and to the state building advisory commission. The agency head shall thereafter cause to be prepared annually a list of firms qualified, based upon criteria established and published by such agency head, to provide such engineering or land surveying services.

(b) Except as otherwise provided in subsection (c), when a project requiring engineering or land surveying services is proposed for a state agency, the agency head for such state agency shall evaluate current statements of qualifications and performance data on file with the agency head, together with those that may be submitted by other firms regarding the proposed project. The agency head may establish time frames for the receipt of qualifications statements and performance data from any firm wishing to be considered for the proposed project. The agency head shall conduct discussions with not less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required engineering or land surveying services and then such agency head shall select from among all such firms, on a rotational basis, the firm to perform the engineering or land surveying services, unless such firm refuses to provide such engineering or land surveying services.

(c) In any case where a project requiring engineering or land surveying services is proposed which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including in any case but not limited to any heating, cooling or power facility, for a state agency and a negotiating committee is not convened under K.S.A. 75-5804 and amendments thereto, the agency head of the state agency shall notify the state building advisory commission and shall request a list of firms qualified to provide the engineering or land surveying services for such project. Upon receipt of any such request, the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms, regarding the proposed project and other information developed and available to the state building advisory commission, and shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the agency head without any recommendation of preference or other recommendation. The agency head shall conduct discussions with the firms listed and shall select the firm to perform the engineering or land surveying services, all in the manner provided in subsection (b). If the agency head is unable to enter into a contract for the necessary engineering or land surveying services with any firm so listed, the agency head shall request the state building advisory commission to prepare and submit another list of firms qualified to provide such engineering or land surveying services and shall proceed in accordance with this subsection. The secretary of administration shall provide to the agency

head such information, advice and assistance as may be requested by the agency head regarding the selection of a firm to provide engineering or land surveying services for such projects, including all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto.

**History:** L. 1977, ch. 287, §§ 3; L. 1978, ch. 337, §§ 31; L. 1984, ch. 336, §§ 1; L. 1996, ch. 48, §§ 2; Mar. 28.

**75-5804. Negotiating committee convened; list of qualified firms for projects; list prepared by state building advisory commission in certain cases; procedure.**

(a) Whenever it becomes necessary in the judgment of the agency head of a state agency for which a project is proposed and, in any case where the total cost of such a proposed project is expected to exceed \$250,000, the agency head shall convene a negotiating committee. Except as otherwise provided in subsection (b), the agency head shall submit the list of at least three and not more than five of the most highly qualified firms to the negotiating committee so convened, without any recommendation of preference or other recommendation.

(b) Whenever a negotiating committee is convened under this section for a proposed project requiring engineering or land surveying services which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including but not limited, to any heating, cooling or power facility, for a state agency, the agency head for the state agency shall notify the state building advisory commission of the project and shall request a list of firms qualified to provide the engineering or land surveying services for the proposed project. Upon receipt of any such request the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms regarding the proposed project and other information developed and available to the state building advisory commission. The commission shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the negotiating committee so convened without any recommendation of preference or other recommendation.

**History:** L. 1977, ch. 287, §§ 4; L. 1978, ch. 337, §§ 32; L. 1979, ch. 280, §§ 19; L. 1996, ch. 48, §§ 3; L. 1996, ch. 238, §§ 1; July 1.

**75-5805. Written project description; no alteration without approval.**

The negotiating committee shall cause a written description of the scope or program of the proposed project to be prepared. Such description shall be used in the negotiations between the negotiating committee and qualified firms. The proposed project description shall be the basis for the project development and such description shall not be altered without the prior approval of the negotiating committee.

**History:** L. 1977, ch. 287, §§ 5; April 21.

**75-5806. Negotiating committee access to data on firms; selection of firms.**

The negotiating committee for each proposed project shall have access to the current statements of qualifications and performance data on file with the agency head for the firms listed by the agency head. In the case of firms listed by the state building advisory commission, the negotiating committee shall have access to the current statements of qualifications and performance data on file with the state building advisory commission and to all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto. The negotiating committee shall conduct discussions with each of the firms so listed regarding the proposed project and then shall select a single firm from such listing to provide engineering or land surveying services in accordance with this act.

**History:** L. 1977, ch. 287, §§ 6; L. 1978, ch. 337, §§ 33; L. 1996, ch. 48, §§ 4; Mar. 28.

**75-5807. Negotiation of contract with selected firm; duties of committee; failure of negotiations with selected firms; additional list of nominees.**

(a) Each negotiating committee shall determine which engineering or land surveying services are necessary and shall negotiate a contract for each proposed project with the selected firm for the necessary engineering or land surveying services. In such negotiations, the negotiating committee shall always consider demonstrated competence and qualifications and shall take into account the estimated value of the engineering or land surveying services to be rendered and the scope, complexity and professional nature thereof.

(b) If the negotiating committee is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated. The negotiating committee shall then undertake negotiations with the second most qualified firm. If there is a failing of accord with the second most qualified firm, negotiations with such firm shall be terminated. The negotiating committee shall then undertake negotiations with the third, fourth and fifth most qualified firms in turn.

(c) If the negotiating committee is unable to negotiate a satisfactory contract with any of the selected firms, the negotiating committee shall reevaluate the necessary engineering or land surveying services and fee requirements and reopen negotiations with any of the firms on the list submitted by the agency head. If the negotiating committee is still unable to enter into a contract for the necessary engineering or land surveying services, the negotiating committee shall request the agency head or, in the case of a proposed project under subsection (b) of K.S.A. 75-5804, and amendments thereto, the state building advisory commission to provide another list of firms to be negotiated with by the negotiating committee and, upon receipt of such list, the negotiating committee shall proceed in accordance with the provisions of this act.

**History:** L. 1977, ch. 287, §§ 7; L. 1978, ch. 337, §§ 34; L. 1996, ch. 48, §§ 5; Mar. 28.

**74-7003. Definitions.** As used in this act:

(h) "Professional engineer" means a person who is qualified to practice engineering by reason of special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, who is qualified as provided in this act to engage in the practice of engineering and who is licensed by the board.

(i) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, the teaching of engineering by a licensed professional engineer in a college or university offering an approved engineering curriculum of four years or more, engineering surveys and studies, the observation of construction for the purpose of assuring compliance with drawings and specifications, representation in connection with contracts entered into between clients and others and the preparation and certification of any engineering design features that are required on plats; any of which embraces such service or work, either public or private, for any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property. As used in this subsection, "engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements and the dependent or independent surveys or resurveys of the public land survey system.

(j) "Land surveyor" means any person who is engaged in the practice of land surveying as provided in this act and who is licensed by the board.

(k) "Practice of land surveying" includes:

(1) The performance of any professional service, the adequate performance of which involves the application of special knowledge and experience in the principles of mathematics, the related physical and applied sciences, the relevant requirements of law and the methods of surveying measurements in measuring and locating of lines, angles, elevation of natural and man-made features in the air, on the surface of the earth, within underground workings and on the bed of bodies of water for the purpose of determining areas, volumes and monumentation of property boundaries;

(2) the preparation of plats of land and subdivisions thereof, including the topography, rights-of-way, easements and any other boundaries that affect rights to or interests in land, but excluding features requiring engineering or architectural design;

(3) the preparation of the original descriptions of real property for the conveyance of or recording thereof and the preparation of maps, plats and field note records that represent these surveys;

- (4) the reestablishing of missing government section corners in accordance with government surveys; and
- (5) the teaching of land surveying by a licensed land surveyor in a college or university offering an approved land surveying curriculum of four years or more.

**History:** L. 1976, ch. 334, §§ 2; L. 1978, ch. 326, §§ 2; L. 1992, ch. 240, §§ 3; L. 1995, ch. 104, §§ 3; L. 1997, ch. 128, §§ 1; July 1.

Environmental Protection Agency

§ 32.325

~~§ 32.225 How do I know if a transaction in which I may participate is a covered transaction?~~

~~As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.~~

**Subpart C—Responsibilities of Participants Regarding Transactions**

DOING BUSINESS WITH OTHER PERSONS

**§ 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 32.305 May I enter into a covered transaction with an excluded or disqualified person?**

- (a) You as a participant may not enter into a covered transaction with an excluded person, unless the EPA grants an exception under § 32.120.
- (b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

**§ 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

- (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions,

and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

- (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the EPA grants an exception under § 32.120.

**§ 32.315 May I use the services of an excluded person as a principal under a covered transaction?**

- (a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

- (b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the EPA grants an exception under § 32.120.

**§ 32.320 Must I verify that principals of my covered transactions are eligible to participate?**

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

**§ 32.325 What happens if I do business with an excluded person in a covered transaction?**

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

EPA Debarment and Suspension Regulations  
Subpart C  
Page 2 of 4

§ 32.330

**§ 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 32.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY  
TIER PARTICIPANTS

**§ 32.335 What information must I provide before entering into a covered transaction with the EPA?**

Before you enter into a covered transaction at the primary tier, you as the participant must notify the EPA office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 32.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 32.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

**§ 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?**

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 32.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to

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enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

**§ 32.345 What happens if I fail to disclose information required under § 32.335?**

If we later determine that you failed to disclose information under § 32.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

**§ 32.350 What must I do if I learn of information required under § 32.335 after entering into a covered transaction with the EPA?**

At any time after you enter into a covered transaction, you must give immediate written notice to the EPA office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.335.

DISCLOSING INFORMATION—LOWER TIER  
PARTICIPANTS

**§ 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

**§ 32.360 What happens if I fail to disclose the information required under § 32.355?**

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we

**Environmental Protection Agency****§ 32.425**

may pursue any available remedies, including suspension and debarment.

**§ 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by § 32.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.355.

**Subpart D—Responsibilities of EPA Officials Regarding Transactions**

**§ 32.400 May I enter into a transaction with an excluded or disqualified person?**

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 32.120.

**§ 32.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 32.120.

**§ 32.415 What must I do if a Federal agency excludes the participant of a principal after I enter into a covered transaction?**

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate, and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 32.120.

**§ 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 32.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.425 When do I check to see if a person is excluded or disqualified?**

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.



Waste Water Project Number  
C20

United States Environmental Protection Agency  
Washington, DC 20460

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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Typed Name & Title of Authorized Representative

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Signature of Authorized Representative Date

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I am unable to certify to the above statements. My explanation is attached.




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 EPA Project Control Number

## CERTIFICATION REGARDING LOBBYING

### CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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 Typed Name & Title of Authorized Representative

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 Signature and Date of Authorized Representative

**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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KANSAS PUBLIC WATER SUPPLY LOAN FUND  
KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Participation By Disadvantaged Business Enterprises Information Sheet

As a recipient of EPA SRF Capitalization Grants, the Kansas Department of Health and Environment (KDHE) is required by 40 CFR Part 33 to seek and is encouraged to utilize small, minority, and women-owned businesses in procurement under loan agreements associated with those grants. Because this project will receive funding, at least in part, from KDHE through a Kansas Public Water supply Loan Fund (KPWSLF) or a Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) loan agreement, those requirements are applicable to the loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor.

This information sheet explains requirements of the KPWSLF and KWPCRLF for Disadvantaged Business Enterprises (DBE) utilization. A copy of this Information Sheet must be included within engineering contracts for construction phase services and must be included within the contract documents of construction specifications.

Definitions

Disadvantaged Business Enterprise - entities owned and/or controlled by socially and economically disadvantaged individuals (as described in 42 USC 7601 and 42 USC 4370d - which includes Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) as defined in this information sheet); a Small Business Enterprise (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Socially disadvantaged individual – individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans	Indian Tribes
Hispanic Americans	Native Hawaiian Organizations	Women
Native Americans	Historically Black Colleges and Universities	

Economically disadvantaged individual - those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of 42 USC 7601 of 42 USC 4370d.

Minority Business Enterprises (MBE) - a Disadvantaged Business Enterprise other than a SBE, SBRA, LSAF, or WBE.

## KDHE Implementation Requirements for DBE Procurement Opportunities

KDHE has an objective of using an amount equal to 4.1% of the capitalization grant as awarded by EPA to KDHE, for construction procurement performed by MBE entities and 6.9% of the capitalization grant for WBE entities. This is referred to as a fair share objective. The loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor are required to adopt this same fair share objective. The fair share objective is not a quota and EPA cannot penalize KDHE, the loan recipient, engineering firm, or the prime contractor for not meeting MBE or WBE participation objectives.

**The prime contractor and consulting engineer responsible for construction phase services are required to make the good faith efforts and apply the administrative requirements listed below for any subcontracts.**

### Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
  - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
  - iii. Date the quotation is due to the prime contractor;
  - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

#### Administrative Requirements

The prime contractor/engineering firm responsible for construction phase services:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.
4. Shall provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. Subcontractors can submit this form to KDHE if there are any concerns regarding the project.
5. Must have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form, and submit it with the bid or proposal package. If DBE subcontractors are not anticipated to be used, a blank form with such notation must still be submitted with the prime bid package. You must still demonstrate DBE firms were provided an opportunity to obtain subcontracts.
6. Must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form with the bid or proposal package (use additional copies of form if needed). If DBE subcontractors are not anticipated to be used, a blank form with such notation must still be submitted with the prime bid package. You must still demonstrate DBE firms were provided an opportunity to obtain subcontracts.
7. Shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

### Finding DBE Firms

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) can be found on the web at [www.ksdot.org/divadmin/civilrights/](http://www.ksdot.org/divadmin/civilrights/).

The Kansas Department of Commerce maintains a Kansas Minority & Women Business Directory on the web at <http://mwbd.kansascommerce.com/>.

The Minority Business Development Agency of the Department of Commerce maintains a business locator database on the web at [www.mbda.gov](http://www.mbda.gov).

KDHE and the municipality are required to maintain a list of bidders that have competed for loan fund projects. This list can be used in conjunction with the directories listed above to find DBE firms. This list can be found on the web at [www.kdheks.gov/pws/loan/SRFbidlist.xls](http://www.kdheks.gov/pws/loan/SRFbidlist.xls).

DBE firms are not limited by the directories listed above. Prime contractors should use any means necessary to locate and contact DBE firms.

In order for a DBE to participate as an MBE or WBE, that entity must be certified by one of the following; the (1) Environmental Protection Agency (EPA), (2) Small Business Administration (SBA), (3) US Department of Transportation, or (4) any other state or local government or private organization certification that has standards that meet or exceed the EPA certification program. MBE's and WBE's must be certified in order for procurement to count towards meeting Fair Share Goals.

### Determination of Compliance

Prime contractors must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

Engineering firms responsible for construction phase services must demonstrate compliance with DBE requirements prior to the construction contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form prior to the award of the construction contract. The municipality is also required to submit to KDHE by April 15 and October 15 (during project construction), EPA Form 5700-52A - MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements. If MBE/WBE firms are utilized, proof of certification must be submitted with EPA Form 5700-52A

## Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Participation Form**

Please use the space below to report any concerns regarding the above EPA-funded project:

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<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

### Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	__ YES	__ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

# Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name \_\_\_\_\_

KPWSLF or KWPCRLF Project No. \_\_\_\_\_

Prime Contract Bidder/Engineering Firm \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

The following firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

Comments \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared By: \_\_\_\_\_

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

(Use additional copies of this sheet if needed)

## U.S. ENVIRONMENTAL PROTECTION AGENCY MBE/WBE UTILIZATION UNDER FEDERAL GRANTS AND COOPERATIVE AGREEMENTS

### PART I. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR (Oct. 1-Sep 30)  20_____	1B. REPORTING PERIOD (Check ALL appropriate boxes) <input type="checkbox"/> 1 <sup>st</sup> (Oct-Dec) <input type="checkbox"/> 2 <sup>nd</sup> (Jan-Mar) <input type="checkbox"/> 3 <sup>rd</sup> (Apr-Jun) <input type="checkbox"/> 4 <sup>th</sup> (Jul-Sep)  <input type="checkbox"/> Semi-Annual (Oct-Mar) <input type="checkbox"/> Semi-Annual (Apr-Sep) <input type="checkbox"/> Annual <input type="checkbox"/> Check if this is the last report for the project (Project completed).				
1C. REVISION OF A PRIOR REPORT? Y or N Year: _____ Quarter: _____	BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:				
2A. EPA FINANCIAL ASSISTANCE OFFICE ADDRESS ( ATTN: DBE Coordinator)		3A. RECIPIENT NAME AND ADDRESS			
2B. EPA DBE COORDINATOR  Name:  E-mail:	2C. PHONE:  Fax:	3B. RECIPIENT REPORTING CONTACT:  Name:  E-mail:	3C. PHONE:  Fax:		
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.)		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM TITLE or CFDA NUMBER:			
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.)  EPA Share: \$ _____  Recipient Share: \$ _____		5B. If NO procurement and NO accomplishments were made this reporting period (by the recipients, sub-recipients, loan recipients, and prime contractors), <b>CHECK</b> and <b>SKIP</b> to Block No. 7. ( <u>Procurements</u> are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. <u>Accomplishments</u> , in this context, are procurements made with MBEs and/or WBEs. <div style="text-align: center;"><input type="checkbox"/></div>			
5C. <b>Total Procurements This Reporting Period</b> (Only include amount not reported in any prior reporting period)  Total Procurement Amount \$ _____ (Include total dollar values awarded by recipient, sub-recipients and SRF loan recipients, including MBE/WBE expenditures.)					
5D. Were sub-awards issued under this assistance agreement? Yes___ No___    Were contracts issued under this assistance agreement ? Yes___ No___					
5E. <b>MBE/WBE Accomplishments This Reporting Period</b>					
Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient, sub-recipients, SRF loan recipients and Prime Contractors.)					
	<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>
\$MBE:	_____	_____	_____	_____	_____
\$WBE:	_____	_____	_____	_____	_____
6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)					
7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE			TITLE		
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE			DATE		

**PART II.**

**MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD**

**EPA Financial Assistance Agreement Number:** \_\_\_\_\_

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or Services <sup>A</sup> (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

### State Revolving Fund Instructions for Part I:

- 1a. Specify Federal fiscal year this report covers. The Federal fiscal year runs from October 1<sup>st</sup> through September 30<sup>th</sup> (e.g. **November 29, 2009 falls within Federal fiscal year 2010**)
- 1b. State Revolving Fund programs report on a semi-annual basis. Check the two appropriate quarters when reporting to KDHE. The Report covering October-March must be submitted by April 15 and the report covering April–September must be submitted by October 15. Also indicate if this is the last report for the project.
- 1c. Indicate if this is a revision to a previous year or quarter, and provide a brief description of the revision you are making.
2.
  - a. Enter Kansas Department of Health and Environment, Bureau of Water, 1000 SW Jackson Street, Suite 420, Topeka, Kansas 66612.
  - b. Enter Name: Brenda Diegel, E-mail: [bdiegel@kdheks.gov](mailto:bdiegel@kdheks.gov)
  - c. Enter 785-296-4262. Fax 785-296-0086
3.
  - a. Enter loan recipient name and address.
  - b. Enter loan recipient's contact persons name and e-mail address.
  - c. Enter loan recipient's contact persons phone number and fax number.
- 4a. Enter the loan number for your SRF Project.
- 4b. Enter Kansas Public Water Supply Loan Fund or Kansas Water Pollution Control Revolving Loan Fund as appropriate
- 5a. Please leave 5a blank.
- 5b. Self-explanatory.
- 5c. Answer first question "Yes" and second question "Yes". Provide the total amount paid to the construction contractor during the reporting period.  
  
If payment was made to an MBE/WBE indicate amount in appropriate column.

6. If there were no MBE/WBE accomplishments this reporting period, please briefly explain what steps you are taking in furtherance of the MBE/WBE requirements specified in the terms and conditions of the Assistance Agreement.
7. Name and title of official administrator or designated reporting official.
8. Signature and month, day year report submitted.

### D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of award, shown as month, day, year. Date of award is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of award is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (eg., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.

\*\*This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30 and 31); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

**APPLICANT ASSURANCE WITH RESPECT TO  
GOOD FAITH EFFORTS FOR DBE UTILIZATION**

I hereby certify that with reference to KPWSLF or KWPCRLF Project No. \_\_\_\_\_, I have reviewed the Good Faith Efforts made by \_\_\_\_\_ (consultant/contractor) in relation to DBE utilization and find that the steps satisfy the requirements set out in KPWSLF/KWPCRLF Participation by Disadvantaged Business Enterprises Information Sheet.

Please Check One:

\_\_\_ Attached is the Demonstration of Compliance with DBE Good Faith Efforts Worksheet (or equivalent).

\_\_\_ No subcontracting opportunities will be offered for this contract.

\_\_\_ Bidder/Engineering firm claims no DBE subcontractors exist for the type of work available for subcontracts. I have reviewed all lists and databases identified in the KPWSLF/KWPCRLF Participation by Disadvantaged Business Enterprises Information Sheet and used other reasonable means to determine and locate DBE firms, and agree with this claim.

