



# Clean Water Revolving Fund & Drinking Water Revolving Fund

## *SUPPLEMENTAL APPLICATION INFORMATION*

*October 2019*

Minnesota Public Facilities Authority

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# 1 DEADLINES FOR PROJECTS ON THE 2020 INTENDED USE PLAN

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Below are the deadlines for projects in the fundable range on the 2020 IUPs:

Item	Submitted to	Date Due
DWRF Loan Application	PFA	March 30, 2020
Drinking Water Project Plans and Specifications	Department of Health	March 30, 2020
CWRF Loan Application	PFA	March 30, 2020
Wastewater and Stormwater Project Plans and Specifications	Pollution Control Agency	March 30, 2020

For the Application Forms, refer to the Application Forms and Instructions (PDF document) and Forms 3-4 (Excel spreadsheets).

For documents to be included in bid specifications and construction contracts, refer to the Contract Packet.

Contact your [PFA loan officer](#) with any questions.

## 2 BASIC PROGRAM INFORMATION AND REQUIREMENTS

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Applicants with projects in the fundable range on the approved Clean Water Revolving Fund (CWRF) or Drinking Water Revolving Fund (DWRF) Intended Use Plans (IUP) are eligible to submit applications for financing to the Public Facilities Authority (PFA). Placement on the IUP is not a guarantee of funding. Prior to a determination of funding, PFA staff reviews and analyzes the applicant's creditworthiness, its financial capacity to undertake the project, its ability to comply with state and federal laws and requirements and whether total project funding is in place. The PFA purchases the general obligation bonds of borrowers to finance eligible projects, transactions which are commonly referred to as loans in this document.

### 2.1 ITEMS NEEDED FOR APPROVAL OF LOAN REQUEST

#### **Complete Loan Application**

The borrower must provide a complete loan application before PFA can recommend approval of a request for financial assistance. A complete loan application includes:

- Completed forms and attachments
- Documentation that total project funding is in place
- Documentation that a dedicated source(s) or revenue is in place or has been established. The dedicated source of revenue must be sufficient for existing and new debt service, operation and maintenance costs of the system, and short-term replacement items (OMr). Documentation includes governing body resolutions, city council minutes establishing the revenue stream, projected cash flows, assessment rolls, rate studies/analysis, etc.

#### **As-bid costs**

Bid tabulations, engineer's recommendation letter to accept bids

#### **Project Certification**

Certification from the Minnesota Department of Health (MDH) for drinking water projects; or Minnesota Pollution Control Agency (MPCA) for wastewater and stormwater projects.

## 2.2 SECURITY AND FINANCING RELATED ITEMS

### **Accounting Procedures & Records**

The borrower must keep all project accounts and records for the PFA-funded project (water and/or sewer fund) in accordance with Generally Accepted Accounting Principles (GAAP). Financial statements must comply with GASB 34 (Governmental Accounting Standards Board) standards related to the reporting of infrastructure assets.

### **Audit Requirements**

The Minnesota Office of the State Auditor establishes audit requirements for governmental entities, and some small cities (population under 2,500 and budget under a specific dollar amount) are not required to have an annual audit. As a condition of the PFA financing, borrowers are required to have an annual independent audit conducted for the term of the loan and provide a copy of the audit and management letters to the PFA each year. The audit must report the PFA-funded utility (water and or sewer fund) on a GAAP basis. Applicants that do not currently have annual independent audits may incur significant costs with this requirement.

Borrowers may need to comply with the single audit act of the federal Office of Management and Budget 2 CFR 200 Subpart, if total federal dollars expended annually equal or exceed the amount that triggers the single audit requirement.

### **Bond Counsel**

A nationally recognized bond counsel must prepare bond documents. A bond counsel is an attorney that specializes in debt issuance. A list of bond counsel firms is included in this packet. Applicants should communicate with bond counsel about the project and proposed pledged revenue sources to ensure that the applicant has the authority to pledge said source(s) and that all procedures (i.e. special assessments) are followed.

### **Bond Purchase and Project Loan Agreement**

The PFA and the Borrower enter into a Bond Purchase and Project Loan Agreement for the amount of the CWRP or DWRP financing. The Agreement incorporates the borrower's application and includes the terms and conditions of the PFA financing.

### **Debt Service Payments**

Debt service payments on PFA loans must begin no later than one year after approval of the financing, and are scheduled for February 20th and August 20th each year. Interest accrues immediately on funds disbursed to the borrower.

## Disbursement Requests

After loan closing, loan proceeds may be drawn by the borrower as eligible project costs are incurred. A borrower may also submit disbursement requests to reimburse for eligible project costs incurred prior to loan closing, provided these costs are identified and discussed with the PFA loan officer during the application process. A signed disbursement form (provided by PFA) along with copies of supporting documentation (invoices, signed contractor partial pay estimates, etc.) must be submitted to your PFA loan officer by the 15th of each month for reimbursement by the end of that same month.

## No Pre-Payments

PFA loans through the CWRF and DWRF are generally not pre-payable. The Bond Purchase and Project Loan Agreement will include language that restricts prepayments. The PFA provides below market rate financing through its CWRF and DWRF. Borrowers incur minimal issuance costs for the CWRF and DWRF and recognize significant interest savings over the life of the financing. Loan repayments support future revolving fund loans and are pledged to PFA tax-exempt revenue bonds which are subject to Internal Revenue Service (IRS) tax law restrictions that impact the PFA's ability to accept prepayments on CWRF and DWRF loans.

**Operation, Maintenance and replacement (O, M and r)** Municipal audits and budgets should reflect the expenditures of and costs for equipment replacement (pumps, motors, etc.,) and set aside funds annually to pay for the future replacement of these non-capital items. These items are also referred to as short-lived assets. The application form 3a, Annual Operation and Maintenance Costs requests the budgeted amounts for equipment replacement. Borrowers should take short-term asset replacement costs into account for their water and sewer systems by budgeting for these costs, setting aside the budgeted funds annually and making expenditures for the replacement items when needed. Note: funds for the short-lived assets are not the same as the Capital Replacement Fund required for recipients of Water Infrastructure Fund (WIF) grants.

## Private Activity

Borrowers must consult with their bond counsel to determine whether the project has any private activity or significant user considerations.

## Procurement

Borrowers are prohibited from entering into contracts (construction and engineering) and contractors are prohibited from entering into sub-contracts with individuals or businesses that are debarred or suspended. For all contracts over \$25,000 borrowers are required to verify and keep a record of a debarment check. Check before contracts are awarded on the General Services Administration System for Award Management website (<https://www.sam.gov/portal/public>) and place a copy of the

debarment check on file. Contractors are required to check the status of their subcontractors. If you have trouble accessing the SAM site, try another browser.

### **Project Costs – Eligible**

- Construction costs for eligible items identified in the MPCA and MDH project certification. For additional information on CWRP projects, go to [MPCA’s Cost Eligibility Guidelines for the Clean Water Revolving Fund](#)
- Engineering costs, including planning, design, construction and start-up
- Land costs (see Miscellaneous Administrative Items)
- Reasonable costs associated with labor standards and American Iron and Steel compliance
- Legal costs associated with establishment of the revenue stream for repayment of the PFA financing such as development of sewer/water ordinance and special assessments or for review of construction contracts
- Reasonable costs to set up and implement long term financial and asset management tools
- Financing costs directly associated with the PFA financing, such as bond counsel costs for preparation of the General Obligation Bond and related documents and limited financial advisor fees for establishing the dedicated source of revenue

### **Project Costs – Ineligible**

- Costs associated with seeking, coordinating, or securing other financing for the project
- Operation and maintenance of the sewer or water system
- Administrative costs of a board, sanitary district or governmental unit
- Indirect costs
- MPCA or MDH permits
- Non-capital costs

### **Reimbursement of Construction Expenditures**

Borrowers intending to use the PFA bond proceeds to reimburse construction expenditures incurred prior to issuing its General Obligation Bond to the PFA must identify these intentions in the application resolution or in a separate “resolution of intent”. Borrowers must consult with bond counsel.

### **Security**

Borrowers must issue a tax-exempt or taxable General Obligation Revenue or General Obligation Improvement Bond/Note to the PFA as security for the financing. The PFA purchases the general obligation bonds of borrowers to finance eligible projects, transactions which are commonly referred to as loans in this document.

### Special Assessments and Connection Fees

If special assessments or connection fees from another municipality are pledged as a revenue source for debt service, borrowers will be subject to specific covenants regarding the use of prepayments of special assessments and payment of connection fees. PFA limits the interest rate that may be charged on special assessments. Contact your loan officer for details and for a copy of PFA's special assessment guidance.

### State Revolving Funds (SRF)

In Minnesota the State Revolving Funds are the Clean Water Revolving Fund (CWRF) and the Drinking Water Revolving Fund (DWRF).

### Temporary Financing

DWRF or CWRF funds cannot be used to retire temporary debt without prior written approval from the PFA. Written approval must be granted by PFA before the applicant issues the temporary financing. If you have concerns about the project timing and when PFA funds will be available, please contact your [PFA loan officer](#).

