DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM GUIDELINES

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DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM GUIDELINES

Section 1: Purpose

Pursuant to IC 4-4-11-15 (2), the following Guidelines shall be used to implement the Drinking Water State Revolving Fund (SRF) Loan Program (Program) established by IC 13-18-21. The purpose of the Program is to:

(1) Provide funding for Loans and other Financial Assistance to or for the benefit of Participants, including forgiveness of principal if allowed under federal law.
(2) Provide funding for Participants to plan, design, construct, renovate, improve, or expand public water systems (PWS) that will facilitate compliance with national primary drinking water regulations applicable to PWS under the federal Safe Drinking Water Act or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act and other activities necessary or convenient to complete these tasks.
(3) Pay the cost of administering the Drinking Water SRF and the Program, as provided in the federal Safe Drinking Water Act.
(4) Conduct any other activity permitted by the Safe Drinking Water Act.

Section 2: Definitions

The following definitions apply throughout this document:

Additional Subsidization means to provide assistance in the form of principal forgiveness, negative interest rate loans, or grants in accordance with Fiscal Year (FY) 2010 Appropriations law (P.L. 111-88) (a). Priority for additional subsidies should be given to communities that could not otherwise afford such projects.

Authority means the Indiana Finance Authority created under IC 4-4-11, which administers the Program.

Authorized Representative means a person who has been designated by the governing Board of a Participant to sign documents on behalf of that Board.

Board means the governing body of the Participant seeking Financial Assistance.

Bond is the debt instrument which evidences the long term financing undertaken by a Participant in accordance with Indiana statutes for incurring debt.

Categorically Excluded means categorically excluded from substantive environmental review, which applies to a Proposed Project that has no physical impact, such as a planning project or to

a Proposed Project with minimal environmental impact as defined in the State Environmental Review Process (SERP) document.

Categorical Exclusion or CE means a Categorical Exclusion which is the environmental document issued when a Proposed Project has no physical impact or has minimal environmental impact as defined by the SERP.

Change Order means proposed work that is being added to or deleted from the original scope of work of a contract, which alters the original contract amount or completion date.

Drinking Water SRF or DWSRF means the Drinking Water State Revolving Fund as authorized by the Safe Drinking Water Act, 42 U.S.C. 1452 et seq., and IC 13-18-21.

Due Diligence means a process that provides financial disclosures to the Program, as well as economic matters related to the Participant and its ability to repay the Loan.

Environmental Assessment or EA is a report prepared pursuant to the State Environmental Review Process (SERP) upon completion of the Program's review of a Preliminary Engineering Report or any other document describing the Proposed Project and its environmental impacts.

Environmental Impact Statement or EIS means an environmental impact statement that is a document prepared for a Proposed Project if it is determined by the Program that the construction or operation, or both, of a Proposed Project will result in significant environmental impacts. The purpose, content, and format of an EIS will be in accordance with the SERP.

Environmental Protection Agency (EPA) Capitalization Grant means a federal grant, as evidenced by an agreement with the United States Environmental Protection Agency that provides funds to capitalize the Drinking Water SRF program.

Financial Assistance means the types of financial assistance authorized by the Safe Drinking Water Act.

Financial Assistance Agreement means an agreement approved under IC 4-13-2-14.1 that contains the covenants between the Participant and the Authority concerning Financial Assistance from the Drinking Water SRF.

Financial Assistance Closing means the occasion in which a Participant tenders its note, bond, guaranty agreement, or credit enhancement agreement to the Authority, and the Authority provides a portion, or all, of the Drinking Water SRF Financial Assistance to the Participant.

Finding of No Significant Impact or FNSI means a finding of no significant impact that is a finding of the Program, issued with an EA, that the construction and operation of a Proposed Project or the improvements thereto will not significantly impact the environment.

Funded Project means a Proposed Project which received funding through an executed Financial Assistance Agreement by and between the Authority.

Green Project Reserve Sustainability Incentive Program or GPR means to provide assistance in the form of interest rate discounts in accordance with Fiscal Year (FY) 2010 Appropriations law (P.L. 111-88) (a) to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

Intended Use Plan or IUP means a plan identifying the intended uses of the amounts available to the Drinking Water SRF. The IUP shall include all requirements set forth in the SDWA.

Loan means purchasing the notes or bonds of a Participant to finance a Proposed Project or Refinancing an existing eligible debt obligation.