\_\_\_\_\_  
Authorized Representative of Applicant (Print / type)

\_\_\_\_\_  
Authorized Representative of Applicant (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant

SPECIFICATION REVIEW GUIDANCE CHECKLIST  
KWPCRLF CONSTRUCTION PROJECTS and  
DESIGN / BUILD PROJECTS

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

Reviewer \_\_\_\_\_

Date \_\_\_\_\_

- \_\_\_\_\_ (A) Advertising Time (Policy)
- \_\_\_\_\_ (B) Nondiscrimination in Advertisement (E.O. 11246)
- \_\_\_\_\_ (C) Anti-Discrimination Provisions and Certification Form (K.S.A. 44-1001 et seq., and K.S.A. 44-1111 et seq.)
- \_\_\_\_\_ (D) Certification of Non-Segregated Facilities (P.L. 88-352)
- \_\_\_\_\_ (E) Equal Employment Opportunity
- \_\_\_\_\_ (F) Disadvantaged Business Enterprise Participation (EPA Regulation Part 33)
- \_\_\_\_\_ (G) Suspension and Debarment (40 CFR Part 32 Subpart C including EPA 5700-49 – (EPA Guidance))
- \_\_\_\_\_ (H) Davis-Bacon Wage Requirements – In accordance with the EPA Guidance Memorandum “Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements” dated November 30, 2009, the Contract Documents must provide that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through this loan agreement 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 in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Contract Documents must include 29 CFR Part 5.5(a). When the project is advertised for bid there must be a section in the contract documents that lists the required wage rates for workers.
- \_\_\_\_\_ (I) Anti-Lobbying Act Certification
- \_\_\_\_\_ (J) 5% Bid Bond (Recommended)

- \_\_\_\_\_ (K) Award of contract (Policy)
- \_\_\_\_\_ (L) Define completion time (Policy)
- \_\_\_\_\_ (M) Right of Entry – EPA and KDHE (EPA Guidance)
- \_\_\_\_\_ (N & O) 100% Performance Bond and 100% Payment Bond (Recommended)
- \_\_\_\_\_ (P) Historical and Archaeological [30.600(a)] (EPA Guidance)
- \_\_\_\_\_ (Q) Payment Provisions (Recommended)
- \_\_\_\_\_ (R) Green Project Reserve Determination and cost breakdown on Bid Form
- \_\_\_\_\_ (S) Principal Forgiveness Determination
- \_\_\_\_\_ (T) If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent. (Recommended)
- \_\_\_\_\_ (U) State and Local Laws, Ordinances, and Restrictions
- \_\_\_\_\_ (V) Storm water NPDES permit
- \_\_\_\_\_ (W) KDHE SRF Construction Contract Provisions should be included in the specs which addresses many of the above requirements, but not all.

STATE REVOLVING FUND PROJECTS  
SPECIFICATION REVIEW GUIDANCE CHECKLIST  
EQUIPMENT, CONTRACTS OR SMALL PURCHASES OF LESS THAN \$200,000

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

Reviewer \_\_\_\_\_

Date \_\_\_\_\_

- \_\_\_\_\_ (B) Nondiscrimination in Advertisement (E.O. 11246)
- \_\_\_\_\_ (C) Anti-Discrimination Provisions and Certification Form (K.S.A. 44-1001 et. seq., and K.S.A. 44-1111 et. seq.)
- \_\_\_\_\_ (D) Certification of Non-Segregated Facilities (P.L. 88-352)
- \_\_\_\_\_ (E) Equal Employment Opportunity
- \_\_\_\_\_ (F) Disadvantaged Business Enterprise Participation (EPA Regulation Part 33)
- \_\_\_\_\_ (G) Suspension and Debarment (Part 32) EPA Regulations (EPA Guidance)
- \_\_\_\_\_ (H) Davis-Bacon Prevailing Wages. Davis-Bacon Wage Requirements – In accordance with the EPA Guidance Memorandum “Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements” dated November 30, 2009, the Contract Documents must provide that all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through this loan agreement 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 in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Contract Documents must include 29 CFR Part 5.5(a). When the project is advertised for bid there must be a section in the contract documents that lists the required wage rates for workers.

Davis/Bacon applies to any construction contract with \$2000 of labor costs or more. Davis/Bacon does not apply to equipment purchase contracts or construction contracts with less than \$2000 of labor costs.

- \_\_\_\_\_ (I) Anti-Lobbying Act Certification
- \_\_\_\_\_ (K) Award of contract (Policy)
- \_\_\_\_\_ (L) Definite delivery time (Policy)
- \_\_\_\_\_ (M) Right of Entry - EPA and KDHE (EPA Guidance)
- \_\_\_\_\_ (Q) Payment Provisions (Policy)
- \_\_\_\_\_ (R) Green Project Reserve Determination and cost breakdown on Bid Form
- \_\_\_\_\_ (S) Principal Forgiveness Determination
- \_\_\_\_\_ (U) State & Local Laws, Ordinances, and Restrictions
- \_\_\_\_\_ (V) Storm Water NPDES permit

DESCRIPTION OF SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES (V-4 + D/B)  
For Projects that are funded between October 30, 2009 and September 30, 2010 by the KWPCRF

A. Advertising Time - KDHE policy recommends the invitation for bids be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening of bids. Projects should be advertised for bids at least 30 days prior to bid opening. To allow ample time for bidders to comply with minority business enterprise requirements, it is suggested a period longer than 30 days be considered.

B. Nondiscrimination in Advertisement - The KDHE SRF program requires the following paragraph be contained in the "Advertisement for Bids" for this project:

Nondiscrimination in Employment

"Bidders on this work will be required to comply with the presidents Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications."

C. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the "Information to Bidders" for this project:

"Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

The enclosed "Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination" information sheet and the "State of Kansas Act Against Discrimination Contract Provisions" certification form must be included in the contract documents. The subject form must be executed, a copy retained for your files and a copy submitted to KDHE prior to approval for contract award. **The certification form should be included as part of the contractor's bid submittal.**

D. Certification of Non-Segregated Facilities - EPA procedures to implement Executive Order 11246 (Equal Opportunity Clause) require the "Certification of Nonsegregated Facilities" form be included in the specifications and **submitted with the bid documents**

E. Equal Employment Opportunity- Section 202 of Executive Order 11246 must be included in the contracts and subcontracts for all construction contracts exceeding \$10,000.

F. Disadvantaged Business Enterprise Participation- The Federal SRF program requires the following documents be included in the contract documents: Participation By Disadvantaged Business Enterprises Information Sheet (Appendix E-1), EPA form 6100-2 (Subcontractor Participation Form), EPA form 6100-3 (DBE Subcontractor Performance Form), and EPA Form 6100-4 (DBE Subcontractor Utilization Form). **All bidders must be required to submit EPA form 6100-3, EPA form 6100-4, and proof of demonstration of compliance with Good Faith Efforts with bids.**

G. Debarred or Suspended Contractors- Bid advertisements must include the following statement:

“Bidders must fully comply with Subpart C of 40 CFR Part 32 entitled Responsibilities of Participants Regarding Transactions. Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the KDHE SRF Loan Fund.”

Subpart C of 2 CFR part 180 must be included as part of the contract documents. EPA Form 5700-49 must be included as part of the contract documents and **submitted with the bid documents.**

H. Davis/Bacon Prevailing Wages - Davis-Bacon Wage Requirements – In accordance with the EPA Guidance Memorandum “Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements” dated November 30, 2009, the Contract Documents must provide that all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through this loan agreement 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 in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Contract Documents must include 29 CFR Part 5.5(a). When the project is advertised for bid there must be a section in the contract documents that lists the required wage rates for workers.

I. Anti-Lobbying Act - The Contract Documents must include the Anti-Lobbying Certification form, which must be **completed and returned with the bid form.**

J. Bid Bond - KDHE recommends if the contract price is expected to exceed \$100,000, each bidder furnish a bid guarantee equivalent to 5 per cent of the bid. Contracts less than \$100,000 are subject to State and local requirements relating to bid guarantee.

K. Award of Contract - KDHE Policy requires the proposal fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

L. Completion Time - KDHE Policy suggests the specifications contain a provision for the maximum calendar or work days allowed for completion of the project.

M. Right of Entry - The Federal SRF program requires that right of entry to the project site be provided for representatives of the Kansas Department of Health and Environment, so they may have access to the work wherever it is in preparation or progress. A paragraph approximately as follows must be included in the specifications:

The successful bidder shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and

safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

N.O. One Hundred Percent Performance and Payment Bonds - KDHE Policy suggests separate performance and payment bonds, each in the amount of 100 percent of the contract price, be required on construction contracts of \$100,000 or more. Use of the loan recipient's own bonding policies and requirements may be utilized but are subject to review and approval by KDHE.

P. Historical and Archeological - The Federal SRF program requires that a paragraph approximately as follows be included in the specifications:

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6<sup>th</sup> Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

Q. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the specifications. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the "Rebate" requirements of Federal tax law.

R. Green Project Reserve Determination and Cost Break Out on Bid Form – A project design may meet the definition of a "Green Project Reserve" design as defined by EPA in the guidance memorandum "Procedures for Implementing Certain Provisions of the Fiscal Year 2010 Appropriation Affecting the Clean Water and Safe Drinking Water State Revolving Fund Programs" dated April 21, 2010, Attachment 2 "2010 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility". KDHE policy is to provide an increased amount of "principal forgiveness" in the KWPCRF 2010 loans for the "green design" components of the project, based on actual bid costs. Therefore, the Bid Form will need to break out the "green design" components and provide a construction cost for those components.

S. Principal Forgiveness Determination – A project design and/or cost may meet the definition of the "affordability criteria" as presented by EPA in the guidance memorandum "Procedures for Implementing Certain Provisions of the Fiscal Year 2010 Appropriation Affecting the Clean Water and Safe Drinking Water State Revolving Fund Programs" dated April 21, 2010, and affordability criteria as developed by KDHE. Any affordability criteria determination and subsequent principal forgiveness will be presented in a formal letter to the loan applicant.

T. If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.

U. State and Local Laws, Ordinances, and Restrictions - The contract documents and specifications must be in compliance with all State and Local laws, ordinances, and restrictions.

V. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at [www.kdhe.state.ks.us/stormwater](http://www.kdhe.state.ks.us/stormwater).

## Quick Reference Review Checklist

### Documents that must be submitted with bids

	Form Name	Page #
1	Certification of Non Segregated Facilities	1
2	Kansas Act Against Discrimination Contract Provisions	4
3	Demonstration of Compliance with DBE Good Faith Efforts Worksheet (or equivalent)	14
4	EPA Form 6100-3 (DBE Subcontractor Performance Form)	15
5	EPA Form 6100-4 (DBE Subcontractor Utilization Form)	16
6	Anti Lobbying Certification Form	17
7	EPA Form 5700-49 (Suspension and Debarment)	

### Clauses that must be included in the Advertisement for Bid

Bidders on this work will be required to comply with the presidents Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.

Bidders must fully comply with Subpart C of 40 CFR Part 32 entitled Responsibilities of Participants Regarding Transactions. Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Kansas Public Water Supply Loan Fund.

### Clauses that must be included in the Information for Bidders Section

Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)

### Other Items

Is the Correct Wage Rate Determination from the U.S. Department of Labor included in the Contract Documents?

Is there a requirement for a 5% bid bond?

Does the Info for Bidders explain the basis for determining the successful bidder and that the successful bidder is defined as the lowest, responsive, responsible bidder?

Does the Contract contain a provision for the maximum calendar or work days allowed for completion of the project?

Does the Contract require 100% Performance and Payment Bonds?

Does the Contract include provisions for prompt payment to the Contractor?

If the Contract includes Arbitration, is it binding only by Mutual Consent?

Is the KDHE SRF Contract Provisions Section defined as part of the Contract Documents in the Agreement?

Is the correct for of Bid Form included, as approved by KDHE showing the breakout of costs qualifying for the Green Project Reserve and/or the principal forgiveness for the loan?

**KDHE SRF CONSTRUCTION  
CONTRACT PROVISIONS**

U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF POLICY AND MANAGEMENT

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Signer (Please Type)

\_\_\_\_\_  
Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## **KDHE SRF LOAN FUND**

### Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) Section 202 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisement for employees placed by or behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of the sentence immediately preceding paragraph 1, and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

## KANSAS ACT AGAINST DISCRIMINATION

### CONTRACT PROVISIONS OF KANSAS STATUTES ANNOTATED (K.S.A.) 44-1030 – State and Local Government contracts; Mandatory Provisions

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
  - (2) In all solicitations or advertisements for employees, the contractor shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Commission;
  - (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
  - (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
  - (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.
- (c) The provisions of this section shall not apply to a contract entered into by a contractor:
- (1) Who employs fewer than four employees during the term of such contract;  
or
  - (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

STATE OF KANSAS  
ACT AGAINST DISCRIMINATION  
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY \_\_\_\_\_

CONTRACTOR'S  
SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

KDHE PROJECT NO. \_\_\_\_\_

DATE \_\_\_\_\_

## **Additional Clauses to be included in the Contract Documents**

### **Contract Provisions for right of entry by KDHE**

The Contractor shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

### **Contract Provisions for Historical and Archeological Deposits**

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6<sup>th</sup> Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

### **Contract Provisions for NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities**

The owner or Contractor must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at [www.kdhe.state.ks.us/stormwater](http://www.kdhe.state.ks.us/stormwater).

### **Contract Provisions for Restrictions on Lobbying**

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

### **Contract Provisions for the Trafficking Victims Protection Act of 2000**

The contractor, its employees, sub-contractors, and sub-contractor's employees under any KWPCRF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the contract or subcontracts under the award.

### **Contract Provisions for Suspension and Debarment**

The contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The contractor must ensure that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. **A certification form must be submitted with bid documents.**

Environmental Protection Agency

§ 32.325

~~§ 32.225 How do I know if a transaction in which I may participate is a covered transaction?~~

~~As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.~~

**Subpart C—Responsibilities of Participants Regarding Transactions**

DOING BUSINESS WITH OTHER PERSONS

**§ 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 32.305 May I enter into a covered transaction with an excluded or disqualified person?**

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the EPA grants an exception under § 32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

**§ 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions,

and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the EPA grants an exception under § 32.120.

**§ 32.315 May I use the services of an excluded person as a principal under a covered transaction?**

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the EPA grants an exception under § 32.120.

**§ 32.320 Must I verify that principals of my covered transactions are eligible to participate?**

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

**§ 32.325 What happens if I do business with an excluded person in a covered transaction?**

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

**§ 32.330**

**§ 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 32.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY  
TIER PARTICIPANTS

**§ 32.335 What information must I provide before entering into a covered transaction with the EPA?**

Before you enter into a covered transaction at the primary tier, you as the participant must notify the EPA office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 32.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 32.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

**§ 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?**

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 32.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to

**40 CFR Ch. I (7–1–06 Edition)**

enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

**§ 32.345 What happens if I fail to disclose information required under § 32.335?**

If we later determine that you failed to disclose information under § 32.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

**§ 32.350 What must I do if I learn of information required under § 32.335 after entering into a covered transaction with the EPA?**

At any time after you enter into a covered transaction, you must give immediate written notice to the EPA office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.335.

DISCLOSING INFORMATION—LOWER TIER  
PARTICIPANTS

**§ 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

**§ 32.360 What happens if I fail to disclose the information required under § 32.355?**

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we

**Environmental Protection Agency****§ 32.425**

may pursue any available remedies, including suspension and debarment.

**§ 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by § 32.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.355.

**Subpart D—Responsibilities of EPA Officials Regarding Transactions**

**§ 32.400 May I enter into a transaction with an excluded or disqualified person?**

- (a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 32.120.
- (b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 32.120.

**§ 32.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 32.120.

**§ 32.415 What must I do if a Federal agency excludes the participant of a principal after I enter into a covered transaction?**

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate, and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 32.120.

**§ 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

- (a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 32.120; or
- (b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 32.425 When do I check to see if a person is excluded or disqualified?**

As an agency official, you must check to see if a person is excluded or disqualified before you—

- (a) Enter into a primary tier covered transaction;
- (b) Approve a principal in a primary tier covered transaction;
- (c) Approve a lower tier participant if agency approval of the lower tier participant is required; or
- (d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.



Waste Water Project Number  
C20

United States Environmental Protection Agency  
Washington, DC 20460

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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Typed Name & Title of Authorized Representative

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Signature of Authorized Representative Date

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I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)  
This form has been adopted for use as a Kansas Water Pollution Control Revolving Fund document

**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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KANSAS PUBLIC WATER SUPPLY LOAN FUND  
KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Participation By Disadvantaged Business Enterprises Information Sheet

As a recipient of EPA SRF Capitalization Grants, the Kansas Department of Health and Environment (KDHE) is required by 40 CFR Part 33 to seek and is encouraged to utilize small, minority, and women-owned businesses in procurement under loan agreements associated with those grants . Because this project will receive funding, at least in part, from KDHE through a Kansas Public Water supply Loan Fund (KPWSLF) or a Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) loan agreement, those requirements are applicable to the loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor.

This information sheet explains requirements of the KPWSLF and KWPCRLF for Disadvantaged Business Enterprises (DBE) utilization. A copy of this Information Sheet must be included within engineering contracts for construction phase services and must be included within the contract documents of construction specifications.

Definitions

Disadvantaged Business Enterprise - entities owned and/or controlled by socially and economically disadvantaged individuals (as described in 42 USC 7601 and 42 USC 4370d - which includes Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) as defined in this information sheet); a Small Business Enterprise (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Socially disadvantaged individual – individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans	Indian Tribes
Hispanic Americans	Native Hawaiian Organizations	Women
Native Americans	Historically Black Colleges and Universities	

Economically disadvantaged individual - those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of 42 USC 7601 of 42 USC 4370d.

Minority Business Enterprises (MBE) - a Disadvantaged Business Enterprise other than a SBE, SBRA, LSAF, or WBE.

## KDHE Implementation Requirements for DBE Procurement Opportunities

KDHE has an objective of using an amount equal to 4.1% of the capitalization grant as awarded by EPA to KDHE, for construction procurement performed by MBE entities and 6.9% of the capitalization grant for WBE entities. This is referred to as a fair share objective. The loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor are required to adopt this same fair share objective. The fair share objective is not a quota and EPA cannot penalize KDHE, the loan recipient, engineering firm, or the prime contractor for not meeting MBE or WBE participation objectives.

**The prime contractor and consulting engineer responsible for construction phase services are required to make the good faith efforts and apply the administrative requirements listed below for any subcontracts.**

### Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
  - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
  - iii. Date the quotation is due to the prime contractor;
  - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
  3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
  4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
  5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

## Administrative Requirements

The prime contractor/engineering firm responsible for construction phase services:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.
4. Shall provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. Subcontractors can submit this form to KDHE if there are any concerns regarding the project.
5. Must have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form, and submit it with the bid or proposal package. If DBE subcontractors are not anticipated to be used, a blank form with such notation must still be submitted with the prime bid package. You must still demonstrate DBE firms were provided an opportunity to obtain subcontracts.
6. Must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form with the bid or proposal package (use additional copies of form if needed). If DBE subcontractors are not anticipated to be used, a blank form with such notation must still be submitted with the prime bid package. You must still demonstrate DBE firms were provided an opportunity to obtain subcontracts.
7. Shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CRF part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

## Finding DBE Firms

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) can be found on the web at [www.ksdot.org/divadmin/civilrights/](http://www.ksdot.org/divadmin/civilrights/).

The Kansas Department of Commerce maintains a Kansas Minority & Women Business Directory on the web at <http://mwbd.kansascommerce.com/>.

The Minority Business Development Agency of the Department of Commerce maintains a business locator database on the web at [www.mbda.gov](http://www.mbda.gov).

KDHE and the municipality are required to maintain a list of bidders that have competed for loan fund projects. This list can be used in conjunction with the directories listed above to find DBE firms. This list can be found on the web at [www.kdheks.gov/pws/loan/SRFbidlist.xls](http://www.kdheks.gov/pws/loan/SRFbidlist.xls).

DBE firms are not limited by the directories listed above. Prime contractors should use any means necessary to locate and contact DBE firms.

In order for a DBE to participate as an MBE or WBE, that entity must be certified by one of the following; the (1) Environmental Protection Agency (EPA), (2) Small Business Administration (SBA), (3) US Department of Transportation, or (4) any other state or local government or private organization certification that has standards that meet or exceed the EPA certification program. MBE's and WBE's must be certified in order for procurement to count towards meeting Fair Share Goals.

## Determination of Compliance

Prime contractors must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

Engineering firms responsible for construction phase services must demonstrate compliance with DBE requirements prior to the construction contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form prior to the award of the construction contract. The municipality is also required to submit to KDHE by April 15 and October 15 (during project construction), EPA Form 5700-52A - MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements. If MBE/WBE firms are utilized, proof of certification must be submitted with EPA Form 5700-52A

# Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name \_\_\_\_\_

KPWSLF or KWPCRLF Project No. \_\_\_\_\_

Prime Contract Bidder/Engineering Firm \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

The following firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

DBE Subcontractor/Supplier contacted \_\_\_\_\_

Address \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email \_\_\_\_\_ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE \_\_\_\_\_ or WBE \_\_\_\_\_? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other \_\_\_\_\_

Comments \_\_\_\_\_

\_\_\_\_\_

Prepared By: \_\_\_\_\_

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

(Use additional copies of this sheet if needed)

### Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___ YES	___ NO	
If yes, please complete the table below. If no, please explain:			
<b>Subcontractor Name/ Company Name</b>	<b>Company Address/ Phone/ Email</b>	<b>Est. Dollar Amt</b>	<b>Currently DBE Certified?</b>

\_\_\_\_\_ Continue on back if needed \_\_\_\_\_

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

\_\_\_\_\_  
EPA Project Control Number

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature and Date of Authorized Representative

## Wage Rate Requirements:

CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

### **Wage Rate Requirements Under EPA FFY 2010 and Subsequent Appropriations**

#### **Preamble**

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 1-5.