## 2.3 MISCELLANEOUS ADMINISTRATIVE REQUIREMENTS

### Acquisition of Land and Permanent Easements

The cost of land necessary for construction, including fee-simple purchase and permanent and temporary easements, may be eligible for reimbursement in the DWRF or CWRF if included in the project certification. For the DWRF, land and permanent easements are eligible when purchased through voluntary transactions.

Land acquired under the CWRF/DWRF must comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act). Costs associated with complying with the Uniform Act, including appraisals and related legal costs, are eligible costs.

- Appraisal - In general, a detailed full narrative appraisal report should be completed for all eligible land acquisitions. If the acquisition is uncomplicated, of low value, and non-controversial a simpler appraisal or valuation method may be acceptable. Appraisals or valuations must be done in conformance with the requirements of the federal Uniform Act.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) Minnesota Department of Transportation's list of prequalified appraisers: <http://www.dot.state.mn.us/consult/prequal.html> scroll to "Current List of Pre-Qualified Consultants" for a list of prequalified appraisers.

- Minnesota Department of Commerce on-line look-up tool to search for licensed appraisers:  
[License Lookup Tool](#)

### **Job Reporting (Minnesota Management and Budget (MMB))**

Borrowers will be subject to the requirements of Minnesota Statutes 16A.633 Subdivision 4 (MN Laws of 2012 Chapter 293, Section 28) which requires job reporting on capital projects. PFA will provide each borrower with a job reporting form template for their project. The report is submitted to PFA at substantial completion/project completion. An example is included in this packet.

### **Real Property Declaration & Information on Waivers to the Real Property Declaration Filing**

Borrowers must file a real property declaration at the county recorder's office identifying the project area as "state bond financed" unless a waiver is granted by Minnesota Management and Budget (MMB) for the recording of the declaration.

### **Records (project files)**

The borrower is responsible to maintain project records. Listed below are some of the main records that are to be maintained:

- General Project Related - loan application, signed loan agreement, bond transcript, financial plan for project, MDH or MPCA approvals/correspondence and State Job Report, Real Property Declaration and/or waiver
- Procurement Related - advertisements for bids, DBE fair share efforts and reports, bid tabulations, bidders list, executed contracts and debarment checks for engineers, other consultants, contractors and subcontractors
- Disbursement Records – disbursement requests, supporting documentation and invoices
- Financial records, in accordance with Generally Accepted Accounting Principles (GAAP)
- American Iron and Steel – documentation from contractor and de minimis tracking, waiver requests
- Labor Standards – certified payrolls, employee interviews, correspondence related to compliance
- Project Closeout – evidence of project acceptance by borrower

### **Public Notice Posting**

The Environmental Protection Agency (EPA) issued a memorandum on guidelines for CWRP and DWRF projects with the purpose of increasing public awareness of EPA assistance nationwide. In response to the guidelines, the PFA will provide basic information about the project funding to the borrower at the time of award. At a minimum, borrowers are required to post a public notice in a public location or on the borrower's website. Borrowers may opt to also use other methods to inform the public about the project. Additional information is located in this packet.

## 2.4 BIDDING REQUIREMENTS SUMMARY

Borrowers must follow state municipal contracting requirements (i.e. Public Contractors Performance and Payment Bond Act, Uniform Municipal Contracting Law, surety deposits for out-of-state contractors, workers compensation, etc.), federal civil rights laws, federal Disadvantaged Business Enterprise (DBE), and American Iron and Steel requirements.

The Contract Packet includes for information on state and federal laws related to procurement, pre-bid and post bid requirements. Required contract language for bid and contract documents and reporting forms is in the Contract Packet.

The Contract Packet must be physically incorporated into the bid and contract documents, along with the appropriate State and Federal prevailing wage rates. **IMPORTANT:** The Contractor will need to provide information to the borrower for required reporting & to document compliance with specific contract conditions such as:

- American Iron & Steel (certifications, letters, de minimis tracking)
- DBE/M/WBE fair share efforts and reporting
- Job Reporting
- Prevailing Wages (both state and federal)

**IDENTIFY THE DATA NEEDS UPFRONT IN THE CONTRACT SO THE INFORMATION IS INCLUDED IN THE CONTRACT AND DOES NOT RESULT IN EXTRA CHARGES FOR THE BORROWER.**

## 2.5 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:

DBE requirements apply to the project which means borrowers and their prime contractors have specific obligations regarding DBE procurement for construction, equipment, supplies and services. Additional information is included in this document and in the Contract Packet.

## 3 PUBLIC NOTICE POSTING

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The Environmental Protection Agency (EPA) issued a memorandum introducing guidelines for CWRP and DWRP projects with the purpose of increasing public awareness of EPA assistance nationwide. In response to the guidelines, the PFA will provide basic information about the project funding to the borrower at the time of the award.

The costs associated standard and non-standard signage describe below are eligible for CWRP or DWRP funding. Borrowers are encouraged to consider the costs and benefit the signage options and which would be the most effective in their area. If appropriate to increase public awareness of projects serving communities where English is not the predominant language, borrowers should provide translations into the appropriate non-English language(s).

CWRP/DWRP projects that include a Point Source Implementation Grant (PSIG) should also refer to the project sign requirements in the PSIG application materials.

### 3.1 MINIMUM REQUIREMENT

At a minimum, borrowers are required to post a public notice in a public location or on the borrower's website. Borrowers may opt to also use other methods described below to inform the public about the project.

### 3.2 STANDARD SIGNAGE

Use of a traditional sign at or near the construction site that includes the name of the facility, project, and community; project funding sources; the PFA logo; and the EPA logo. Contact your [PFA loan officer](#) to obtain the logos.

### 3.3 NON STANDARD SIGNAGE

Use of a variety of methods to provide information on the project to the public, such as:

- Posters or Brochures: A poster or brochure which can be placed in or available at a public location accessible to community members (City Hall, community center, library, etc.)
- Newsletter, Periodical, or Press Release: For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, project information may be provided through a local newspaper, community newsletter or similar periodical.

- Insert or Pamphlet in Water/Sewer Bill: This approach would effectively publicize the project to those individuals directly benefitting from the project.
- Online and Social Media Publicity: Online publicity may appear on the town, community, or facility website if available. Social media sites such as Facebook or Twitter can also be used

Include the following information in all Non-Standard Signage:

- the name of the facility, project, and community
  - brief description of the project, including funding amounts and sources
  - a brief description of the water quality benefits the project will achieve
- the PFA logo and that the project is partially funded with EPA funding

## 4 AMERICAN IRON AND STEEL REQUIREMENTS

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This section provides information on American Iron and Steel (AIS) requirements for projects funded in whole or in part with the CWRP or DWRP. This packet includes links to EPA guidance, sample construction contract conditions, sample certifications, an example de minimis tracking form, and information on waivers. (NOTE: The Environmental Protection Agency Sample Construction Contract Language and Certifications refer to the Clean Water and Drinking Water State Revolving Funds. In Minnesota the State Revolving Funds are the Clean Water Revolving Fund and the Drinking Water Revolving Fund.)

### 4.1 RECIPIENT RESPONSIBILITIES

Each PFA recipient is responsible to comply with and maintain documentation that shows compliance with AIS requirements. It is important that the recipient's consulting engineer is familiar with and understands the AIS requirements. Below are the recipient responsibilities for AIS:

#### **Plans and Specifications/Construction Contracts:**

Include AIS contract language and requirements in the plans and specifications and in construction contracts. Specifically, identify:

- What documentation the contractor will need to provide to show compliance with AIS requirements.
- The waiver process and what information is needed from the contractor to submit a waiver request.
- The de minimis waiver and what information the contractor needs to provide to support the de minimis waiver.
- Consulting engineers are encouraged to specifically identify those iron and steel products that must meet the AIS requirements on the bid summary and include a notation that states "This item must be produced in the U.S. and documentation must be provided to the owner prior to installation."

#### **Waivers:**

Federal law sets forth certain circumstances under which EPA may waive the AIS requirement. EPA can issue waivers to the AIS requirement where:

- Applying the requirements is inconsistent with public interest.

- Iron and steel products are not produced in the U. S. in sufficient and reasonably available quantities and of a satisfactory quality.
- Inclusion of iron or steel products produced in the US will increase the overall project by more than 25%.

Instructions for the waiver process are outlined in Section 4.4.

EPA has also approved a de minimus waiver that will apply to all projects. PFA recipients will be required to obtain and maintain documentation on de minimus items and provide a de minimus summary at project conclusion to PFA. Links to EPA de minimis waiver and tracking spreadsheet are in the EPA Guidance and Links section below.

*PFA Disbursement Request Certification:*

Sign (authorized representative of the borrower) a certification (included on the PFA disbursement request) indicating that the project is in compliance with the AIS requirements. This certification is provided with each disbursement request.

**Project Monitoring and Site Visits, Project Records:**

- Maintain project records, including AIS documentation on file for review.
- Show documentation and records to PFA/MPCA/MDH staff during on-site monitoring visits.
- When possible, show PFA/MPCA/MDH the physical project and iron and steel products prior to being installed and permanently incorporated into the project.

