**LOAN APPLICATION NO. \_\_\_\_-\_\_\_\_-\_\_\_\_\_\_\_\_-\_\_\_\_**

(This number is assigned by OWRB)

In order to complete the review of the above referenced application, it is necessary that the following additional information and material be furnished to the Board. Please note that this request for additional information does not constitute application approval, but is only a UUstage of the application submission and Board staff review process. Please provide a signed original or signed electronic copy.

The following filing, reviewing and processing fee is required with all loan applications. Such fee shall be based on the amount of financial assistance applied for (as set out below) and must be paid to the Oklahoma Water Resources Board by the applicant at the time of filing this application.

# 0BULoan Application Amount Fee

$ 249,999 or less $ 100.00

$ 250,000 - 999,999 $ 250.00

$1,000,000 or more $ 500.00

**A. LOAN TYPE**

|  |  |  |  |
| --- | --- | --- | --- |
| **Loan Type** | 1BAmount | **Term 1** | 3BCollateral Pledged 2 |
| FAP Bond |  |  |  |
| Clean Water SRF |  |  |  |
| Drinking Water SRF |  |  |  |

1. Term of Loan in years – FAP Bond maximum 30 years; SRF maximum 30 years

2. Collateral proposed to be pledged to repayment of the loan – e.g. revenues from water, sewer, and other utility systems, and any sales tax revenue

**B. APPLICANT INFORMATION**

*1. Applicant Name and Address*

|  |  |
| --- | --- |
| Name: |  |
| County: |  |
| Address: |  | Phone: | ( ) |
|  |  | Fax: | ( ) |
| Office Hours: |  | E-mail: |  |
| Website: |  | SAM.gov UEI # (SRF Applicants Only): |  |

*2. Applicant’s Chief Officer* and/or person to whom all pre-application inquiries should be directed:

|  |  |
| --- | --- |
| Name: |  |
| Title: |  | Phone: | ( ) |
| Address: |  | Fax: | ( ) |
|  |  | E-mail: |  |

*3. Applicant's Chair and Secretary:*

|  |  |
| --- | --- |
| **Name** | **Office Held** |
|  | Chair |
|  | Secretary |

*4. Applicant's Financial Consultant:*

|  |  |
| --- | --- |
| Firm Name: |  |
| Contact: |  | Phone: | ( ) |
| Address: |  | Fax: | ( ) |
|  |  | E-mail: |  |

*5. Applicant’s Legal Counsel:*

|  |  |
| --- | --- |
| Firm Name: |  |
| Contact: |  | Phone: | ( ) |
| Address: |  | Fax: | ( ) |
|  |  | E-mail: |  |

*6. Applicant’s Bond Counsel:*

|  |  |
| --- | --- |
| Firm Name: |  |
| Contact: |  | Phone: | ( ) |
| Address: |  | Fax: | ( ) |
|  |  | E-mail: |  |

*7. Applicant’s Consulting Engineer on Project Being Refinanced:*

|  |  |
| --- | --- |
| Firm Name: |  |
| Contact: |  | Phone: | ( ) |
| Address: |  | Fax: | ( ) |
|  |  | E-mail: |  |

*8. Authorizing Resolution* – Please enclose a certified copy of the resolution reflecting applicant’s authorization for making this loan application to the OWRB.

### 2BC. FINANCIAL INFORMATION

*1. Applicant’s Existing Debt* – Please complete the information on USCHEDULE ONEU for **each** outstanding debt obligation of the Applicant. Make copies of USCHEDULE ONEU if additional pages are needed. Also, please include copies of loan documentation on all outstanding debt obligations, including, as applicable, bond resolutions or indentures, trust agreements, promissory notes, loan agreements, mortgage and security agreements, etc.