Operation and Maintenance includes the activities required to ensure the continuing dependable and economic function of the PWS, including maintaining compliance with primary and secondary drinking water standards, as follows:

(1) Operation is the control and management of the unit processes and equipment that make up the PWS. This includes financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning, and operating activities.
(2) Maintenance is the preservation of the functional integrity and efficiency of equipment and structures by implementing systems of preventive and corrective maintenance**.**

Participant means the following:

(1) Political Subdivision as defined in IC 36-1-2-13.
(2) Regional Water, Sewage, or Solid Waste District organized under IC 13-26-1.
(3) Local Public Improvement Bond Bank as established under IC 5-1.4-2-1.
(4) Qualified entity described in IC 5-1.5-1-8(4) that is a public water utility as described in IC 8-1-2-125.
(5) Conservancy District established for the purpose set forth in IC 14-33-1-1(a)(4).
(6) Any other owner of a PWS that is authorized by the Safe Drinking Water Act to borrow from the Drinking Water SRF.

Project Priority List or PPL ranks, in descending priority of need, Proposed Projects for which Participants have requested Financial Assistance from the Drinking Water SRF for eligible expenses. The PPL is created by the Program, updated annually, and may be amended from time to time.

Preliminary Engineering Report or PER means the document(s) submitted by the Participant that provide the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project.

Program means the Drinking Water State Revolving Fund Loan Program as established by IC 13-18-21.

Proposed Project means the activities or tasks a Participant identifies in its PER or any other document required by the Program related to the planning, design, and or construction of a Proposed Project for which the Participant may commit and expend funds.

Public Water System or PWS means a public water system as described in 327 IAC 8-2-1(74).

Refinancing means the refinancing of a Participant's issued and outstanding bond, note or other debt obligation as permitted by the Safe Drinking Water Act through the Drinking Water SRF under criteria used by the Authority from time to time.

Record of Decision or ROD means a record of decision issued by the Program upon the completion of an EIS which includes a determination of whether to proceed with a Proposed Project.

Safe Drinking Water Act or SDWA means the federal act as amended by the Safe Drinking Water Act Amendments of 1986, the Lead Contamination Control Act of 1988, and the Safe Drinking Water Act Amendments of 1996.

State Environmental Review Process means the State Environmental Review Process which is a National Environmental Policy Act-compliant environmental review approved by the U.S. Environmental Protection Agency.

Study Area means the geographical area comprising a Participant's boundaries which also includes the location of the Proposed Project to be financed or refinanced by such Participant through the Drinking Water SRF.

Substantial Completion Date of Construction means the date determined by the Participant and provided to the Program when all but minor components of a Funded Project have been built, all equipment is operational, and the Funded Project is capable of functioning as designed.

Substantive Environmental Impact means a significant adverse environmental impact resulting directly or indirectly from the construction, upgrade, expansion or operation of a Proposed Project.

Section 3: Uses of the Drinking Water SRF

The Drinking Water SRF will be used to do the following:

(1) Provide Financial Assistance for Proposed Project planning, design, and/or construction or for other activities that are permitted by the Safe Drinking Water Act.
(2) Refinance a Participant's outstanding indebtedness as determined to be eligible for repurchase by the Authority under the Safe Drinking Water Act.
(3) Pay reasonable direct and indirect program administration costs.
(4) Provide funds for set aside accounts as permitted by the Safe Drinking Water Act.

Section 4: Criteria for Determining Financial Assistance Eligibility

4-1 Project Priority List

A Proposed Project must be on the PPL to be awarded Financial Assistance from the Authority.

4-2 Intended Use Plan

(1) The Program will prepare annually an IUP and PPL pursuant to the Safe Drinking Water Act, to be effective on the first day of the State's fiscal year.
(2) The Program will adopt an IUP after public notice of the plan and after responding to any comments received as determined by Program staff. The Program may amend the IUP to add eligible Proposed Projects, and change or amend Proposed Projects as necessary from time to time.
(3) Placement on the PPL will be based on the following criteria:
    (a) The Proposed Project must be consistent with the uses of the Drinking Water SRF as identified in the Safe Drinking Water Act and IC 13-18-21-3.
    (b) A Participant must submit general project information on an application form provided by the Program that is signed by the Participant's Authorized Representative.