**American Iron and Steel Documentation**

Contractors must comply with and provide documentation that shows compliance with AIS requirements. Product certifications letters need to include the following five items:

1. Identify the product. The letter should list the specific product(s) delivered to the project site.
2. Identify where the product was made. The letter should include the location(s) of the foundry/mill/factory where the product was manufactured (City and State).
3. To whom was the product delivered? The letter should include the name of the project and the jurisdiction where the product was delivered.
4. Signature of company representative
5. Specifically reference the American Iron and Steel requirements.

PFA borrowers must maintain American Iron and Steel certifications and documentation in their project files.

## 4.2 EPA GUIDANCE AND LINKS

Information from EPA on the implementation of the AIS requirements can be found at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm), including:

EPA March 20, 2014 Memorandum “Implementation of American Iron and Steel Provisions of P. L. 113-76 Consolidated Appropriations Act, 2014” (See EPA link above for guidance documents, including the March 20, 2014 memorandum). Included is a detailed list of products that must comply with the requirements. An iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail-see EPA guidance);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail-see EPA guidance);
- Reinforced precast concrete; and
- Construction materials (defined in more detail-see EPA guidance).

[EPA De Minimis Waiver](#) - for incidental components of projects. Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project

### [EPA Questions and Answers](#)

- Part 1: Valves and Hydrants:
- Part 2: Products, Projects and Process:
- Part 3: Plans and specification dates, Refinancing and Coatings (March 16, 2015)

Check EPA’s American Iron and Steel website frequently for updates.  
[http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)

### 4.3 SAMPLE DOCUMENTS

The sample AIS documents are described below. The checklists and sample language are included in this section and are on the PFA website.

- **EPA Sample American Iron and Steel Construction Contract Language.** Contract language requiring use of AIS must be physically inserted into plans and specifications, bidding documents construction contracts and purchase agreements.
  
- **EPA Sample Step Certifications.** EPA recommends use of a step certification process, similar to the one used by the Federal Highway Administration, as the best practice to document American Iron and Steel. An alternative to the step certification is for the final manufacturer, who delivers the iron or steel product to the worksite, vendor or contractor, to provide a certification “asserting that all manufacturing processes occurred in the U.S.”. The EPA guidance material does not provide a sample of the alternative certification. EPA states that additional documentation may be needed if the certification lacks important information.
  - EPA sample step certification for iron and steel that is processed and/or manufactured
  - EPA sample step certification for iron and steel that is shipped and/or provided

#### 4.3.1 SAMPLE Construction Contract Language Use of American Iron and Steel

[\(From 3/20/14 EPA Memorandum\)](#)

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

#### SAMPLE Construction Contract Language

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the Minnesota Public Facilities Authority (the “Authority”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires that all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the Authority that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the Authority to recover as damages against the Contractor any loss, expense or cost (including without limitation attorneys’ fees) incurred by the Purchaser or the Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Authority or any damages owed to the Authority by the Purchaser). While the Contractor has no direct contractual privity with the Authority, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Authority.

4.3.2 SAMPLE Step Certification (Processed/Manufactured)

Use of American Iron and Steel

[\(From 3/20/14 EPA Memorandum\)](#)

*The following information is provided as a SAMPLE letter of a step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead.*

Date

Company Name  
Company Address  
City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel Requirement as mandated in the Environmental Protection Agency’s State Revolving Fund Programs.

Item, Products and/or Materials:

Xxxx  
Xxxx  
Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing materials to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

#### 4.3.3 SAMPLE Step Certification (Shipped/Provided)

Use of American Iron and Steel

[\(From 3/20/14 EPA Memorandum\)](#)

*The following information is provided as a SAMPLE letter of a step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead.*

Date

Company Name  
Company Address  
City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement as mandated in the Environmental Protection Agency's State Revolving Fund Programs.

Item, Products and/or Materials:

Xxxx  
Xxxx  
Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing materials to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

#### 4.4 AMERICAN IRON AND STEEL WAIVER PROCESS

##### Applicant Information Checklist for Waiver Request

Submit completed Applicant Information Checklist for Waiver Request and the attachments identified in the Checklist via e-mail to the MPCA or MDH contact identified below. MPCA and MDH will review submitted waiver requests for completeness and forward to the Environmental Protection Agency (EPA) for review. EPA headquarters will use a checklist shown in this section to review waiver requests. An excel version of the [waiver checklist](#) can be found on the PFA website under the “forms” tab on the CWRP and DWRP pages.

EPA will post waiver requests received, approved and denied on their website ([http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)).

##### Clean Water State Revolving Fund Projects - Minnesota Pollution Control Agency (MPCA)

Abram Peterson

[Abram.Peterson@state.mn.us](mailto:Abram.Peterson@state.mn.us)

651-757-2105

##### Drinking Water State Revolving Fund Projects - Minnesota Department of Health (MDH)

Chad Kolstad

[Chad.Kolstad@state.mn.us](mailto:Chad.Kolstad@state.mn.us)

651-201-3972

Please copy your PFA loan officer on the e-mail waiver request to MPCA or MDH

<b>American Iron and Steel Waiver Process</b>		
<b>Applicant Information Checklist for Waiver Request</b>		
<p>The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application. (Source: March 20, 2014 EPA Memorandum "Implementation of American Iron and Steel provisions of P. L. 113-76, Consolidated Appropriations Act, 2014"). Complete and submit checklist along with supporting documents MDH or MPCA contacts listed below:</p>		
Clean Water Revolving Fund (CWRP) projects submit checklist and support documents to Abram Peterson, MPCA (651-757-2105)	<a href="mailto:Abram.Peterson@state.mn.us">Abram.Peterson@state.mn.us</a>	
Drinking Water Revolving Fund (DWRP) projects submit checklist and support documents to Chad Kolstad, MDH (651-201-3972)	<a href="mailto:Chad.Kolstad@state.mn.us">Chad.Kolstad@state.mn.us</a>	
Additional information at: <a href="http://water.epa.gov/grants_funding/aisrequirement.cfm">http://water.epa.gov/grants_funding/aisrequirement.cfm</a>		
Items	✓	Notes
<b>General</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following information:                             <ul style="list-style-type: none"> <li>— Description of the foreign and domestic construction materials</li> <li>— Unit of measure</li> <li>— Quantity</li> <li>— Price</li> <li>— Time of delivery or availability</li> <li>— Location of the construction project</li> <li>— Name and address of the proposed supplier</li> <li>— A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the instructions in the memorandum</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>		
<b>Cost Waiver Requests</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following information:                             <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>		
<b>Availability Waiver Requests</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:                             <ul style="list-style-type: none"> <li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul>		

**Environmental Protection Agency HQ Review Checklist for Waiver Request**

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (availability waiver)
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent (cost waiver).

Review Items	Yes	No	N/A	Comments
<b>Cost Waiver Requests</b>				
<ul style="list-style-type: none"> <li>• Does the waiver request include the following information?                             <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>				
<b>Availability Waiver Requests</b>				
<ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?                             <ul style="list-style-type: none"> <li>— Supplier information or other documentation indicating availability/delivery date for materials</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> </ul> </li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:                             <ul style="list-style-type: none"> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>— Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul>				

#### 4.5 AMERICAN IRON AND STEEL WAIVER PROCESS DE MINIMIS WAIVER

The EPA de minimis waiver dated April 15, 2014 ([national waiver for de minimis incidental components](#)) permits the use of non-American iron or steel products when they are for de minimis incidental components of projects. Funds used for de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

To use this waiver, PFA borrowers should first consult with their contractors to determine the items to be covered by this waiver. Borrowers must maintain documentation (i.e., invoices) for the de minimis items in the project file and submit a summary report to the PFA at project conclusion, or sooner, if available. An excel version of the [de minimis tracking report](#) shown on the next page can be found on the PFA website under the “forms” tab on the CWRP and DWRP pages.

The de minimis project summary report must include the following:

- PFA borrower name
- Project name
- Name/Title/ Signature of person completing the report
- Signature date
- Total cost of materials for the project by type/categories and the estimated cost
- Total cost of materials for the de minimis items by types/categories (i.e. miscellaneous fasteners, nuts, bolts, fittings) and the estimated cost

Refer to the EPA De Minimis Waiver for additional information.





Public Facilities Authority ● Pollution Control Agency ● Department of Health

## 4.6 AMERICAN IRON AND STEEL (AIS) QUICK REFERENCE SHEET

### What is AIS?

American Iron and Steel (AIS) is a requirement for any project receiving financial assistance from the State Revolving Funds (SRFs). In Minnesota, the SRFs are the Clean Water Revolving Fund (CWRF) and the Drinking Water Revolving Fund (DWRf). AIS requires iron and steel products used in the project be produced in the United States. This requirement applies to projects receiving SRFs for construction, alteration, maintenance, and/or repair of a public water system or treatment works. If any portion of the project contract is using SRF funding, the whole project must be AIS compliant.

