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Department of Natural Resources
Bureau of Community Financial Assistance
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Financial Assistance Agreement
Safe Drinking Water Loan Program
Form 8700-214B rev 10/16

STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM
LEAD SERVICE LINE (LSL) PRINCIPAL FORGIVEN FINANCIAL ASSISTANCE AGREEMENT

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF MILWAUKEE

\$2,600,000 With \$2,600,000 PRINCIPAL FORGIVENESS

FINANCIAL ASSISTANCE AGREEMENT

Dated as of June 28, 2017

This constitutes a **Financial Assistance Agreement** under the State of Wisconsin's Safe Drinking Water Loan Program. This agreement is awarded pursuant to ss. 281.59 and 281.61, Wis. Stats. The purpose of this agreement is to award financial assistance from the Safe Drinking Water Loan Program. This agreement also discloses the terms and conditions of this award.

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

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

Municipal Identification No. 40251
Safe Drinking Water Loan Program Project No. 4851-30

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WITNESSETH:

WHEREAS, this is a FINANCIAL ASSISTANCE AGREEMENT (the "FAA"), dated June 28, 2017, between the STATE OF WISCONSIN Safe Drinking Water Loan Program (the "SDWLP"), by the Department of Natural Resources (the "DNR") and the Department of Administration (the "DOA"), acting under authority of ss. 281.59 and 281.61, Wis. Stats., as amended (the "Act"), and the City of Milwaukee, a municipality within the meaning of the Act, duly organized and existing under the laws of the State of Wisconsin (the "Municipality"); and

WHEREAS, the United States, pursuant to the Federal Safe Drinking Water Act Amendments of 1996 (the "Safe Drinking Water Act"), requires each state to establish a drinking water revolving loan fund to be administered by an instrumentality of the state before the state may receive capitalization grants for eligible projects from the United States Environmental Protection Agency (the "EPA"), or any successor which may succeed to the administration of the program established by the Safe Drinking Water Act; and

WHEREAS, the State of Wisconsin has, pursuant to ss. 281.59 and 281.61, Wis. Stats., established the SDWLP to be used in part for purposes of the Safe Drinking Water Act; and

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

WHEREAS, DNR and DOA have the joint responsibility to provide SDWLP financial assistance to municipalities for the construction of eligible drinking water projects, all as set forth in the Act; and

WHEREAS, the Municipality has submitted to DNR an application for financial assistance (the "Application") for a project (the "Project"), DNR has approved the Application and determined the Application meets the DNR criteria for project eligibility established in applicable state statutes and regulations; and

WHEREAS, DNR has determined that the Municipality and the Project are not ineligible for financial assistance under s. 281.61(2g), Wis. Stats.; and

WHEREAS, DNR has determined the SDWLP will provide financial assistance to the Municipality by making a loan (the "Loan") under s. 281.59(9), Wis. Stats., for the purposes of that subsection, and providing Principal Forgiveness of the Loan principal;

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

ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION

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

"Act" means ss. 281.59 and 281.61, Wis. Stats., as amended.

"Application" means the written application of the Municipality dated June 23, 2016, for financial assistance under the Act.

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

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

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

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

"Final Completion" means all Service Lines to be financed under this FAA have been installed and DNR has completed all necessary Project closeout procedures, including final disbursement of Financial Assistance to the Municipality.

"Financial Assistance" means any proceeds provided under this Financial Assistance Agreement in the form of a Loan of which the Loan principal will be forgiven.

"Financial Assistance Agreement" or "FAA" means this Financial Assistance Agreement between the SDWLP by DNR, DOA, and the Municipality.

"Loan" means the loan made by the SDWLP to the Municipality of which the principal will be forgiven pursuant to this FAA at the time Loan disbursements are made.

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

"Principal Forgiveness" means Financial Assistance received in the form of forgiveness of Loan principal amounts pursuant to the Act or this FAA.

"Project" means the project assigned SDWLP Project No. 4851-30 by DNR, described in the Project Manager Summary Page (Exhibit C).