Section 5: Program Standards

Loans and other available Drinking Water SRF Financial Assistance for Proposed Projects will be made only to a Participant that meets all of the following criteria:

(1) Owns, operates, and maintains, or causes to be operated and maintained, a PWS for its useful life.
(2) Demonstrates financial, managerial, technical, and legal capability to meet the terms of the Financial Assistance Agreement and to operate and maintain the PWS for its useful life.
(3) Agrees to submit an annual operating budget for the Authority's approval and periodically adjust fees, charges, taxes, special assessments, and revenues available to the Participant, if any, in order to assure receipt of sufficient revenue annually to comply with all requirements of the Financial Assistance Agreement.
(4) Agrees to:
    (a) maintain financial records in accordance with generally accepted government accounting principles for utilities; and
    (b) provide a copy of audits of the PWS financial records as conducted by the state board of accounts or other certified independent auditor during the term of its Financial Assistance Agreement.
(5) Agrees to allow inspection by the Authority of the financial records related to the PWS during the term of the Financial Assistance Agreement.
(6) Meets all other Program requirements.

Section 6: Due Diligence Process

The Due Diligence process will include the following tasks:

(1) The Participant will submit a completed Due Diligence form issued or authorized by the Program with the required documentation.
(2) The Program staff will review or cause to be reviewed the Due Diligence form and documentation.

6-1 Approval of rate study; water rate ordinance

(1) Every Participant will obtain the Authority's approval of its water system rates and charges as part of the financial due diligence process.
(2) Each Participant will establish rates and charges at a level adequate to produce and maintain sufficient revenue to properly operate and maintain the treatment works, and to repay all debt obligations of the treatment works.

6-2 Interlocal Agreement

If the Proposed Project will serve two or more Participants, the Participant will submit an interlocal service agreement, contract, or other legally binding instrument necessary for the financing, construction, operation, and maintenance of the Proposed Project for approval by the Authority's staff prior to loan closing. If the Participant is a multi-county infrastructure Authority under IC 36-7-23, the Authority may require similar documentation and assurances.

6-3 Additional Subsidization

The Program may provide assistance in the form of principal forgiveness, negative interest rate loans, or grants to communities which meet eligibility requirements, including high user rates, low median household incomes, and that could not otherwise afford such projects. The Program will determine eligibility prior to loan closing.

Section 7: Environmental Impact Assessment

7-1 Categorical Exclusions

The following classes of projects may be Categorically Excluded from substantive environmental review:

(1) Minor addition, rehabilitation, improvement, or expansion of any existing PWS's treatment facilities that will disturb only previously disturbed land.
(2) Rehabilitation of a PWS's distribution system that will disturb only previously disturbed land.

A CE may be rescinded by the Program if it is determined that sufficient information exists to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any PWS construction project that received a CE.

The Program will public notice all new or rescinded Categorical Exclusions in one newspaper of general circulation within the Study Area.

7-2 Environmental Assessment

The purpose of an EA is to document for public evaluation and comment the potential environmental impacts of the Proposed Project and describe the feasible PWS alternatives. The EA will be provided as an attachment to the FNSI document and will be prepared according to the SERP.

7-3 Finding of No Significant Impact

The purpose of issuing a FNSI is to notify the public that based upon the Program's evaluation of all pertinent information submitted in the PER and information submitted by State and federal agencies, the construction and operation of the Proposed Project will result in no significant adverse environmental impact.

(1) The FNSI and attached EA will be issued for public comments for thirty days. If significant public comments are received during the public comment period, the FNSI will be reevaluated and a new FNSI, if appropriate, will be issued for public comments for thirty days.
(2) A final decision to proceed, or not to proceed, with the Proposed Project will be issued by the Program after all public comments have been evaluated

7-4 Environmental Impact Statement

The criteria for initiating an EIS are established under 40 CFR 6.108. A ROD will be issued by the Program upon completion of an EIS that will include a determination of whether to proceed with the Proposed Project. The ROD will contain specific mitigation measures that will minimize, eliminate, or compensate for the environmental impacts of the construction or operation, or both, of the Proposed Project. The ROD will be issued for public comments for thirty days and will be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the ROD will be reevaluated and a new ROD, if appropriate, will be issued for public comments for thirty days.

Section 8: Preliminary Engineering Report

8-1 Purpose

The purpose of the PER is to provide the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project. The PER must be approved by the Program prior to award of Financial Assistance for a Proposed Project, unless it is a refinancing. PER information and data requirements are dependent on the type of Proposed Project and shall be determined by Program staff.

The Program may request additional information from a Participant that it deems necessary to adequately assess the technical, economic, and environmental adequacy of the Proposed Project.

