UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

WIFIA CREDIT AGREEMENT

For Up to $280,860,714

With

CITY OF WICHITA, KANSAS

For the

NORTHWEST WATER TREATMENT FACILITY (NWWTF) PROJECT
(WIFIA – N18108KS)

Dated as of April 23, 2020
# TABLE OF CONTENTS

## ARTICLE I DEFINITIONS AND INTERPRETATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Interpretation</td>
<td>21</td>
</tr>
</tbody>
</table>

## ARTICLE II THE WIFIA CREDIT FACILITY

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>WIFIA Credit Amount</td>
<td>22</td>
</tr>
<tr>
<td>4</td>
<td>Disbursement Conditions; Approval of Requisition</td>
<td>23</td>
</tr>
<tr>
<td>5</td>
<td>Term</td>
<td>24</td>
</tr>
<tr>
<td>6</td>
<td>Interest Rate</td>
<td>24</td>
</tr>
<tr>
<td>7</td>
<td>Security and Priority; Flow of Funds</td>
<td>24</td>
</tr>
<tr>
<td>8</td>
<td>Payment of Principal and Interest</td>
<td>25</td>
</tr>
<tr>
<td>9</td>
<td>Prepayment</td>
<td>28</td>
</tr>
<tr>
<td>10</td>
<td>Fees and Expenses</td>
<td>29</td>
</tr>
</tbody>
</table>

## ARTICLE III CONDITIONS PRECEDENT

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Conditions Precedent</td>
<td>30</td>
</tr>
</tbody>
</table>

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Representations and Warranties of Borrower</td>
<td>36</td>
</tr>
<tr>
<td>13</td>
<td>Representations and Warranties of WIFIA Credit Provider</td>
<td>42</td>
</tr>
</tbody>
</table>

## ARTICLE V COVENANTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Affirmative Covenants</td>
<td>42</td>
</tr>
<tr>
<td>15</td>
<td>Negative Covenants</td>
<td>49</td>
</tr>
<tr>
<td>16</td>
<td>Reporting Requirements</td>
<td>54</td>
</tr>
</tbody>
</table>

## ARTICLE VI EVENTS OF DEFAULT

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Events of Default and Remedies</td>
<td>58</td>
</tr>
</tbody>
</table>

## ARTICLE VII MISCELLANEOUS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Disclaimer of Warranty</td>
<td>62</td>
</tr>
<tr>
<td>19</td>
<td>No Personal Recourse</td>
<td>62</td>
</tr>
<tr>
<td>20</td>
<td>No Third Party Rights</td>
<td>62</td>
</tr>
<tr>
<td>21</td>
<td>Borrower’s Authorized Representative</td>
<td>62</td>
</tr>
<tr>
<td>22</td>
<td>WIFIA Credit Provider’s Authorized Representative</td>
<td>62</td>
</tr>
<tr>
<td>23</td>
<td>Servicer</td>
<td>63</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>----------</td>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>24.</td>
<td>Amendments and Waivers</td>
<td>63</td>
</tr>
<tr>
<td>25.</td>
<td>Governing Law</td>
<td>63</td>
</tr>
<tr>
<td>26.</td>
<td>Severability</td>
<td>63</td>
</tr>
<tr>
<td>27.</td>
<td>Successors and Assigns</td>
<td>63</td>
</tr>
<tr>
<td>28.</td>
<td>Remedies Not Exclusive</td>
<td>63</td>
</tr>
<tr>
<td>29.</td>
<td>Delay or Omission Not Waiver</td>
<td>63</td>
</tr>
<tr>
<td>30.</td>
<td>Counterparts</td>
<td>64</td>
</tr>
<tr>
<td>31.</td>
<td>Notices</td>
<td>64</td>
</tr>
<tr>
<td>32.</td>
<td>Indemnification</td>
<td>65</td>
</tr>
<tr>
<td>33.</td>
<td>Sale of WIFIA Credit Facility</td>
<td>65</td>
</tr>
<tr>
<td>34.</td>
<td>Effectiveness</td>
<td>66</td>
</tr>
<tr>
<td>35.</td>
<td>Termination</td>
<td>66</td>
</tr>
<tr>
<td>36.</td>
<td>Integration</td>
<td>66</td>
</tr>
</tbody>
</table>
SCHEDULE I – Project Budget
SCHEDULE II – Construction Schedule
SCHEDULE III – Existing Indebtedness
SCHEDULE IV – WIFIA Payment Instructions
SCHEDULE V – Flow of Funds
SCHEDULE 12(n) – Principal Project Contracts