### What is an American Iron and Steel product?

An iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail at the link below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail on the link below);
- Reinforced precast & prestressed concrete; and
- Construction materials (defined in more detail at the link below).

**How is AIS incorporated into the project specifications?**

The Public Facilities Authority's (PFA) contract packet must be directly incorporated into the specifications. MDH and/or PCA will verify that the contract packet is included during the plan and specification review process and recommends that bid items are individually identified if they have a potential to contain AIS components. The contract packet is available at:

[https://mn.gov/deed/assets/contract-packet\\_tcm1045-314698.pdf](https://mn.gov/deed/assets/contract-packet_tcm1045-314698.pdf)

The contract packet includes:

AIS sample language for the contractor - this is just sample language and needs to be completed with actual AIS language for the project by each contractor

An example De Minimis Waiver Tracking Form

**Is there a waiver process?**

Yes. Talk to the AIS state representatives:

CWRF – Abram Peterson, 651-757-2105, [abram.peterson@state.mn.us](mailto:abram.peterson@state.mn.us)

DWRF – Chad Kolstad, 651-201-3972, [chad.kolstad@state.mn.us](mailto:chad.kolstad@state.mn.us)

**What can constitute an AIS waiver?**

1. applying these requirements would be inconsistent with the public interest;
2. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

**What waivers have been granted approval and apply nationally?**

1. De Minimis Waiver (up to 1% of total material costs for 1 component or 5% of total material costs for all components)
2. Temporary Stainless Steel Nuts and Bolts Waiver (extended to Feb. 24, 2020)
3. Pig Iron and Direct Reduced Iron Waiver
4. Minor Component Wavier (up to 5% of total material cost of a component)

**What is required by supplier to certify the product as AIS compliant\*:**

1. Product Name/description
2. Where it was made (City & State)
3. To whom it was delivered
4. Reference to AIS compliance
5. Signature of product representative

\* All products meeting the AIS criteria above must have a certification form unless they qualify for one of the waivers above. Certification should not reference the previous American Recovery and Reinvestment Act (ARRA)

**Who verifies that the correct documentation has been submitted?**

PFA loan officers will do documentation checks of certifications and verify that the De Minimis Tracking Form is complete but it is ultimately the project owner's responsibility to assure all the correct documentation is available upon request.

For more information, see the Environmental Protection Agency's American Iron and Steel website:  
<http://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

## 5 DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

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DBE requirements apply to the project which means borrowers and their prime contractors have specific obligations regarding DBE procurement for construction, equipment, supplies and services. Additional information is included in this document and in the Contract Packet.

### 5.1 BORROWER RESPONSIBILITIES

**ALL BORROWERS SHALL:**

- Follow Six Good Faith Efforts for all procurements and maintain documentation on file
- Include the Required Contract Conditions along with the Six Good Faith Efforts language/conditions in all procurement contracts. (Refer to the Contract Packet).
- Require bidders to provide the borrower with information for a Bidder's List
- Create and maintain the Bidders List.
- PFA applicant signs and submits Form 6 – DBE Certification, with the PFA loan application.
- Submit annual reports, EPA Form 5700-2a, if required by PFA, on DBE contract activity

### 5.2 CONTRACTOR RESPONSIBILITIES

**ALL CONTRACTORS SHALL:**

- Follow Six Good Faith Efforts in all procurements
- Comply with required Good Faith Efforts contract language; Include specific language in sub-contracts
- Provide borrower with information for semi-annual report and updates to the Bidders List

**NOTE 4-1-16: EPA SUSPENDED USE OF 6100 FORMS (6100-2, 6100-3 AND 6100-4) FOR PROCUREMENTS INITIATED AFTER MARCH 7, 2016. THESE FORMS HAVE NOT BEEN REINSTATED. PLEASE VERIFY THAT THE CURRENT PFA CONTRACT PACKET IS BEING USED.**

### 5.3 PRIMARY FEDERAL STATUTORY AUTHORITIES – DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

- 40 C.F.R. Part 33, Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

- Public Law 102-389 (42 U.S.C. 437d), a 1993 appropriations act
- Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note)
- Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988
- Executive Order 12138, related to Women’s Business Enterprise Policy, issued October 13, 1971
- Executive Order 12432, “Minority Business Enterprise Development,” issued July 14, 1983

## 5.4 DEFINITIONS

**Disadvantaged Business Enterprise (DBE)** – an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized business (HUB) Zone Small Business Concern, or a concern under a successor program.

**HUBZone** – a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian Reservation.

**HUBZone Small Business** – a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

**Labor Surplus Area Firm (LSAF)** – a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR Part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of approximate services in labor surplus areas exceed 50 percent of the contract price.

**Minority Business Enterprise (MBE)** – a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women’s Business Enterprise (WBE). See section on Certified M/WBE Firms, below.

**Procurement** – the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

**Small Business in a Rural Area (SBRA)** – a small business operating in an area identified as a rural county with a code 6 to 9 in the Rural-Urban Continuum Classification Code developed by the United States Department of Agriculture in 1980.

**Small Business, Small Business Concern or Small Business Enterprise (SBE)** - a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

**Women’s Business Enterprise (WBE)** – a business concern which is at least 51% owned or controlled by women for purposes of EPA’s 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA’s 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband’s 50% interest in her share. Similarly, a business concern which is more that 50% owned by a married man will not become a qualified WBE by virtue of his wife’s 50% interest in his share. See section on Certified M/WBE Firms, below.

## 5.5 CERTIFIED M/WBE FIRMS

M/WBE firms certified by the Minnesota Unified Certification Program, the Small Business Administration (SBA) of the Department of Transportation can be counted towards the fair share goals for M/WBE reporting to the PFA. See “How do I find information on DOT’s and SBA’s certification programs?” <https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises#q17>

To see whether a firm is a certified firm eligible to be counted as a M/WBE firm, check the Minnesota Unified Certification Program Directory or the SBA Dynamic Small Business Search Directory. Links are listed below.

Minnesota Unified Certification Program: <http://mnucp.metc.state.mn.us/> includes a free search engine that lists certified DBE contractors and suppliers. Links to this directory are also on the MN Department of Transportation website: <http://www.dot.state.mn.us/civilrights/>

Small Business Administration Dynamic Small Business Search – search engine that lists businesses with 8(a) Certifications; Small Disadvantaged Business Certifications; HUBZone Certifications and DBE

Certifications. Check contractor detail to see what current certifications are in place.

[http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)

## 5.6 MINORITY/WOMEN BUSINESS ENTERPRISES RESOURCES

### Links to M/WBE Resources:

- Association of Women Contractors <http://www.awcmn.org/>
- Diversity Information Resources, Inc. [www.diversityinforesources.com](http://www.diversityinforesources.com)
- Metropolitan Economic Development Association <http://www.meda.net/>
- Minority Business Development Agency (U. S. Department of Commerce) <http://www.mbda.gov/>
- MN Department of Administration (at this time the MN Dept. of Administration listings are not certified and cannot be counted as M/WBE vendors by the EPA). [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us)

### Rural-Urban Continuum Codes for Metro & Non-Metro Counties

The following is a list of Minnesota Counties that have been coded by the U. S. Department of Agriculture as a rural or urban (which also can be a rural county adjacent to a metropolitan area). For the purposes of the U. S. Environmental Protection Agency's condition regarding Small Businesses in Rural Areas (SBRA), those counties coded 6 through 9 meet the definition of rural. Data are from the 2013 census. Codes are defined as follows:

#### Metro Counties:

- Counties in metro areas of 1 million population or more
- Counties in metro areas of 250,000 to 1 million population
- Counties in metro areas of fewer than 250,000 population

#### Nonmetro Counties

- Urban population of 20,000 or more, adjacent to a metro area
- Urban population of 20,000 or more, not adjacent to a metro area
- Urban population of 2,500 to 19,000, not adjacent to a metro area
- Urban population of 2,500 to 19,999, not adjacent to a metro area
- Completely rural or less than 2,500 urban population, adjacent to a metro area
- Completely rural or less than 2,500 urban population, not adjacent to a metro area

## METROPOLITAN COUNTIES (Urban)

Anoka	1	Filmore	3	Ramsey	1
Benton	3	Hennepin	1	St. Louis	2
Blue Earth	3	Houston	3	Scott	1
Carlton	2	Isanti	1	Sherburne	1
Carver	1	LeSueur	1	Sibley	1
Chisago	1	Mille Lacs	1	Stearns	3
Clay	3	Nicollet	3	Wabasha	3
Dakota	1	Olmstead	3	Washington	1
Dodge	3	Polk	3	Wright	1

