



NEW YORK CLEAN WATER STATE REVOLVING FUND

MUNICIPAL WASTEWATER: Description of Application Components

This document describes the components necessary for submitting a Clean Water State Revolving Fund (CWSRF) application. The item numbers correspond to the items listed in the “Application Checklist – Municipal”.

Part I includes those application components that are required to process an application.

Part II includes additional components that may also be necessary to close a CWSRF financing and/or disburse funds.

The type of financing and the project’s schedule and status at the time of application will determine which, if any, of the application component items are or will be required.

It is important that the applicant and EFC confer and agree early in the application process on the components and documentation needed. Please call EFC at 518-402-7396 if you have questions or need additional information. The application package documents are also available on the EFC website at www.efc.ny.gov (Click on “Clean Water State Revolving Fund”, then “Application Process”).

Note: The terms “project” or “projects” refer to that for which CWSRF financing is sought unless otherwise noted. Prior to submission of a CWSRF Financial Application, the applicant should have already submitted an approvable Engineering Report and a Smart Growth Assessment, and the project should be listed on the Annual List in the current IUP.

PART I – Items Required to Process an Application for CWSRF Financing

1. APPLICATION FORM

A completed CWSRF Application Form, signed by the authorized municipal representative, is required. Refer to the Application Form Instructions for more information.

2. MUNICIPAL BOND RESOLUTION(S)

The following documents regarding the Bond Resolution need to be submitted as part of a financing application:

- a) Certified copy of the Bond Resolution

- b) Proof of Publication of Permissive Referendum Notice (if applicable)
- c) Proof of Publication of Estoppel Notice

NOTE: The following is for general informational purposes only. It is not intended as legal advice. The requirements governing a particular applicant will depend on its particular facts and circumstances.

To obtain CWSRF financing, each applicant will be required to adopt a resolution authorizing the issuance of bonds or notes (or both). Such resolutions are commonly referred to as “bond resolutions” or “local bond resolutions”. The form, content, and procedure for adopting a bond resolution is set forth in the Local Finance Law.

Depending upon the particular circumstances, a bond resolution may not be effective until at least 50 days after passage. Delays in passing a bond resolution can delay the financing. Effective planning, timely action and the early involvement of a nationally recognized bond attorney is critical.

All CWSRF applicants are strongly urged to retain the services of a nationally recognized bond counsel early, to ensure their continued eligibility for CWSRF financing.

Bond counsel should be kept informed of your project and will write the bond resolution. Some of the requirements for such resolution is as follows:

- a) A statement of the **specific object or purpose**, or class of objects or purposes, for which the obligations are to be issued.
- b) A statement of the **estimated maximum cost** “of each such specific object or purpose.”
- c) The **plan for the financing** of the total cost of all the items of such specific object or purpose, (or class of objects or purposes), and the intended source or sources, other than the proceeds of the obligations, of the balance of the money to be so applied.
- d) A statement of the **amount of bonds to be issued** (i.e., the maximum borrowing) for such specific object or purpose, or class of objects or purposes. Note: If the applicant expects to pay its costs of issuance (e.g., the CWSRF financing issuance costs, bond counsel costs, local counsel costs, etc.) through the proceeds of the CWSRF financing, the financing amount specified in the municipal bond resolution should include such costs. EFC will determine whether such costs are eligible for CWSRF financing. Please consult EFC if you have any questions.
- e) A determination of the **period of probable usefulness** of the specific object or purpose, or class of objects or purposes, for which the bonds are to be issued, if such determination is made by the finance board.

- f) In the case of towns or villages, a determination whether the proposed **maturity** of the bonds will exceed five years.
- g) If **current funds** are needed prior to the issuance of the bonds, or bond anticipation notes, a statement that the appropriate amount of current funds has been provided, or will be provided before the issuance of the bonds or BANs.
- h) Authorization for substantially level or declining annual debt service if the applicant intends to utilize such amortization method.
- i) **Authorization** for one or more officials of the applicant to sign the bonds, and other documents relating to the CWSRF financing.

In addition to the requirements listed above, the form and content of an applicant's bond resolution may be affected by the rules of the Office of State Comptroller (OSC), requirements of the CWSRF, and local requirements as well.

The method of adopting a bond resolution is also strictly regulated. Again, **the CWSRF applicant should consult a nationally recognized bond counsel for assistance in determining which requirements apply in its particular case.** In general, the Local Finance Law requires that every bond resolution be passed by at least a two-thirds vote of the finance board. There are exceptions. Please contact your bond counsel for further information.

Proof of publication of Permissive Referendum Notice (if applicable) needs to be included with the financing application.

Estoppel Notice for the Bond Resolution needs to be submitted with the application for financing.