8-2 Development of Feasible Alternatives

The PER will contain a section identifying and evaluating the range of feasible alternatives that were evaluated during the planning process, including that of taking no action. The rationale for the selected alternative along with the reasons for rejecting the others must be included.

8-3 Environmental Information

The PER consists of the following environmental information:

(1) A comparison of the potential environmental impacts among feasible alternatives, including that of taking no action.
(2) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
    (a) Disturbed and undisturbed land;
    (b) Historic and Architectural Resources;
    (c) Wetlands;
    (d) Surface Waters;
    (e) 100-Year Floodplains and Floodways;
    (f) Groundwater;
    (g) Plants and animals.
    (h) Prime Farmland and Geology;
    (i) Air Quality;
    (j) Open Space & Recreational Opportunities;
    (k) National Natural Landmarks;
    (l) Lake Michigan Coastal Zone (Lake, Porter & LaPorte counties only); and
    (m) Secondary Impacts
(3) The environmental information document will include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing PWS.
(4) Specific mitigation measures will be listed, as necessary, which will eliminate, minimize, or compensate for the environmental impacts enumerated above.
(5) If the construction of a Proposed Project is initiated five or more years after the date of approval of a PER, an additional environmental information document will be required unless it is determined by the SRF Program that there have been no substantial changes in the environmental impacts of the Proposed Project.
(6) If a Proposed Project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information will be required if there have been no significant changes to the original PER.

(7) If, however, a Proposed Project contemplates significant changes to the original PER, the Program will conduct a review of the environmental impacts of the Proposed Project.

8-4 Green Project Reserve (GPR) Sustainability Incentive Program

The Program may provide assistance in the form of an interest rate discount to eligible communities which request funding for Proposed Projects that address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities in an approved PER. The Participant must prepare and submit a Business Case or Categorical Exclusion during PER review in order to establish GPR eligibility.

8-5 Public Participation

The PER will include the following:

(1) A record of the public hearing.
(2) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

Copies of all written comments submitted by the public during the PER process will be routed through the Program for comment by the Participant.

8-6 Public Hearings

At least one Public Hearing will be held by the Participant within the Proposed Project's Study Area for the purpose of discussing the Proposed Project. A copy of the PER and/or documents reasonably describing a Proposed Project will be available to all attendees at the Public Hearing. Requirements for the Public Hearing will include the following:

(1) The Public Hearing will be publicized in at least one newspaper of general circulation in the Study Area a minimum of ten days prior to the date of the Public Hearing.
(2) The PER will be available for public review for a minimum of ten days prior to the date of the Public Hearing.
(3) Written comments will be accepted during the Public Hearing and for a period of five days following the Public Hearing according to SRF Guidelines.
(4) A sign-up sheet will be available at the Public Hearing for all individuals interested in receiving the CE/FNSI, EA/FNSI, or EIS/ROD or environmental documents.

Section 9: Bidding and Procurement

Section 9 will not apply to a Refinancing.

9-1 Professional Services

Participants conducting procurement for the uses authorized by the Drinking Water SRF for professional services will proceed pursuant to IC 5-16-11.1.

9-2 Procurement of Construction and Equipment

Participants conducting procurement for the uses authorized by the Drinking Water SRF for any activity other than professional services will proceed pursuant to IC 36-1-12.

9-3 Disadvantaged Business Enterprises (DBEs) (including Minority, and Women's Business Enterprises)

The Participant shall make the following good faith efforts to ensure that disadvantaged business enterprises are utilized when possible. Good faith efforts include taking the following actions:

(1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
(2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
(3) Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
(4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
(5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
(6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

Section 10: Pre-Construction

Section 10 does not apply to a Refinancing.

10-1 Construction Permit

The Participant must obtain a construction permit from the Department of Environmental Management (IDEM) in accordance with State rules or other permitting authority if applicable, in conjunction with the approved PER prior to awarding any construction contract. The Participant must receive authorization from the Program prior to initiating procurement for construction.

10-2 Acquisition of Land, Easements, and Existing Facilities

The Participant is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the Proposed Project. The Participant must certify

to the Program that it has, or will have by a mutually agreeable date, the required property rights prior to entering into any contract to construct, operate and maintain the Proposed Project. All acquisitions of property by exercise of power of eminent domain will comply with the procedure in IC 32-24-1 et seq. and Section 1452(a)(2) of the Safe Drinking Water Act.