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

"Project Milestone" means a minimum percentage of the Financial Assistance for which the Municipality should have incurred costs on eligible activities by the end of a specific time period, established to ensure that the Municipality will implement the Project in an expeditious manner.

"Regulations" means chs. NR 166, NR 809, and NR 811, Wis. Adm. Code, the regulations of DNR, ch. Adm. 35, Wis. Adm. Code, the regulations of DOA, adopted pursuant to and in furtherance of the Act, and ch. 145, Wis. Stats, as administered by the Department of Safety and Professional Services, as such may be adopted or amended from time to time.

“Safe Drinking Water Act” means the federal Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26.

“SDWLP” means State of Wisconsin Safe Drinking Water Loan Program, established pursuant to ss.281.59 and 281.61, Wis. Stats., and managed and administered by DNR and DOA.

“Service Line” means the water service piping from the curb stop of a municipally-owned main or service line to the meter or other water utility service terminal on private residential property, pre k – 12 school or licensed day care center.

"State" means the State of Wisconsin.

"Substantial Completion" means the point in time when no further lead service lines are to be replaced by the Municipality using Financial Assistance provided in this FAA or 36 months after execution of the FAA, whichever occurs first.

“Use of American Iron and Steel” means the requirements contained in section 2113 of Public Law 114-322, the Water Infrastructure Improvements for the Nation Act of 2016.

“Water Diversion Permit” means a DNR permit issued to the Municipality under s. 30.18(2), Wis. Stats., to divert water from a stream or lake in Wisconsin.

“Water System” means all structures, conduits, and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes downstream from the curb stop.

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

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

ARTICLE II
REPRESENTATIONS

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

- (a) The SDWLP has complied with the provisions of the Act and has full power and authority to execute and deliver this FAA, consummate the transactions contemplated hereby, and perform its obligations hereunder.
- (b) The SDWLP is not in violation of any of the provisions of the Constitution or laws of the State which would affect its powers referred to in the preceding paragraph (a).
- (c) Pursuant to ss. 281.59 and 281.61, Wis. Stats., the SDWLP is authorized to execute and deliver the FAA, and to take actions and make determinations that are required of the SDWLP under the terms and conditions of the FAA.
- (d) The execution and delivery by the SDWLP of this FAA and the consummation of the transactions contemplated by this FAA shall not violate any indenture, mortgage, deed of trust, note, agreement, or other contract or instrument to which the State is a party or by which it is bound, or to the best of the SDWLP's knowledge, any judgment, decree, order, statute, rule, or regulation applicable to the SDWLP, and all consents, approvals, authorizations, and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated thereby have been obtained.
- (e) There is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board, or body pending or, to the knowledge of the SDWLP, threatened against or affecting the SDWLP, or to the knowledge of the SDWLP, any basis therefore, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or which, in any way, could adversely affect the validity of this FAA or any agreement or instrument to which the State is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.
- (f) The Project is on the DNR funding list for the 2017 state fiscal year.

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

- (a) The Municipality possesses the legal municipal form of a city under ch. 62, Wis. Stats. The Municipality is located within the State and is a "municipality" within the meaning of the Act, duly organized and existing under the laws of the State, and has full legal right, power, and authority to:
 - (1) conduct its business and own its properties,
 - (2) enter into this FAA, and
 - (3) carry out and consummate all transactions contemplated by the FAA.
- (b) The Municipality is in compliance with its Water Diversion Permit (if any).
- (c) The governing body of the Municipality has duly approved the execution and delivery of this FAA in the amount of \$2,600,000, and has authorized the taking of any and all action as may be required on the part of the Municipality and its authorized officers to carry out, give effect to, and consummate the transactions contemplated by the FAA.
- (d) This FAA has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the Municipality.

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

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

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

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

(4) wherein an unfavorable decision, ruling, or finding could adversely affect the transactions contemplated hereby.

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

(g) The resolution of the Municipality authorizing execution of the Financial Assistance Agreement has been duly adopted by the Municipality and remains in full force and effect as of the date hereof.

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

(i) The Municipality represents that it has not made any commitment or taken any action that shall result in a valid claim for any finders' or similar fees or commitments for obtaining the Loan under this FAA.