*2. Existing Sales Tax Revenue* – List sales tax portion (if any) currently dedicated to retirement of the existing debt and/or portion available to retire proposed OWRB debt. Please include a copy of the applicable sales tax ordinance(s) if sales tax will be pledged to repayment of the proposed OWRB debt [AUTHORITIES ONLY; NOT APPLICABLE FOR DISTRICTS].

|  |  |  |
| --- | --- | --- |
| Total Existing Sales Tax: | % |  |
| Amount Dedicated to Existing Debt: | % |  |
| Amount Available for Proposed Debt: | % |  |

*3. Covenants and Restrictions:*

|  |
| --- |
| List legal covenants or restrictions for sales tax and utility revenue obligations, if pledged for this loan: |
|  |

*4. Financial Information* – Unless previously provided or available on the state auditor and inspector’s website (www.sai.ok.gov), please include copies of financial audits for the previous five fiscal years.  Also provide the current fiscal year budget and year-to-date unaudited operating statements.

*5. Pending Litigation* – Include a statement from the Applicant’s Legal Counsel stating: (a) the existence of any pending litigation and its potential impact on the Applicant, and

 (b) the existence of pending administrative complaints that allege discrimination based on race, color, national origin, sex, age, or disability. Do not include employment complaints not covered by 40 CFR Parts 5 and 7.

*6. Capital Improvements Program* – Please provide a description of the Applicant’s capital improvements program, if any, as relates to water and sewer infrastructure.

*7.* *Insurance* – Please provide proof of insurance including fidelity bond, property, worker’s comp, and general liability (provide written explanation for any lack of insurance). Also, please provide proof of operator’s certification

**D. ECONOMIC INFORMATION**

*1. Ten Largest Taxpayers* – Two (2) year historical trend of ad valorem assessed valuation [AUTHORITIES ONLY; NOT APPLICABLE FOR DISTRICTS].

| **YEAR:** |  |  | **YEAR:** |  |
| --- | --- | --- | --- | --- |
| **Name** | **Ad Valorem Assessed Valuation** |  | **Name** | **Ad Valorem Assessed Valuation** |
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| Totals: |  |  | Totals: |  |

*2. Sales Tax Collections* – Ten (10) year historical trend of collections [AUTHORITIES ONLY; NOT APPLICABLE FOR DISTRICTS]:

|  |  |  |
| --- | --- | --- |
|  | 5BTotal Sales Tax | **Applicant Portion** |
| **Year** | **Percentage** | **Amount Collected** | **Percentage** | **Amount Collected** |
|  | % |  | % |  |
|  | % |  | % |  |
|  | % |  | % |  |
|  | % |  | % |  |
|  | % |  | % |  |
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|  | % |  | % |  |
|  | % |  | % |  |
|  | % |  | % |  |
|  | % |  | % |  |

*3. Total Water and Sewer Connections* – Ten (10) year historical trend of connections, coinciding with the Applicant's fiscal year end:

|  |  |  |
| --- | --- | --- |
|  | **Water Connections** | **Sewer Connections** |
| **Year** | **Active\*** | **Inactive** | **Total** | **Active\*** | **Inactive** | **Total** |
|  |  |  |  |  |  |  |
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Note: An inactive sewer connection is a connection that is not believed to be in use (ex: because the property is vacant.)

Please provide the connection information below, coinciding with the Applicant’s fiscal year end:

|  |  |  |
| --- | --- | --- |
|  | **Commercial Water Connections** | **Industrial Water Connections** |
| **Year** | **Active\*** | **Inactive** | **Total** | **Active\*** | **Inactive** | **Total** |
|  |  |  |  |  |  |  |

\*Note: Use maximum number of active meters/connections recorded during the year.

**E. PROJECT**

*1. Project Description* – Provide a copy of the construction permit, if available, and the site certificate.

|  |
| --- |
| Description of Project Being Refinanced: |
|  |

*2. Loan Budget* - List loan refinancing cost including legal, financial consultant costs, trustee bank fee, etc:

|  |  |
| --- | --- |
| **Budget Item** | **Cost Estimate** |
|  |  |
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|  |  |
|  |  |
| Total |  |