#### **-OR-**

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 11-3(ii)(A), below and for compliance as described in Section 11-5.

#### **I. Requirements under EPA FFY 2010 and Subsequent Appropriations For Subrecipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial

assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Lorraine Fleury at [fleury.lorraine@epa.gov](mailto:fleury.lorraine@epa.gov) or at 215-814-2341 of EPA, Region III Grants and Audit Management Branch for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

### **2. Obtaining Wage Determinations.**

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of

paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the subgrant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who

has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program

shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally -assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the :same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause

requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions *made*, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the

initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices . These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

# **WAGE RATE DETERMINATION**

KWPCRLF Project #:

Municipality:

Date:

Subject: Bid Documents for Review and Approval

Contract Title:

The following documents are enclosed for review and approval prior to awarding of the contract(s):

- \_\_\_\_\_ Proof of advertising
- \_\_\_\_\_ Tabulation of bids (must include address, phone #, email, and contact person for all bidders)
- \_\_\_\_\_ Low bid and/or proposal recipient wishes to accept
- \_\_\_\_\_ Recipient recommendation of award
- \_\_\_\_\_ Any addenda not previously submitted and bidder acknowledgment of all addenda
- \_\_\_\_\_ Bid bond
- \_\_\_\_\_ Suspension and Debarment (40 CFR Part 32 Subpart C including EPA Form 5700-49)
- \_\_\_\_\_ Davis-Bacon Wage Requirements
- \_\_\_\_\_ EPA Form 6100-3 (DBE Subcontractor Performance Form) from all bidders <sup>1</sup>
- \_\_\_\_\_ EPA Form 6100-3 (DBE Subcontractor Performance Form) from the engineering consultant responsible for construction phase engineering services
- \_\_\_\_\_ EPA Form 6100-4 (DBE Subcontractor Utilization Form) from all bidders
- \_\_\_\_\_ EPA 6100-4 (DBE Subcontractor Utilization Form) from the engineering consultant responsible for construction phase engineering services
- \_\_\_\_\_ Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form (Appendix E-3) for the proposed contractor
- \_\_\_\_\_ Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form (Appendix E-3) for the engineering consultant responsible for construction phase engineering services
- \_\_\_\_\_ State of Kansas Act Against Discrimination Contract Provisions signature form
- \_\_\_\_\_ One set of as-bid plans and specifications, if not previously submitted
- \_\_\_\_\_ Site certification and description including the Applicant Assurance with respect to Acquisition, if not previously submitted
- \_\_\_\_\_ Certification of Non-Segregated Facilities
- \_\_\_\_\_ Anti-Lobbying Certification Form
- \_\_\_\_\_ Increase request, if required
- \_\_\_\_\_ Construction storm water NPDES permit, if not previously submitted

The proposal(s) expire \_\_\_\_\_  
Date

For additional information contact:

Name:  
Address:  
Phone No.

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Signature of Authorized Representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 30 2009

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** Peter S. Silva *Michael Shynis for*  
Assistant Administrator

**TO:** Water Management Division Directors  
Regions I - X

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement, and the focus of this memorandum, requires the application of Davis-Bacon Act requirements.

P.L. 111-88 includes the following language in Title II under the heading, "Administrative Provisions, Environmental Protection Agency,"

For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after October 30, 2009 (date of enactment of P.L. 111-88), and prior to

October 1, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Notably, there is no application of the Davis-Bacon Act requirements where such a refinancing occurs for a project that has completed construction prior to October 30, 2009. This provision does not apply to any project for which an assistance agreement was executed prior to October 30, 2009, no matter when construction occurs.

Further information may be provided in the form of "Questions and Answers" if necessary.

We fully understand the complexity of this provision and the difficulties involved in its application. If you have any question, please contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0614, or Philip Metzger, Attorney-Advisor, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3776.

**CROSS-CUTTING FEDERAL AUTHORITIES:**

**A HANDBOOK ON THEIR APPLICATION IN THE  
CLEAN WATER AND DRINKING WATER STATE REVOLVING FUND PROGRAMS**

October 2003



**CROSS-CUTTING AUTHORITY HANDBOOK**

**OCTOBER 2003**

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**SECTION I: INTRODUCTION**

*CROSS-CUTTING AUTHORITY HANDBOOK* **OCTOBER 2003**

**Purpose**

This handbook describes how cross-cutting federal authorities apply to projects and activities receiving assistance under the Clean Water State Revolving Fund (CWSRF) program authorized by Title VI of the Clean Water Act and the Drinking Water State Revolving Fund (DWSRF) program authorized by section 1452 of the Safe Drinking Water Act (together, the SRF programs). The basic rules for complying with cross-cutting federal authorities in the two programs are set-out in the CWSRF regulations at 40 C.F.R. § 35.3145 and in the DWSRF regulations at 40 C.F.R. § 35.3575.

Cross-cutting federal authorities are the requirements of other federal laws and Executive Orders that apply in federal financial assistance programs. Often, these authorities are expressly applied by the statute authorizing the assistance itself. More frequently, the requirements are not cited in the authorizing statute, but apply broadly by their own terms to a wide range of federal financial assistance programs. In the SRF programs, these include environmental laws such as the Endangered Species Act, the National Historic Preservation Act and executive orders on the protection of wetlands and flood plains, social policy authorities such as executive orders on equal employment opportunity in federally assisted programs, and economic authorities such as rules implementing executive orders on the debarment and suspension of persons who have engaged in misconduct.

In the SRF programs, the requirements of cross-cutting federal authorities apply to projects and activities whose cumulative SRF funding equals the amount of the capitalization grant. Generally, projects and activities funded with monies in amounts greater than the capitalization grant amount are not subject to these requirements. However, all programs, projects and activities undertaken in the SRF programs are subject to federal anti-discrimination laws, including the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, section 13 of the Federal Water Pollution Control Act Amendments of 1972, and Executive Order 11246 on affirmative action in federal contracting.

The Environmental Protection Agency (EPA) retains ultimate responsibility for ensuring that states and assistance recipients comply with the cross-cutting federal authorities. However, because of the unique nature of the SRF programs – which are managed by the states who, unlike EPA, have a direct relationship with the recipients that must comply with the authorities – compliance activities are carried out mainly by the states and assistance recipients, to the extent authorized under each cross-cutter.

This handbook is intended to serve as an information resource for EPA regional personnel with responsibilities for the SRF programs, for state SRF program managers, and for assistance recipients in the two programs. It summarizes the requirements of applicable cross-cutting authorities that are pertinent to the SRF programs, and the procedures states and recipients must follow to attain compliance. More detailed procedures must be worked out between the EPA regional offices and the states as part of the capitalization grant agreement process. State SRF program managers and assistance recipients should also refer to the applicable laws and regulations for the actual requirements of the law (this handbook is a mere

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summary) to ensure that new requirements have not been enacted by statute or implemented by regulation. Finally, SRF personnel should be aware that the list of applicable cross-cutters in this handbook may change if revisions to existing laws are made or new laws are enacted.

**The State Revolving Fund Programs**

The Water Quality Act of 1987, Pub. L. No. 100-4, established the CWSRF program in the new title VI of the Federal Water Pollution Control Act, which is more commonly known as the Clean Water Act (CWA). 33 U.S.C. § 1251, *et. seq.* Under Title VI, 33 U.S.C. § § 1381 - 1387, EPA awards grants to states (capitalization grants) to establish and capitalize revolving funds. From these funds, which are further capitalized by a 20 percent match and other state contributions, the states may provide loans and other types of assistance for the construction of publicly owned wastewater treatment facilities, the implementation of non-point source management programs, and the development and implementation of estuary conservation and management plans.

The Drinking Water State Revolving Fund (DWSRF) program at section 1452 of the Safe Drinking Water Act (SDWA), was authorized by the SDWA Amendments of 1996, Pub. L. No. 104-182, 42 U.S.C. § 300j-12. The DWSRF was created to assist public water systems maintain or achieve compliance with the drinking water standards of the SDWA and to protect public health. As in the CWSRF, EPA awards grants to states to capitalize revolving funds, which are further capitalized by the required state match and any other funding the state contributes to the DWSRF. The DWSRF may provide low cost loans and other types of assistance to eligible public water systems. In contrast to the CWSRF program, a state can also set aside up to 31% of its DWSRF capitalization grant funds and use the funds for state drinking water programs and activities that support source water protection and enhance water systems management (e.g., operator certification, capacity development). The amount of a capitalization grant that is used for these "set-aside" purposes is not deposited in the state's revolving fund.

Under the SDWA, a state may administer its DWSRF in combination with other state loan funds unless expressly prohibited by state law. 42 U.S.C. §300j-12(g)(1). The funds must be accounted for separately and used solely for specified purposes. One year after a DWSRF program receives its first capitalization grant, it may transfer up to one-third of the amount of its DWSRF capitalization grant(s) to its CWSRF or an equivalent amount from its CWSRF to its DWSRF. By allowing states to transfer funds between the CWSRF and DWSRF programs, Congress indicated its intent for the two SRFs to be implemented and managed in a similar manner. EPA developed policies and procedures for the DWSRF that are consistent with the previously established CWSRF.

**State Revolving Funds and Cross-Cutting Authorities**

The structure and intent of the SRF programs are substantially different from that of

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most EPA grant programs, such as the CWA construction grant program.<sup>1</sup> These differences affect the application of federal cross-cutting authorities. Significant among these differences is the relationship between the federal government and the ultimate assistance recipient. In the CWA construction grant program (and, still, in most other Agency grant programs), EPA awarded grants directly to the local recipient for an identified project or activity. EPA remained involved at the project level, ensuring that these projects complied with cross-cutting authorities in accordance with federal regulations applicable to activities directly funded by federal agencies.<sup>2</sup> In the SRF programs, grant funds flow from EPA to the SRFs, which are further capitalized by the required state matching contribution. States may also provide funds from other sources, such as bond proceeds, if the state elects to leverage SRF assets. These funds are then made available by the state, not by EPA, to local recipients as loans or other types of non-grant assistance. EPA does not select or approve projects to receive SRF assistance. Those decisions are made by the states, which must set priorities for funding based on the requirements of the two statutes. See CWA § § 603(g) and 606(c), SDWA § 1452(b).

In enacting the SRF programs, Congress intended to place the responsibility for financing water infrastructure needs and managing these programs on the states. See, e.g., S. Rep. No. 99-50 at 8, 99<sup>th</sup> Cong. 1<sup>st</sup> sess. (1985), H. Rep. No. 104-632 at 11, 104<sup>th</sup> Cong. 2d sess. (1996). Unlike the CWA construction grants program, in the SRF programs the states, rather than EPA, play a paramount role in day-to-day project level activities. For the most part, EPA's role in the SRFs is limited to ensuring that the state-established programs comply with the requirements of CWA title VI and SDWA section 1452, and annually reviewing the performance of the state programs. Although EPA will remain ultimately responsible for ensuring compliance with cross-cutting federal authorities, it will do so largely through its review of state programs.

**Application of Cross-Cutting Authorities in the SRF Programs Generally**

In the SRF programs, compliance with federal cross-cutting authorities begins with a commitment made by the state SRF agency to comply, and to require certain recipients to comply, with applicable authorities. 40 C.F.R. § 35.3145 (CWSRF); 40 C.F.R. § 35.3575 (DWSRF). This commitment is explicitly contained in the capitalization grant or operating agreements. The EPA regional office reviews a state's compliance with cross-cutters as part of the Annual Review.

Cross-cutters apply to the SRF agency as the grant recipient and to projects and

<sup>1</sup> The CWA's Title II construction grant program was the predecessor to the CWSRF program. It was a more traditional federal financial assistance program under which federal funds were granted directly to local communities for the construction of wastewater facilities. 1990 was the last year in which Congress appropriated funds for Title II.

<sup>2</sup> Although EPA retained final authority over cross-cutter activities, in the CWA's construction grants program, much of the work involved in attaining compliance was carried out by the grant recipient or by the delegated state agency. See, e.g., 40 C.F.R. § 35.3015.

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activities receiving federal financial assistance.<sup>3</sup> Because SRFs may consist of funds from several sources (federal grants, state match, loan repayments, or bond proceeds), states must apply cross-cutter requirements to projects whose cumulative funding is equal to the amount of the federal capitalization grant.

**Application of Cross-Cutting Federal Authorities in the CWSRF Program**

To ensure that the federal interest in the fund is protected, the CWSRF program requires that cross-cutting authorities requirements must be met by projects or activities whose cumulative funding equals the amount of the federal capitalization grant to the state.<sup>4</sup>

The state decides which projects will be used to meet this requirement and must ensure that these projects comply with federal cross-cutting authorities.<sup>5</sup> Once the state determines which projects will receive funding that cumulatively equals the amount of the capitalization grant, other projects funded with CWSRF monies are not generally subject to cross-cutting authorities.<sup>6</sup> However, the state may require compliance with cross-cutters by projects whose cumulative funding is greater than the amount of the federal capitalization grant. If the state does this, it may bank the excess to meet future requirements.<sup>7</sup>

**Application of Cross-Cutting Federal Authorities in the DWSRF Program**

Because of its similarities to the CWSRF, and because many aspects of the two

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<sup>3</sup> This describes only those cross-cutting requirements that apply at the project level in the SRF programs. It does not address cross-cutting authorities that apply only to the state as the grant recipient (e.g., The Drug-Free Workplace Act, Pub. L. No. 100-690 (1988)) nor those that apply whether or not federal assistance is involved (e.g., the Occupational Safety and Health Act, Pub. L. No. 91-596).

<sup>4</sup> Title VI of the CWA used the term "directly made available by" capitalization grants to delineate the federal interest, see CWA § 602(b)(6), but this phrase was also used for a more specific purpose of identifying projects which must comply with several identified requirements, including requirements carried over from the CWA Title II construction grant program.

<sup>5</sup> To the extent each cross-cutting authority permits, project-level involvement by EPA will be limited to cases in which disputes arise concerning compliance.

<sup>6</sup> All programs, projects, and activities undertaken by the SRF programs are subject to the federal anti-discrimination laws, including the Civil Rights Act of 1964, Pub. L. No. 88-352 §601, 78 Stat. 252 (codified as amended at 42 U.S.C. §2000d), the Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794), and the Older Americans Amendments of 1975, Pub. L. No. 94-135, § 303, 89 Stat. 713, 728 (codified at 42 U.S.C. § 6102). Further, these broader anti-discrimination laws apply by their own terms to the entire organization receiving federal financial assistance, not just to the project itself.

<sup>7</sup> Required compliance under the minority-owned and women-owned business enterprise (DBE) laws by projects whose cumulative funding is greater than the amount of the federal capitalization grant is not "bankable."

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programs are often run in conjunction by the states, the concept that cross-cutting authorities apply to projects and activities whose cumulative funding equals the amount of the grant has been applied to the DWSRF program. Unlike the CWSRF, however, as much as 31% of the DWSRF capitalization grant can be set aside and used for state program activities and certain local initiatives. Because these "set-aside" funds are held in accounts outside the loan fund, only federal dollars are used to support set-aside activities (with the possible exception of a 1:1 cash match a state may provide to support one of the allowable set-asides. See 42 U.S.C. § 300j-12(g)(2)). Therefore, federal cross-cutters must be applied to all set-aside expenditures. A state cannot meet the cross-cutting requirement for set-aside activities by applying cross-cutting authorities to an excess of projects receiving assistance from the loan fund. For infrastructure projects receiving assistance from the DWSRF loan fund, requirements imposed by cross-cutters will only apply to those projects whose cumulative funding is equal to the amount of the capitalization grant deposited into the loan fund (i.e., the capitalization grant less the amount directed to set-asides).

As an example, State A's drinking water capitalization grant is \$1.3 million this year. State A will use \$300,000 of the grant to fund set-aside activities. The state will be required to ensure compliance with cross-cutter authorities on the entire \$300,000 used for set-asides, to the extent that the use of those funds implicate the authorities.<sup>8</sup> The remaining \$1 million of the grant, and other state funding, including the state's required match, brings the total deposit to the DWSRF loan fund to \$1.6 million. State A has 10 projects on its priority list. One project is eligible for a \$300,000 loan, another for a \$200,000 loan, 2 projects are each eligible for loans of up to \$250,000, and the remaining 6 projects are each eligible for loans of \$100,000. State A has determined that the four projects eligible for the largest loans (totaling the capitalization grant of \$1 million deposited into the Fund) will be the projects that must comply with federal cross-cutting requirements. The other six projects funded with the remaining \$600,000 are not subject to these requirements. However, State A is going to require compliance by all 10 projects, and next year, if the capitalization grant amount deposited into the fund remains at \$1 million, the state will have a credit of \$600,000 that it can apply towards cross-cutting requirements for projects receiving assistance from the loan fund.

**Structure of the Handbook**

The cross-cutting authorities are arranged in this handbook according to three general categories: Environmental, Social Policy, and Economic and Miscellaneous authorities. Each section begins with a brief description of the overall category. For example, the Environmental Authorities section is preceded by a discussion of how the process for complying with cross-cutting environmental authorities should be accomplished in conjunction with an approved state environmental review process (SERP).

Within each category, each individual cross-cutter is presented. The particular authority

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<sup>8</sup> In most cases, the activities being conducted under the set-asides will not implicate factors that require application of cross-cutting authorities. For example, using set-aside funds for the salaries of staff administering the program is not an "undertaking" that will have an "effect" on historic properties under section 106 of the National Historic Preservation Act.

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is briefly described and a relevant excerpt is usually quoted, with citations given to both the Public Law and the United States Code. This general discussion is followed by a summary of the implementation process under the CWSRF and the DWSRF. Citations to implementing regulations and other useful documents are included whenever appropriate.<sup>9</sup>

**A Note on Conventions Used in the Handbook**

For ease of both the drafting and the use of this handbook, certain short-hand phrases are often used to describe various institutions. The Environmental Protection Agency is referred to throughout as **EPA**. The state agency primarily responsible for administering the SRF program is referred to as the **SRF agency**.<sup>10</sup> The EPA regional office that is overseeing the state's SRF program is referred to simply as the **EPA regional office**. Where an environmental cross-cutting authority is the responsibility of another office in the EPA Region, that office is called the **EPA regional program office**. A federal government agency other than EPA that has statutory responsibility for a cross-cutting federal authority is termed the **responsible federal agency**, while its state counterpart, if one exists, is designated the **responsible state agency**.

In the SRF programs, the entity initially responsible for compliance activities is designated as the **SRF assistance recipient** or simply the **assistance recipient** (e.g., a municipality or public water system). Compliance activities in the SRF programs may, and in some instances, must, occur before assistance is awarded.

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<sup>9</sup> With the exception of NEPA, where states follow the EPA approved "State environmental review process," in carrying out the federal cross-cutting requirements, states must follow the applicable regulations and prescribed processes since the states are complying with the cross-cutters on EPA's behalf.

<sup>10</sup> The term "SRF agency" will be used to describe the various combinations of environmental agencies primarily responsible for the implementation of the CWA and the SDWA as well as any other agencies or departments with delegated authority to implement the SRF programs.

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SECTION II: ENVIRONMENTAL AUTHORITIES

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**A. National Environmental Policy Act  
Pub. L. No. 91-190 (1970)  
42 U.S.C. § 4321 et. seq.**

The National Environmental Policy Act (NEPA), which was signed into law on January 1, 1970, instructs federal agencies to thoroughly analyze the environmental consequences of their actions in an open and public manner. NEPA was the first statute to incorporate the "impact statement" approach to federal agency decision-making processes. The impact statement requirement directs responsible federal officials to prepare detailed environmental assessments for "major federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(C)). The cross-cutting effect of this requirement extends to nearly all federal financial assistance programs.

NEPA does not require that agencies achieve a particular environmental result in their undertakings. Instead, it directs agencies to adhere to a process that aims to minimize the adverse environmental impacts of their activities. EPA's NEPA regulations at 40 C.F.R. Part 6, Subpart C, incorporate requirements that are designed to result in compliance with the substantive requirements of a host of other, more specifically focused environmental laws, such as the Clean Air Act (CAA) and the Endangered Species Act.

EPA regulations at 40 C.F.R. §35.3140 and §35.3580 require recipients to conduct an environmental review, or NEPA-like review, for projects and activities funded with SRF program funds. State SRF recipients may comply with the environmental review requirement by complying with EPA's NEPA regulations at 40 C.F.R. Part 6.<sup>11</sup> The specific application of the NEPA-like review in the SRF programs is detailed below.

**NEPA Implementation in the SRF Programs**

**1. The Clean Water Act**

Under the Clean Water Act and 40 C.F.R. § 35.3140(a), EPA requires that all section 212 projects undergo a NEPA-like environmental review. These projects include the familiar wastewater treatment projects as well as nonpoint source pollution control and estuary projects that can also fit the definitions of "construction" and "treatment works" in CWA § 212.

Because of the nature of the CWSRF program – conferring, as it does, a greater responsibility on the states than in traditional grant programs – and because EPA seeks to promote an environmental ethic in the states, the Agency has required states to adopt procedures for conducting environmental reviews that are consistent with the intent of NEPA but that are carried out solely by state agencies under state statutes and policies. 40 C.F.R.

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<sup>11</sup> EPA's Part 6 NEPA regulations are currently under review. EPA will advise states if this review results in any changes or new requirements which may have an impact on the SRF.