(j) Each of the facilities constituting a part of the Project is eligible for financing under the Safe Drinking Water Act. The DNR is granting a variance through this FAA to s. NR 166.07(2)(w), Wis. Adm. Code, to allow Service Lines to be eligible for SDWLP funding. Any portions of the Project that are ineligible for financing from the SDWLP are listed within the Project Manager Summary Page attached hereto as Exhibit C. The Municipality intends the Project to be and continue to be an eligible project under the Act during the term of this FAA. Each Service Line to be replaced as part of the Project will satisfy the federal environmental review requirements. The Project is an eligible project under s. 281.61, Wis. Stats.

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

(l) The Project is in compliance with all applicable federal, state, and local laws and ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality. The Municipality has complied with and completed all requirements of DNR necessary to commence construction of the Project prior to the date hereof. The Municipality intends to proceed with due diligence to complete the Project pursuant to Section 4.02 hereof.

(m) The Municipality represents that it has satisfied all the applicable requirements in ss. 281.61(3), (4), (5), and (8m), Wis. Stats., ch. NR 166, Wis. Adm. Code, and ch.145, Wis. Stats.

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

(o) The Municipality has met all terms and conditions contained within, and certifies that the Project funded through this agreement will result in the entire Service Line being lead-free and that no partial replacement will result in a service line that is still partially lead.

(p) The Municipality represents that it has submitted to DNR a budget estimate and documentation related to all individuals or firms hired to perform work for the Project.

(q) The Municipality acknowledges that, under s. 281.59(11)(b), Wis. Stats., upon breach of contract by the Municipality or upon failure of the Municipality to comply with s. 281.59, Wis. Stats., the State may recover amounts due the SDWLP by deducting those amounts from any State payments due the Municipality.

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

	Transportation	State-shared	Total
2015	\$25,424,486.79	\$218,881,283.12	\$244,305,769.91
2016	\$25,553,354.00	\$218,991,956.12	\$244,545,310.12

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

2017	\$25,788,151.08	\$219,038,336.66	\$244,826,487.74
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These are not the entire amounts of State aid distributed to the Municipality. Other State aid is subject to intercept.

The Municipality acknowledges that s. 70.60, Wis. Stats., provides that the State may recover amounts due the SDWLP by adding a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located.

Further, in the event that the Municipality would become eligible to receive State payments, s. 281.59(11)(b), Wis. Stats., provides that, upon breach of contract by the Municipality or upon failure of the Municipality to comply with s. 281.59, Wis. Stats., the State may recover amounts due the SDWLP by deducting those amounts from any State payments due the Municipality.

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

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

(t) The Municipality acknowledges that it is eligible to receive Financial Assistance in the form of a Loan of \$2,600,000 with Principal Forgiveness of \$2,600,000 for payment of Project Costs.

ARTICLE III
FINANCIAL ASSISTANCE PROVISIONS

Section 3.01. Financial Assistance Clause Prior to disbursement, the Financial Assistance shall be held by the SDWLP for the account of the SDWLP. Earnings on undisbursed Loan funds shall be for the account of the SDWLP. Financial Assistance shall be disbursed only upon submission by the Municipality of disbursement requests and approval thereof as set forth in Section 3.02 hereof.