## NONMETROPOLITAN COUNTIES (Rural)

Aitkin	8	Kandiyohi	4	Pine	6
Becker	6	Kittson	9	Pipestone	6
Beltrami	7	Koochiching	6	Pope	8
Big Stone	9	Lac qui Parle	9	Red Lake	8
Brown	6	Lake	6	Redwood	7
Cass	9	Lake of the Woods	9	Renville	8
Chippewa	7	Lincoln	9	Rice	4
Clearwater	8	Lyon	7	Rock	6
Cook	9	McLeod	6	Roseau	7
Cottonwood	7	Mahnomen	8	Steele	5
Crow Wing	4	Marshall	8	Stevens	7
Douglas	6	Martin	7	Swift	7
Faribault	6	Meeker	6	Todd	6
Freeborn	7	Morrison	6	Traverse	9
Goodhue	4	Mower	4	Wadena	7
Grant	9	Murray	9	Waseca	6
Hubbard	7	Nobels	7	Watsonwan	6
Itasca	6	Norman	8	Wilkin	6
Jackson	7	Otter Tail	6	Winona	4
Kanabec	6	Pennington	6	Yellow Medicine	9

## 6 FEDERAL DAVIS BACON ACT, STATE PREVAILING WAGES & REQUIREMENTS

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Both Federal (Davis Bacon) prevailing wages and State prevailing wages apply to CWRF and DWRF projects. Payment of the wage and fringe benefits most beneficial to the employees are required. Overtime is governed by Minnesota Prevailing Wage statutes at M.S. 177.42 which requires overtime when an employee works more than 8 hours/day OR 40 hours/week. MN Department of Labor and Industry interprets that overtime applies to both 8 hours/day and 40 hours/week. Thus any employee working more than 8 hours in one day is entitled to overtime at the most beneficial wage (i.e. 4 days x 10 hours/day = overtime for 2 hours each day).

This section outlines PFA borrower's responsibilities with respect to prevailing wages for the project from the pre-bid state to project completion.

This section also includes information on basic principles of the prevailing wage requirements, links to state and federal resources, forms (Notice of Contract Award and the Final Federal Labor Standards Form), and checklists.

## 6.1 PRE BID STAGE – SELECT, PRINT & INSERT THE PROPER WAGE DECISION(S)

The type/nature of the construction project governs which federal wage determination(s) and which state wage certification(s) apply. Some projects may trigger more than one Federal determination and/or state certification. To avoid problems and potential liability PFA strongly recommends the following steps be taken prior to final approval of plans and specifications and prior to advertising for bids:

Refer to Minnesota Department of Labor and Industry (DOLI) web site for information about State Prevailing Wages: <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>. Or telephone DOLI at (651) 284-5091

Review U. S. Department of Labor (DOL) Memorandums #130 and 131, DOL guidance on federal wage determinations and selecting the proper wage determination(s) for the project:

- <http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
- <http://www.dol.gov/whd/programs/dbra/faqs/page19.htm>
- <https://www.dol.gov/whd/govcontracts/pwrb/Tab6.pdf>

PHYSICALLY include the contract conditions and applicable Federal and State wage determinations in the bidding documents and final contracts. The wage decisions are available on line and can be found:

- Federal Wage Determinations on line: <https://beta.sam.gov/>
- State Prevailing Wage Certifications: <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

## 6.2 BID AND CONTRACT AWARD STAGE

PHYSICALLY include the contract conditions and applicable Federal and State wage determinations in the bidding documents and final contracts. Provide and apply prevailing wage updates as required to prospective bidders. It is the prime contractor's responsibility to include the prevailing rates and conditions into all subcontracts. Subcontractors are to include the prevailing rates and contract conditions in any lower tier subcontracts.

PHYSICALLY incorporate the following in all prime contracts and contractors to include in all subcontracts:

1. The standard Davis Bacon contract clauses found in 29 CFR 5.5(a) (located in the PFA Contract Packet)
2. Minnesota Department of Labor and Industry prevailing wage contracting clause (located in the PFA Contract Packet)
3. Applicable Federal and State wage determinations

**Federal Davis-Bacon Prevailing Wage Rate Trigger** - Federal wage decisions are “modified” and the “modifications” may be applicable to the project depending upon when issued. Monitor the U. S. Department of Labor web site for changes to Federal wage decisions. Modifications issued 10 or more days before bid opening must be applied to the project. If there are more than 90 days between bid opening and contract award, current modifications may apply to the contract. Consult with your PFA loan officer.

**State of Minnesota Prevailing Wages Trigger**- Contact the Minnesota Department of Labor and Industry for guidance on which Minnesota State Prevailing Wage Certification applies to the project. Please note that the State of Minnesota wage rates typically list two “effective dates” with different wage rates for the identified work classification. The second rate is a built-in increase that is to be paid to affected employees as of the effective date of the increase.

**BEFORE CONTRACT IS AWARDED, verify that prime contractor(s) is not debarred. Prime contractors are responsible to check that subcontractors are not debarred. Go to <https://www.sam.gov/SAM/> Place SAM printout in project file.** Note if you are having trouble with the link, try another internet browser.

### 6.3 AFTER BID AWARD

Submit LABOR STANDARDS NOTICE OF CONTRACT AWARD to the PFA once information is known.

- Discuss labor standards requirements at the preconstruction conference.
- Review the state and federal wage determinations to see if all worker classifications needed for the project are included. All classifications needed must be in both Federal and State wage determinations.
  - If a classification is missing from the State wage determination, contact MN DOLI to request a classification.
  - If a classification is missing from the Federal wage determination, follow the process to propose an Additional Classification and Rate to the Federal U.S. Department of Labor. See the resources on page 43.
- Review all subcontracts subject to Davis Bacon entered into by prime contractors to verify that the prime contractors have required its subcontractors to include the applicable wage determinations and contract conditions.

## 6.4 DURING CONSTRUCTION

### 6.4.1 Obtain Weekly Payroll and Statement of Compliance

Certified payrolls are to be submitted weekly by the prime contractor. The prime contractor is responsible to collect and submit the subcontractor payrolls and statement of compliance weekly to the City. PFA recommends using MNDOT payroll format (Payroll and Statement of Compliance). The MNDOT format provides information on fringe benefits that is helpful for determining whether the contractor/subcontractor is in compliance. Employee home addresses and social security numbers must not be on the certified payrolls (Federal Requirement).

Prior to submitting a disbursement request to PFA for construction costs, the Borrower should have all certified payrolls for that period from the prime contractor (prime contractor responsible to provide subcontractor's payrolls) and conduct payroll verification and employee interviews as described in this section to ensure compliance with state and federal requirements.

#### LINK TO PAYROLL FORMS:

- MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>
- U. S. Department of Labor Payroll Form WH347 and Instructions: <http://www.dol.gov/whd/forms/wh347instr.htm>

### 6.4.2 Verify Job Site Postings are in Place

The prime contractor is responsible to post the following at the construction site:

- Applicable state and federal wage rates
- "Notice to All Employees" poster the required federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- The required Minnesota Department of Labor and Industry posters <http://www.dli.mn.gov/about-department/workplace-posters>

It is a good idea to take a photograph of the required postings and maintain it on file.

### 6.4.3 Verify Compliance with Prevailing Wage Requirements

The PFA borrower or their representative must periodically conduct spot checks of a representative sample of weekly payrolls, verify fringe benefits, and conduct employee interviews to ensure that contractor/subcontractor is complying with requirements and paying the appropriate wage rates.

Establish and follow a payroll review and employee interview schedule based on an assessment of the risks of noncompliance and length of contract. Conduct more frequent spot checks if risks are higher or if contractor/subcontractor noncompliance.

Conduct immediate interviews in response to an alleged violation of the prevailing wage requirements.

Conduct employee interviews in confidence. Use [Form SF1445](#) or equivalent document for the interviews.

Verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

Periodically review contractors and subcontractors use of apprentices and trainees. Verify registration and certification of apprentices and trainees with respect to apprenticeship and training programs approved by US Dept. of Labor or a state program; to ensure that contractors and subcontractors are not using a disproportionate number of laborers, trainees and apprentices. Conduct these reviews in accordance with the payroll and employee interviews.

Maintain all Labor Standards records, including information on any restitutions (underpayments to laborers or mechanics), on file. Note: employee home addresses and social security numbers must not be on the certified payrolls.

#### 6.4.4 Submit a Compliance Certification Form to PFA if Requested

If requested by PFA, submit a COMPLIANCE CERTIFICATION FOR SUBMITTED PAYROLLS FORM. This form transmits payrolls and a certification on whether or not payrolls are in compliance with requirements.

#### 6.4.5 Immediately Report Potential Violations

Immediately report potential wage violations to:

1. Your [PFA loan officer](#)
2. Minneapolis District Office of the U. S. Department of Labor
3. U. S. Environmental Protection Agency, Grants Management Office

Mpls. District Office US Dept. of Labor  
ESA Wage & Hour Division  
Tri-Tech Center, Suite 920  
331 Second Avenue South  
Minneapolis, MN 55401-132177  
Phone: (612) 370-3371  
1-866-4-USWAGE (1-866-487-9243)

U. S. Environmental Protection Agency  
Grants Management Officer  
U. S. EPA Region 5  
West Jackson Boulevard  
Mail Code: MC-10J  
Chicago, IL, 60604-3507

## 6.5 PROJECT COMPLETION

Submit a FINAL FEDERAL LABOR STANDARDS REPORT to PFA at project completion.

Maintain labor standards records with the project files at the borrower's office.