**F. EXISTING WATER / SANITARY SEWER SYSTEM AND ADD’L INFORMATION**

*1. Treatment capacity* – in million gallons per day (mgd):

|  |  |  |
| --- | --- | --- |
|  | **Facility Name** | **Capacity** |
| **Water:** |  |  |
|  |  |  |
| **Sewer:** |  |  |
|  |  |  |

*2. Storage capacity* – in thousand or million gallons:

|  |  |  |
| --- | --- | --- |
|  | **Facility Name** | **Capacity** |
| **Water:** |  |  |
|  |  |  |
| **Sewer:** |  |  |
|  |  |  |

*3. Applicant’s Current Water Supply Source*

If groundwater is a source for your water supply, list the legal description of each well down to a 10 acre tract (e.g. NW NW NW Section 3, T6N, R7W).

|  |  |
| --- | --- |
| **Well Site** | **Legal Description** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

If surface water is a source for your water supply, list the legal description of each diversion point down to a 10 acre tract (e.g. NW NW NW Section 3, T6N, R7W).

|  |  |
| --- | --- |
| **Diversion Point** | **Legal Description** |
|  |  |
|  |  |
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|  |  |

If water is purchased from another entity, provide the name and phone number of the entity and include a copy of any water purchase contract.

|  |  |
| --- | --- |
| Entity Name: |  |
| Address: |  | Phone: | ( ) |
|  |  | Fax: | ( ) |

*4. Water Rights* – List all water rights permits by which the applicant is authorized to take water (indicate if an application for water rights is currently being processed):

|  |  |  |
| --- | --- | --- |
| **Water Right Number** | **Holder** | **Number of Acre-Feet Per Year** |
|  |  |  |
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If you have more permits than can be shown above, list on a separate sheet and attach using the above format.

*5. Peak and Average Usage* -- four year historical and projected trends (in million gallons per day):

|  |  |
| --- | --- |
| **Historical** | **Projected** |
| **Year** | **Peak (mgd)** | **Average (mgd)** | 6BYear | **Peak (mgd)** | **Average (mgd)** |
|  |  |  |  |  |  |
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*6. Operating/Lease Agreements* – Provide copies of any operating agreements or lease agreements relating to the water or sewer system (if applicable); for example, a lease agreement between a town and its public works authority.

*7. Water Consumption and Revenue* – Please complete UATTACHMENT IU providing four year historical and projected trends by usage (million gallons) and revenue (by residential, commercial and industrial class); four year historical and projected trends for ten largest customers by usage (million gallons) and revenue; water connection for the most recent year coinciding with the Applicant's fiscal year; and four year historical for consumption and system water loss.

*8. Water/Sewer Rate Structure* – Please complete UATTACHMENT IIU providing the current rate structure and make copies and complete for the previous three rate structures.

*9. Inventory of Facilities* – Please complete UATTACHMENT IIIU providing an inventory of existing water and sanitary sewer facilities.

10. *Private Activity Questionnaire* – Please complete the Private Activity Questionnaire located below Attachment III.

**G. ADDITIONAL INFORMATION CHECKLIST**

Don’t forget to include the following information (application section reference):

* Authorizing Resolution (B8)
* Copies of loan documents on outstanding debt obligations (C1)
* SCHEDULE ONE – Outstanding Debt (C1)
* Sales Tax Ordinance [AUTHORITIES ONLY; NOT APPLICABLE FOR DISTRICTS] (C2)
* Audited Financial Information unless previously submitted or available at www.sai.ok.gov (C4)
* Pending Litigation Statement (C5)
* Description of capital improvements program, if any (C6)
* Insurances and Operator’s License(s) (C7)
* Site Certificate and Construction Permit (E1)
* Water Purchase Agreements (F3)
* Operating/Lease Agreements (F6)
* ATTACHMENT I – Water Consumption and Revenue (F7)
* ATTACHMENT II – Water/Sewer Rate Structure (F8)
* ATTACHMENT III – Inventory of Facilities (F9)
* Private Activity Questionnaire (F10)

Also include the following if not previously submitted to the OWRB:

* Trust Indenture; Orders of Incorporation, etc.
* Copies of any current Notice of Violation or Consent Order

**VERIFICATION**

STATE OF OKLAHOMA )

 ) ss.