Because the bond counsel opinion required at closing of the CWSRF financing will address due authorization and delivery of financing documents and the applicant's bonds, the applicant should confer with bond counsel regarding the form and substance of the bond resolution.

3. ENVIRONMENTAL REVIEW DOCUMENTS AND FINDINGS

An environmental review of an applicant's project needs to be completed before an applicant can receive CWSRF financing. The State Environmental Review Process (SERP) applies to all projects receiving financial assistance from the CWSRF. The SERP incorporates certain environmental review requirements of the State Environmental Quality Review (SEQR) Act, Article 8 of the Environmental Conservation Law (ECL), and its implementing regulations under 6 NYCRR, Part 617.

The applicant needs to submit documentation of its environmental review along with a State Historic Preservation Office (SHPO) review to the regional office of the DEC in its

area. DEC is required to conduct an independent environmental review of each project, and will use the information received from the application for this purpose. Once this is done, DEC certifies that fact to EFC. This certification completes the environmental review process, and is a prerequisite to CWSRF financing.

The applicant will need to solicit a letter from the Office of Parks, Recreation and Historic Preservation (OPRHP) indicating that a suitable SHPO review has been completed. A copy of the final OPRHP letter needs to be provided to EFC as part of an application for CWSRF financing.

4. SPECIAL IMPROVEMENT DISTRICT FORMATION OR INCREASED AUTHORIZATION

The applicant will need to provide documentation that a special improvement district has been established or expanded, or the maximum amount to be expended for such district increased, as needed (this is only applicable to towns and counties). If the first year user costs are projected to be higher than the threshold set by the Office of the State Comptroller (OSC), provide a copy of the approval from OSC.

5. ENGINEERING SERVICES CONTRACT WITH MWBE UTILIZATION PLAN

To fund engineering planning services with CWSRF funds an executed contract for engineering planning services for the project needs to be submitted with the application and reviewed by EFC for eligibility. If the agreement is \$25,000 or more a MWBE Utilization Plan and/or good faith effort documentation for the engineering services contract needs to be submitted with the agreement. Information and forms are available on the EFC website at www.efc.ny.gov (Click on “Clean Water State Revolving Fund”, then MWBE-EEO and Disadvantaged Business Enterprise”).

PART II – Items that may be Necessary to Close a CWSRF Financing and/or Disburse Funds.

1. FINANCIAL STATEMENTS

For applicants other than counties, cities, towns and villages, financial statements (audited if available) for the three (3) most recent fiscal years need to be submitted to EFC.

2. CO-FUNDING DOCUMENTATION

The applicant needs to provide documentation of commitment from other funding sources before closing on a financing. Documentation may include, for example, a grant or third-party loan commitment letter. The requirement for documentation applies when the project will be financed in part by grants and/or loans from other funding agencies. The

project may include costs above the amount for which CWSRF financing is sought. The CWSRF can be used in some cases to pre-finance another funding source, such as a grant or loan which will not be available until after construction is complete. **Note: Only Short-Term Market-Rate funds will be available to pre-finance any awarded grants associated with the project to be financed with CWSRF funds. Generally, grant advances or disbursements can be requested directly from these sources as the project progresses.**

3. CURRENT ADOPTED CAPITAL AND OPERATING BUDGETS

4. REIMBURSEMENT OF INTERFUND BORROWINGS

If the CWSRF financing will be used in whole or in part to reimburse interfund borrowings (project expenditures paid for from municipal funds), EFC requires the submittal of items a) and b) below. The applicant should consult with counsel to determine if the costs related to the interfund borrowing are subject to tax law limitations.

a) **Bond Resolution Authorizing Interfund Borrowing**

A municipality's governing body needs to authorize an interfund borrowing by either adopting a bond resolution or by passing a resolution authorizing same (see General Municipal Law §9-a Inter-fund advances). A copy of the resolution authorizing the interfund borrowing must be submitted to EFC.

b) **Cost Documentation**

Documentation of interfund borrowing is required for EFC to determine project eligibility and the amount of the CWSRF financing which will be used to reimburse the borrowing. Documentation includes executed agreements and contracts, invoices and, in some cases, proof of payment (including cancelled checks).