Section 3.02. Disbursement of Financial Assistance

- (a) Each disbursement request shall be delivered to DNR. Each request must contain invoices or other evidence acceptable to DNR and DOA that Project Costs for which disbursement is requested have been incurred by the Municipality.
- (b) The SDWLP, through its agents, plans to make disbursements of Financial Assistance on a semimonthly basis, upon approval of each disbursement request by DNR and DOA. Such approval by DNR and DOA may require adjustment and corrections to the disbursement request submitted by the Municipality. The Municipality shall be notified whenever such an adjustment or correction is made by DNR or DOA.
- (c) Disbursements made to the Municipality are subject to pre- and post-payment adjustments by DNR or DOA.
 - (1) If the Financial Assistance is not yet fully disbursed, and SDWLP funds were previously disbursed for costs not eligible for SDWLP funding or not eligible under this FAA, the SDWLP shall make necessary adjustments to future disbursements.
 - (2) If the Financial Assistance is fully disbursed, including disbursements for any costs not eligible for SDWLP funding or not eligible under this FAA, the Municipality agrees to repay to the SDWLP an amount equal to the non-eligible costs within 60 days of notification by DNR or DOA.
- (d) The SDWLP or its agent shall disburse Financial Assistance only to the Municipality's account by electronic transfer of funds. The Municipality hereby covenants that it shall take actions and provide information necessary to facilitate these transfers. The Municipality agrees to pay project invoices in a timely manner.
- (e) Disbursement beyond ninety-five percent (95%) of the total FAA amount, unless otherwise agreed to by DNR and DOA pursuant to a written request from the Municipality, may be withheld until:
 - (1) the Municipality certifies in writing to DNR its compliance with applicable Federal requirements;
 - (2) the Municipality furnishes reports, and provides data and such other information as SDWLP may require prior to Project closeout; and
 - (3) DNR certifies in writing to DOA the Municipality's compliance with all applicable requirements of this FAA.

Section 3.03. Remedies

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

- (2) is not complying with or is in violation of any covenant set forth in this FAA; or
- (3) is not in compliance with the Act or the Regulations;

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

- (i) Up to 20% of disbursements otherwise due the Municipality may be withheld.
- (ii) Project work may be suspended.
- (iii) A court of appropriate jurisdiction to enter an injunction or afford other equitable or judicial relief as the court finds appropriate may be requested by DNR.
- (iv) Other administrative remedies may be pursued.

(b) If the Municipality fails to observe or perform any covenant, condition, or agreement on its part under this FAA for a period of thirty (30) days after written notice is given to the Municipality by DNR, specifying the default and requesting that it be remedied, the SDWLP is provided remedies by law and this FAA. These remedies include, but are not limited to, the following rights:

- (1) Pursuant to s. 281.59(11)(b), Wis. Stats., DOA shall place on file a certified statement of all amounts due the SDWLP under this FAA. DOA may collect all amounts due the SDWLP by deducting those amounts from any State payments due the Municipality, or add a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located under s. 70.60, Wis. Stats.
- (2) In the case of a joint utility system, the SDWLP may bill the users of the Municipality's system directly.
- (3) The SDWLP may enforce any right or obligation under this FAA, including the right to seek specific performance or mandamus, whether such action is at law or in equity.

Section 3.04. FAA Effective Date and FAA Term This FAA shall become effective upon its execution and delivery by the parties hereto, and shall remain in effect for a period of 20 years beginning with the date of this FAA.

ARTICLE IV
CONSTRUCTION OF THE PROJECT

Section 4.01. Construction of the Project The Municipality shall construct the Project, or cause it to be constructed, in accordance with the Application. The Municipality shall proceed with the construction of the Project in conformity with law and with all applicable requirements of governmental authorities having jurisdiction with respect thereto.

Section 4.02. Completion of the Project

(a) The Municipality agrees that it shall undertake and complete the Project for the purposes and in the manner set forth in this FAA and in accordance with all federal, state, and local laws, ordinances, and regulations applicable thereto. The Municipality shall, with all practical dispatch and in a sound and economical manner, complete or cause to be completed, the construction of the Project. The Municipality shall obtain all necessary approvals from any and all governmental agencies prior to construction which are requisite to completion of the Project.

(b) The Municipality shall notify DNR if it fails to meet the following Project Milestones with respect to incurring Project Costs for which the Municipality will request disbursement of the Financial Assistance: Year 1: 20%; Year 2: 60%; Year 3: 100%. Year 1 commences as of the date of this FAA – June 28, 2017.

(c) The Municipality shall notify DNR of the Substantial Completion of the Project. At or prior to completion of the Project, the Municipality shall cause to be prepared for the Project documentation identifying the location of the removal of lead service lines, and the material of the new service lines. All service lines will be installed per Milwaukee Water Works specifications.