COUNTY OF )

I, , being first duly sworn and upon oath states: that I am the duly authorized representative for the Applicant herein; that I have read the contents of the within and foregoing LOAN APPLICATION and is familiar with the contents thereof; and that the matters and information therein set forth are, to the best of Applicant's knowledge and belief, true and correct.

 (Applicant Name)

Signed By:

Printed Name:

Title:

 (Applicant's Representative)

Subscribed and sworn to before me this day of , 20 .

 (Notary Public)

My Commission Expires:

(SEAL)

ATTORNEY’S CERTIFICATION AS TO LEGALITY OF APPLICATION

I, the undersigned, certify that: I am an attorney representing the applicant herein with respect to the foregoing application attached hereto; the applicant is a [CHECK ONE]:

 municipality

 public trust

 rural water/sewer district

 other public entity (identify):

duly organized and existing under the laws of Oklahoma; the applicant possesses full power and authority to acquire, complete and operate the project described in this application; and this application has been lawfully and effectively authorized and executed as the valid action of the applicant.

 Attorney at Law

Printed Name:

OBA No.:

**SCHEDULE ONE**

#### 7BOutstanding Debt Obligations

|  |  |
| --- | --- |
| Source of Funds: |  |
| Original Amount: |  | Date Obtained: |  |
| Current Balance: |  | Maturity Date: |  |
| Annual Payment: |  | Interest Rate: | % |
| Reserve Balance: |  | Interest Rate Mode: |  |
| Pledged Collateral: |  |
| Has the Applicant been over 30 days late on a payment?If yes, please explain: | ( ) Yes( ) No |
|  |
| Has the Applicant been in default on this loan?If yes, please explain: | ( ) Yes( ) No |
|  |

|  |  |
| --- | --- |
| Source of Funds: |  |
| Original Amount: |  | Date Obtained: |  |
| Current Balance: |  | Maturity Date: |  |
| Annual Payment: |  | Interest Rate: | % |
| Reserve Balance: |  | Interest Rate Mode: |  |
| Pledged Collateral: |  |
| Has the Applicant been over 30 days late on a payment?If yes, please explain: | ( ) Yes( ) No |
|  |
| Has the Applicant been in default on this loan?If yes, please explain: | ( ) Yes( ) No |
|  |

Make copies of SCHEDULE ONE if additional pages are needed.

ATTACHMENT I

**WATER SALES**

# **Four (4) Year Historical Trend**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **RESIDENTIAL** | **COMMERCIAL** | **INDUSTRIAL** | **TOTAL** |
| **YEAR** | **VOLUME** | **REVENUE** | **VOLUME** | **REVENUE** | **VOLUME** | **REVENUE** | **VOLUME** | **REVENUE** |
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**ANNUAL WATER INFORMATION (Most recent four (4) year historical)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **YEAR:** |  |  |  |  |
| **Purchased/Produced:** |  |  |  |  |
| **Sold/Consumption:** |  |  |  |  |
| **Unaccountable:** |  |  |  |  |

# **TEN LARGEST CUSTOMERS**

# **Please provide the previous four (4) years of historical usage for each pledged revenue type (i.e. water, sewer, etc.) by using the tables below or by submitting your own data.**

| **YEAR:** |  **Service:** |  | **YEAR:**  |  **Service:** |
| --- | --- | --- | --- | --- |
| **Name** | **Usage (mg)** | **Revenue** |  | **Name** | **Usage (mg)** | **Revenue** |
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| **Totals:** |  |  |  | **Totals:** |  |  |
|  |  |  |  |  |  |  |
| **YEAR:** |  **Service:** |  | **YEAR:** |  **Service:** |
| **Name** | **Usage (mg)** | **Revenue** |  | **Name** | **Usage (mg)** | **Revenue** |
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| **Totals:** |  |  |  | **Totals:** |  |  |