5. REFINANCING OF EXISTING DEBT

If the CWSRF financing will be used in whole or in part to refinance existing debt (e.g., existing BANs or bonds), EFC requires the submittal of items a) – h) below.

a) **Bond Resolution Authorizing Original Debt**

A certified copy of the bond resolution authorizing the original debt, along with proof of publication of permissive referendum (if applicable) and estoppel.

b) **Bond Anticipation Note (BAN) and Renewals**

These documents provide information about the terms of the BAN including the interest rate(s), maturity date(s), principal payment(s) and call provisions.

c) **Opinion of Bond Counsel**

This document provides an opinion by the applicant's bond counsel that the form and terms of the original borrowing conformed to Local Finance Law and that the debt was validly authorized and incurred.

d) **Official Statement**

If the debt to be refinanced was publicly offered provide a copy of the Official Statement.

e) **Refunding Bond Resolution**

The refunding of bonds requires a refunding bond resolution authorizing such action. Please consult with a nationally recognized bond counsel.

f) **Estoppel Notice**

Proof of Publication of Estoppel Notice for the refunding resolution is also required.

g) **Cost Documentation**

Documentation for the refinancing of a BAN or bonds is required to determine project eligibility and the amount of the CWSRF financing which will be used for the refinancing. Documentation includes executed agreements and contracts, invoices and, in some cases, proof of payment (including cancelled checks).

h) **Net Interest Statement**

A CWSRF financing can be used to finance net interest costs incurred until construction completion. The net interest statement needs to include the amount of interest paid on the debt to be refinanced less any interest earned on the proceeds. Additional documentation, including bank statements, may be required.

6. INTERMUNICIPAL AGREEMENTS

The project may involve more than one municipality. Two or more municipalities may share responsibility for ownership, construction, payment, use, operation or maintenance of the project. In other cases, the project may convey wastewater to or from facilities owned and/or operated by a municipality other than the applicant.

Please provide a copy of existing or proposed Intermunicipal Agreements or other contracts, if any, relating to the project, the district or the system for the ownership, construction, payment, use, operation or management. Including agreements with any local, state or federal agency (e.g. State Department of Corrections), or regional water or sewer authority.

A copy of any draft agreement critical to the project will also need to be provided to EFC before a short-term financing can be closed. The expiration date of any significant intermunicipal agreement should be the same as the term of a CWSRF long-term financing. An intermunicipal agreement is significant to the project if it is necessary for the continued operation of the project (e.g. an agreement for wastewater treatment or conveyance) or relates to the financial viability of the project (e.g. payments received).

7. SUPPLEMENTAL MUNICIPAL BOND RESOLUTION

If a Supplemental Bond Resolution is needed, the following documents regarding the supplemental resolution need to be submitted as part of a complete application:

- a) Certified copy of the Supplemental Bond Resolution
- b) Proof of Publication of Permissive Referendum Notice (if applicable)
- c) Proof of Publication of Estoppel Notice

See Part I, Item 2 (Municipal Bond Resolution(s)) for a detailed description of this item.

8. CONSOLIDATION PLAN, AGREEMENTS AND APPROVAL LETTER

Projects which consolidate wastewater collection and treatment systems are eligible for CWSRF assistance if the consolidation is designed to address such problems as onsite treatment systems, inadequate system capacity, or the system is unable to maintain adequate compliance for financial or managerial reasons. In addition, the purchase of a portion of another system's capacity is eligible if the project is to bring the smaller system into compliance and is the most cost-effective solution available. The Consolidation Plan, any associated agreements and a letter from DEC approving the plan need to be submitted. (Also refer to item 6.)

9. MUNICIPAL SERVICE AGREEMENTS

a) Intermunicipal Agreements (final agreements)

A final executed copy of an intermunicipal agreement, as described in 6 above.

b-c) Private Operating and Private Use Agreements

In other situations, the project may involve current or projected non-governmental users and/or operators. In such cases, the applicant may have a specific contractual agreement with the non-governmental party, regarding rates and charges, which are not available to the general public. In other cases, the project may be designed in a way to specifically accommodate the needs of a non-governmental user.

Such situations can raise unique issues, and can have a bearing on whether the financing is eligible for federal tax exemption. Therefore, in all cases, the applicant

needs to provide information about non-governmental involvement in the project, including any documentation of executed, or contemplated, agreement(s) between itself and non-governmental parties. Documentation may include private use agreements, and/or private operating agreements.

10. SMART GROWTH ASSESSMENT FORM

EFC is required to determine whether each project that includes the construction of new or expanded public infrastructure is consistent with the relevant smart growth criteria set forth in the State Smart Growth Public Infrastructure Policy Act to the extent practicable.

11. AGREEMENTS FOR PROFESSIONAL SERVICES

If the CWSRF financing will be used to finance engineering, legal, financial, and/or bond counsel services, executed agreements for such services must be submitted. All such agreements should set forth the scope of services to be provided, and the estimated or actual cost of such services.