## 6.6 BASIC PRINCIPLES FOR PREVAILING WAGES AND OVERTIME PAY

**MOST BENEFICIAL WAGE AND OVERTIME REQUIREMENTS APPLY.** The most beneficial of the base hourly rate + fringe benefit (state base rate + state fringe rate OR federal base rate + federal fringe rate whichever is higher) is required to be paid to workers. Overtime is triggered when an employee works more than 8 hours/day OR 40/week (Minnesota DOLI interprets that overtime applies to both 8 hours a day and 40 hours a week.) Time and one-half must be paid for each hour of overtime worked.

**FRINGE BENEFITS** must be paid for each hour worked, including any overtime hours. The ½ time premium is not paid for fringe benefits. Fringe benefits must be bona-fide, and, if not paid in cash, must be paid to a 3rd party plan.

**EMPLOYEE INFORMATION ON PAYROLLS.** Payrolls cannot include home addresses or social security numbers of the employees (federal requirement).

**IDENTIFY STATE AND FEDERAL WORKER CLASSIFICATION.** Payrolls must clearly identify the work classification for each employee. The format/titles can differ between the State and Federal classifications (MN uses a numerical identifier, Feds typically uses titles). Both state and federal classifications are needed to determine whether the proper rate is being paid to employees. If a classification is missing from the State or Federal wage determinations contact the appropriate agency to secure the classification required.

- Federal Request for Additional Classification and Rate U. S. DOL – Wage and Hour Division: <https://www.dol.gov/whd/govcontracts/dbra-forms.htm>. Complete form and send to Conformance and CBA Update public email address:
- [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) . The e-mail must be sent by the PFA Borrower and not their engineer or consultant.
- State Request for additional classification – contact MN DOLI at Phone: 651-284-5091 or email: [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

**STATEMENT OF COMPLIANCE.** A Statement of Compliance is required with each weekly payroll submittal.

**OWNER-SUPERVISORS & FOREMEN** who do not engage in work on the project are not subject to prevailing wage. If they do work, Owner operators are not exempt from the prevailing wage requirements.

**TRACKING FORMS** can aid in efficient payroll review and compliance monitoring. It is suggested that the labor standards officer prepare a matrix which identifies all project job classifications which are expected to be utilized during construction and compares each classification under the Federal and State wage decisions referenced in the Notice of Contract Award. Such a matrix will help demonstrate that the highest wage rate was paid for the classification being reviewed. Maintain tracking sheets and matrixes in your labor standards compliance files. Contact PFA if you want to see examples of tracking forms.

**LABOR STANDARDS RECORDS.** All prevailing wage records (certified payrolls, correspondence, employee interviews, debarment search results, etc.) will need to be on file and maintained by the PFA borrower at project conclusion.

**APPEALS ON CONFORMANCES (Additional Classifications)** – Refer to the “US DOL Prevailing Wage Resource Book-DB Conformances Tab 8” for information on reconsideration and appeal of additional classifications. See also Code of Federal Regulations ([CFR](#)) [29 CFR Part 7](#) for information on how to submit an appeal.

## 6.7 PREVAILING WAGE STEPS/CHECKLIST

1. Select the proper wage determination(s) for project
2. Physically insert federal and state wage rates and contract conditions (the PFA contract packet) into plans/specifications
3. Provide updated federal wage rates to all bidders prior to bid opening; and provide updates if more than 90 days between bid opening and contract award. If a modification is issued less than 10 days before the bid opening and there is not reasonable time still available to notify bidders of the modification, place a report of the finding to that effect into the contract file.
4. Bid Opening
5. Verify prime contractor is not debarred ([www.sam.gov](http://www.sam.gov)) . Keep copy of printout on file. (NOTE: if you are having trouble with the link, try another internet browser.)
  - a. Prime contractor to verify that all subcontractors and suppliers are not debarred
6. Review all contracts (prime and subcontracts) to ensure PFA conditions, prevailing wage rates are included
  - a. Prime contractor to ensure that contract conditions are included in all lower tier contracts
7. Review wage determinations to determine if any additional classifications are missing but needed for the project.
  - a. If a federal additional classification is needed, complete this form: [Authorization Additional Classification and Rate](#) and send it along with any required information via e-mail to: U.S. DOL public e-mail address: [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov).
  - b. If a classification is missing from the Minnesota prevailing wages, contact MN DOLI
8. Award Contract
9. Submit "Labor Standards Notice of Contract Award" to PFA
10. Conduct preconstruction conference, review labor standards requirements/responsibilities with contractor/subs
11. Construct project
12. Compliance and Verification
  - a. Check that required postings are up; take digital photograph and place on file
  - b. Receive payrolls/statement of compliance on a weekly basis
  - c. Verify compliance with prevailing wage requirements.
  - d. Conduct employee interviews
  - e. Resolve any issues
13. IMMEDIATELY NOTIFY U.S. Dept. of LABOR, U.S. Environmental Protection Agency and PFA of violations
14. Submit "Final Federal Labor Standards Compliance Report" at project conclusion
15. Maintain files

## 6.8 FEDERAL AND STATE PREVAILING WAGE LINKS & RESOURCES

### STATE OF MINNESOTA DEPT. OF LABOR AND INDUSTRY RESOURCES

- Contact:
  - Phone: (651) 284-5091
  - E-mail: [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)
- Minnesota Prevailing Wages and posters <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>
- MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>
- DOLI Rules: [Minnesota Rules 5200.1000 – 5200.1120](#)

### U. S. DEPT. OF LABOR DAVIS BACON PREVAILING WAGES RESOURCES

- Contact: Minneapolis District Office, U. S. Department of Labor, Wage and Hour Division 612-370-3341 (Officer of the Day will respond to inquiries/questions about federal labor laws including Davis Bacon)
- Guidance, posters, forms, guidance documents and laws on Davis Bacon requirements: <https://www.dol.gov/whd/govcontracts/dbra.htm>
  - Federal Wage Determinations on line: <https://beta.sam.gov/>
  - Guidance on selecting the proper federal wage determination: <http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
  - U. S. DOL FAQ – Davis Bacon – Is it possible for more than one wage determination to apply to a project? <http://www.dol.gov/whd/programs/dbra/faqs/page19.htm>
  - Federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
  - Federal employee interview [Form: SF1445](#)
  - U. S. Department of Labor Payroll Form WH347 and instructions: <http://www.dol.gov/whd/forms/wh347.pdf>, <http://www.dol.gov/whd/forms/wh347instr.htm>
  - U. S. DOL FAQ – Davis Bacon <http://www.dol.gov/whd/programs/dbra/faqs.htm>
  - U. S. DOL – Wage and Hour Division – Request for Additional Classification and Rate: [Authorization Additional Classification and Rate](#)
  - U.S. DOL – E-mail Conformance (additional classification) send requests to: [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov)

**FEDERAL CONTACT DEBARMENT CHECK:** [www.sam.gov](http://www.sam.gov) (Note: check contractor debarment before awarding contract, debarment check applies to all procurement actions). If link does not open, try using another internet browser.

### 6.9 LABOR STANDARDS – NOTICE OF CONTRACT AWARD FORM

Fill out one form for each contract awarded and provide to your [PFA Loan Officer](#).

*Federal Wage Determinations - for contracts competitively bid, an exception provides that the wage determination updates (modifications) issued less than 10 days before the bid opening shall be effective unless there is not a reasonable time still available to notify bidders of the modification, and a report of the finding to that effect is inserted into the contract file. If contracts are awarded 90 days or more after bid opening, the modification issued closest to the award date must be used.)*

*State Wage Determinations - Check with Minnesota Department of Labor and Industry about which Minnesota State Prevailing Wage Certification applies to the project.*

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

PFA Project Number (if known): \_\_\_\_\_

Project Description: \_\_\_\_\_  
\_\_\_\_\_

County where project is located: \_\_\_\_\_

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

Bid Opening Date: \_\_\_\_\_

Contract Award Date: \_\_\_\_\_

Construction Start Date: \_\_\_\_\_

Contract amount: \_\_\_\_\_

Contractor Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Construction Completion: \_\_\_\_\_

Contractor Debarment Check Date/Results: \_\_\_\_\_

*(Do debarment check before contract award. Print debarment check and retain in labor standards file)*

Labor Standards – Notice of Contract Award (cont.)

**FEDERAL** wage decision number(s) used in contract: \_\_\_\_\_

Federal Wage decision type used in contract (building, heavy, highway): \_\_\_\_\_

Federal Modification number used in contract: \_\_\_\_\_

Federal effective date of wage decision: \_\_\_\_\_

**STATE** wage decision type (commercial, heavy/highway) used in contract: \_\_\_\_\_

County Number (commercial projects) where project is located: \_\_\_\_\_

Region Number (heavy/highway projects) where project is located: \_\_\_\_\_

Effective date of wage type used in contract: \_\_\_\_\_

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

I certify the correct wage decision is being applied to the above noted project and that the contractor and subcontractors are not debarred or suspended from participating on federal contracts, verified by [www.sam.gov](http://www.sam.gov) :

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

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

Title: \_\_\_\_\_

### 6.10 FINAL FEDERAL LABOR STANDARDS COMPLIANCE REPORT FORM

Please complete and submit this form to the PFA when each construction contract is completed.