#  **TEN LARGEST CUSTOMERS**

# **Four (4) year projected trend by usage (mg) and revenue**

# **In the space below, please indicate any anticipated major customers, if any, starting or discontinuing service in the future. Please include the year, if known, and impact on future usage and revenue.**

Anticipated Major Customers Starting Service:

Anticipated Major Customers Discontinuing Service:

ATTACHMENT II

#  **Water/Sewer Rate Structure**

**Applicant Name:**

**a. Water Rates – Effective Date:**

Residential:

Minimum bill $ for gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Commercial:

Minimum bill $ for gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

**b. Sewer Rates – Effective Date:**

Residential:

Minimum bill $ for gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

 Commercial:

Minimum bill $ for gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Next gallons for $ per gallons

Make copies of ATTACHMENT II if additional pages are needed.

ATTACHMENT III

Inventory of Existing Water, Sanitary Sewer and Stormwater Facilities

**A. Water System**

1. Water Source and Treatment

Number of active surface water intakes:

Number of active water wells:

Total Pumping capacity gpm

Water treatment capacity mgd

Clearwell capacity gal

1. Water Distribution System

Total length of all distribution mains miles

Distribution mains size range inches

Are there enough valves to isolate small areas? (Y/N)

Number of booster pump stations in the system

Master meters:

|  |  |
| --- | --- |
| Master Meter Name | Purchaser Name |
|  |  |
|  |  |
|  |  |

Storage Tanks:

|  |  |  |
| --- | --- | --- |
| Name | Capacity (gal) | Type (elevated, standpipe, ground) |
|  |  |  |
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|  |  |  |
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|  |  |  |

**B. Stormwater System** (Complete only if stormwater infrastructure is a component of the loan or if pledging stormwater revenues)

1. Community General Information

Is the applicant a MS4 community? (Y/N)

Does the community participate in the

National Floodplain Insurance Program? (Y/N)

Is the community enrolled in the

Community Rating System program? (Y/N)

1. Stormwater Collection System

Total length of all stormwater collection mains miles

Stormwater collection mains size range inches

Is there a sign to avoid dumping through inlets? (Y/N)

**C. Sanitary Sewer System**

1. Sanitary Sewer Treatment

|  |  |  |
| --- | --- | --- |
|  | Plant A | Plant B |
| Plant name |  |  |
| Plant capacity (mgd) |  |  |
| Total number of lagoon cells |  |  |
| Total lagoon surface area (acres) |  |  |
| Effluent flow measurement method |  |  |
| Receiving Stream or Reservoir |  |  |
| Treatment units *(mark all that apply)* |
|  | **Plant A** | **Plant B** |
| Bar Screens |  |  |
| Comminutors |  |  |
| Grit Chambers |  |  |
| Flow Equalization |  |  |
| Stormwater Holding Pond |  |  |
| Primary Clarifier |  |  |
| Final Clarifier |  |  |
| Trickling Filters |  |  |
| Aeration Tanks |  |  |
| Oxidation Ditch |  |  |
| Rotating Biological Contractor |  |  |
| Sequencing Batch Reactors |  |  |
| Land Application |  |  |
| Total Retention Lagoon |  |  |
| Flow Through Lagoon |  |  |
| Sludge Thickeners |  |  |
| Anaerobic Digestors |  |  |
| Aerobic Digestors |  |  |
| Sludge Drying Beds |  |  |
| Mechanical Dewatering Units |  |  |
| Chlorination/Dechlorination |  |  |
| Ultraviolet Disinfection |  |  |

1. Sanitary Sewer Collection System

Total length of all collection mains miles

Collection system pipe size range inches

Average manhole diameter feet

Total number of lift stations

D. **Notices of Violation and Consent Orders**

 Is the entity under any open Consent Order? \_\_\_\_\_ Yes \_\_\_\_\_ No

 If yes, please list CO number(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Does the entity have any open Notices of Violation? \_\_\_\_\_ Yes \_\_\_\_ No

 If yes, please list NOV number(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 What violations do the Consent Order and/or Notices of Violation address?