The CWSRF requires certification by a professional engineer, licensed to practice in New York State, that the project was constructed in accordance with the approved plans and specifications. This is generally provided by the design engineer. Executed agreements for engineering services during construction must be submitted for all projects so that EFC may review the scope of services, regardless of whether these costs are being financed through the CWSRF. Please notify EFC if the certification will be provided by a qualified municipal employee.

12. MWBE UTILIZATION PLAN

(For Executed Contracts/Professional Services Agreements)

Within 10 days following the execution of a construction contract over \$100,000 or a professional services agreement of more than \$25,000, an MWBE Utilization Plan or a waiver request with good faith effort documentation needs to be submitted to EFC for

review. For contracts/agreements that have been executed, the utilization plan should be submitted with the application. For future contract/agreement awards, the utilization plan submittals are required within 10 days of the contract/agreement execution. Information and forms are available on the EFC website at www.efc.ny.gov (Click on “Clean Water State Revolving Fund”, then “MWBE-EEO and Disadvantaged Business Enterprise”).

13. CERTIFICATION AS TO TITLE TO PROJECT SITE

The applicant needs to certify that:

- a) it holds a valid fee simple title to, or other appropriate estate or interest in, the Project site(s) (including all necessary easements and rights-of-way) as needed for its undisturbed use and possession during the construction, operation and maintenance of the Project; or
- b) it has initiated formal condemnation proceedings and has filed an acquisition map to acquire the necessary property interest in the Project site(s) and has the right of entry to the property. (Proof that the acquisition map has been filed with the court is required).

14. LEASE AGREEMENTS

If the applicant holds a leasehold interest in the project site or has leased any portion of the project, the lease agreement(s) should be submitted.

15. WORK FORCE DOCUMENTATION

Work force is project work completed by municipal/wastewater system employees (also referred to as force account work). It can be technical (e.g., engineering, construction) or administrative (e.g., bookkeeping).

a) **Certification for Technical Work Force Use and Proposal**

Technical work force consists of municipal or system employees performing engineering and construction tasks, and the associated equipment and materials costs used for planning, design and/or construction of the project. If you intend to finance these costs, complete the Certification for Technical Work Force Use form which is included in the application package and submit it to EFC with your proposal for performing this work. EFC needs to approve the proposal prior to you starting this work.

b) **Administrative Work Force Proposal**

If CWSRF financing of administrative work force expenses associated with the project is desired, you need to submit a proposal to EFC before disbursement is made.

16. CONSTRUCTION CONTRACTS

a) **Construction Plans and Specifications**

Copies of the project construction plans and specifications (with P.E. stamp) used to construct the project (construction drawings, specifications, construction contract forms, bidding instructions, etc.) will be reviewed by EFC. These documents need to be approved by EFC or the appropriate regulating agency. The design of the project needs to be based on the approved engineering/technical report and the technical standards and regulations applicable to the type of project being considered.

Note: Plans and specifications should be submitted directly to EFC or the appropriate regulating agency no less than three (3) months prior to advertisement of contract bids to allow sufficient time for EFC or the appropriate regulating agency to review and issue an approval letter. It is important to note that initial disbursement of funds for each construction contract will not be permitted until the following items are received and approved by EFC:

b) **Bid Tabulation and Evaluations**

Copies of the Bid Tabulation for all construction contracts, and any evaluations of the bids provided to the applicant should be submitted to the EFC Project Engineer.

c) **Notice of Award**

Copies of the Notice of Award for all construction contracts should be submitted to the EFC Project Engineer.

d) **Executed Construction Contracts**

EFC will review a copy of all executed contracts between the applicant and construction contractors or suppliers for work to be CWSRF financed. These documents should be submitted to the EFC Project Engineer.

e) **Notice to Proceed**

After an applicant signs a contract with a construction contractor or supplier, the applicant typically issues a Notice to Proceed. This Notice authorizes the contractor/supplier to begin work and establishes the construction start date of your project. A copy of the Notice to Proceed needs to be submitted for each construction contract.

f) **Contract Change Orders**

EFC will review all executed change orders between the applicant and construction contractors or suppliers for work to be CWSRF financed.

g) **EPA 6100-3 and 6100-4 Forms**

These forms are to be collected during the bidding process from all bidders on construction contracts. These forms should be submitted to the EFC Project Engineer.

h) **Wage Determinations**

EFC will review both NYS and federal prevailing wage determinations for appropriateness.

i) **SRF Contractor Certification**

Each contractor is required to certify acknowledgement of their responsibilities for incorporation of American Iron and Steel into the project.

j) **Certification for Contracts (Lobbying Certification)**

Each contractor is required to certify regarding certain lobbying activities.

k) **MWBE – EEO Documents**

A MWBE Utilization Plan must have been submitted and accepted by EFC. An EEO Policy Statement must have been submitted to EFC.