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§35.3140. States still have the option to adopt the federal regulations set out at 40 C.F.R. Part 6, or to apply their own "NEPA-like" process for conducting reviews.

EPA's regulations implementing the CWSRF program at 40 C.F.R. Part 35 Subpart K extract the fundamental principles of EPA's 40 C.F.R. Part 6 NEPA regulations in a way that fits the unique structure of the CWSRF program. They set forth the minimum requirements that must be incorporated in state environmental review processes (SERPs) for all projects. These requirements allow state agencies to distinguish between the environmental review procedures that must be applied to projects that receive funds equaling the amount of the grant, and that are the focus of this handbook, and alternative procedures that may be applied to other projects. The Regional Administrator must review and approve the SERP and any subsequent significant changes to the SERP using the criteria at Appendix A to 40 C.F.R. Part 35, Subpart K. In general terms, the Regional Administrator will approve a SERP that contains the following elements:

- proper legal authority to conduct environmental reviews;
- an interdisciplinary approach for identifying and mitigating any environmental effects caused by the projects;
- a procedure to fully document the information, processes and premises that influence decisions;
- public notice and participation procedures; and,
- a process for evaluating alternatives and measures to avoid, minimize, or mitigate adverse impacts.

**2. The Safe Drinking Water Act**

The DWSRF environmental review process, see 40 C.F.R. § 35.3580, is based on the principles developed for the CWSRF program.

Projects whose cumulative funding equals the amount of the capitalization grant must be reviewed under a SERP that is functionally equivalent to EPA's NEPA review or the "NEPA-like" review process created by the state. 40 C.F.R. § 35.3580(c). As noted in the Introduction, because all set-aside activities are funded with federal dollars they must meet federal cross-cutting authorities to the extent that they are implicated. This includes environmental review. In most cases, the use of the funds for activities conducted under set-asides (e.g., funding state staff positions, contracts to provide technical assistance) will not implicate environmental review requirements, because these activities do not have a significant effect on the environment.

The Regional Administrator must review and approve the SERP and any subsequent significant changes to the SERP using the criteria at Appendix A to 40 C.F.R. Part 35, Subpart L. In general terms, the Regional Administrator will approve a SERP that contains the following elements:

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- proper legal authority to conduct environmental reviews;
- an interdisciplinary approach for identifying and mitigating any environmental effects caused by the projects;
- a procedure to fully document the information, processes and premises that influence decisions;
- public notice and participation procedures; and,
- a process for evaluating alternatives and measures to avoid, minimize, or mitigate adverse impacts.

**3. Tier II SERPS**

States must conduct environmental reviews of CWSRF and DWSRF projects, but for those activities funded in an amount greater than the capitalization grant, a state may elect to apply an alternative SERP (i.e., Tier II review). See 40 C.F.R. § 35.3140(c) and 40 C.F.R. § 35.3580(d).

**4. The SERP and Compliance with Other Environmental Authorities**

The intent underlying the SERP process is to ensure that recipients consider environmental impacts early in the planning process, to resolve compliance issues through prudent planning, and to integrate under the SERP umbrella procedures for compliance with the other cross-cutting environmental laws. Most of these other environmental authorities must also be addressed early in the planning process of a project or activity. As stated previously, in the SRF programs, compliance with federal cross-cutting authorities begins with a commitment made by the state SRF agency to comply, and to require certain assistance recipients to comply, with the applicable cross-cutters. States may also receive compliance assistance through the appropriate official in the EPA regional program office.

With some variations to account for differences in the laws or in the roles of the different levels of government, there is a series of steps in the process of achieving compliance with the environmental cross-cutters through the SERP process.

(1) With the assistance of the SRF agency, the assistance recipient must first conduct the necessary studies and analyses and prepare documentation demonstrating that the proposed project is in compliance with the cross-cutting environmental authorities, or that appropriate mitigation measures are included in its planning. These studies should be done in conjunction with the SERP's broader environmental analysis. The assistance recipient may also need to consult with representatives of responsible state agencies on particular cross-cutters to resolve compliance issues before the state-level review begins.

(2) The state SRF agency conducts an independent review of the documents prepared in step one and drafts the SERP documentation, which should include a preliminary

determination regarding compliance with relevant cross-cutters, or the measures the assistance recipient must take to achieve compliance.

(3) The state SRF agency must notify the responsible state or federal agency of its findings. If the responsible state or federal agency concurs in the SRF agency's determination (for example, where the Fish and Wildlife Service issues a "No Affect" letter), the SRF agency may then issue its final decision document and proceed with the project. If the responsible state or federal agency objects to the SRF agency's findings, the SRF agency must either revise its findings or seek to resolve outstanding issues directly with the responsible agency.

When the SRF agency and the responsible federal agency cannot resolve issues between themselves, these issues must be raised with the EPA regional office. During this process, the EPA regional office may consult with the responsible federal agencies. The SRF agency must maintain a file on each project, which documents the SRF agency's actions with respect to environmental cross-cutters (e.g., including the letter requesting comments on the preliminary determination and a summary of comments).

#### 5. The SERP and Compliance with Environmental Justice

Executive Order No.12898, signed February 11, 1994, directs all federal agencies to "make achieving environmental justice part of its mission." Each agency is required to identify and address any "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." EPA has defined its vision of environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Further, environmental justice requires that "no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from . . . the execution of federal, state, local, and tribal programs and policies." ([www.epa.gov/compliance/environmentaljustice/](http://www.epa.gov/compliance/environmentaljustice/)). One vehicle for EPA's efforts to address environmental justice concerns is the NEPA analysis. As a matter of policy, EPA has integrated environmental justice concepts into NEPA analyses through guidelines outlining the steps that should be taken to ensure environmental justice concerns have been addressed during the NEPA process. Identifying potential adverse effects on minority and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options is emphasized. Like NEPA's procedural requirements, the purpose of the SERP process is to help ensure that environmental consequences are fully considered and addressed before actions are taken. Therefore, states must comply with Executive Order No. 12898 by integrating environmental justice into their SERP process.

#### B. Historic Resources

##### National Historic Preservation Act Pub. L. No. 89-665, as amended, 80 Stat. 917 (1966) 16 U.S.C. §470 *et. seq.*

The National Historic Preservation Act (NHPA) embodies a long-standing national policy to preserve historic sites, buildings, structures, districts and objects of national, state, tribal, local, and regional significance and, among other things, to protect such historic properties from adverse impacts caused by activities undertaken or funded by federal agencies. NHPA expanded the scope of the 1935 Historic Sites Act, Pub. L. No. 74-292 by establishing the National Register of Historic Places, a listing of historical and cultural resources maintained by the U.S. Department of the Interior (DOI).

The fundamental responsibilities of federal agencies are expressed in Section 106 of the Act, which reads:

The head of any Federal agency having direct or indirect jurisdiction over a proposed or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act (16 U.S.C. §§ 470i *et. seq.*) a reasonable opportunity to comment with regard to such undertaking.  
*16 U.S.C. §470(f)*<sup>12</sup>

The NHPA is administered by the DOI and the Advisory Council on Historic Preservation (the Council). The Council implements section 106 of the NHPA and has promulgated regulations for consultation regarding how to determine the effects of federal agency undertakings on historic properties. 36 C.F.R. Part 800. Although under certain circumstances the Council may become directly involved in such consultations, the procedures generally call for consultation between the federal agency and relevant state or tribal historic preservation officers (SHPOs and THPOs) and other interested parties.

#### Implementation in the SRF Programs

The SRF agency, in consultation with the Advisory Council or SHPO/THPO, as well as other interested parties, must first determine whether a project might affect historic properties that are included or eligible for inclusion on the National Register. This step is done by

<sup>12</sup> Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including: those carried out by or on behalf of the agency; those carried out with federal financial assistance; those requiring a federal permit, license, or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. 16 U.S.C. § 470w(7), 36 C.F.R. § 800.16(y).

identifying whether there are historic properties in the project area. The SRF agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Unlisted properties are evaluated against the National Park Service's published National Register criteria, in consultation with the SHPO/THPO and any Indian Tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If the SRF agency finds that historic properties are present, the next step is to assess possible adverse effects. Again, consultation must occur with the SHPO/THPO and other interested parties. If they agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed upon conditions. If the parties cannot agree or they find that there is an adverse effect, the agency begins consultation to identify ways to avoid, minimize, or mitigate adverse effects. This process also requires consultation with the SHPO/THPO and others, including Indian Tribes and Native Hawaiian organizations, local governments, and members of the public.

Before the SRF agency issues its environmental decision document on the project, the 106 process should be completed. If, because of disagreement among the appropriate parties, the SRF agency cannot issue a determination that no historic or cultural properties are in the project area, that resources do exist in the project area but will not be adversely affected, or that adequate mitigating measures will be taken to avoid or reduce adverse effects to resources in the project area, the SRF agency must notify the EPA regional office. The EPA regional office will then enter into consultations with all parties to resolve the dispute.

#### Additional References

- 36 C.F.R. Part 800. Protection of Historic Properties. See also [www.achp.gov](http://www.achp.gov) for additional reference materials and guidance.
- Programmatic Agreement Among the Environmental Protection Agency, The Advisory Council On Historic Preservation, And The National Conference Of State Historic Preservation Officers Concerning Compliance With The National Historic Preservation Act Under EPA's State Water Pollution Control Revolving Fund Program (1991).<sup>13</sup>

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#### Archeological and Historic Preservation Act Pub. L. No. 93-291 (1974) 16 U.S.C. §469a-1

The intent of the Archeological and Historic Preservation Act (AHPA) is to limit the loss of important historical data that would result from federal, or federally authorized, construction

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<sup>13</sup> EPA has entered into a Programmatic Agreement with the Council and the National Conference of State Historic Preservation Officers establishing procedures for NHPA compliance in the CWSRF program. Because the two programs are similar, the DWSRF program follows the programmatic agreement as a matter of practice. Under this agreement, the SRF agency in the first instance carries out the responsibilities of the NHPA section 106 process.

activities. Unlike section 106 of the NHPA, which principally addresses adverse effects to historic properties identified within a project area prior to project initiation, the requirements of the AHPA are typically invoked when historic properties are discovered after the project has begun and potential adverse effects may occur. (The NHPA regulations do have a provision that addresses late discoveries of historic properties).

The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeological data that may be lost during the construction of federally sponsored projects and to nominate for the register resources under the agency's control, to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. If such items are discovered, the DOI must be notified to recover the data or recommend measures to mitigate potential losses. The Department's standards and guidelines (48 Fed. Reg. 44716 (Sept. 9, 1983)) detail accepted archeological preservation activities and methods. This publication is the standard for all data recovery activities undertaken in the SRF programs for discovery situations under the AHPA, or for avoiding or mitigating adverse impacts on known historic properties under the NHPA.

16 U.S.C. § 469a-1 reads in part:

#### (a) Notification and request for preservation of data

Whenever any federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any federal construction project or federally licensed project, activity or program, may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary [of the Interior], in writing, and shall provide the Secretary with appropriate information concerning the program, project or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data . . . ."

When discoveries are made on a project that required the involvement of the SHPO/THPO during the early planning stages of the project, compliance with the AHPA can be satisfied by continuing to work through the SHPO/THPO under procedures of the NHPA. Alternatively, whether or not it is necessary to consult with the SHPO/THPO on a project involving NHPA compliance, compliance with the AHPA may be accomplished by working directly with the DOI, National Park Service's Departmental Consulting Archeologist.

#### Implementation in the SRF Programs

The SRF agency may involve the SHPO/THPO in determining the significance of discoveries of scientific, prehistoric, historical, or archeological data made during construction. Agreements for data recovery, and mitigation measures if necessary, made between the SRF agency and the SHPO/THPO will satisfy EPA's compliance obligations. The EPA regional office needs to be notified and involved only when disputes cannot be resolved. If, however, the SRF agency fails to work through the SHPO/THPO, the EPA regional office must be notified and will coordinate with the DOI to ensure compliance with the AHPA.

Recovery or mitigation measures may require alteration of the project's approved plans. The results of the consultations and approved data recovery mitigation plan must be included in the assistance recipient's environmental documentation for the project.

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### C. Environmentally Sensitive Lands

#### Protection of Wetlands<sup>14</sup>

##### Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997)

A national policy aimed at protecting wetlands, which include marshes, swamps, bogs, ponds, and other areas that are regularly inundated with water, has been pursued, at least implicitly, since the passage of the Rivers and Harbors Act of 1899. A number of laws, including the CWA and the Coastal Zone Management Act, Pub. L. No. 92-583, 16 U.S.C. §1451 *et. seq.*, in some manner regulate the management of wetlands.

National wetlands policy applicable to the activities of federal agencies is set forth in Executive Order No. 11990, which was issued by President Carter in 1977 and which President Clinton amended 20 years later by Executive Order No. 12608. The Executive Order broadly directs all agencies of the federal government to carefully consider the effects on wetlands from the discharge of any of their responsibilities, and to minimize the destruction, loss, or degradation of wetlands in any manner when there are feasible alternatives to the action. Section 2(a) of the order requires that:

... each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

The Executive Order also requires public notice of any plans to support new construction in wetlands.

#### Implementation in the SRF Programs

SRF assistance recipients must first determine, in consultation with the state environmental agency, whether a proposed project will be located in or affect a wetland.<sup>15</sup> If so, further consultations must be held to develop and evaluate alternative locations for the project or other mitigating measures.

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<sup>14</sup> See also Pub. L. No. 99-645, 1998, as codified at 16 U.S.C. § 3901 *et. seq.*

<sup>15</sup> Under 16 U.S.C. § 3931, the DOI is directed to prepare the National Wetlands Inventory Maps and other documents as part of the National Wetlands Inventory Project. (1998).

If this evaluation determines that there are no practicable alternatives that would avoid impacts to wetlands, the assistance recipient, in consultation with the state environmental agency, shall design or modify the project to minimize adverse impacts to the wetlands and provide an opportunity for public review and comment on the proposed project.

Two other important aspects of complying with Executive Order No. 11990 in the SRF programs must be considered by the assistance recipient. Under the EPA's "no net loss of wetlands" policy, where natural wetlands will be destroyed by project construction, assistance recipients must devise plans to construct substitute or "mitigation" wetlands. Secondly, the recipient should seek the assistance of the U.S. Fish and Wildlife Service when developing measures to mitigate adverse impacts on wetlands, to ensure that these measures adequately protect the diversity and the habitat of species living in the affected wetland.

During the environmental review of the project, the SRF agency must furnish both the U.S. Fish and Wildlife Service and the EPA regional office with documentation demonstrating that (1) all alternatives to locating the project in or affecting the wetland were carefully considered, (2) the alternative selected was the only practicable one, and (3) adequate measures will be taken to mitigate damage to the wetland, including its natural systems. The SRF agency will be responsible for ensuring that any comments by the Service and the EPA regional office are taken into account in the project's design.

#### Additional References

- 40 C.F.R. Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.

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#### Flood Plain Management

##### Executive Order No. 11988 (1977), as amended by Executive Order No. 12148 (1979)

Federal policy designed to promote the prudent management of flood plains has been in effect since 1968, with the passage of the National Flood Insurance Act. Pub. L. No. 90-448, 42 U.S.C. § 4001 *et seq.* By providing federal subsidies for private flood insurance and by requiring flood-prone communities to have the insurance as a condition to receiving federal assistance, that law and the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234, 87 Stat. 939 (1973), recognized the serious economic and environmental damage that can result from flooding in developed lowland areas.

Executive Order No. 11988 regulates the actions of federal agencies that affect flood plains.<sup>16</sup> This order requires all agencies undertaking, financing, or assisting proposed activities to determine whether they will occur in or affect a flood plain and to evaluate potential measures to avoid adversely affecting the plain. Locations of flood plains can be determined by examining

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<sup>16</sup> Executive Order No. 12148, 3 C.F.R. §412, transferred functions for flood plain management to the Federal Emergency Management Agency.

maps available from the U.S. Department of Housing and Urban Development, Federal Emergency Management Agency (FEMA), the U.S. Department of Agriculture, and state water resource planning agencies. Agencies must select, if they are available, viable alternative locations for their undertakings that will not affect flood plains.

If construction or improvements will be undertaken or supported in a flood plain because no practicable alternative locations are available, and the SRF agency has otherwise complied with the Executive Order, measures must be taken to minimize the risk of flood damage to or within the flood plain, such as flood proofing the facility to be constructed, elevating structures above base flood levels, or providing compensatory flood storage. In addition, public review is required for each plan or proposal for action taking place within a flood plain.

#### Implementation in the SRF Programs

In consultation with the state SRF agency, the SRF assistance recipient must first determine whether the proposed project will be located in or affect a flood plain.

If the proposed project will be located in or will affect a flood plain, the assistance recipient must prepare a flood plain/wetlands assessment. If there are no practicable alternatives to the proposed site, the assistance recipient must document the mitigating measures or design modifications that will be taken to reduce the threats from locating the project in the flood plain. In conjunction with the public notice procedures in the SERP, the project area community must be informed why the proposed project is to be located in a flood plain.

The environmental information documentation describing mitigating and design measures must be submitted by the assistance recipient to the SRF agency, which prepares a preliminary finding on whether the assistance recipient has complied with Executive Order No. 11988. Notice of this finding should be given to FEMA, which may provide recommendations for improving mitigation measures or further modifying the project's design to enhance flood protection.

#### Additional References

- 40 C.F.R. Part 6 Appendix A: Statement of Procedures on Flood Plain Management and Wetlands Protection.
- 43 Fed. Reg. 6030 (1978): Water Resources Council's Flood Plain Management Guidelines issued to aid all other federal agencies in amending their regulations and procedures to comply with Executive Order No. 11988. The Guidelines include an eight-step decision-making process.
- "Further Advice on Executive Order 11988 Flood Plain Management," issued by FEMA and the Interagency Task Force on Flood Plain Management, in 1987.

#### Farmland Protection Policy Act Pub. L. No. 97-98 (1981) 7 U.S.C. §4201 et. seq.

In the 1970s, federal assistance for large-scale construction projects became pervasive and concerns developed in several agencies that many projects were being undertaken without due regard to their effect on the productive capacity of the nation's agricultural lands. These concerns gave rise to a series of policy statements, issued by the U.S. Department of Agriculture, the Council on Environmental Quality and the EPA (*EPA Policy to Protect Environmentally Significant Agricultural Lands*, signed by the Administrator on September 8, 1978), instructing federal program managers to more carefully consider the effect of a project on agricultural land and to take alternative or mitigating measures, when appropriate, to ensure that valuable farmland is preserved.

This policy direction culminated in 1981 with the passage of the Farmland Protection Policy Act, which was included in the 1981 Farm Bill (Agriculture and Food Act of 1981, Pub. L. No. 97-98, 7 U.S.C. § 4201 et. seq.). In the Act, Congress directed federal agencies to use criteria developed by the Soil Conservation Service (SCS) to identify the potential adverse effects of federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is compatible with the farmland preservation policies of state and local governments, and private organizations.

7 U.S.C. § 4202(b) calls upon all federal agencies to:

... identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state, unit of local government, and private programs and policies to protect farmland.

#### Implementation in the SRF Programs

Early in the planning phase of a project, the SRF agency and SRF assistance recipient should seek technical assistance from the state conservationist or local representative regarding the alternative sites proposed for the project. The state conservationist can offer advice on what further actions must be taken by the assistance recipient and the SRF agency to further evaluate important farmlands; the significance of all identified important farmlands; the sizing of the project as it relates to secondary growth; the continued viability of farming and farm support services in the project area; and alternatives or mitigation measures the SRF agency and assistance recipient should take to reduce potential adverse effects on important farmlands.

Before proceeding with the project, the SRF agency must notify the state conservationist or local representative about measures that the SRF assistance recipient will take to avoid, minimize, or mitigate effects on important farmlands.

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- 7 C.F.R. Part 658: Department of Agriculture criteria for identifying and taking into account the adverse effects of federal programs on the preservation of farmlands.
- *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978.

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D. Coastal Area Protection

**Coastal Zone Management Act**  
**Pub. L. No. 92-583 (1972), as amended**  
**16 U.S.C. § 1451 et. seq.**

In 1972, Congress amended the Marine Resources and Engineering Development Act to establish a national policy for the protection, beneficial use, and effective management and development of the nation's coastal zones.<sup>17</sup> The Act is also applicable to the coasts of the Great Lakes. The Coastal Zone Management Act, Pub. L. No. 101-508, 104 Stat. 1388-300 (1990), authorizes the Secretary of Commerce to assist states in the development of management plans designed to regulate land and water use in coastal areas. The Act also calls on all federal agencies to ensure that their activities in coastal areas are consistent with the state coastal zone management plans that have been approved by the Department of Commerce.

16 U.S.C. §1456(c)(1)(A) states:

(c)(1)(A) Each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs.

Generally, before any federally supported activity can be undertaken in a coastal zone, a determination that the project is consistent with the coastal zone management plan (consistency determination) must be secured from the responsible state agency.