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Is the proposed project addressing these violations? \_\_\_\_\_ Yes \_\_\_\_ No

**PRIVATE ACTIVITY QUESTIONNAIRE**

OKLAHOMA WATER RESOURCES BOARD
FINANCIAL ASSISTANCE DIVISION

The Oklahoma Water Resources Board has been requested to provide a loan for the project described in Section 1 below. Please answer the questions in Sections 2 and 3 (if applicable), regarding the Project. Due to Federal Law, this information is needed before a loan can be made to finance the Project, so please reply promptly.

This form should be returned to:

Oklahoma Water Resources Board

3800 North Classen Boulevard

Oklahoma City, OK 73118

Questions regarding the completion of the form should be directed to:

Joe S. Freeman or Kate Burum, Esq. or Your Local Bond Counsel

Chief, Financial Assistance Div. Assistant General Counsel

joe.freeman@owrb.ok.gov Financial Assistance Div.

(405) 530- 8800 kate.burum@owrb.ok.gov

 (405) 530 -8800

|  |  |  |  |
| --- | --- | --- | --- |
| Section 1. | Name of Applicant |  |  |
|  | Applicant Contact: |  |  |
|  | Phone Number: |  |  |
|  | Amount of Loan: | $ |  |

|  |  |
| --- | --- |
| Section 2. | Please check all statements that describe the Project. “Governmental unit” as used below does not include the Federal government or any instrumentality thereof or any not-for-profit, tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. |
|  | 🞎 | (1) | No portion of the Project will be used for anything other than water or wastewater system improvements, and no portion of the proceeds of the loan will be used for anything other than water or wastewater system improvements and related transaction costs. Please check all that apply to the project: |
|  |  |  | 🞎 Infrastructure🞎 Engineering🞎 Planning & Design🞎 Land Acquisition 🞎 NonPoint Source Pollution Prevention (CWSRF and FAP loan only)🞎 Green Project Reserve (CWSRF loan only)🞎 Stormwater Control (CWSRF and FAP loan only) |
|  | 🞎 | (2) | No portion of the Project will be owned by, leased or sold to, any person or entity other than a governmental unit. |
|  | 🞎 | (3a) | No portion of the Project will be managed by any person or entity other than a governmental unit, -or- |
|  | 🞎 | (3b) | Some portion of the Project will be managed pursuant to a management contract or incentive pay contract that is a qualified management contract.[[1]](#footnote-1)Please include a copy of any operating or management contract with this form. |
|  | 🞎 | (4) | No portion of the Project will be used for research or testing pursuant to an agreement with private industry. |
|  | 🞎 | (5) | No person other than a governmental unit will have a priority right to treatment or other use of the facility through any procedure or contract (other than one permitting bulk discounts to large users) which gives preference to one customer over any other. |
|  | 🞎 | (6) | The applicant is not lending any of the loan proceeds. |
|  | 🞎 | (7) | No portion of the proceeds will be used to reimburse the governmental unit for any costs paid or incurred more than 60 days prior to the date a resolution was adopted by the governmental unit declaring the governmental unit’s intent to reimburse such expenditure from the proceeds of the loan. Any amounts paid by the governmental unit in respect of the Project prior to the loan closing will be reimbursed not later than (a) 18 months after such Project cost was paid or (b) 18 months after the Project was placed in service, but in no event more than 3 years after such Project cost was paid.[[2]](#footnote-2) |
|  | 🞎 | (8) | At least 75 percent of the loan proceeds will be applied to the payment of construction and construction-related costs; that is, no more than 25 percent of the loan proceeds will be used for the acquisition of land, equipment, and expenses related to the acquisition process. |
|  | 🞎 | (9) | No portion of the loan is to be used to repay any outstanding tax-exempt indebtedness with respect to the Project. If any portion of such loan is to be used to repay outstanding tax-exempt borrowing, please complete Section 3 below. |