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

(e) Upon Final Completion of the Project, the Municipality shall:

(1) complete and deliver to DNR the completed Contract Utilization of Disadvantaged Business Enterprises (DBE) form attached hereto as Exhibit B of this FAA;

(2) prepare and deliver to DNR the completed Federal Requirements Compliance Certification attached hereto as Exhibit D of this FAA; and

(3) obtain all required permits and authorizations from appropriate authorities, if required, for operation and use of the Project.

Section 4.03. No Warranty Regarding Condition, Suitability, or Cost of Project Neither the SDWLP, DOA, nor DNR makes any warranty, either express or implied, as to the Project or its condition or that it shall be suitable for the Municipality's purposes or needs, or that the Financial Assistance shall be sufficient to pay the costs of the Project. Review or approval of any engineering reports, facilities plans, plans and specifications, or other documents, or the inspection of Project construction by DNR does not relieve the Municipality of its responsibility to properly plan, design, build, and effectively operate and maintain the Project as required by laws, regulations, permits, and good management practices. DNR or its representatives are not responsible for increased costs resulting from defects in any plans and specifications or other Project documents. Nothing in this section prohibits a Municipality from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

ARTICLE V
COVENANTS

Section 5.01. Application of Financial Assistance The Municipality shall apply the proceeds of the Financial Assistance solely for Project Costs.

Section 5.02. Operation and Maintenance

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

- (1) at all times operate the Water System or otherwise cause the Water System to be operated properly and in a sound and economical manner, including proper training of personnel;
- (2) maintain, preserve, and keep the Water System or cause the Water System to be maintained, preserved, and kept, in good repair, working order, and condition; and
- (3) periodically make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Water System may be performed properly. The Municipality shall not, during the term of this FAA, without the approval of DNR, discontinue operation of or sell or otherwise dispose of the Water System, except for portions of the Water System sold or otherwise disposed of in the course of ordinary repair and replacement of parts.

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

Section 5.04. Public Ownership The Municipality shall at all times retain ownership of the Water System to which the Service Lines funded through this FAA are attached.

Section 5.05. Establishment of Project Accounts

(a) The Municipality shall maintain a separate account that reflects the receipt and expenditure of all SDWLP funds for the Project. All Financial Assistance shall be credited promptly upon receipt thereof and shall be reimbursement for or expended only for Project Costs. The Municipality shall:

- (1) permit any authorized representative of DNR or DOA, or agents thereof, the right to review or audit all records relating to the Project or the Financial Assistance;
- (2) produce, or cause to be produced, all records relating to any work performed under the terms of this FAA for examination at such times as may be designated by any of them or their authorized representatives;
- (3) permit extracts and copies of the Project records to be made by them or their authorized representatives; and
- (4) fulfill information requests by them or their authorized representatives.

Section 5.06. Records The Municipality shall retain all files, books, documents, and records relating to construction of the Project for at least three years following the date of Final Completion of the Project, or for longer periods if necessary due to any appeal, dispute, or litigation. All other files and records relating to the Project, including the locations and addresses of the replaced Service Lines, shall be retained so long as

this FAA remains in effect. The locations and addresses of the lead Service Lines replaced for this Project shall be retained for 20 years.

Section 5.07. Project Areas The Municipality shall permit representatives of DNR visual access to the Project and various related records at reasonable times and allow extracts and copies of Project records to be made by DNR representatives.

Section 5.08. Notice of Impaired System The Municipality shall promptly notify DNR and DOA in the case of: any material damage to or destruction of the Project or any part thereof; any actual or threatened proceedings for the purpose of taking or otherwise affecting by condemnation, eminent domain, or otherwise, all or a part of the Water System; any action, suit, or proceeding at law or in equity by or before any governmental instrumentality or agency; or any other event that may impair the ability of the Municipality to construct the Project or operate the Water System.

Section 5.09. Hold Harmless The Municipality shall save, keep harmless, and defend DNR, DOA, and all their officers, employees, and agents, against any and all liability, claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the construction, occupancy, use, service, operation, or performance of work in connection with the Project, including acts or omissions of the Municipality's employees, agents, or representatives.