**Implementation in the SRF Programs**

The Coastal Zone Management Act places primary responsibility for complying with its provisions in the state Coastal Zone Management agency. SRF assistance recipients should

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<sup>17</sup> The coastal zone encompasses coastal waters including the lands therein and thereunder and the adjacent shore lands and the waters therein and thereunder. The coastal zone includes islands, intertidal areas, salt marshes, wetlands and beaches. The zone extends inland from the shorelines only to the extent necessary to control the shore lands. See 16 U.S.C. § 1453(1)

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consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the project will be consistent with the state's coastal zone management plan. Consistency can be achieved through appropriate siting of the facility and its components or by incorporating adequate mitigating measures in the project's design. The SRF assistance recipient must then provide the SRF agency with documentation that the project is consistent with the coastal zone management plan. The SRF agency will review the documentation and may propose additional mitigating measures before forwarding a certification of consistency to the state Coastal Zone Management agency. If the Coastal Zone Management agency determines that the project is consistent with the state management plan (a consistency determination), the SRF assistance may be provided.

If the Coastal Zone Management agency cannot issue a consistency determination, the SRF agency must resume consultation with the assistance recipient and the Coastal Zone Management agency in an effort to resolve consistency issues. Conflicts can be addressed through informal discussions with the Coastal Zone Management Act's administering agencies, the National Oceanic and Atmospheric Administration (NOAA), or through mediation by the Department of Commerce, Office of Ocean and Coastal Resource Management.

Additional References

- 15 C.F.R. Part 930 Subpart F: Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Programs.
- 15 C.F.R. Part 923: Coastal Zone Management Program Regulations.

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**Coastal Barrier Resources Act**  
**Pub. L. No. 97-348, 96 Stat. 1653 (1982)**  
**16 U.S.C. §3501 et. seq.**

In 1982, Congress enacted legislation intended to discourage development in the Coastal Barrier Resources System,<sup>18</sup> a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes. The Coastal Barrier Resources Act restricts federal financial expenditures and assistance that would encourage development in the Coastal Barrier Resources System and the adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. 16 U.S.C. § 3504(a) reads in part:

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<sup>18</sup> The Coastal Barrier Resources System is established at 16 U.S.C. §3503. The areas in the system are depicted on maps on file with the Secretary of DOI titled, "Coastal Barrier Resources System."

Limitations on Federal Expenditures Affecting the System

(a) . . . no new expenditures or new financial assistance may be made available under authority of any federal law for any purpose within the [Coastal Barrier Resources System], including, but not limited to --

(1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure . . . .

16 U.S.C. §3505 provides a number of exceptions to this limitation on federal funding, including exceptions for facilities necessary to explore and extract energy resources and for "the maintenance, replacement, reconstruction, or repair, but not the expansion of, publicly-owned or operated . . . structures or facilities that are essential links in a larger network or system." 16 U.S.C. §3505(a)(3).

**Implementation in the SRF Programs**

During the planning phase of a proposed project and with the assistance of the state SRF agency, the SRF assistance recipient should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the Coastal Barrier Resources System and, if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

The state SRF agency must then provide the state Coastal Zone Management agency and the U.S. Fish and Wildlife Service with a certification, supported by sufficient documentation, that the proposed project will not affect the system, or documentation on the alternative site or mitigating measures that will be taken to avoid any effect on the system. The U.S. Fish and Wildlife Service is responsible for commenting on this information directly to the state SRF agency or the Coastal Zone Management program. Any recommendations offered by the U.S. Fish and Wildlife Service or the Coastal Zone Management agency to further minimize the effect of the proposed project must be considered for integration in the project's design by the SRF agency before it may provide assistance.

**Additional References**

- 48 Fed. Reg. 45664 (1983): DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines.

**E. Wild and Scenic Rivers Act**  
**Pub. L. No. 90-542, 82 Stat. 913 (1968)**  
**16 U.S.C. §1271 et. seq.**

Congress passed the Wild and Scenic Rivers Act to preserve the special scenic, cultural, historic, recreational, geologic, and fish and wildlife values of the nation's free flowing rivers and related adjacent land. The Act established the national Wild and Scenic River System, which includes rivers designated by Act of Congress and rivers that the Secretary of the DOI approves for addition to the list upon the petition of state governors. The Wild and Scenic Rivers Act establishes requirements for proposed projects that may effect the river, river segments, or the adjacent land.

The Wild and Scenic Rivers Act prohibits federal assistance for water resource projects<sup>19</sup> that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a designated wild and scenic river. This restraint is contained in 16 U.S.C. §1278(a), which reads in part:

. . . no department or agency of the United States shall assist by loan, grant, or otherwise in the construction of any water resource project that would have a direct and adverse effect on the values for which such river was established.

Similar language is used to describe the protection due rivers that are being studied for possible inclusion in the system (study rivers). 16 U.S.C. §1278(b).

**Implementation in the SRF Programs**

During the planning of a proposed project, the SRF assistance recipient should consult with appropriate state or federal officials and the SRF agency to determine whether the project or any alternatives under consideration may affect a designated or study river. The appropriate agency is the one that has jurisdiction over the rivers in the project area and includes the National Park Service, the U.S. Forest Service, or, in some cases, the DOI's Bureau of Land Management (BLM). The cross-cutting requirements of the Wild and Scenic Rivers Act are satisfied if there are no designated or study rivers in the project area, or if the project will not have a direct and adverse effect on a designated or study river.

With the assistance of the SRF agency and other appropriate state and federal officials, the SRF assistance recipient must evaluate further the alternatives under consideration that may affect a wild and scenic river. If those evaluations demonstrate that an alternative will have an adverse effect on a wild and scenic river, it must be eliminated from consideration and other alternatives or planning adjustments must be pursued.

Documentation of any evaluations done by the assistance recipient to determine the

<sup>19</sup> "Water resource projects" are defined in the Services' regulations to include "construction of developments which would affect the free-flowing characteristics of a designated or proposed Wild and Scenic River or Study River." "Construction" is defined as any action carried out with federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or a Study River." 36 C.F.R. § 297.3.

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effect of a proposed alternative on a wild and scenic river, along with documentation demonstrating that the selected plan will not adversely affect the river, must be furnished to the SRF agency. The SRF agency must then submit this information for review and comment to the federal agency charged with administering the river at least 60 days in advance of the planned action. 16 U.S.C. § 1278(a). SRF assistance cannot be provided to the applicant without the consent of the federal administering agency.

**Additional References**

- 36 C.F.R. Part 297 Subpart A: Wild and Scenic Rivers, Water Resources Projects.
- 47 Fed. Reg. 39457 (1982): Joint DOI National Park Service and Department of Agriculture (DOA) Forest Service Final Revised Guidelines for Eligibility Classification and Management of River Areas.

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**F. Endangered Species Act**  
**Pub. L. No. 93-205 (1973), as amended**  
**16 U.S.C. §1531 et. seq.**

Congress passed the Endangered Species Act in response to the risks posed to plants, fish, and wildlife by development and economic growth. The DOI's U.S. Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service prepare and maintain a list of endangered and threatened species. The Act requires all federal agencies to ensure that their activities are not likely to jeopardize, destroy, or adversely modify listed or proposed endangered and threatened species, or the designated critical habitat on which they depend. The Act also prohibits federal agencies and all other "persons" from "taking," e.g., harming (including, in some cases, habitat modification), harassing, or killing, endangered, and most threatened, animal species, without prior authorization for incidental taking from the applicable Service.

Actions that may affect listed species or their critical habitat must be reviewed through a consultation process between the federal agency and either the U.S. Fish and Wildlife Service, which is responsible for terrestrial and freshwater species, or the National Marine Fisheries Service, which is responsible for most marine species. Federal agencies also must "confer" with the Service(s) if their actions are likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of habitat proposed for designation as critical. The consultation and conference processes are established by Section 7 of the Act, which reads in part:

(a) Federal Agency Actions and Consultations.  
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(2) Each federal agency shall, in conjunction with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered

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species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected states, to be critical. . . .

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(4) Each federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed . . . or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.  
16 U.S.C. §§1536(a)(2)and (4)

Finally, all "persons" in the U.S., including federal agencies, states, and other non-federal entities, are prohibited from "taking" (e.g., harming, harassing, or killing) individuals of listed animal species under section 9 of the ESA. Detailed regulations governing consultation, conferences, and take issues associated with agency actions are set forth at 50 CFR Part 402. These regulations allow for federal agencies to fulfill certain ESA duties through designated non-federal representatives. 50 CFR § 402.08.

**Implementation in the SRF Programs**

During project planning, the SRF assistance recipient should obtain a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area and consult with the regional office of the appropriate Service to determine whether any listed or proposed species or critical habitat may be affected by the proposed project. The project can proceed if the state SRF agency conclusively determines that listed or proposed species or critical habitat will not be affected in any way -- adversely or beneficially, directly or indirectly -- by the project or interrelated or interdependent activities.

If the proposed project may affect a listed or proposed species or critical habitat, the state SRF agency and the appropriate Service must consult to determine the nature of that effect. A biological assessment must be prepared by the SRF agency (with the SRF assistance recipient's assistance, if appropriate) to serve as a basis for the determination that there will be no likely adverse effect on any listed species or critical habitat, or to support EPA in formal consultation with the appropriate service.<sup>20</sup> In order for the consultation to be concluded through an informal process, the appropriate service must provide written concurrence with the determination that the action is not likely to adversely affect listed species or critical habitat. In other words, the consultation does not conclude until the Service issues either (1) a biological opinion or (2) a concurrence letter agreeing that the action is not likely to adversely affect any listed species (informal consultation).

When formal consultation is necessary, the appropriate Service will render a biological opinion. If the opinion concludes that a proposed project is likely to jeopardize a listed species

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<sup>20</sup> While biological assessments are mandated for "major construction activities" as defined by the Act's regulations, they are not mandatory for projects that are not "major construction activities." In that case, however, a biological evaluation or other analysis similar to a biological assessment that analyzes the project's potential effects on species and critical habitat is required in order for the consultation process to proceed.

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or destroy or adversely modify a critical habitat, the Service will propose reasonable and prudent alternatives to the project that will not result in jeopardy of destruction or adverse modification, if possible. The EPA regional office, after consulting with the state SRF agency, will likely require an alternative or modified plan for the project that is not likely to jeopardize the species or habitat. In addition, if the opinion concludes that the proposed project will result in the incidental "taking" of a listed animal species, the Service generally will provide an incidental take statement that authorizes take so long as the state SRF agency and the SRF assistance recipient comply with specified reasonable and prudent measures necessary or appropriate to minimize impact on the species, and terms and conditions to implement those reasonable and prudent measures.

For either informal or formal consultation, ESA consultation does not conclude until the Service issues either (1) a concurrence letter agreeing that the action is not likely to adversely affect any listed species (informal consultation) or (2) a biological opinion (formal consultation). There are time frames by which the Service is supposed to respond, but the SRF agency cannot proceed until the Service acts.

**Additional References**

- 50 C.F.R. Part 402: DOI and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act.
- 50 C.F.R. 17.11 and 17.12: U.S. Fish and Wildlife Lists of Endangered or Threatened Species.
- 50 C.F.R. 17.95, 17.96 and Part 226: U.S. Fish and Wildlife Critical Habitats.
- 50 C.F.R. 222.23(a) and 227.4: National Marine Fisheries Service's List of Endangered or Threatened Marine Species.
- Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and National Marine Fisheries Service (March 1998), found at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>

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**G. Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act**

**Pub. L. 94-265 (1976), as amended  
16 U.S.C. §1801 et. seq.**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, was designed to manage and conserve national fishery resources. Eight Regional Fishery Management Councils (RFMC) were established to maintain the fisheries in their

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geographic region through Fishery Management Plans (FMP). The National Oceanic and Atmospheric Administration (NOAA), through the National Marine Fisheries Service (NMFS), evaluates FMP and issues necessary regulations.

In 1996, reflecting Congressional concern with marine habitat loss, the MSA was amended. The Sustainable Fisheries Act of 1996 added new requirements for the identification and protection of Essential Fish Habitat (EFH)<sup>21</sup> for species included in the fishery management unit. Each RFMC was required to designate EFH in its region, as well as identify adverse effects on EFH. Federal agencies are required to consult with the NMFS regarding "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this chapter." 16 U.S.C. § 1855(b)(2).

The NMFS issued final EFH regulations in 2002 for coordination and consultation with federal and state agencies concerning actions that may adversely effect EFH. (50 C.F.R. 600.905 et. seq.). Actions completed prior to an EFH designation will not require a consultation; however renewals, reviews or substantial revisions will require a consultation if the renewal, review or revision may adversely affect EFH. Importantly, "EFH consultation is required for any federal funding of actions that may adversely effect EFH." (50 C.F.R. 600.920(a)(1)).

**Implementation in the SRF Programs**

EFH consultations are only required for actions that may adversely effect EFH. Thus, with the assistance of the SRF agency, the assistance recipient must first determine whether a proposed project may adversely effect EFH. The NMFS will make maps and/or other information on the locations of EFH available as well as provide information on ways to promote conservation of EFH, in order to facilitate this assessment. If an action may adversely effect EFH, the SRF assistance recipient must complete an EFH consultation in conjunction, generally within the SERP process.

When a SERP document is transmitted to the NMFS for comment, the document or the transmittal letter should clearly state that the agency is initiating EFH consultation. For example, if the agency wants to use the EA process for EFH consultation, it must give the NMFS a draft EA and delay signing a Finding of No Significant Impact (FONSI) until after the agency responds to NMFS EFH recommendations. If an agency does not wish to provide a draft EA to the NMFS, it may use some other process for EFH consultation.

If an SRF assistance recipient prepares an EFH Assessment, it must provide that assessment to NMFS for comment. The NMFS will respond informally or in writing. The NMFS

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<sup>21</sup>EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." 16 U.S.C. 1802(10). The NMFS has further interpreted this statutory definition at 50 C.F.R. 600.10.

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comments may include EFH Conservation Recommendations, if appropriate. If so, the SRF recipient must respond to any NMFS EFH Conservation Recommendations, explaining the project's proposed measures for addressing, avoiding or mitigating the adverse effect of the project on EFH. In the event that such a response is inconsistent with the Conservation Recommendations, the SRF agency should first consult with the EPA regional office before explaining the reasons for not following the recommendations.

**Additional References**

- 50 C.F.R. 600.920 Federal agency consultation with the Secretary. Includes details on the requirements of EFH Assessments. "EFH Assessment Template issued by Habitat Conservation Division, National Marine Fisheries Service, June 14, 2001, available at [www.nwr.noaa.gov/1habcon/habweb/efh/templates/efh\\_assessment\\_template.pdf](http://www.nwr.noaa.gov/1habcon/habweb/efh/templates/efh_assessment_template.pdf).
- "Essential Fish Habitat Consultation Guidance" issued by Office of Habitat Conservation, National Marine Fisheries Service, available at [www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html](http://www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html).
- "Guidance for Integrating Magnuson-Stevens Fishery Conservation and Management Act EFH Consultations with Endangered Species Act Section 7 Consultations" issued by National Marine Fisheries Service, January 2001, available at [www.nmfs.noaa.gov/habitat/habitatprotection/images/guidance1.pdf](http://www.nmfs.noaa.gov/habitat/habitatprotection/images/guidance1.pdf).
- "National Finding for use of Endangered Species Act Section 7 Consultation Process to Complete Essential Fish Habitat Consultations" issued by National Marine Fisheries Service, February 28, 2001, available at [www.nwr.noaa.gov/1habcon/habweb/efh/national\\_finding\\_2-01.pdf](http://www.nwr.noaa.gov/1habcon/habweb/efh/national_finding_2-01.pdf)

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**H. Clean Air Act Conformity**

**Pub. L. No. 95-95 (1977), as amended**

**42 U.S.C. §7401 et. seq.**

Because of the nature and scope of the problem to be remedied, the Clean Air Act (CAA) imposes responsibilities for its implementation on all levels of government. Among other things, the Act directs EPA to set ambient air quality standards, which are airborne pollutant levels that are sufficient to protect the public health and welfare. Each state must develop an implementation plan (SIP), describing how it will attain, maintain and enforce the air quality standards. Developing the SIP, and implementing its provisions for controlling direct and indirect emissions, is done in consultation with state air agencies and other government organizations.

Section 176(c) of the Act prohibits any federal assistance for an activity within a non-attainment or maintenance area that fails to conform to an applicable SIP. This broad provision reads in part:

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(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a [State Implementation Plan].

42 U.S.C. § 7506(c)

**Implementation in the SRF programs**

Section 176(c) is implemented through regulations published by the EPA (40 C.F.R. § 93.150 et seq (Determining Conformity of General Federal Actions to State or Federal Implementation Plans)). If a state has adopted its own set of general conformity regulations and EPA has approved them into the SIP, those regulations must be followed. The SRF assistance recipient must first determine the direct and indirect emissions from the proposed project. If a project's emissions for each nonattainment pollutant are below the de minimis thresholds set forth in the applicable regulation, no further analysis is necessary and the project is presumed to conform. If the total of direct and indirect emissions is above the applicable de minimis levels and the project is otherwise not exempt from a conformity determination, the project must be found to conform to the SIP pursuant to one of the criteria listed in the regulation. The SRF agency, in consultation with the responsible state air agency and others, must take public comment on a proposed conformity determination. Projects cannot proceed unless they are found to conform. The conformity analysis can be included in the environmental review documents.

**Additional References**

- General Conformity Guidance: Question and Answers (July 13, 1994 and October 19, 1994 (which addresses issues with respect to SRF funded projects) found at [www.epa.gov/ttn/oarpg/genconformity.html](http://www.epa.gov/ttn/oarpg/genconformity.html).

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**I. Safe Drinking Water Act**

**Pub. L. No. 93-523 (1974), as amended**

**42 U.S.C. 300f et. seq.**

In 1974, Congress passed the first comprehensive SDWA. The Act required water supply systems in the United States to meet certain minimum national standards to protect the public health. Under the Act, EPA is required to set standards for the wide range of contaminants that can be present in drinking water supplies. EPA's drinking water regulations are codified at 40 C.F.R. 141-143. The SDWA was significantly amended in 1976, 1986, and

1996.

In the 1974 Act, Congress emphasized preventing contamination of aquifers that are the sole source of drinking water for a community. Section 1424 of the SDWA directs EPA, upon determining that a sole source aquifer may be at risk of contamination, to publish notice of that determination in the Federal Register. In accordance with Section 1424(e) of the SDWA, 42 U.S.C. §300h-3(e), after the notice is published:

... no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator [of EPA] determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

#### Implementation in the SRF Programs

Before the SRF agency can approve project plans, SRF assistance recipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project.

If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures. In the latter case, the state SRF agency must advise the EPA regional office of the assistance recipient's plans. If the EPA regional office requires additional mitigating measures, the SRF agency and the assistance recipient, with the assistance of the EPA regional office, must integrate these measures into the project's design.

### SECTION III: SOCIAL POLICY AUTHORITIES

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One way in which Congress and the Executive Branch have advanced certain social policy objectives is by linking the accomplishment of those objectives to federal assistance. For example, recipients of construction assistance under most federal programs must comply with the Executive Orders designed to ensure equal employment opportunity and to increase the participation of disadvantaged business enterprises (DBEs) in federally assisted programs and activities.

Prominent among the cross-cutting social policy authorities are four anti-discrimination laws that have special status in federally assisted programs or activities and in the SRF programs. Title VI of the Civil Rights Act of 1964 (Title VI), and the three anti-discrimination laws that were modeled on it — Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act), the Age Discrimination Act of 1975 (Age Discrimination Act), and Title IX of the Education Amendments of 1972 (Title IX),<sup>22</sup> — prohibit discrimination in any federally assisted program on the basis of race, color, national origin, sex, handicap, or age. Unlike other cross-cutting authorities that apply only to the federally funded program or activity, the prohibitions of these laws generally apply to the entire operation of the organization receiving the assistance. For example, if a local school system receives federal funds to upgrade its libraries, it must comply with the civil rights laws in other aspects of its programs, including those that do not receive federal financial assistance. The legislative history of the Civil Rights Restoration Act also makes clear that, where one level or department of government receives federal financial assistance for distribution to another level or department of government, both recipients must comply with the civil rights laws.

Consequently, the state SRF agency and all recipients of SRF assistance, must comply with Title VI, the Rehabilitation Act, and the Age Discrimination Act. The CWSRF recipients must also comply with Section 13 of the federal Water Pollution Control Act Amendments of 1972 (Section 13), which prohibits sex-based discrimination in CWA programs. Section 13 of the CWA instructs EPA to enforce its requirements according to rules similar to those used to enforce the requirements of the other civil rights laws.

Because the details of implementing these four laws are the same, they will be treated collectively in this section. Implementation of the other social policy authorities will be discussed individually.

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<sup>22</sup> Title IX of the Education Act Amendments applies only to education programs and therefore will not be discussed.

**A. Civil Rights Laws (i.e., Super Cross-Cutters)**

**Title VI of the Civil Rights Act of 1964**  
**42 U.S.C. § 2000d**

**Section 13 of the Federal Water Pollution Control Act Amendments of 1972**  
**33 U.S.C. § 1251**

**Section 504 of the Rehabilitation Act of 1973**  
**29 U.S.C. § 794**

**The Age Discrimination Act of 1975**  
**42 U.S.C. § 6102**

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap or age, in programs or activities receiving federal financial assistance. If, for example, a municipality receives SRF assistance to build a wastewater treatment plant, it may not decline to provide service from that plant to a particular neighborhood because of its racial composition. As the preface to this section noted, Title VI, the Rehabilitation Act, and the Age Discrimination Act were amended in 1988 to clarify that their anti-discrimination provisions apply to the entire operations of an assistance recipient, not just to the specific program, project, or activity that is the objective of the assistance. The reach of these statutes and Section 13, which contains language instructing EPA to treat its sex discrimination provisions in a manner similar to the Civil Rights Act, extends beyond that of other cross-cutting authorities.