10-3 Bid Tabulations

Certified bid tabulations and recommendations of award will be submitted by the Participant to the Program for review and approval prior to Participant's award of any construction contract.

10-4 Pre-Construction Contract Requirements

Participant must provide copies of the following to the Program for the Participant to enter into any construction contract:

(1) Executed contracts.
(2) Notices to contractors to proceed.
(3) Bid bonds.
(4) Performance and payment bonds.
(5) Construction schedules.

10-5 Construction Wage Rates

Standard wage rates shall be paid for each Proposed Project as is generally prescribed for Indiana construction projects funded with public funds unless federal prevailing wages as prescribed by the Davis-Bacon Act are required under the EPA Capitalization Grant providing funding for the Proposed Project.

10-6 Pre-Construction Conference

Prior to the initiation of construction, Participant must hold a Pre-Construction Conference with all necessary parties, including the Program.

Section 11: Construction

Section 11 does not apply to a Refinancing.

11-1 Change Orders

(1) The Participant will submit copies of every and all Change Order(s) issued for the Funded Project to the Program for review and approval, including but not limited to Change Orders which:

(a) alter the scope or design of the Funded Project; or
(b) increase the amount of financing needed for the Funded Project.

(2) If the Change Order will result in the expenditure of more Drinking Water SRF funds than the current amount of Financial Assistance approved by the Authority, an amendment increasing the amount of Financial Assistance must be executed prior to the implementation of the Proposed Projects contemplated by the Change Order. Any additional Financial Assistance will comply with existing law as to the borrowing power of the Participant.

11-2 Inspections

(1) The Program will conduct construction inspections in order to:

(a) Determine compliance with the Program-approved PER, IDEM construction permit, and the Financial Assistance Agreement.
(b) Determine completion of any GPR components.
(c) Confirm substantial completion of the Funded Project(s) in the final inspection.
(d) Protect the Authority's financial interest in the Funded Project(s).

Inspections performed by the Program are not conducted to replace the Participant's responsibility to properly monitor the construction of its Funded Project(s).

(2) During the construction of the Funded Project(s), the Participant will:

(a) Conduct construction inspections to ensure that the construction complies with the Program- approved PER, IDEM construction permit(s), and the terms and conditions of each construction contract.
(b) Maintain inspector logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor including weather conditions and problems encountered, if any.
(c) Conduct a pre-final inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection.
(d) Provide the Program with the Certificate of Substantial Completion for each Funded Project; including, where applicable, the GPR Certificate of Completion.

11-3 As-Built Plans

After completion of the Funded Project, the Participant will provide as-built plans for the Funded Project to the Program. These may be submitted in electronic format.

Section 12: Disbursement of Loan Proceeds

The Financial Assistance will be disbursed as follows:

(1) The Program will review and certify the Drinking Water SRF loan share of the appropriate costs incurred for the Funded Project. These costs will be documented as

requested by the Program. The Authority may pay these costs in accordance with the Financial Assistance Agreement.

(2) The Participant will approve all requests for loan disbursement and provide such approval to the Program.

(3) Loan proceeds disbursed to or on behalf of the Participant will be used only for authorized purposes. Funds will not be applied to pay costs associated with an unapproved contract Change Order.

(4) The Program may at any time review and audit requests for loan disbursements and make adjustments for circumstances including, but not limited to, the following:
    (a) Mathematical errors.
    (b) Items not yet purchased or constructed.
    (c) Ineligible items.

(5) All files and records pertaining to the Funded Project will be maintained by the Participant and made accessible to the Program upon request. These files and records will be retained by the Participant for at least six years after initiation of operation as determined by the Program. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six-year period, the records will be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular six- year period, whichever is later.

Section 13: Reservation of Rights

The following rights are reserved:

(1) The Drinking Water State Revolving Fund Loan Program Guidelines does not prohibit a Participant from requiring more assurances, guarantees, or indemnity, or other contractual requirements from any party performing work on any Proposed or Funded Project.

(2) The Drinking Water State Revolving Fund Loan Program Guidelines do not affect the Program's right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Participant that fails to carry out its obligations under these Guidelines.

(3) Review or approval by or for the Program does not relieve the Participant of its responsibility to properly plan, design, build, and effectively operate and maintain the PWS as required by federal and state statutes, rules, regulations, permits, and best management practice. Neither the Program nor the Authority is responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other sub-agreement documents related to any Proposed or Funded Project.