

State of Wisconsin
Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street, 2nd Floor
PO Box 7921
Madison, Wisconsin 53707-7921
(608) 266-7555

Financial Assistance Agreement
Clean Water Fund Program
Form 8700-214A rev 08/17

STATE OF WISCONSIN CLEAN WATER FUND PROGRAM
FINANCIAL ASSISTANCE AGREEMENT WITH PRINCIPAL FORGIVENESS

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF MANITOWOC

\$10,494,459 With up to \$730,000 PRINCIPAL FORGIVENESS

FINANCIAL ASSISTANCE AGREEMENT

Dated as of December 13, 2017

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

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

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

Municipal Identification No. 36251
Clean Water Fund Program Project No. 4679-10

"Parity Obligations" means the Municipality's \$20,215,592 Sewerage System Revenue Bonds, Series 1999, dated February 10, 1999; its \$1,801,926 Sewerage System Revenue Bonds, Series 2002, dated December 23, 2002; its \$1,000,000 Sewerage System Revenue Bonds, Series 2010, dated May 12, 2010; and any other obligations issued on a parity with the Municipal Obligations pursuant to the restrictive provisions of Section 11 of the Municipal Obligation Resolution.

"Plans and Specifications" means the Project design plans and specifications assigned No. S-2016-0580, approved by DNR on October 17, 2016, as the same may be amended or modified from time to time in accordance with this FAA.

"Principal Forgiveness" means Financial Assistance received in the form of forgiveness of Loan principal amount pursuant to the Act, Regulations, and this FAA of which no repayment thereof shall be required except as may be required per the Act, Regulations or this FAA. The amount of principal forgiveness available for this Project as of the date of this FAA is \$730,000 of which \$30,000 is designated specifically for activities related to developing a Fiscal Sustainability Plan. The applicable percentage of principal forgiveness for this Project, as shown on the Final Funding List, is 30%.

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

"Project" means the project assigned CWFP Project No. 4679-10 by DNR, described in the Project Manager Summary Page (Exhibit F), and further described in the DNR approval letter for the Plans and Specifications, or portions thereof, issued under s. 281.41, Wis. Stats.

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

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

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

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

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

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

"State" means the State of Wisconsin.

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

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

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

(w) The Municipality represents that it has submitted to DNR a bid tabulation for the Project, with a recommendation to DNR for review and concurrence. The expected or actual Substantial Completion date of the Project is August 31, 2018.

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

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

	Transportation	State-shared	Total
2015	\$1,902,776.93	\$5,397,847.67	\$7,300,624.60
2016	\$1,795,999.00	\$5,397,126.46	\$7,193,125.46

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

2017	\$1,642,028.87	\$5,399,963.21	\$7,041,992.08
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These are not the entire amounts of State aid distributed to the Municipality. Other State aid is subject to intercept on failure of the Municipality to make full Loan payments due the CWFP.

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

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

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

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

(bb) The Municipality acknowledges that it is eligible to receive Financial Assistance in the form of a Loan of \$10,494,459 with Principal Forgiveness of \$700,000 for payment of Project Costs. Additional Principal Forgiveness up to \$30,000 will be made available for reimbursement of 50% of the costs of developing a Fiscal Sustainability Plan.

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

CITY OF MANITOWOC

FORM

By: _____
Justin M. Nickels
Mayor

FORM

Attest: _____
Jennifer Hudon
City Clerk/Dep. Treas.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By: _____
Authorized Officer

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: _____
Authorized Officer

EXHIBIT A

PROJECT BUDGET SHEET SUMMARY

CITY OF MANITOWOC
CWFP Project No. 4679-10

	Total Project Costs	Ineligible CWFP Costs	Eligible Costs Paid by Grant(s) & FSP PF	CWFP Principal Forgiveness Eligible Costs	Eligible CWFP Costs Paid With Municipal Funds	CWFP Total Award Amount for this Project	Principal Forgiveness Amount (A)
Force Account	0	0	0	0	0	0	
Interim Financing Costs	0	0	0	0	0	0	
Facility Plan Preparation	20,000	0	0	20,000	20,000	0	
Plans/ Specifications Preparation	466,000	0	0	466,000	466,000	0	
Land or Easement Acquisition	0	0	0	0	0	0	
Engineering/ Construction Mgmt.	812,100	0	30,000	782,100	10,752	801,348	
Construction/ Equipment	8,966,000	0	7,752	8,958,248	0	8,958,248	700,000
Contingency	721,484	0	1	721,483	0	721,483	
Miscellaneous Costs	3,380	0	0	3,380	0	3,380	
CWFP Closing Costs	10,000	0	0	10,000	0	10,000	
TOTAL	\$10,998,964	\$0	\$37,753	\$10,981,211	\$496,752	\$10,494,459	\$700,000

A = This project is eligible for 30% of eligible costs in principal forgiveness up to a cap of \$700,000, which is \$700,000.

B = This project is also eligible for an additional \$30,000 in principal forgiveness as reimbursement for 50% of the cost of Fiscal Sustainability Plan (FSP) development.

EXHIBIT F

PROJECT MANAGER SUMMARY PAGE

CITY OF MANITOWOC
CWFP Project No. 4679-10

1. **Project Description:** The Wastewater Treatment Facility Improvements include: one new 115-foot diameter primary clarifier; one new effluent pump; boiler and heat exchanger replacement; miscellaneous valve and sump pump replacement; water supply and other piping replacements; heating, air conditioning and ventilation replacement in four buildings; replacement of motor control centers, transformers, and other electrical work; associated demolition and equipment removals; and concrete and masonry repair.