The following excerpts from the four laws demonstrate their prohibition of various forms of discrimination that are prohibited in federally assisted programs and activities:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

*Title VI*

No person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal assistance under . . . the federal Water Pollution Control Act . . .

*Section 13*<sup>23</sup>

(n)o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance . . . .

*Rehabilitation Act*

(n)o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance.

*Age Discrimination Act*

**Implementation in the SRF Programs**

Because of the extraordinary reach of the civil rights laws, all assistance recipients must comply with these "super cross-cutters." Pursuant to EPA's regulations on "Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency," the SRF agency must agree, and require all assistance recipients to agree, not to discriminate on the basis of race, color, national origin or sex. 40 C.F.R. Part 7.<sup>24</sup>

Recipients of federal assistance are required to collect and maintain information to show compliance with the laws. This information includes a list of discrimination complaints, reports of any compliance reviews conducted by other agencies, descriptions of any pending discrimination-based lawsuits, and data on the racial, ethnic, national origin, sex, and handicap characteristics of populations served. If there is "reason to believe" that discrimination may be occurring based on this review, the matter will be referred to the EPA Regional Director of Civil Rights for appropriate action.

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<sup>23</sup>Section 13 only applies to the CWSRF.

<sup>24</sup>The fact that the regulations do not address discrimination on the basis of age *does not* exempt recipients from compliance with the later-enacted Age Discrimination Act.

**B. Equal Employment Opportunity  
Executive Order No. 11246 (1965)**

Through a series of Executive Orders, and a decision by the Equal Employment Opportunity Commission, the federal government has established a national policy designed to battle discrimination based on race, color, sex, religion, and national origin in federal assistance programs and to enhance hiring, training, and promotion opportunities for minorities and women in construction programs financed, in part, by federal dollars. Chief among these directives is Executive Order No. 11246, which requires all federal contracting agencies to include certain nondiscrimination and "affirmative action" provisions in all contracts and to require the recipients of federal contracts to include these provisions in subcontracts. The provisions commit the contractor or subcontractor to maintain a policy of non-discrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire, and train employees without regard to race, color, sex, religion, or national origin.

Executive Order No. 11246 was signed by President Johnson on September 24, 1965 and has been amended by subsequent administration directives. Part III of the order applies equal employment opportunity principles to federally assisted construction programs.

**PART III - NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

Sec. 301. Each executive department and agency which administers a program involving federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract,<sup>25</sup> that the applicant for federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the federal government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order . . . .

Section 202 contains seven clauses that must be included in construction contracts. These clauses commit the contractor or subcontractor to refrain from discrimination in its treatment of employees and to undertake certain affirmative action practices.

<sup>25</sup> The Executive Order defines "Construction contract" as "any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property." Executive Order 11246, §302(a).

The Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor is responsible for implementing the Executive Order and for providing guidance and regulations for use by other agencies of the federal government. Contracting agencies are authorized to conduct compliance reviews and to cancel, terminate, or suspend contracts if these reviews or investigations of complaints reveal that contractors or subcontractors are failing to abide by the provisions of the Executive Order.

**Implementation in the SRF Programs**

The SRF agency must agree to require recipients of assistance for projects whose cumulative funding equals the amount of capitalization grants to include in contracts the seven equal employment opportunity clauses of Executive Order No. 11246. This requirement does not apply to exempted contracts; typically those under \$10,000.

If the contract is to be performed in an area that has been designated by the OFCCP for special treatment, mainly metropolitan areas, contractors and subcontractors must agree to undertake affirmative action programs in accordance with regulations and other directives promulgated by that Office.

**Additional References**

- 41 C.F.R. Part 60 (1997): Department of Labor Regulations on Equal Employment Opportunity.

**C. Disadvantage Business Enterprise Provisions**

**Promoting the Use of Small, Minority, and Women-owned Businesses  
Executive Orders No. 11625, 12138, and 12432**

**Section 129 of the Small Business Administration Reauthorization  
and Amendment Act of 1988 Pub. L. No. 100-590**

**Department of Veterans Affairs and Housing and Urban Development, and Independent  
Agencies Appropriations Act, 1993 Pub. L. No. 102-389**

Since the early 1970s, the federal government has pursued a policy designed to increase the participation of disadvantage business enterprises (DBEs) in the financial

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assistance programs of federal agencies and in contracts awarded by state and local recipients of federal assistance.

The inception of this policy was Executive Order No. 11625, which was signed by President Nixon on October 13, 1971. The Executive Order directed the Secretary of Commerce to coordinate the activities of all federal agencies in promoting opportunities for minority-owned business. This directive was followed by President Carter's Executive Order No. 12138 (May 18, 1979), which extends the policy to include business enterprises owned by women and prohibited discrimination against these entities by recipients of federal assistance. President Reagan's Executive Order No. 12432 (July 14, 1983) sets forth in more detail the responsibilities of federal agencies for monitoring, maintaining data, and reporting on the results of their efforts related to minority business development.

The Executive Orders impose far-reaching responsibilities on agencies and departments of the Federal Government, first through the Secretary of Commerce, who:

(With the participation of other federal departments and agencies as appropriate, (is authorized to) develop comprehensive plans and specific program goals for the minority enterprise program, establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of federal support in achieving the objectives established by this order.

(Executive Order No. 11625, §1(b)(1))

Later Executive Orders impose obligations directly upon each federal agency and department. For example, President Carter's National Women's Business Enterprise Policy requires that:

(Each department or agency empowered to extend federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex.

(Executive Order No. 12138, §1-101(c))

EPA's fiscal year 1993 Appropriations Act, Pub. L. No. 102-389, is the primary source of the Agency's DBE program for procurement under federal financial assistance. In the Appropriations Act, Congress established a goal of eight percent DBE participation in procurement under EPA financial assistance programs.

Following the Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), federal affirmative action programs that use racial or ethnic criteria as a basis for decision-making are subject to strict judicial scrutiny. In response to *Adarand*, EPA has

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modified its DBE program to replace the 8% statutory goal with a fair share goal for procurement under assistance that is negotiated with recipients based on the availability of DBE businesses in the relevant geographic market. EPA is currently revising its various specific DBE regulatory provisions to reflect the narrow tailoring requirements of *Adarand* which will be promulgated as a new Part 33.

Implementation in the SRF Programs

Requirements for states to encourage participation by disadvantaged businesses in the SRF programs are set forth in the EPA's regulations at 40 C.F.R. §35.3145(d) and (e)(CWSRF) and 40 C.F.R. § 35.3575(d). Generally, recipients of assistance in an amount equal to the capitalization grant must take "six affirmative steps" that are intended to promote the participation of disadvantaged business enterprises in their projects and activities, and thereby increase the likelihood that the state will achieve its fair share objective. During the procurement phase for the project, the assistance recipients must, to the extent practicable:

- place qualified disadvantaged businesses on solicitation lists;
- assure that disadvantaged businesses are solicited whenever they are potential sources;
- divide project requirements into smaller tasks when possible to maximize participation by disadvantaged businesses;
- establish delivery schedules that encourage disadvantaged business participation;
- obtain assistance from Federal offices responsible for promoting disadvantaged business participation and;
- require prime contractors to follow the previous steps when awarding subcontracts.

There may be additional SRF-specific provisions of the new DBE Part 33 once it has been finalized.

#### SECTION IV: ECONOMIC AND MISCELLANEOUS AUTHORITIES

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The primary aim of the authorities discussed in this section differs somewhat from that of the environmental and social authorities. Where Congress and the Executive Branch seek to accomplish certain national goals by requiring compliance with cross-cutting environmental and social policy authorities, the objective of cross-cutting economic and miscellaneous authorities is to more directly regulate the expenditure of federal funds. Thus, these authorities prohibit providing assistance to a facility that has enjoyed an economic advantage from its failure to comply with the CAA or the CWA, (Executive Order No. 11738, 3 C.F.R. 799 (1973)), or prohibit assistance recipients from entering into a procurement contract with a corporation that has been barred or suspended from doing business with the federal government.

The sources for many of the economic and miscellaneous authorities are Executive Orders, Congressional appropriations, and government-wide policies promulgated by the Office of Management and Budget (OMB). These authorities typically serve as the source for rules governing the operations of federal agencies rather than as the roots of significant national policy.

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##### A. Prohibitions Relating to Violators of the Clean Air Act and the Clean Water Act with Respect to Federal Contracts, Grants, or Loans

**Executive Order No. 11738 (1973)**  
**Section 306 of the Clean Air Act,**  
**42 U.S.C. § 7606, and**  
**Section 508 of the Clean Water Act,**  
**33 U.S.C. § 1368**

Both the CAA and the CWA prohibit federal agencies from procuring goods or services from—or extending assistance by way of grant, loan or contract to — persons who have been convicted of violations of either law. Executive Order No. 11738 was issued to coordinate enforcement of these provisions by conferring certain responsibilities on the EPA Administrator. Under section 2(b) of Executive Order No. 11738, the Administrator

shall . . . designate facilities which have given rise to a conviction for an offense under (the criminal provisions of the CAA and the CWA).

The Executive Order also prohibits federal agencies from extending assistance to facilities that are not in compliance with either Act. Section 3(b) of Executive Order No. 11738 provides that:

(N)o federal agency authorized to extend federal assistance by way of grant, loan or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

The prohibition of section 3(b) does not apply if the purpose of the assistance is to remedy the cause of the CAA or CWA violation.

##### Implementation in the SRF Programs

The SRF agency must agree to advise assistance recipients that they may not procure goods, services, or materials from listed suppliers. The state must also certify that assistance to facilities that are not in compliance with the laws will be extended to remedy the problems giving rise to the violation.

##### Additional References

- Excluded Parties Listing System: <http://epls.arnet.gov/>
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##### B. Debarment and Suspension Executive Order No. 12549 (1986)

On February 18, 1986, the White House instructed OMB to coordinate a government-wide policy for excluding certain individuals and businesses from participation in federal assistance programs. OMB responded to Executive Order No. 12549 by issuing guidelines for development of a "common rule" on debarment and suspension in non-procurement activities. Agencies were required by OMB to adopt the common rule to provide uniformity, but were allowed to make additions to suit specific needs. EPA's version of the common rule was published at 53 Fed. Reg. 19195 (1988) and is codified at 40 C.F.R. Part 32 (1997).

It is the policy of the Executive Order and regulations issued thereunder to protect the federal interest, and thereby the interest of the public, by excluding individuals and businesses who, by their actions, have relinquished their claim to certain federal assistance programs. A person or business can be debarred from participation in assistance programs for conviction or for civil judgments for offenses such as fraud, antitrust violations, embezzlement or theft, or for serious violations of the terms of public agreements or transactions. There are other causes as well that can be established administratively by a preponderance of the evidence. Suspension can be imposed when adequate evidence exists that a person or business is engaging in activities that would give rise to debarment.

The regulations specify the programs and activities covered by the Executive Order, the

minimum due process standards that the EPA must follow before finding a person ineligible, including the appeal process, and the consequences of a debarment or suspension action — the exclusion for a period of time from participation in any similar assistance programs administered by any federal agency.

#### Implementation in the SRF Programs

A company or individual who is debarred or suspended cannot participate in primary and lower tiered covered transactions. These transactions include SRF loans and contracts and subcontracts awarded with SRF loan funds.

Under 40 C.F.R. 32.510, the SRF agency must submit a certification stating that it shall not knowingly enter into any transaction with a person who is proposed for debarment, suspended, declared ineligible, or voluntarily excluded from participation in the SRF program. This certification is reviewed by the EPA regional office before the capitalization grant is awarded.

A recipient of SRF assistance directly made available by capitalization grants must provide a certification that it will not knowingly enter into a contract with anyone who is ineligible under the regulations to participate in the project. Contractors on the project have to provide a similar certification prior to the award of a contract and subcontractors on the project have to provide the general contractor with the certification prior to the award of any subcontract.

In addition to actions taken under 40 C.F.R. Part 32, there are a wide range of other sanctions that can render a party ineligible to participate in the SRF program. Lists of debarred, suspended and otherwise ineligible parties are maintained by the General Services Administration and should be checked by the SRF agency and all recipients of funds directly made available by capitalization grants to ensure the accuracy of certifications.

#### Additional References

- 40 C.F.R. Part 32: EPA Regulations on Debarment and Suspension.
- Excluded Parties Listing System: <http://epls.amet.gov/>

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#### C. Demonstration Cities and Metropolitan Development Act Pub. L. No. 89-754 (1966), as amended 42 U.S.C. § 3331 *et. seq.*

During the 1960s, as the pace of growth in the nation's urban areas quickened, a host of federal programs were established to provide assistance in these areas for housing, roads, hospitals, water supply, and wastewater treatment. The sheer number of these programs

began to complicate the planning efforts of local officials.

In 1966, Congress enacted the Demonstration Cities and Metropolitan Development Act, title II of which instructed federal agencies to consult with local officials to ensure smoother coordination of their assistance programs and to ensure that projects funded under federal programs are consistent with local planning requirements.

The coordination and consultation directions (42 U.S.C. § 3334(a)) read in part:

(a) All applications . . . for federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of . . . water supply and distribution facilities, sewerage facilities and waste treatment works . . . and water development projects . . . within any metropolitan area shall be submitted for review—

(1) to any area wide agency which is designated to perform metropolitan or regional planning for the area . . . and which is, to the greatest practicable extent, composed of or responsible to the elected officials . . .

#### Implementation in the SRF Programs

Responsibility for following intergovernmental review procedures in the SRF program rests with the SRF agency. The SRF agency must contact the state's single point of contact as early as possible to determine whether capitalization grant applications are subject to the state's intergovernmental review process and what materials must be submitted. Single points of contact and other reviewers should send their comments concerning applications for capitalization grants to the grant applicant who will include them in the grant application package submitted to the EPA regional office no later than 60 days after receipt of an application and other required materials for review. The state may require the SRF agency to submit individual assistance agreements to the single point of contact for review as well.

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#### D. Uniform Relocation Assistance and Real Property Acquisition Policies Act Pub. L. No. 91-646 (1971), as amended 42 U.S.C. §§ 4601-4655

The Uniform Relocation Assistance and Real Property Acquisition Policies Act establishes a uniform policy for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for federal or federally assisted projects. It provides basic guidelines for negotiating the acquisition of real property by the federal government. The Act also requires agencies to reimburse individuals for actual and reasonable expenses incident to relocation, such as moving costs, direct loss of tangible personal property associated with moving or discontinuing a business, and expenses involved in searching for a replacement home or business site.

Section 305 of the Act prohibits federal agencies from:

approv(ing) any program or project or any grant to, or contract or agreement with, a state agency or person provided such authority by regulation under which federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property . . . unless (the state provides assurances) that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies (of title III of the Act), and

(2) property owners will be paid or reimbursed for necessary expenses as specified (in the title III provisions).

(42 U.S.C. § 4655 (1988))

The Act was significantly amended in 1987 by the Surface Transportation and Uniform Relocation Assistance Act, Pub. L. No. 100-17, 101 Stat. 132. The 1987 Amendments assigned implementation responsibility to the Department of Transportation. The amendments also enhanced state and local autonomy by authorizing certification of state and local programs which are carried out in accordance with state laws that are consistent with the Act. (42 U.S.C. § 4606 (1988)).

The Act was further amended in 1997 to provide that a displaced person is not eligible to receive relocation payments or any other assistance under the Act if the displaced person is an alien not lawfully present in the United States, unless such ineligibility would result in exceptionally and extremely unusual hardship to the alien's spouse, parent, or child and such relative is a citizen or an alien admitted for permanent residence. (42 U.S.C. § 4605).

#### Implementation in the SRF Programs

Projects or activities receiving SRF assistance in an amount equal to the capitalization grant must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105. The cost of complying with the Act is an eligible cost that can be included in the SRF loan. The state SRF agency must certify that state rules governing land acquisition and relocation assistance are consistent with the purposes of the Uniform Relocation Act or that SRF assistance recipients will comply with federal law, and that assistance recipients will be required to comply with the appropriate rules. A key aspect of the law is to require use of a professional appraisal to determine the fair market value as a basis for establishing the offer price. In the DWSRF program there is a specific requirement in the SDWA that any land acquired must be from a willing seller. SDWA §1452(a)(2). The term "willing seller" means that the property owner voluntarily agrees to the terms and conditions of the purchase without compulsion to sell.

#### Additional References

- 49 C.F.R. Part 24 (Department of Transportation regulations incorporated by reference at 40 C.F.R. Part 4)

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#### E. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

##### Executive Order No. 13202 (2001), as amended by Executive Order No. 13208 (2001)

Executive Order No. 13202, signed February 17, 2001 and amended April 4, 2001, requires all executive agencies that award construction contracts, issue grants or otherwise fund construction contracts after February 17, 2001 to ensure Government neutrality toward contractors' labor relations. The Executive Order prohibits discrimination against contractors and their employees in construction contracts based upon labor affiliation or lack thereof. In addition, the executive agency must not insist upon, nor forbid, project labor agreements. More concretely, bidding specifications, project agreements and other controlling documents must not require, prohibit or otherwise discriminate, with respect to labor affiliation or lack thereof. However, the Executive Order does not prohibit contractors and subcontractors from affiliating with labor organizations or voluntarily entering into labor agreements. Section 3 of the Executive Order addresses grant recipients specifically, mandating that:

To the extent permitted by law, any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects, shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts awarded after the date of this order by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on their behalf, shall contain any of the requirements or prohibitions set forth in section 1 (a) or (b) of this order.

#### Implementation in the SRF Programs

Grants awarded to SRF assistance recipients after February 17, 2001 are subject to the provisions of Executive Order No. 13202. Grants awarded between January 25 and October 18, 2002, the period during which the OMB suspended implementation of the Order, are not subject to its provisions.

SRF assistance recipients must ensure that bid specifications, project agreements, and other controlling documents for construction contracts awarded after February 17, 2001 do not require or prohibit agreements with labor organizations. Further, SRF assistance recipients and any construction manager acting upon their behalf must not otherwise discriminate against bidders, offerors, contractors, or subcontractors for entering into, or refusing to enter into,

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agreements with labor organizations.

SRF assistance recipients otherwise subject to the provisions of the Executive Order may qualify for an exemption. Under Subsection 5(c), EPA must find that the recipient of federal funding was a party to a project labor agreement or other controlling agreement as of the date of the original Order and one or more construction contracts have been awarded under such agreement as of the date of the original Order.

# **TAB 5**

## **Sample Loan Agreement**

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**LOAN AGREEMENT**

**Between**

**THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
ACTING ON BEHALF OF  
THE STATE OF KANSAS**

**AND**

**\_\_\_\_\_, KANSAS  
KWPCRF PROJECT NO.: \_\_\_\_\_**

**EFFECTIVE AS OF \_\_\_\_\_**

---

***The interest of the Kansas Department of Health and Environment (“KDHE”) in the Loan Repayments to be made by the Municipality and certain other revenues (the “Revenues”) under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the “Authority”) pursuant to a Pledge Agreement, between KDHE and the Authority. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium, if any, and interest on the Authority's Kansas Water Pollution Control Revolving Fund Revenue Bonds, pursuant to a Master Bond Resolution adopted by the Authority.***

# LOAN AGREEMENT

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

**THIS LOAN AGREEMENT**, effective as of \_\_\_\_\_ by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (“KDHE”), acting on behalf of THE STATE OF KANSAS (the “State”), and \_\_\_\_\_, KANSAS, a “Municipality” according to K.S.A. 65-3321 hereinafter referenced as the “Municipality”;

**WITNESSETH:**

**WHEREAS**, the Federal Water Quality Act of 1987 (the “Federal Act”) established a state revolving fund program as a means to phase-out the Environmental Protection Agency (EPA) construction grants program and replace it with a revolving loan program operated by the individual states; and

**WHEREAS**, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states (CFDA 66.458), on the condition that each state provide a state match for such state's revolving fund; and

**WHEREAS**, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the “Loan Act”), the State of Kansas (the “State”) has established the Kansas Water Pollution Control Revolving Fund (the “Revolving Fund”) for purposes of the Federal Act; and

**WHEREAS**, under the Loan Act, the Secretary (the “Secretary”) of the Kansas Department of Health and Environment (“KDHE”) is given the responsibility for administration and management of the Revolving Fund; and

**WHEREAS**, the Secretary, the Kansas Department of Administration, Division of Accounts and Reports (“the DOA”), and the Kansas Development Finance Authority (the “Authority”) have entered into an Inter-Agency Agreement effective March 1, 1999, (the “Inter-Agency Agreement”), to define the cooperative relationship between KDHE, DOA, and the Authority, to jointly administer certain provisions of the Loan Act; and

**WHEREAS**, the Authority and KDHE have supplemented the Inter-Agency Agreement by entering into a Combined Master Pledge Agreement, dated as of November 1, 1992, as the same has been amended and may be further amended and supplemented from time to time, (jointly the “Pledge Agreement”), pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities (as defined in the Loan Act) for Wastewater Treatment Projects (the “Projects”) and to pledge the Loan Repayments received pursuant to such Loan Agreements and certain other revenues to the Authority; and

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the “Bonds”) for the purpose of providing funds to implement the State’s requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act);

**WHEREAS**, the Municipality has made timely application to KDHE for a Loan to finance all or a portion of the Project Costs; and

**WHEREAS**, KDHE has approved the Municipality's application for a Loan, subject to the receipt of capitalization grants from the EPA pursuant to the Federal Act and proceeds of the Bonds when issued by the Authority; and

**NOW, THEREFORE**, for and in consideration of the award of the Loan by KDHE, the Municipality agrees to complete its Project and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise or as otherwise defined in the Master Resolution, have the following meanings:

“**Act**” means the Constitution and laws of the State, including particularly the Loan Act and K.S.A. 74-8905(a), as amended and supplemented.