Section 5.10. Nondiscrimination Covenant

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

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

Section 5.11. Employees The Municipality or its employees or agents are not employees or agents of the DNR or DOA for any purpose, including worker's compensation.

Section 5.12. Reimbursement Any payment of Financial Assistance to the Municipality in excess of the amount determined by final audit to be due the Municipality shall be reimbursed to DOA within 60 days after DNR or DOA provides a notice of overpayment.

Section 5.13. Rebates The Municipality agrees to pay to the SDWLP any refunds, rebates, credits, or other amounts received for Project Costs that have already been funded by the SDWLP.

Section 5.14. Maintenance of Legal Existence

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

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

(1) the resulting, surviving, or transferee legal entity is a legal entity established and duly existing under the laws of Wisconsin;

(2) such resulting, surviving, or transferee legal entity is eligible to receive financial assistance under the Act;

(3) such resulting, surviving, or transferee legal entity expressly assumes in writing all of the obligations of the Municipality contained in this FAA and any other documents the SDWLP deems reasonably necessary to protect its environmental interests and its investment in the Project; and

(4) the SDWLP shall have consented in writing to such transaction, which consent may be withheld in the absolute discretion of the SDWLP.

Section 5.15. Use of American Iron and Steel The Municipality agrees to comply with the requirements for Use of American Iron and Steel contained in Public Law 114-322 for products used in the Project which are made primarily of iron or steel.

Section 5.16. Wage Rate Requirements The Municipality represents that it shall comply with Section 1450(e) of the Safe Drinking Water Act (41 USC 300j-9(e)), which requires that all laborers and mechanics employed by contractors and subcontractors funded directly by or assisted in whole or in part with funding under this Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 31 of title 40, United States Code.

ARTICLE VI
MISCELLANEOUS

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

- (a) Department of Administration
Office of Capital Finance
Environmental Improvement Fund
101 East Wilson Street, 10th Floor
Madison, WI 53702-0004
or
PO Box 7864
Madison, WI 53707-7864

- (b) Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street, 2nd Floor
Madison, WI 53702-0005
or
PO Box 7921
Madison, WI 53707-7921

- (d) City of Milwaukee
841 North Broadway, Room 501
Milwaukee, WI 53202-3613

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

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

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

Section 6.04. Execution in Counterparts This FAA may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.05. Applicable Law This FAA shall be governed by and construed in accordance with the laws of the State, including the Act.

Section 6.06. Further Assurances The Municipality shall, at the request of DNR and DOA, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for obtaining funding for this Project and better assuring, conveying, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this FAA.

Section 6.07. Termination This FAA may be terminated in whole or in part pursuant to one or more of the following:

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

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

Section 6.08. Rescission The SDWLP may rescind this FAA prior to the first disbursement of any funds hereunder if it determines that:

(a) there has been substantial non-performance of the Project work by the recipient without justification under the circumstances;

(b) there is substantial evidence this FAA was obtained by fraud;

(c) there is substantial evidence of gross abuse or corrupt practices in the administration of the Project;

(d) the Municipality has failed to comply with the covenants contained in this FAA; or

(e) any of the representations of the Municipality contained in this FAA were false in any material respect.

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

CITY OF MILWAUKEE

By: _____
Tom Barrett
Mayor

Attest: _____
James R. Owczarski
Clerk

COUNTERSIGNED:

By: _____
Martin Matson
Comptroller

Approved as to form, content, and execution this _____ day of _____, 2017.