This Project is eligible for 30% of eligible costs in Principal Forgiveness up to a cap of \$700,000, which is \$700,000. This Project is also eligible for an additional \$30,000 in Principal Forgiveness as reimbursement for 50% of the cost of Fiscal Sustainability Plan (FSP) development.

Note that Task Order 16-01 was amended to include FSP services and flow monitoring as part of the FSP collection system condition assessment. The total contract in the amount of \$62,000 includes \$30,000 that is FSP PF eligible and \$32,000 that is Loan eligible.

2. **Ineligible Costs:** There were no ineligible costs identified in the review of this Project. If the Department identifies ineligible Project Costs as the Project progresses, the Department will notify the Municipality.
3. **Other Funding Sources:** This Project includes \$504,505 in assistance from other funding sources. The Wastewater Facility Internal Funds (i.e. Municipal Funds) will be used to cover \$496,752.

Focus on Energy (FOE) is contracted to pay \$7,752.85 in construction costs, leaving \$8,958,247.15 to be covered by the Financial Assistance Agreement (FAA). Since the FAA does not include cents, costs needed to be rounded to the nearest dollar. In this instance the FOE grant will be rounded down so that the remaining 15 cents can be funded with Loan dollars if need be.

Rounding down the construction cost covered by FOE results in the Loan amount in the CWFP database (ELOS) to be short a dollar. To make this FAA budget match the ELOS budget, a dollar is added to the contingency and then deducted from "Eligible costs paid by Grants". This results in an increase of one dollar in the total Project costs in order to cover the dollar used in contingency to balance the budget so that the total loan amount rounds up to (as stated earlier) cover the 15 cents in construction.

4. **Miscellaneous Costs:** This Project includes \$3,380 for asbestos abatement.
5. **Contingency Allowance:** The Contingency allowance of \$721,484 is five percent of the amount of uncompleted construction work adjusted for reviewed in-house change orders and additional approved contingency.

Base contingency (Uncompleted construction work x 5%)	\$335,934
CO No.1 C.D. Smith Construction, Inc. \$60,550	
Additional Contingency (for pile driving costs)	<u>\$325,000</u>
Total Contingency Allowance	\$721,484

6. **Equipment Replacement Fund:** The Municipality shall establish an equipment replacement fund according to s. NR 162.08, Wis. Adm. Code, and maintain the equipment replacement fund as a separate fund of the Municipality. Annual deposits shall be made to the equipment replacement fund in amounts sufficient to meet the equipment replacement schedule developed by the Municipality. In reviewing the equipment replacement fund schedule in the CWFP application, the annual deposit is estimated at \$463,205.
7. **DBE Good Faith Effort:** The City of Manitowoc and the prime contractor have made a Good Faith Effort regarding the solicitation of DBEs. A contract was awarded to a DBE subcontractor, Wisconsin Rebar, Inc. in the amount of \$50,000.
8. **Green Project Reserve:** One new biogas boiler will be provided to replace an existing boiler that is out of service and will operate primarily on biogas. The remaining existing boilers will operate on natural gas. The boilers heat the hot water system which provides process and building heating. Based on current average biogas production from the primary digesters and typical heating demands, the biogas utilized in the boiler is expected to offset approximately 130,000 therms of natural gas per year. At \$0.70/therm, the biogas used in boilers offsets approximately \$90,000 per year of natural gas.

Green Infrastructure	\$0
Water Efficiency	\$0
Energy Efficiency	\$250,000
Environmentally Innovative	\$0
TOTAL Green Project Reserve Funding	\$250,000

9. **Use of American Iron and Steel:** Based on the Plans and Specifications approval date of October 17, 2016, this Project is subject to the Use of American Iron and Steel UAIS requirements of section 608 of the Clean Water Act, as amended June 10, 2014.
10. **Fiscal Sustainability Plan:** The Municipality has certified that a Fiscal Sustainability Plan (FSP) that meets the requirements of section 603(d)(1)(E) of the Water Resources Reform and Development Act will be completed prior to project closeout and that the plan will be maintained at least for the life of the Loan. Total FSP costs included in this FAA come to \$62,000. Principal Forgiveness in the amount of \$30,000 is being provided as reimbursement for 50% of the cost of FSP development.

Clean Water Fund Program Project No. 4679-10
City of Manitowoc
Upgrade WWTF; New Primary Clarifier; SCADA & Equip
Financial Assistance Agreement
Closing Schedule

By November 6, 2017:

- Department of Natural Resources (DNR) project manager distributes Financial Assistance Agreement (FAA) to Department of Administration (DOA) for review.

By November 13, 2017:

- Quarles & Brady, LLP distributes draft Municipal Obligation Resolution and other bond documents to the City of Manitowoc and DOA for review. Project manager mails FAA to municipality.

On November 20, 2017:

- Municipality holds properly noticed meeting at which time:
 1. Municipal Obligation Resolution is adopted
 2. Bond related documents are signed by municipal officials
 3. DNR FAA is signed by municipal officials

NOTE: Most documents must be signed by Highest Elected Official & Clerk/Secretary and some documents must have municipal seal applied. Do not sign any Exhibits.

By November 21, 2017 VIA OVERNIGHT DELIVERY:

- 1. Municipality returns FAA via overnight delivery to DNR Project Manager Michelle Eis for countersigning by DNR.
 2. Municipality delivers signed & sealed Resolution & other bond documents via overnight delivery to Quarles & Brady, LLP.

By December 11, 2017:

- Quarles & Brady, LLP sends final signed and sealed bond documents and legal opinion to DOA.

December 13, 2017:

- Loan Closing Day. Quarles & Brady, LLP contacts DOA to confirm closing and DOA wire transfers the first disbursement to municipal bank account.