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

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

PFA Project Number: \_\_\_\_\_

Completion Date (mm/dd/yy): \_\_\_\_\_

Number of construction (face to face) wage interviews completed: \_\_\_\_\_

Number of interview forms mailed and completed: \_\_\_\_\_

Number of trades reviewed through interviews, including mailed forms: \_\_\_\_\_

If no interviews were conducted face to face or by mail, provide explanation in comments section.

If the answer to any of the following questions is "NO" please explain in comments

Were the required postings (posters, wage rates) observed on site?      Yes              No

Have all payrolls been received?    Yes              No

Are all payroll submissions complete and compliant?                                      Yes              No

Were wage interviews compared to payroll submissions?                                      Yes              No

Have all known labor standards non-compliances been resolved?                              Yes              No

Have all known restitutions been received by employees?                                      Yes              No

Were willful violations or complaints forwarded to DOL, EPA and PFA staff? Yes              No

Final Report Comments (if any) attach comments if additional space is needed:

Final Federal Labor Standards Compliance Report Form (cont.)

I certify to the best of my knowledge that all laborers and mechanics employed by this construction contract were paid in accordance with Federal labor provisions, except as noted. There are no outstanding or unresolved Federal labor standards underpayments, complaints or disputes.

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

Title: \_\_\_\_\_ Organization: \_\_\_\_\_

(Individual signing the form should be the one responsible for payroll review and monitoring.)

## 7 REAL PROPERTY DECLARATIONS, WAIVERS AND CERTIFICATIONS

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Real Property Declaration Recording Requirement – Borrowers and grantees receiving PFA funds that include state general obligation bond proceeds (includes PFA loans) are required to record a Real Property Declaration that identifies the project area as “state bond financed property”, unless the project qualifies for a waiver from the filing requirements described below. The Declaration places limitations on the use and sale of the property under Minn. Stat. Sec. [16A.695](#) and the [Fourth Order Amending Order of the Commissioner of Finance dated July 30, 2012](#) (the “Commissioner’s Order”). An example of the Real Property Declaration is included in this document. The borrower should have their attorney draft the Real Property Declaration.

Real Property Declaration Recording Waiver - Section 7.02 of the Commissioner’s Order allows the Commissioner of Minnesota Management and Budget (MMB) to waive the declaration recording requirement described above for projects or portions of projects located within roads, highways or utility or transit corridors, easements or rights of way where recording would be problematic. Thus, the borrower should request a waiver from MMB for the portions of their projects that fall within that description. An example of the request is included in this document.

MMB Waiver Certification - If MMB grants the waiver from the Real Property Declaration Recording Requirement, the borrower will only need to sign a MMB prepared Waiver Certification for those parts of the project, which do not need to be recorded. In the Waiver Certification the borrower acknowledges that those project areas are “state bond financed property”. A description or map of the project areas, which does not have to be a legal description, is attached to the MMB Waiver Certification. Portions of projects that are located on parcels of land that do not fit that description (such as treatment plants and ponds, lift stations, etc.), are not eligible for the waiver and the borrower will need to record a Real Property Declaration against those parcels. An example of the Waiver Certification is included in this document.

The following documents are attached:

- Example Real Property Declaration
- Example Form letter to MMB requesting a waiver for the portion of the project that cannot be recorded with the County under the Real Property Declaration Filing Requirements
- Example MMB Waiver Certification

Provide Completed Document to PFA

The Borrower must provide the signed Waiver Certification and/or a copy of the recorded Declaration to PFA and MMB prior to disbursement of money for construction activities or as soon thereafter as practicable.

**NOTE:** Do not sign a **MMB Waiver Certification** or **Declaration**, or record a **Declaration** until you have requested a waiver from MMB for the eligible portions of your project and received MMB's response. MMB's response to your request will indicate which portion(s) of your project has been granted a waiver and which portion(s) must have a recorded Declaration.

The **Declaration** must be recorded at the County Recorder's office.

### 7.1 EXAMPLE OF REAL PROPERTY DECLARATION

FOR USE BY FILING OFFICER ONLY

Minnesota Public Facilities Authority  
REAL PROPERTY DECLARATION

The undersigned has the following interest in the real property located in the County of \_\_\_\_\_, State of Minnesota, that is legally described in Exhibit A attached and all facilities situated thereon (collectively, the "Restricted Property"):

(Check the appropriate box):

- a fee simple title
- a lease
- an easement

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by the said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain Bond Purchase and Project Loan Agreement between the Minnesota Public Facilities Authority and \_\_\_\_\_ [name of borrower] for Loan No. MPFA - \_\_\_\_\_, dated \_\_\_\_\_;

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Executive Director of the Minnesota Public Facilities Authority and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way

modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

\_\_\_\_\_  
[name of borrower],  
a political subdivision of the state of Minnesota

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF                    )

This forgoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ the \_\_\_\_\_ [insert name and title of first signatory], and \_\_\_\_\_, the \_\_\_\_\_ [insert name and title of second signatory], respectively, of the \_\_\_\_\_, [insert name of borrower] a political subdivision of the state of Minnesota.

\_\_\_\_\_ Notary Public

This Declaration was drafted by:  
[insert name and address]

Exhibit A  
LEGAL DESCRIPTION

## 7.2 WAIVER REQUEST FROM REAL PROPERTY DECLARATION RECORDING REQUIREMENT

An example request letter appears on the next page. It may be submitted electronically to Roger Behrens, [Roger.Behrens@state.mn.us](mailto:Roger.Behrens@state.mn.us) (651-201-8131) at MMB for review and response. Please also copy your PFA loan officer on the waiver request.

Delete instructions in [brackets] before submitting to MMB.

7.2.1 Example of Letter Requesting a Waiver

*(Put on City Letterhead)*

\_\_\_\_\_, 2020

Commissioner of Minnesota Management and Budget  
c/o Roger Behrens  
Minnesota Management and Budget  
400 Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155

RE: Real Property Declaration Waiver Request - \_\_\_\_\_ Project  
MPFA-\_\_\_\_\_ [insert MPFA project no.]

Dear Commissioner:

The City of \_\_\_\_\_ has submitted an application to the Minnesota Public Facilities Authority (“PFA”) requesting funding for a project within its jurisdiction. The project will be funded with a PFA [include only the applicable funding sources:] Clean Water Revolving Fund Loan/Drinking Water Revolving Fund Loan/Wastewater Infrastructure Grant. As described in the application to the PFA, the project is as follows:

[describe project]

The financing above will be funded in whole or in part with State bond proceeds, and the City must comply with the requirements applicable to Real Property Declarations set forth in Section 7.02 of Minnesota Management and Budget’s (MMB’s) Fourth Order Amending Order of Commissioner of Finance dated July 30, 2012 (the “Commissioner’s Order”).

[use one of the following two paragraphs:]

[if the entire project is eligible for a waiver] This letter constitutes the City’s written request for a waiver of the Declaration requirement because the entire project lies within roads, highways or utility or transit

corridors, easements or rights of way, and the recording of the Declaration against such property would be unduly onerous or impracticable. I understand that the City will have to sign a Waiver Certification that the property improved by the funding described above is State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB.

[if only a portion of the project is eligible for a waiver] This letter constitutes the City's written request for a waiver of the Declaration requirement only for the portion of the project within roads, highways or utility or transit corridors, easements or rights of way, and the recording of

the Declaration against such property would be unduly onerous or impracticable. I understand that the City will have to sign a Waiver Certification that the property subject to the waiver is State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB. I also understand that the City will be required to record a real property Declaration for the remaining parcel(s) of land in the project that is/are not eligible for the waiver, stating that such parcel(s) is/are State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB.

I am including for your review a map which shows the location of the project. If you need any additional information, please contact me at (\_\_\_\_)\_\_\_\_\_.

Sincerely,

cc: \_\_\_\_\_, PFA [insert name of PFA loan officer]

7.2.2 Example of MMB Waiver Certification

(ACTUAL WAIVER CERTIFICATION WILL BE PROVIDED BY MMB - DO NOT SIGN THIS FORM)

Minnesota Management and Budget  
State of Minnesota  
General Obligation Bond Financed Property

The undersigned has a fee simple, leasehold and/or easement interest in the real property located in the County(ies) of \_\_\_\_\_, State of Minnesota that is generally described or illustrated graphically in Exhibit A attached and all facilities situated thereon (the "Restricted Property") and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is state bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget;
- B. The Restricted Property is subject to the provisions of the Bond Purchase and Project Loan Agreement between the Minnesota Public Facilities Authority and [name of borrower] for Loan No. MPFA - \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_; and
- C. The Restricted Property shall continue to be deemed state bond financed property for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

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

\_\_\_\_\_

[name of borrower],

a political subdivision of the state of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

[Insert a narrative or graphic description of the Restricted Property. It need not be a legal description.]