By: _____
Jeremy McKenzie
Assistant City Attorney

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By: _____
Authorized Officer

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: _____
Authorized Officer

EXHIBIT A

PROJECT BUDGET SHEET SUMMARY

CITY OF MILWAUKEE
SDWLP Project No. 4851-30

	Total Project Costs	Costs NOT Eligible for LSL PF	Total LSL Principal Forgiveness Amount
Force Account	0	0	0
Engineering	0	0	0
Construction – residential LSL replacements	7,064,595	6,064,595	1,000,000
Construction – daycare LSL replacements	1,664,000	64,000	1,600,000
Miscellaneous	0	0	0
TOTAL	\$8,728,595	\$6,128,595	\$2,600,000

EXHIBIT B

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

MANDATORY PROJECT CLOSEOUT DOCUMENT

Note: This form is authorized by s. NR 162.14(4)(b)4, Wis. Adm. Code. Receipt of this completed form by the Department is mandatory prior to receiving a final disbursement. The information printed on this form is taken from the completed DBE Subcontractor Utilization Form (EPA Form 6100-4). Any changes or additions made to the list of prime contractors and DBE subcontractors during the construction must be reflected on this form at closeout. Personal information collected on this form will be used for program administration and must be made available to requesters as required by Wisconsin Open Records Law (s. 19.31 – 19.39, Wis. Stats.).

Municipality Name: City of Milwaukee	Project Number: 4851-30	Loan/Grant Amount: \$2,600,000
Project Description: Private Lead Service Line Replacements		
Did the municipality satisfy the DBE requirements? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If no, refer to Project Manager Summary Page of the FAA.)		

Construction/Equipment/Supplies Contracts	Indicate DBE Type	Type of Product or Service *	Contract Estimate \$	Actual Amount Paid to DBE Firm
				Municipality Completes at Project Closeout
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
				Total MBE \$ _____
				Total WBE \$ _____
				Total Other \$ _____

Construction/Equipment/Supplies Contracts	Indicate DBE Type	Type of Product or Service *	Contract Estimate \$	Actual Amount Paid to DBE Firm
				Municipality Completes at Project Closeout
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
				Total MBE \$ _____
				Total WBE \$ _____
				Total Other \$ _____

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

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

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

EXHIBIT C

PROJECT MANAGER SUMMARY PAGE

CITY OF MILWAUKEE
SDWLP Project No. 4851-30

1. Project Description: The City of Milwaukee passed ordinance #160742, titled “a substitute ordinance mandating the replacement of lead water service lines and establishing a special assessment for lead water service lines on private property” which took effect on January 1, 2017. This ordinance requires that the privately-owned portion of a lead water service line be replaced whenever any of the following occurs: a leak or failure has been discovered on either the privately-owned or utility-owned portion of the service line; or the utility-owned portion of the line is replaced on either a planned or emergency basis. The ordinance also provides that for residential properties, subject to the availability of public funds, that the property owner’s share of the cost shall be the lesser of one-third of the average current cost to replace the privately-owned portion of the lead service line or \$1,600, whichever is less. The \$1,600 amount will be adjusted annually based on a construction price index and the city will pay the balance of the cost of the line replacement.

Private lead service lines (LSL) replacements in Milwaukee were contracted for by Milwaukee Water Works (MWW) using a variety of methods:

- Childcare Projects Pilot - Proposals were solicited by MWW to perform LSL replacements at three childcare facilities. The Scope of Work package was emailed on 11/29/16 to seven contractors who had performed service line repair/replacement work for MWW during 2016. The proposal request was not publicly advertised. Davis-Bacon wage rates and use of American Iron and Steel (AIS) provisions were required. The City of Milwaukee’s Resident Preference Program (RPP) and Small Business Enterprise (SBE) program were utilized – 40% RPP and 11% SBE were specified. MWW received one proposal. A service order was issued to the successful proposer and served as the contract. MWW was invoiced using the submitted item prices. The work at all three locations was completed in December, 2016.
- Emergency Projects Temporary Program - Proposals were solicited by MWW for the emergency replacement of LSLs which have experienced a leak or failure. The Request for Proposal (RFP) package was emailed to multiple contractors on 12/27/16. The RFP was publicly advertised in the Daily Reporter beginning on 12/30/16. A revised RFP was issued by email on 1/6/17. Davis-Bacon wage rates and AIS provisions were required. Disadvantaged Business Enterprise (DBE) language was included. The MWW initially received fifteen proposals but only ten of the contractors submitted required insurance documentation and were subsequently added to the approved list. Approved contractors were called on a rotating cycle and paid on a time and material basis. The rotation was modified based on job performance, cost, and availability. A service order was issued for each project location. The contractors submitted separate invoices for public side and private side costs. The program was intended to be utilized for a three-month period beginning in January, 2017, but was extended until formal contracts were issued in late May. One-hundred and ten lead services are anticipated to be replaced in 2017 utilizing the temporary program.
- Emergency and Childcare Projects Formal Contract - In March, 2017 MWW bid a contract package utilizing the City of Milwaukee’s standard contracting process. The package included fifty locations, which will be made up of emergency and childcare LSL replacements. The package was publicly advertised in the Daily Reporter beginning on 3/29/17. Davis-Bacon wage rates and AIS provisions were required. DBE language was included. The City of Milwaukee’s RPP and SBE program were utilized – 40% RPP and 15% SBE were specified. A contract was issued to one successful bidder – American Sewer Services, Inc. MWW will be invoiced using the submitted bid prices. MWW intends to advertise additional contract packages throughout the year, as necessary. Three-hundred and fifty