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| Section 3. | REFINANCING. Complete questions 1 through 8 below only if any portion of the proceeds of any loan received from the Oklahoma Water Resources Board will be used to repay any outstanding borrowing with respect to the Project. |
|  | (1) | Date of issue of prior borrowing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Insert original issue date if prior borrowing was itself a refinancing of a previous loan.) |
|  | (2) | Original issue amount of prior borrowing: $\_\_\_\_\_\_\_\_\_\_ |
|  | (3) | Outstanding amount of prior borrowing: $\_\_\_\_\_\_\_\_\_\_ |
|  | (4) | Unexpended amount of prior borrowing: $\_\_\_\_\_\_\_\_\_\_ |
|  | (5) | Please state whether the prior borrowing was itself tax-exempt or taxable.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | (6) | First date on which prior borrowing may be repaid: \_\_\_\_\_\_\_\_\_\_ |
|  | (7) | Date election was made with respect to prior borrowing to pay 1-1/2 percent penalty in lieu of rebate amount: \_\_\_\_\_\_\_\_\_\_. This election would apply only if the original bond was issued after December 19, 1989 and qualified in whole or in part for the 2-year construction bond exception to rebate. (Indicate N/A if no election has been made.) |
|  |  | or |
|  |  | Check whether borrower has met \_\_\_ 6-month, \_\_ 18-month or \_\_\_ 2-year expenditure exceptions to rebate with respect to such prior borrowing or whether it expects to meet a \_\_\_ 6-month, \_\_\_ 18-month or \_\_\_ 2-year rebate expenditure exception. |
|  | Comments by the applicant: |
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RESPONDENT

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

1. A qualified management contract is a contract where: (i) the compensation is reasonable for the services rendered and may include reimbursement of actual and direct expenses and related administrative overhead; (ii) no element (eligibility for, amount of, and timing) of the compensation provides the service provider a share of net profits from the operation of the facility financed and refinanced with the proceeds of the Bonds; (iii) no burden of bearing any share of net losses from the operation of the managed property is imposed on the service provider; (iv) compensation is based solely on a capitation fee, a periodic fixed fee, a per unit fee and/or incentive compensation based on qualitative measurements; (v) payment of compensation is deferred due to insufficient net cash flows, as long as the contract includes requirements that (a) compensation is payable at least annually, (b) the qualified user is subject to reasonable consequences for late payment such as reasonable interest charges or late payment fees and (c) compensation must be paid no later than five years from the original due date; (vi) the term of the contract including all renewal options is not greater than the lesser of 30 years or 80% of the weighted average reasonable expected economic life of the managed property; (vii) the qualified user exercises a significant degree of control over the use of the managed property, such as approving the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property; (viii) the qualified user bears the risk of loss upon damage or destruction of the managed property (but third party insurance is permitted); (ix) the service provider agrees that it is not entitled to take any tax position inconsistent with its role as service provider to the qualified user with respect to the managed property (such as claiming depreciation or amortization, investment tax credit, or deduction for rent with respect to the managed property); (x) not more than twenty percent (20%) of the voting power of the governmental unit in the aggregate may be vested in the service provider and its directors, officers, shareholders partners, members and employees; (xi) the governing body of the governmental unit must not include the chief executive officer of the service provider, or the chairperson of the service provider’s governing body; and (xii) the chief executive officer of the service provider must not be the chief executive officer of the governmental unit or any of the governmental unit’s related parties.

A renewal option, for purposes of the foregoing, is defined to mean a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

The service provider must not have any role or relationship with the qualified user, that, in effect, substantially limits the qualified user’s ability to exercise its rights under the contract, based on all the facts and circumstances.

If the compensation terms of a management contract are materially revised, the requirements for compensation terms are retested as of the date of the material revision and the management contract is treated as one that was newly entered into as of the date of the material revision. [↑](#footnote-ref-1)
2. An exception to these requirements is provided with respect to an amount not to exceed 20 percent of the cost of the Project financed with the proceeds of the Bonds, but only if such costs are “preliminary expenditures”, e.g.,architectural, engineering, surveying, soil testing or similar costsincurred prior to the commencement of acquisition, construction or rehabilitation of the Project, other than land acquisition, site preparation and similar costs incident to the commencement of construction. [↑](#footnote-ref-2)