## 8 ASSET MANAGEMENT

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The PFA strongly recommends that all of its borrowers have an asset management program. An asset management program for a water or sewer system can help decision makers better understand the condition of the major components of their system, establish priorities for repair and replacement to maximize useful life, and guide financial decisions for implementing projects.

The basic premise of infrastructure asset management is to intervene at strategic points in an asset's normal life cycle to extend the expected useful service life, and thereby maintain its performance. Initial steps of an asset management program:

- Conduct a detailed inventory and develop a comprehensive list of the utility's assets, including information on location, condition, remaining useful life, and criticality to the utility operations.
- Identify daily/monthly/yearly operation and maintenance tasks to maximize the useful life of the assets and strategies to keep the utility operating at its best.
- Develop a clear organizational system for financial records to help identify trends and determine the full cost of operating the utilities.
- Prioritize projects and develop a long-range capital improvement plan, to implement the identified projects.

Activities related to the development or enhancement of an asset management plan may be eligible for PFA clean water or drinking water funds. Contact your PFA loan officer for more information.

### *Resources*

- Minnesota Rural Water Association offers programs and training that can help a community develop an asset management program. See website for more information. <http://www.mrwa.com/index.html>
- [Asset Management Resources for Small Drinking Water Systems \(EPA\)](#) several links to resources on asset management, computer software (Check Up Program for Small Systems CUPSS), reference guides and more.
- Planning for Sustainability Handbook - EPA handbook describing steps utilities can undertake to enhance their planning processes to ensure that water utilities are sustainably managed using cost-effective life cycle analysis. [Planning for Sustainability: A Handbook for Water and Wastewater Utilities \(PDF\)](#)
- Environmental Finance Center Network - <http://efcnetwork.org/> includes many resources on system management, asset management, rate setting, etc.

## 9 ENERGY ASSESSMENT - TECHNICAL ASSISTANCE

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### **MNTAP – MINNESOTA TECHNICAL ASSISTANCE PROGRAM**

The University of Minnesota’s MnTAP (Minnesota Technical Assistance Program) is a non-regulatory program in the School of Public Health at the University of Minnesota.

MnTAP’s work in water focuses on reducing water consumption and wastewater loadings. For additional information on MnTAP services and resources, visit their website:

<http://www.mntap.umn.edu/>

### **MINNESOTA RURAL WATER ASSOCIATION ENERGY ASSESSMENT TOOLS**

The Minnesota Rural Water Association has energy assessment tools and technical assistance for cities under 10,000 in population. For additional information contact:

Paul Hoeschen, MRWA Energy Efficiency Technical Advisor

Office: 800-367-6792

Cell: 218/820-0479

[Paul.hoeschen@mrwa.com](mailto:Paul.hoeschen@mrwa.com)

[www.mrwa.com](http://www.mrwa.com)

# 10 MUNICIPAL BOND LISTING (MINNESOTA AND NORTH DAKOTA)

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## **Municipal Bond Listing** **(Minnesota and North Dakota)**

The borrower is required to use the services of a “nationally recognized bond counsel” to prepare the authorizing resolution and related bond documents for the transaction. This listing includes “nationally recognized bond counsels”.  
(Listed in *The Bond Buyer’s Municipal Marketplace Directory*, Fall 2018)

**BALLARD SPAHR, LLP**

2000 IDS Center, 80 S.Eighth St  
Mpls, MN 55402-2119  
Tel: 612-371-3122  
[www.ballardspahr.com](http://www.ballardspahr.com)

**BARNES & THORNBURG, LLP**

225 South Sixth Street, Suite 2800  
Mpls, MN 55402  
Tel: 612-333-2111  
[www.btlaw.com](http://www.btlaw.com)

**BEST & FLANAGAN, LLP**

60 South Sixth Street, Suite 2700  
Mpls, MN 55402-4452  
Tel: 612-339-7121  
[www.bestlaw.com](http://www.bestlaw.com)

**BRIGGS AND MORGAN, P.A. - Mpls.**

2200 IDS Center  
80 S. Eighth Street  
Mpls, MN 55402  
Tel: 612-977-8400  
[www.briggs.com](http://www.briggs.com)

**DORSEY & WHITNEY LLP**

50 South Sixth Street, Suite 1500  
Mpls, MN 55402  
Tel: 612-340-2600  
[www.dorsey.com](http://www.dorsey.com)

**ECKBERG LAMMERS**

1809 Northwestern Avenue  
Stillwater, MN 55082  
Tel: 651-439-2878  
[www.eckberglammers.com](http://www.eckberglammers.com)

**FAEGRE BAKER DANIELS, LLP**

2200 Wells Fargo Center  
90 South Seventh Street  
Mpls, MN 55402-3901  
Tel: 612-766-7000  
[www.faegrebd.com](http://www.faegrebd.com)

**FREDRICKSON & BYRON, P.A.**

200 South Sixth Street, Suite 4000  
Mpls, MN 55402-1425  
Tel: 612-492-7000  
[www.fredlaw.com](http://www.fredlaw.com)

**FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.**

700 Lonsdale Bldg.  
302 West Superior Street  
Duluth, MN 55802  
Tel: 218-722-0861  
[www.fryberger.com](http://www.fryberger.com)

**KENNEDY & GRAVEN, CHARTERED**

470 U. S. Bank Plaza  
200 South Sixth Street  
Mpls, MN 55402  
Tel: 612-337-9300  
[www.kennedy-graven.com](http://www.kennedy-graven.com)

**KNUTSON, FLYNN & DEANS P.A.**

1155 Centre Pointe Drive, Suite 10  
Mendota Heights, MN 55120  
Tel: 651-222-2811  
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**MCGRANN SHEA ANDERSON CARNIVAL STRAUGHN & LAMB, CHARTERED**

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**OHNSTAD TWICHELL, P.C.**

P. O. Box 458  
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[www.ohnstadlaw.com](http://www.ohnstadlaw.com)

**WINTHROP & WEINSTINE, P.A.**

Capella Tower, Ste 3500  
225 South Sixth Street  
Mpls, MN 55402  
Tel: 612-604-6400  
[www.winthrop.com](http://www.winthrop.com)

## 11 DUNS NUMBER

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The Application (Form 1, General Information), requests the applicant's DUNS number. The borrower's DUNS number is needed by PFA for reporting and other purposes.

Informational links on the DUNS number:

- <http://fedgov.dnb.com/webform/displayHomePage.do>
- <http://www.grants.gov/web/grants/applicants/organization-registration/step-1-obtain-duns-number.html>

# 12 JOB REPORTING TEMPLATE EXAMPLE

Below is an example of the Job Reporting Template. PFA will provide each borrower with a job reporting form template for their project. Submission of the report to PFA is required a substantial completion.

## MN Jobs Reporting spreadsheet for capital projects funded thru the MN Public Facilities Authority

part 1. PFA project info:

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Recipient	Proj id	Award dt	Program Description (s)	Funding ID (s)	Award Amt:

part 2. jobs reporting fields for MMB's database (blue-shaded fields to be completed by recipients):

Project Name (must be unique within MMB's database)	Project Start Date	Project End Date	Main County for the Project	Job Type	Hourly Pay Range (direct pay only, exclude fringe and indirect)	Number of Hours Paid for Jobs: Created	Number of Hours Paid for Jobs: Retained
<div style="border: 1px dashed black; padding: 5px;"> <p>Instructions:</p> <p>Please return this completed worksheet (after project completion) by email to the PFA project loan officer *</p> <p>Only the blue-shaded columns need to be completed by recipients:</p> <ul style="list-style-type: none"> <li>-Project Start Date</li> <li>-Project End Date</li> <li>-Number of Hours Paid, by:                             <ul style="list-style-type: none"> <li>Category (jobs created / jobs retained)</li> <li>Job type (Engineering/Other Professional; Construction; or Other)</li> <li>Hourly pay range</li> </ul> </li> </ul> <p>MN Public Facilities Authority 1st National Bank Building 332 Minnesota St, Suite W820 Saint Paul, MN 55101-1378 <a href="http://mn.gov/deed/pfa">mn.gov/deed/pfa</a></p> <p style="text-align: right;">* project loan officer: loan officer name loan officer phone # <a href="#">loan officer email</a></p> </div>	Engineering /Other Professional	Less than \$10.00					
	\$10.00 - 15.00						
	\$15.01 - 20.00						
	\$20.01 - 25.00						
	\$25.01 - 30.00						
	\$30.01 - 35.00						
	\$35.01 - 40.00						
	more than \$40.00						
	Construction	Less than \$10.00					
	\$10.00 - 15.00						
	\$15.01 - 20.00						
	\$20.01 - 25.00						
	\$25.01 - 30.00						
	\$30.01 - 35.00						
	\$35.01 - 40.00						
	more than \$40.00						
	Other	Less than \$10.00					
	\$10.00 - 15.00						
	\$15.01 - 20.00						
	\$20.01 - 25.00						
\$25.01 - 30.00							
\$30.01 - 35.00							
\$35.01 - 40.00							
more than \$40.00							