lead services are anticipated to be replaced in 2017 utilizing the formal contract process. One-hundred of these are anticipated to be at childcare facilities.

Milwaukee will be covering 100% of the cost of LSL replacements at childcare centers. Homeowners will be required to pay one third of the average replacement cost up to a maximum of \$1,600. The City will request reimbursement from the SDWLP for 100% of the private LSL replacement costs with the understanding that the homeowner share, once repaid, will continue to be utilized to fund additional private LSL replacements until all private LSLs in the City have been replaced. Under this agreement, \$1,600,000 is allocated for LSL replacements at childcare facilities and \$1,000,000 is allocated for residential LSL replacements.

2. Ineligible Costs: Ineligible costs in the amount of \$6,128,595 are shown in the budget. These costs are for the public side of LSL replacements as well as estimated future costs that were over the funding amount available under this agreement. Some of these costs will be covered by funding provided for SFY 2018.
3. DBE Good Faith Effort: The City of Milwaukee's Small Business Enterprise (SBE) program was utilized on the childcare pilot project and the formal contract program. The following DBE language was included on the temporary and formal contract programs: "State of Wisconsin Disadvantaged Business Enterprise (DBE) Program contractors, including MBEs and WBEs, are encouraged to submit bid proposals."
4. Davis-Bacon wage rate requirements: All private LSL replacement work is being done under municipal contracts, therefore Davis-Bacon wage rate requirements apply to all work funded under this agreement.
5. Environmental Review conditions: The City of Milwaukee lead service line replacement project is not anticipated to have a negative impact on the environment due to individual sites having limited disturbance footprints. The preliminary Endangered Resources Review resulted in issuance of a *Notice of Broad Incidental Take Permit/Authorization for No/Low Impact Activities*. The University of Wisconsin Milwaukee Cultural Resources Management Department was retained by MWW to perform the archaeological and historical investigations. One site (2526 S. 34th St.) is coincident with an uncatalogued burial site. Permission to disturb has been requested from the Wisconsin Historical Society (WHS). No additional working requirements were specified at any of the other project locations. All private LSL replacement locations will subject to the environmental review process before being funded.

EXHIBIT D

FEDERAL REQUIREMENTS COMPLIANCE CERTIFICATION

**[Prepare on Municipal Letterhead at Time of
Project Completion and Closeout]**

The undersigned officials of the City of Milwaukee (the "Municipality") hereby certify that, for all expenditures made for construction of DNR Project No. 4851-30 (the "Project"), the Municipality certifies that after taking into account any national or project-specific waivers approved by the U.S. Environmental Protection Agency, DNR Project No. 4851-30 has met the requirements for the Use of American Iron and Steel contained in Public Law 114-322, the Water Infrastructure Improvements for the Nation Act of 2016.

The municipality further certifies that it has met the prevailing wage requirements of the Davis-Bacon Act, as applicable.

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

By: _____
[Name of Highest Elected Official or
Authorized Representative]
[Title]

Dated as of: _____

Attest: _____
[Name of Clerk or Secretary]
[Title]

Dated as of: _____