“**Additional Payments**” means the payments described in **Section 2.06** hereof.

“**Additional Revenue Obligations**” means any obligation for the payment of money undertaken by the Municipality which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, and all Existing Revenue Obligations.

“**Authority**” means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

“**Authorized Municipality Representative**” means any person authorized pursuant to a resolution of the governing body of the Municipality to perform any act or execute any document relating to the Loan, or this Loan Agreement.

“**Bonds**” means the Kansas Development Finance Authority, Water Pollution Control Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 37, and supplements thereto.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder promulgated by the Department of the Treasury.

“**Dedicated Source of Revenue**” shall have the meaning ascribed thereto in *Exhibit B* attached hereto.

“**EPA**” means the Environmental Protection Agency of the United States, its successors and assigns.

“**Event of Default**” means any occurrence of the following events:

(a) failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due;

(b) failure by the Municipality to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by KDHE, unless KDHE shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period KDHE may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected;

(c) failure by the KDHE to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Agreement which shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to KDHE by the Municipality, unless the Municipality shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Municipality may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by KDHE within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Municipality contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect;

(e) any representation made by or on behalf of KDHE contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, is intentionally false or misleading in any material respect;

(f) a petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality, such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal;

(g) the Municipality shall generally fail to pay its debts as such debts become due;

(h) failure of KDHE to promptly pay any Project Costs when reasonably requested to do so by the Municipality pursuant to **Section 2.03** hereof.

**“Existing Revenue Obligation”** means any obligation for the payment of money undertaken by the Municipality, which is payable from or secured, by a pledge of, or lien upon, the System Revenues existing or outstanding at the time of execution and delivery of this Loan Agreement by the Municipality.

**“Federal Act”** means the Federal Water Quality Act of 1987, as amended.

**“GAAP”** means generally accepted accounting principles as applicable to municipal utility systems.

**“Indebtedness”** means any financial obligation of the Municipality evidenced by an instrument executed by the Municipality, including this Loan, Existing Revenue Obligations, Additional Revenue Obligations, general obligation bonds or notes, lease or lease-purchase agreement or similar financial transactions.

**“KDHE”** means the Kansas Department of Health and Environment or its successors in interest.

**“Loan Act”** means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-3321 through 65-3329, inclusive, as amended and supplemented.

**“Loan Agreement”** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

**“Loan Repayments”** means the payments payable by the Municipality pursuant to **Section 2.05** of this Loan Agreement.

**“Loan Terms”** means the terms of this Loan Agreement provided in **Article II** hereof.

**“Master Resolution”** means the Master Bond Resolution adopted by the Board of Directors of the Authority, as amended and supplemented from time to time by Supplemental Resolutions.

**“Municipality”** means \_\_\_\_\_, Kansas, its successors and assigns.

**“Project”** means the acquisition, construction, improvement, repair, rehabilitation or extension of the System described in **Exhibit A** hereto, which constitutes a project pursuant to the Loan Act for which KDHE is making a Loan to the Municipality pursuant to this Loan Agreement.

**“Project Costs”** means all costs or expenses which are necessary or incident to the Project and which are directly attributable thereto, including, but not limited to: (a) costs of any Loan

reserves; (b) interest on the Loan during the construction of the Project; (c) financing and administrative costs associated with the Loan Agreement; and (d) subject to the approval of Bond Counsel and the Authority, payment of temporary financing obligations issued by the Municipality to pay Project Costs;

**“Regulations”** means Kansas Administrative Regulations (K.A.R.) 28-16-110 to 28-16-138, and any amendments thereto promulgated by KDHE pursuant to the Loan Act.

**“Revolving Fund”** means the Kansas Water Pollution Control Revolving Fund established by the Loan Act.

**“SEC Rule”** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

**“Secretary”** means the Secretary of KDHE

**“State”** means the State of Kansas, acting, unless otherwise specifically indicated, by and through KDHE, and its successors and assigns.

**“System”** means \_\_\_\_\_ of the Municipality, as the same may be modified or enlarged from time to time, including the Project described in **Exhibit A**, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Wastewater Treatment System.

**“System Revenues”** means all revenues derived by the Municipality from the ownership and operation of the System.

**“Wastewater Treatment System”** means any Wastewater Treatment Works, as defined in the Federal Act, that is publicly owned, and as further described in the Regulations.

## **Section 1.02. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) All references in this Loan Agreement to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Loan Agreement as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) The Table of Contents and the Article and Section headings of this Loan Agreement shall not be treated as a part of this Loan Agreement or as affecting the true meaning of the provisions hereof.

## ARTICLE II

### LOAN TERMS

**Section 2.01. Amount of the Loan.** Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of Bonds, KDHE will loan an amount not to exceed \_\_\_\_\_ Dollars [\$\_\_\_\_\_] to the Municipality to pay all or a portion of Project Costs described in **Exhibit A** hereto. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (**Exhibit B** hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in addition to the amount of the Loan. Any amendment to **Exhibit B** shall be effected by written amendment to the Loan Agreement executed by all parties.

**Section 2.02. Interest Rate.** The interest rate on the loan shall be [Gross Loan Rate] \_\_\_% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, **Exhibit B** hereto. This interest rate consists of a net loan interest rate, and a service fee, as described in **Exhibit B**. Any subsequent revision to the amount of the Loan or **Exhibit B** hereto shall not change the gross interest rate on the Loan.

#### **Section 2.03. Disbursement of Loan Proceeds.**

(a) Subject to the conditions described in this Section, KDHE agrees to disburse the proceeds of the Loan during the progress of the Project for Project Costs. Requests for disbursement may be submitted by the Municipality (in substantially the form attached hereto as **Exhibit E**), not more than once per month, in accordance with the procedures set forth by KDHE. Any request for disbursement must be supported by proper invoices and a certificate of the Authorized Municipality Representative to the effect that all representations made in this Loan Agreement remain true as of the date of the request and, based upon that information then available to such person, no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred.

The Municipality may request disbursement for the following Project Costs:

- (1) any eligible planning/design costs incurred prior to execution of this Loan Agreement;
- (2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request); or
- (3) interest becoming due on the Loan prior to the initial scheduled payment of principal; and

(4) the principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs.

(b) KDHE shall not be under any obligation to disburse any Loan proceeds to the Municipality under this Loan Agreement unless:

(1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;

(2) the Municipality shall certify to KDHE that it has executed a Project contract or contracts and has funds available to pay for that portion of the Project Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement, if any;

(3) no Event of Default by the Municipality shall have occurred and be continuing; and

(4) the Municipality continues to maintain reasonable progress towards completion of the Project.

**Section 2.04. Schedule of Compliance; Completion of Project.**

(a) The Municipality agrees to complete the Project in accordance with the Conditions Applicable to Construction of the Project set forth in **Exhibit C** attached hereto.

(b) The completion of the construction of the Project shall be evidenced to KDHE by a certificate signed by the Authorized Municipality Representative stating: (1) that the construction of the Project has been completed in accordance with the plans and specifications therefore; and (2) that all Project Costs have been paid, except Project Costs the payment of which is not yet due or is being retained or contested in good faith by the Municipality. Such certificate shall be given not later than the date established by KDHE, which shall be approximately the date that the Project is capable of being placed into operation by the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 2.05. Repayment of the Loan.**

(a) *Loan Repayments.* The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest on the Loan in accordance with *Exhibit B* attached hereto, until the Loan has been paid in full. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on *Exhibit B* as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made the earlier of two years after receipt by the Municipality of the first disbursement under the Loan or one year after Project completion. The final installment of principal under the Loan shall be fully repaid not later than 20 years after Project completion.

(b) *Prepayment of the Loan.* The Municipality may prepay the outstanding principal of the Loan, in whole, or in part, at any time, without penalty, upon giving 60 days written notice to KDHE of its intent to so prepay, such notice shall indicate the actual source of funds that will be used to make the prepayment (specifically proceeds from a tax exempt bond issue, proceeds from a taxable bond issue, cash on hand, or some other instrument); provided, however, a partial prepayment may be made only if the prepayment amount is the greater of 10% of the original principal amount of the Loan or \$50,000. A new *Exhibit B* will be prepared by KDHE following receipt of any acceptable partial prepayment, re-amortizing the remaining principal amount over the remaining term of the Loan.

**Section 2.06. Additional Payments.** The Municipality shall pay as Additional Payments the following amounts:

(a) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Resolution are insufficient to make such payments; and.

(b) All other payments of whatever nature which the Municipality has agreed to pay or assume hereunder.

### ARTICLE III

#### REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

**Section 3.01. Representations of the Municipality.** The Municipality makes the following representations:

(a) ***Organization and Authority.***

(1) The Municipality is a municipal corporation duly created and validly existing under and pursuant to the constitution and statutes of the State.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The Ordinance (adopted substantially in the form attached hereto as ***Exhibit F***) and other proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted.

(4) This Loan Agreement has been duly authorized, executed and delivered on behalf of the Municipality, and, constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) **Full Disclosure.** To the best knowledge of the Municipality, there is no fact that the Municipality has not disclosed to KDHE in writing on the Municipality's application for the Loan or otherwise that materially adversely affects or that will materially adversely affect the properties, activities, or its System, or the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) **Non-Litigation.** There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the legality of any official act taken in connection with obtaining the Loan; (5) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (6) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (7) the collection of revenues of the System; (8) the levy and collection of unlimited *ad valorem* taxes to pay the principal of and interest on the Loan; or (9) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) **Compliance with Existing Laws and Agreements.** To the best knowledge of the Municipality, the authorization, execution and delivery of this Loan Agreement by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements thereunder will not result in any breach of any existing law or agreement to which the Municipality is a party.

(e) **No Defaults.** No event has occurred and no condition exists that would constitute an Event of Default. The Municipality is not presently aware of any violation of any agreement, which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(f) **Compliance with Law.** The Municipality has, to the best of the Authorized Municipality's Representative's knowledge:

(1) complied with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Loan Act, the Regulations and the Federal Act, the failure to comply with which would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

(2) obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the Project.

(g) **Use of Loan Proceeds.** The Municipality will apply the proceeds of the Loan as described in **Exhibit D**: (1) to finance or refinance a portion of the Project Cost; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by KDHE and is eligible for such reimbursement pursuant to the Regulations and the Code.

(h) **Project Costs.** The Municipality certifies that the Project Costs, as listed in **Exhibit D**, is a reasonable and accurate estimation and, upon direction of KDHE, will supply the same with a certificate from its engineer stating that such Costs are reasonable and accurate estimations, taking into account investment income to be realized during the course of construction of the Project, if any, and other lawfully available money that would, absent the Loan, have been used to pay the Project Costs.

### **Section 3.02. Particular Covenants of the Municipality.**

(a) **Dedicated Source of Revenue for Repayment of the Loan.** The Municipality hereby establishes the Dedicated Source of Revenue described on **Exhibit B** attached hereto, which Dedicated Source of Revenue is hereby pledged to the Loan Repayments, Additional Payments and all other obligations of the Municipality under this Loan Agreement.

(b) **Performance Under Loan Agreement.** The Municipality covenants and agrees in the performance of its obligations under this Loan Agreement:

(1) to comply with all applicable State and federal laws, rules and regulations (including, but not limited to the conditions set forth in **Exhibit C** hereto) as are applicable to this Loan Agreement; and

(2) to cooperate with KDHE in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and KDHE under this Loan Agreement (including, without limitation the requirements contained in **Exhibit C** hereto).

(c) **Completion of Project and Provision of Moneys Therefore.** The Municipality covenants and agrees:

(1) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in **Exhibit C** hereto; and

(2) to provide, from its own financial resources, all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(d) **Delivery of Documents and Payment of Fees.** Concurrently with the delivery of this Loan Agreement and the closing of the Loan, the Municipality will cause to be delivered to KDHE:

(1) fully executed counterparts of this Loan Agreement;

(2) copies of the ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as **Exhibit F** together with an affidavit of publication thereof in the official newspaper of the Municipality;

(3) an opinion of the Municipality's counsel substantially in the form set forth in **Exhibit G** attached hereto;

(4) such other certificates, documents, opinions and information as KDHE may reasonably require.

(e) **Operation and Maintenance of System.** The Municipality covenants and agrees that it shall, in accordance with prudent wastewater treatment utility practice:

(1) at all times operate the properties of its System in an efficient manner in accordance with applicable laws and regulations;

(2) maintain its System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its System in good repair, working order and operating condition;

(3) implement any modification of the rates fees and charges for use of the System that comprise the Dedicated Source of Revenues as the Secretary may require to ensure repayment of the Loan in accordance with the provisions of the Loan Act; and

(4) take such other action as the Secretary may require in accordance with powers granted to the Secretary under the Loan Act and the Regulations.

(f) **Disposition of System.** The Municipality shall not sell, lease or otherwise transfer ownership of all or substantially all of its System without the consent of the Secretary. In no event shall the Municipality sell, abandon or otherwise transfer ownership of the System to any person or entity other than a city, county, township, sewer district, improvement district, or other political subdivision of the State, or any combination thereof, that has legal responsibility to treat wastewater. The Municipality shall provide the Secretary with ninety (90) days' prior written notice to KDHE of such sale, lease or transfer. No such sale, lease or transfer shall be effective unless compliance is with the provisions of *Section 4.02* hereof, assuming such sale, lease or transfer is deemed to be an assignment for the purposes of such Section. The provisions of this paragraph shall not be construed to prohibit the lease of portions of the System by the Municipality in connection with a lease-purchase transaction to finance improvements to the System; provided that a termination or an event of default by the Municipality under such arrangement shall not have a material adverse effect on the Municipality's Dedicated Source of Revenues.

(g) **Records and Accounts**

(1) The Municipality shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Accounts"). Such System Records shall be audited annually in accordance with generally accepted auditing standards if the total Disbursement of Loan Proceeds exceed \$25,000 for the Municipalities fiscal year. This audit shall be completed by an independent certified public accountant or firm of independent certified public accountants, or by an independent registered municipal accountant, and may be part of the single agency audit made on the Municipality's General Accounts in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, **Audits of States, Local Governments, and Non-Profit Organizations** as amended in 1996 and 2003 and as may be further amended and revised. Such System Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 270 days of the close of the Municipal Fiscal Year being so audited.

(2) The Municipality shall maintain Project accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association.

(h) **Inspections.** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, including the System Records and General Accounts, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith.

(i) **Financial Information.** The Municipality specifically agrees to provide to KDHE a reasonable number of copies of such financial information and operating data of the Municipality and the System to the extent necessary for KDHE to comply with its continuing disclosure obligations set forth in the SEC Rule and the Pledge Agreement. Such financial information shall be accompanied by an audit report prepared in accordance with the provisions of *subsection (g)(2)* hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law. Any such requested financial information and operating data shall be supplied to KDHE within 270 days after the end of the Municipal Fiscal Year. Such requirement may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System, unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, un-audited financial information shall be provided to KDHE pending receipt of the audit report. In addition, the Municipality shall provide KDHE with prompt notification of the occurrence of certain material events. For purposes of this paragraph,

“material event” shall mean: (a) principal and interest payment delinquencies on any Indebtedness; (b) non-payment related defaults in agreements authorizing any Indebtedness; (c) rating changes on any Indebtedness; (d) adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or (e) unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.

(j) **Insurance.** The Municipality will carry and maintain such reasonable amount of all-risk insurance on all properties and all operations of its System as would be carried by similar municipal operators of Systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, or other similar future law (currently \$500,000 per occurrence).

(k) **Notice of Material Adverse Change.** The Municipality shall promptly notify KDHE of any material adverse change in the activities, prospects or condition (financial or otherwise) of the System, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(l) **Additional Covenants and Requirements.** The parties hereto acknowledge that this Loan Agreement may be assigned or pledged to secure financings of the Authority. Should it be necessary to modify any covenants or obtain or enhance the security of the financings, the parties agree to take all reasonable actions and make reasonable covenants and agreements necessary to accomplish such purpose to the extent permitted by applicable laws.

## ARTICLE IV

### ASSIGNMENT

**Section 4.01. Assignment and Transfer by KDHE.** The Municipality hereby approves and consents to any assignment or transfer of this Loan Agreement that KDHE deems necessary in connection with the operation and administration of the Revolving Fund. The Municipality hereby specifically approves the assignment and pledging of the Loan Repayments and Additional Payments to the Authority, and the Authority’s pledging of all or a portion of the same to the Bonds.

**Section 4.02. Assignment by the Municipality.** This Loan Agreement may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

(a) KDHE and the Authority shall have approved said assignment in writing;

(b) the assignee is a city, county, township, sewer district, improvement district or other political subdivision of the State or any combination thereof that has legal responsibility to treat wastewater;

(c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;

(d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations to the Authority under the Pledge Agreement, nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and

(e) the Municipality shall, at its expense, provide KDHE and the Authority with an opinion of a qualified attorney that each of the conditions set forth in *subparagraphs (b), (c), and (d)* hereof have been met.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**Section 5.01. Notice of Default.** If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such Event of Default given in the manner set forth in **Section 6.01** hereof.

**Section 5.02. Remedies on Default.**

(a) Whenever an Event of Default shall have occurred and be continuing, KDHE or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements, cancellation of the Loan Agreement and acceleration of the remaining scheduled principal payments set forth on **Exhibit B**, or such other remedies provided to the Secretary in the Loan Act and the Regulations.

(b) Upon the occurrence of an Event of Default on the part of KDHE, and to the extent permitted by law and availability of appropriated funds by the Kansas Legislature, KDHE shall, on demand, pay to the Municipality the reasonable fees and expenses incurred by the Municipality in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of KDHE contained herein. Prior to incurring any such expenses, the Municipality shall provide written notice to KDHE that it intends to incur such expenses; provided, however, a failure by the Municipality to give such notice shall not affect the Municipality's right to receive payment for such expenses. Upon request by KDHE, the Municipality shall provide copies of statements evidencing the fees and expenses for which the Municipality is requesting payment.

**Section 5.03. Expenses.** Upon the occurrence of an Event of Default on the part of the Municipality, and to the extent permitted by law, the Municipality shall, on demand, pay to KDHE the reasonable fees and expenses incurred by KDHE in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Municipality contained herein. Prior to incurring any such expenses, KDHE shall provide written notice to the Municipality that it intends to incur such expenses; provided, however, a failure by KDHE to give such notice shall not affect KDHE's right to receive payment for such expenses. Upon request by the Municipality, KDHE shall provide copies of statements evidencing the fees and expenses for which KDHE is requesting payment.

**Section 5.04. Application of Moneys.** Any moneys collected by KDHE pursuant to **Section 5.02** hereof shall be applied: (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to **Section 5.03** hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable.

**Section 5.05. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, 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. In order to entitle the parties hereto to exercise any remedy reserved to them in this **Article V**, it shall not be necessary to give any notice, other than such notice as may be required in this **Article V**.

**Section 5.06. Retention of Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

**Section 5.07. Financial and Management.** Upon failure of the Municipality to pay one or more installments of the Loan Repayments in a timely manner, or in the event that the Secretary deems it advisable or necessary, the Secretary, after consultation with the governing body of the Municipality, may require the Municipality to undergo a financial and management operations review. The governing body shall correct any deficiencies noted during such review and adopt charges or surcharges as may be required by the Secretary during the term of this Loan Agreement.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in *subsection (b)*, to the parties hereinafter set forth at the following addresses:

(1) to KDHE:

Department of Health and  
Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
Attention: Bureau of Water

with a copy to its General Counsel

(2) to the Authority:

Kansas Development Finance  
Authority  
555 South Kansas Avenue, Suite 202  
Topeka, Kansas 66603  
Attention: President,

with a copy to its General Counsel

(3) to the Municipality:

at the address set forth on ***Exhibit H***.

All notices given by telefax as aforesaid shall be deemed given as of the date of evidence of receipt thereof by the recipient. All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so deposited in the United States Postal Service, if postage is prepaid. 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.

**Section 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

**Section 6.03. Severability.** In the event any provision of this Loan Agreement 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 Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

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

**Section 6.06. Governing Law and Regulations.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State, including the Loan Act and the Regulations, which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

**Section 6.07. Consents and Approvals.** Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Secretary.

**Section 6.08. Further Assurances.** The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably 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 Loan Agreement.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, KDHE and the Municipality have caused this Loan Agreement to be executed, sealed and delivered, effective as of the date above first written.

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, acting on behalf of THE STATE OF KANSAS



By: \_\_\_\_\_  
Title: Secretary

"KDHE"

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

\_\_\_\_\_, KANSAS

(Seal) By: \_\_\_\_\_  
Title: Mayor

"Municipality"

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

ATTEST:

By: \_\_\_\_\_  
Title: Clerk

**EXHIBIT A**

DESCRIPTION OF THE PROJECT

SAMPLE

## **EXHIBIT B**

### **DEDICATED SOURCE OF REVENUES AND LOAN REPAYMENT SCHEDULE**

#### ***Dedicated Source of Revenue***

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

#### ***Loan Repayment Schedule***

The Municipality and KDHE have agreed that interest becoming due semiannually on the Loan during the construction period for the Project may be capitalized and repaid as a part of the Loan. In this regard, KDHE shall give the Municipality written notice of each semiannual installment of interest becoming due during the construction period. At its option, the Municipality may elect to pay such amounts, and if so elected, must pay such amounts within 30 days of receipt of the notice of their becoming due. If the Municipality does not elect to pay such amounts within 30 days of receipt of such notice, the amount then due and owing as semiannual interest on the Loan shall be capitalized and added to the principal amount of the Loan and shall bear interest at the rate of interest set forth in **Section 2.02** hereof.

**Loan Repayment Schedule.**

[The Repayment Schedule will be provided in the final Loan Agreement when the actual interest rate is known.]

SAMPLE

## EXHIBIT C

### CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

NOTE: The standard conditions applicable to the Loan are marked with an asterisk (\*). Optional conditions not applicable to the Loan will not be included in the actual Loan Agreement. Other necessary special conditions not listed below will be added at the end of this Exhibit C. (Version 4)

- \*1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:
- a. Advertising for bids within \_\_\_ days of authorization to advertise.
  - b. Bid opening no sooner than \_\_\_ days after advertisement for bids.
  - c. Contract award within \_\_\_ days of bid opening.
  - d. Issuance of notice to proceed within \_\_\_ days of contract award.
  - e. Initiation of operation within \_\_\_ days of notice to proceed or no later than \_\_\_\_\_
  - f. Finalization of construction within \_\_\_\_\_ days of notice to proceed.
  - g. Project Performance Certification 365 days following Initiation of Operation.

No change may be implemented by the Municipality, which will delay or accelerate this schedule without prior approval of KDHE. KDHE must be promptly notified of any proposed changes.

2. The Municipality must certify by \_\_\_\_\_ that all easements and rights-of-way necessary to allow construction of the Project have been obtained (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).

The Municipality must submit an "Applicant Assurance with Respect to Acquisition of Real Property Including Easements" June 2009, and a "Certificate as to Title to Project Site" June 2009 stating the property necessary to allow construction of the project has been obtained. The Municipality must submit these prior to permission to award a construction contract.

- \*3. The Municipality agrees that all bid solicitations will include the following statement in the "Advertisement for Bids" for this project:

#### Nondiscrimination in Employment

Bidders on this work will be required to comply with the President's Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.

- \*4. The municipality must comply with and include the requirements of the Prohibition Statement below in all contracts and subcontracts made to private entities.

The Contractor, its employees, subcontractors and subcontractors' employees may not engage in severe forms of trafficking in persons during the period of time that the contract is in effect; procure a commercial sex act during the period of time that the contract is in effect; or use forced labor in the performance of the contract or subcontract.

- \*5. a. The Municipality agrees that all bid solicitations will include the following statement in the "Information to Bidders" for this project.

"Bidders on this work, including subcontractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)."

Currently there is no reporting procedure associated with this requirement.

- b. The Municipality agrees to comply with the Kansas Act Against Discrimination, K.S.A. 44-1001, et. seq. and the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111, et. seq. as provided by law and to include those provisions in every contract or purchase order so that they are binding upon such subcontractors or vendors.

- \*6. The Municipality will obtain a signed Certificate of Non-Segregated Facilities from the prime contractor prior to the award of a construction contract if the contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. The Municipality will assure that the prime contractor obtains a signed copy of Certificate of Non-Segregated Facilities from each subcontractor prior to the award of any subcontract exceeding \$10,000, which is not exempt from the provisions of the equal opportunity clause. The certificate signed by the prime contractor is to be kept on file with the Municipality; and certificates signed by subcontractors are to be kept on file with the prime contractor.

- \*7. The Municipality agrees to include Section 202 of Executive Order 11246 in all contracts and subcontracts for all construction contracts exceeding \$10,000.00.

- \*8. Wage Rate Requirements:

CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)."

This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

## **Wage Rate Requirements Under EPA FFY 2010 and Subsequent Appropriations**

### **Preamble**

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 1-5.

#### **-OR-**

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section 11-5.

### **I. Requirements under EPA FFY 2010 and Subsequent Appropriations For Subrecipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Lorraine Fleury at [fleury.lorraine@epa.gov](mailto:fleury.lorraine@epa.gov) or at 215-814-2341 of EPA, Region III Grants and Audit Management Branch for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB

applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

## 2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work . Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for

apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.S(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally -assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the :same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions *made*, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices . These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item S(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

## **II. Requirements under EPA FFY 2010 and Subsequent Appropriations Act For Subrecipients That Are Not Governmental Entities**

Section II is not applicable to the Kansas Water Pollution Control Revolving Fund, and so is removed from this document.

\*9. The Municipality hereby agrees to the following requirements regarding Disadvantaged Business Enterprise (DBE) procurement:

- a. If the loan amount is greater than \$250,000, adopt the MBE/WBE Fair Share Objective/Goals established between KDHE and EPA for construction of the project. These goals will be made part of the construction contract specifications.
- b. Make the good faith efforts to contact DBE firms set out in 40 CFR Section 33.301 whenever procuring construction services for the project.
- c. Comply with the administrative provisions found in 40 CFR Section 33.302.
- d. If the loan amount is greater than \$250,000, maintain a bidders list of contractors and subcontractors that have previously bid on municipality projects funded by KWPCRLF as required by 40 CFR Section 33.501(b).
- e. The Municipality agrees to submit to KDHE a completed EPA Form 5700-52A by April 15 and October 15, once the notice to proceed for construction has been issued, thru the semi-annual period in which construction has been completed.

\*10. The Municipality agrees that all bid solicitations will include the following statement:

“Bidders must fully comply with Subpart C of 40 CFR Part 32 entitled Responsibilities of Participants Regarding Transactions. Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Kansas Water Pollution Control Revolving Loan Fund.”

Subpart C of 40 CFR Part 32 must be included as part of the contract documents and EPA Form 5700-49 must be included in all contracts, completed and returned with the bid form.

The Municipality acknowledges that doing business with any part appearing in the “List of Parties Excluded from Federal Procurement or Non Procurement Programs” may result in disallowance of federal funds under this Loan Agreement and may also result in suspension or debarment under this Part.

- \*11. The Municipality agrees that all bid solicitations will include the Anti-Lobbying Certification form, which must be completed and returned with the bid form.
- \*12. The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available online on the KDHE Stormwater Web Page at [www.kdhe.state.ks.us/stormwater](http://www.kdhe.state.ks.us/stormwater).
- \*13. The Municipality shall follow applicable state procurement laws and regulations, and procedures established by the Secretary of KDHE as presented in Water Quality Policy Memorandum No. 10-1 dated May 3, 2010 - Final. KDHE approval is required prior to procurement.
- \*14. In accordance with OMB Circular A-133, which implements the Single Audit Act, the municipality hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Please note this loan is provided, in part, with federal funds (CFDA 66.458). Within nine months after the end of the recipient’s fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the Audit Report to KDHE. Please note the cost of the Audit is an allowable cost to be paid with loan funds.
- \*15. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.
- \*16. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:
  - \*a. The Municipality agrees the performance standards applicable to the Project are:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_

- b. The final plan of operation (50 percent payment) submitted in accordance with Exhibit C, Condition No. 17 must include a draft proposal for these extended start-up services, based on the complexity of the Project, size and experience of the Municipality's operating staff, effluent characteristics, discharge requirements and other pertinent factors.
  - c. The final operation and maintenance manual (90 percent payment) submitted in accordance with Exhibit C, Condition No. 18 must be accompanied by a final proposal for these services.
  - \*d. One year after completion of construction and initiation of operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and effluent limitations contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
  - \*e. Municipality agrees to furnish KDHE with an annual report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.
- \*17. A final plan of operation and draft operation and maintenance manual shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an assessment of the employee skills necessary to carry out the operation and maintenance function and a training plan designed to provide employees with the necessary skills. Details on the skills assessment must be submitted along with the final plan of operation. Necessary training as indicated by the skills assessment must be provided in accordance with the approved training plan.
18. The final operation and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion.
19. The rates and ordinances enacting the approved user charge system and sewer use requirements as approved by KDHE shall be enacted prior to initiation of operation.
- \*20. This Project is consistent with the Kansas Water Quality Management Plan, subject to the provisions of Section 208(d) and 208(e) of the Federal Water Pollution Control Act, as amended. Service by the Project will not be denied or conditioned on the basis of factors or issues unrelated to wastewater management.
- \*21. The Loan Recipient must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the Loan Recipient. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

- \*22. The Loan Recipient must comply with the “Cross-Cutting Federal Authorities: A Handbook on Their Application in the Clean Water and Drinking Water State Revolving Fund Programs”, dated October 2003 and found at

<http://www.epa.gov/owm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/Crosscutterhandbook.pdf>

- 23. By accepting this Loan, the Municipality assures that the existing population to be served by the collection system to be built with this Loan will connect to the system within one year after completion of construction. The Municipality shall submit a letter confirming this action within one year after completion of construction.
- 24. The Municipality hereby agrees to implement measures to mitigate all known adverse environmental effects of the project. The following mitigate actions are required: Subject to Environmental Clearance.
- 25. The Municipality shall obtain a Corps of Engineers Section 404 and/or Section 10 permit prior to awarding the construction contract.
- 26. This Project is for a segment of a total project. KDHE does not assume any obligation, commitment, or responsibility for funding anticipated on future steps, phases, segments or stages. The Municipality agrees to complete the treatment works of which this segment is a part in accordance with the following schedule, regardless of whether KDHE funding is available for the remaining segments:

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**EXHIBIT D**

**USE OF LOAN PROCEEDS**

The proposed project will provide for (Repeat Exhibit A)

The loan proceeds will be utilized to pay the costs of:

1. Construction: All actual construction costs of the wastewater collection, pumping, and treatment plant modifications.
2. Engineering: All actual costs of construction services including basic services, design, bidding, inspection, final plan of operation, user charge and sewer use ordinance development, one year project performance evaluation, and all items as included in the engineering contract between
3. Administrative: All reasonable costs of legal and financial administrative support directly provided for the project, including financial audits.
4. Green components: All actual costs of Construction, Engineering and Administration of the proposed project to provide (list the green components of the design), and all other work and appurtenances necessary.

Unallowable Costs: The costs of full time employees of the municipality and purchase of land and easements.

## EXHIBIT E

### INSTRUCTIONS FOR REQUESTING DISBURSEMENTS

1. All payment requests must be filed on the Outlay Report and Request for Disbursement Form and represent the actual completion level of the project at the date the request is prepared.
2. All cost entries must be based upon allowable work in place, which is due and payable. This means that you may **not** request payment for:
  - a. Any work or services, which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
  - b. Any work performed under a change order unless written approval of the change order has been given by the State.
  - c. Any ineligible project costs.
  - d. Any retainage which you are withholding from the construction contractor, engineer, etc.
  - e. Expenditures relating to site acquisition, easements, rights-of way, EXCEPT: (1) additional work required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act such as appraisal and certification services; (2) when the site itself is allowable in accordance with Federal SRF regulations and guidance; and (3) costs incurred in eminent domain proceedings.
  - f. Costs associated with the approval, preparation, issuance and sale of Bonds, and other costs incidental to normal operating overhead of a Municipality, whether performed by Municipal employees, the engineer, or the attorney.

It is essential that you understand the cost basis of the approved Loan amount. It is, therefore, necessary that you read the Loan Agreement (including all conditions) and its transmittal letter, any Loan amendments and Project correspondence, and that you maintain current and accurate files on all approved change orders. Failure to follow these procedures may result in your requesting and subsequently receiving overpayment of loan funds, which later may, in turn, result in substantial inconvenience to you and the Municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

3. **INSTRUCTIONS** - Please type or print legibly. Items 4, 5, 6, and 8.o. are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
			shown on line d.
2.	This space is reserved for the assigned KDHE project number. Enter complete project identification number e.g., C20 0681 02.	8f	Enter inspection and audit fees of construction and related programs.
3	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.	8g	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility.
7.	The employer identification number assigned by the U.S. Internal Revenue Service <b>MUST</b> be entered to assist in processing of your Disbursement Request.	8h	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
8.	Use only columns (a), (b), and (c).	8i	Enter the amounts for all items not specifically mentioned above.
8a	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	8j	Enter the total cumulative amount to date which should be the sum of lines a through i.
8b	Enter amounts pertaining to the work of location and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	8k	Enter the total amount of program income applied to the loan agreement. Identify on a separate sheet of paper the sources and types of the income.
8c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	8l	Enter the net cumulative amount to date which should be the amount shown on line j minus the amount on line k.
8d	Enter basic fees for services of architectural engineers.	8m	Enter the amount of reimbursements paid to date.
8e	Enter other architectural engineering services. Do not include any amounts		

8n Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines l and m. If different, explain on a separate sheet.

9b Leave blank, this is to be completed by the funding agency official representative who is certifying to the percent of project completion as provided for in the terms of the loan agreement.

9a To be completed and signed by the duly authorized recipient official. The date should be the actual date the form is submitted to the funding agency.

4. **NOTE: ONE ORIGINAL SIGNATURE DISBURSEMENT REQUESTS AND ONE SET OF SUPPORTING DOCUMENTATION MUST BE SUBMITTED.**

**Submit disbursement requests directly to:**

Kansas Department of Health & Environment  
Bureau of Water  
Municipal Programs  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

You should retain one copy for your records.

5. The Authorized Municipality Representative identified in the Loan Agreement remains the principal contact for all project matters.

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EXHIBIT E				
KWPCRF or KPWSLF OUTLAY REPORT AND REQUEST FOR DISBURSEMENT (See Instructions)	1. AGENCY TO WHICH THIS REPORT IS SUBMITTED: KDHE - BUREAU OF WATER  MUNICIPAL PROGRAMS SECTION OR PUBLIC WATER SUPPLY SECTION	2. KDHE PROJECT NUMBER ASSIGNED  KWPCRF PROJECT # C20 _____ KPWSLF PROJECT # _____		
3. TYPE OF REQUEST: FINAL _____ PARTIAL _____	4. PAYMENT REQUEST NUMBER # _____	5. PERIOD COVERED BY THIS REPORT FROM (Mo, day, year) TO (Mo, day, year)		
6. RECIPIENT ORGANIZATION INFORMATION  NAME : NO. & STREET : CITY : STATE AND ZIP CODE		7. FEIN NUMBER:		
8. TO: THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, ACTING ON BEHALF OF THE STATE OF KANSAS UNDER THE LOAN AGREEMENT EFFECTIVE AS OF _____, BETWEEN KDHE AND the _____. The undersigned hereby requests that the following amounts be paid to the following payees for the following Project Costs as defined in said Agreement:				
CLASSIFICATION	(a) Total amount requested	(b) Payee	(c) Description	Total Approved (KDHE use only)
a. Administrative expense				See KDHE Attached Sheet or Reverse Side
b. Preliminary expense (Planning and Design)				
c. Land, structures, right-of-way (Not allowable)				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Construction and project improvement cost				
h. Equipment (By Separate Contract)				
i. Miscellaneous cost				
j. Total cumulative to date (sum of lines a thru i)	\$0.00			
k. Deductions for program income				
l. Net cumulative to date (Line j minus line k)	\$0.00			
m. Disbursements Paid to Date				
n. Amount due this Request (Line l minus Line m)	\$0.00			
o. Percentage of physical completion of project				
9. CERTIFICATION: I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the purchase, construction and installation of the Project, have been properly incurred and are a proper disbursement of the proceeds of the Loan and that an inspection has been performed and all work is in accordance with the terms of the Loan; have been paid or are justly due to the persons whose names and addresses are stated above; and have not been the basis of any previous requisition from the proceeds of the Loan; (ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improvement, repair, rehabilitation or extension of the Wastewater Treatment Works or the Water Supply/Treatment/Distribution Works; (iii) all representations made in the Agreement remain true as of the date of this request; and (iv) no adverse developments affecting the financial condition of the Recipient or its ability to complete the Project or to repay the Loan have occurred.				
a. RECIPIENT:		b. KDHE Representative Certifying to line 8.n.  Rodney R. Geisler or David F. Waldo		
Signature of Authorized Certifying Official		Signature of Authorized Certifying Official  <b>See KDHE Attached Sheet or Reverse Side</b>		
Typed or Printed Name and Title		Typed or Printed Name and Title Chief, Municipal Programs Section or Public Water Supply		
Date Submitted	Telephone (Area Code, number & ext.)	Date Approved	Telephone (Area Code, number & ext.)	
			785-296-5527 or 296-5503	

**\* AMOUNT ROUNDED DOWN TO NEAREST WHOLE DOLLAR PER KWPCRF PROGRAM REQUIREMENT.**

**EXHIBIT F**

**FORM OF MUNICIPALITY ORDINANCE**

\*\*\*\*\*

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF \_\_\_\_\_, KANSAS  
HELD ON [ORDINANCE DATE]**

The Governing Body of the City met in [regular/special] session at the usual meeting place in the City, at [meeting time], the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN \_\_\_\_\_, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.**

Thereupon, [Council member / Commissioner] \_\_\_\_\_ moved that said Ordinance be passed. The motion was seconded by [Council member / Commissioner] \_\_\_\_\_. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the Governing Body, the vote being as follows:

Yes: \_\_\_\_\_.

No: \_\_\_\_\_.

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. \_\_\_\_\_ and was signed and approved by the Mayor and attested by the Clerk. The Clerk was directed to publish the Ordinance one time in the official newspaper of the City.

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.

(SEAL)

\_\_\_\_\_  
Clerk

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SAMPLE

(Published in [Official City Newspaper] on [publication date])

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN \_\_\_\_\_, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.**

**WHEREAS**, the Federal Water Quality Act of 1987 (the "Federal Act") established revolving fund program for public wastewater treatment systems to assist in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan program operated by the individual states; and

**WHEREAS**, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

**WHEREAS**, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving Fund (the "Revolving Fund") for purposes of the Federal Act; and

**WHEREAS**, under the Loan Act, the Secretary of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

**WHEREAS**, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public wastewater treatment projects (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

**WHEREAS**, Hesston, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a wastewater collection and treatment system (the "System"); and

**WHEREAS**, the System is a public Wastewater Treatment Works, as said term is defined in the Loan Act; and

**WHEREAS**, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following: Repeat Exhibit A

(the "Project"); and

**WHEREAS**, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-16-110 to 28-16-138 (the "Regulations") applicable thereto necessary to qualify for the loan; and

**WHEREAS**, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed \_\_\_\_\_ Dollars [\$\_\_\_\_\_] (the "Loan") in order to finance the Project; and

**WHEREAS**, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF \_\_\_\_\_, KANSAS:**

**Section 1. Authorization of Loan Agreement.** The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of \_\_\_\_\_, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the City Attorney, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

**Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan.** Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In

the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

In accordance with the Loan Act, the obligations under the Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

**Section 3. Further Authority.** The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 4. Governing Law.** The Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 5. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

**PASSED** by the governing body of the City on [Ordinance Date] and [signed][and **APPROVED**] by the Mayor.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

[APPROVED AS TO FORM ONLY.]

\_\_\_\_\_  
[City Attorney]

**EXHIBIT G**

**FORM OF OPINION OF MUNICIPALITY'S COUNSEL**

[Date]

Kansas Development Finance Authority  
Topeka, Kansas

The Kansas Department of Health and  
Environment, acting on behalf of  
The State of Kansas  
Topeka, Kansas

Re: Loan Agreement effective as of \_\_\_\_\_, between the Kansas Department of Health and Environment ("KDHE"), acting on behalf of the State of Kansas (the "State"), and \_\_\_\_\_, Kansas (the "Municipality")

I have acted as counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Loan Agreement (the "Loan Agreement"). In my capacity as counsel to the Municipality, I have examined original or certified copies of minutes, ordinances of the Municipality and other documents relating to the authorization of the Project, the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue (as defined in the Loan Agreement) for repayment of the Loan evidenced by the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

In this connection, I have examined the following:

- (a) an executed or certified copy of the Loan Agreement;
- (b) proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;
- (c) Ordinance No. \_\_\_\_ of the Municipality (the "Ordinance") adopted on [Ordinance Date], and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement; and

(d) such other proceedings, documents and instruments as I have deemed necessary or appropriate to the rendering of the opinions expressed herein.

In this connection, I have reviewed such documents, and have made such investigations of law, as deemed relevant and necessary as the basis for the opinions hereinafter expressed.

Based upon the foregoing, it is my opinion, as of the date hereof, that:

1. The Municipality is a municipal corporation duly created, organized and existing under the laws of the State.
2. The Municipality operates a public Wastewater Treatment Works, as said term is defined in the Loan Act.
3. The Project has been duly authorized by the Municipality.
4. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Ordinance to, execute and deliver, and perform its obligations under, the Loan Agreement.
5. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion I have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.
6. The Municipality has duly authorized the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.
7. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not conflict with or result in a breach of any of the terms of, or constitute a default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Municipality is a party or by which it or any of its property is bound or any of the rules or regulations applicable to the Municipality or its property or of any court or other governmental body.

Very truly yours,

***EXHIBIT H***

**MUNICIPALITY'S NOTICE ADDRESS**

SAMPLE