EXHIBIT A – Form of WIFIA Bond
EXHIBIT B – Anticipated WIFIA Credit Disbursement Schedule
EXHIBIT C – Form of Non-Debarment Certificate
EXHIBIT D – Requisition Procedures and Form of Requisition
EXHIBIT E – Form of Non-Lobbying Certificate
EXHIBIT F – WIFIA Debt Service
EXHIBIT G-1 – Opinions Required from Counsel to Borrower on Effective Date
EXHIBIT G-2 – Opinions Required from Bond Counsel on WIFIA Bond Effective Date
EXHIBIT G-3 – Opinions and Reliance Letter Required from Bond Counsel in Connection with Disbursements
EXHIBIT H – Form of Closing Certificate
EXHIBIT I – Form of Certificate of Substantial Completion
EXHIBIT J – Form of Quarterly Report
EXHIBIT K – Form of Public Benefits Report
EXHIBIT L – Form of Financial Plan
WIFIA CREDIT AGREEMENT

THIS WIFIA CREDIT AGREEMENT (this “Agreement”), dated as of April 23, 2020, is by and between CITY OF WICHITA, KANSAS, a city of the first class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”), with an address at 455 N. Main Street, Wichita, KS 67202 (the “Borrower”), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “Administrator”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “WIFIA Credit Provider”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “Act” or “WIFIA”), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Credit Provider to enter into agreements to provide financial assistance with one or more eligible entities to make secured credit facilities with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Credit Provider make the WIFIA Credit Facility (as defined herein) in a principal amount not to exceed $280,860,714 to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated October 29, 2019 (the “Application”);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Credit Facility, subject to the terms and conditions contained herein;

WHEREAS, the Borrower has, pursuant to K.S.A. 10-1201 et seq. (the “Utility Revenue Bond Act”), authorized the issuance of its Water and Sewer Utility Revenue Bonds in an amount not to exceed $636,165,665 to pay Total Project Costs;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Credit Provider proposes to make funding available to the Borrower for a portion of the costs of the Project through the issuance of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower has passed Ordinance No. 51-____ authorizing the issuance of the WIFIA Bond and, in connection with the execution of this Agreement, shall adopt Resolution No. 20-____ prescribing the form and details of the WIFIA Bond (the “WIFIA Bond Resolution”);
WHEREAS, in accordance with Section 101 of the WIFIA Bond Resolution, this Agreement, including all exhibits hereto, shall be attached to the WIFIA Bond Resolution as an addendum thereto, fully incorporated therein, and all references the “WIFIA Bond Resolution” or similar phrase referring to the WIFIA Bond Resolution in any WIFIA Credit Document or any other Related Document shall be construed to include the terms of this Agreement for all purposes, including for purposes of the Act and the Utility Revenue Bond Act;

WHEREAS, pursuant to the foregoing, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions of this Agreement, as incorporated by the WIFIA Bond Resolution, and of the WIFIA Bond; and

WHEREAS, the WIFIA Credit Provider has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Credit Provider as follows:

ARTICLE I
Definitions and Interpretation

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Act” means the Act as defined in the recitals hereto.

“Additional Bonds” means Additional Parity Bonds and Subordinate Bonds; provided that any General Obligation Indebtedness shall not constitute Additional Parity Bonds.

“Additional Indebtedness” means Additional Parity Indebtedness and Subordinate Indebtedness.

“Additional Parity Bonds” means any bonds secured by the Net Revenues hereafter issued pursuant to the Bond Resolutions and standing on a parity and equality with the WIFIA Bond with respect to the Lien on the Net Revenues.

“Additional Parity Indebtedness” means, collectively or individually, as the context requires, the Additional Parity Bonds and the Additional Parity Obligations.

“Additional Parity Obligations” means any leases or other obligations, other than the Parity Bonds, of the Borrower hereafter issued or incurred, payable from the Net Revenues and
standing on a parity and equality with the Parity Bonds with respect to the Lien on the Net Revenues.

“Additional Rights” has the meaning provided in Section 14(q) (Affirmative Covenants – Additional Rights).

“Administrator” has the meaning provided in the preamble hereto.

“Agreement” has the meaning provided in the preamble hereto.

“Annual Maximum Disbursement Certificate” has the meaning provided in Section 11(c)(iii)(A) (Conditions Precedent to Disbursements).

“Annual Budget” means, with respect to the Utility, the Borrower’s budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of the Bond Resolutions, including a budget of Current Expenses, for any Borrower Fiscal Year and delivered pursuant to Section 16(a)(i) (Reporting Requirements – Annual Budget; Financial Plan).

“Anticipated WIFIA Credit Disbursement Schedule” means the schedule set forth in Exhibit B (Anticipated WIFIA Credit Disbursement Schedule), reflecting the anticipated disbursement of proceeds of the WIFIA Credit Facility, as such schedule may be amended from time to time pursuant to Section 4(d) (Disbursement Conditions; Approval of Requisition).

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Application” has the meaning provided in the recitals hereto.

“Authorized Investments” means the investments hereinafter described, provided that no moneys or funds shall be invested in a Derivative:

(a) investments authorized by the Kansas Statutes Annotated (“K.S.A.”) 12-1675 and amendments thereto;

(b) the municipal investment pool established pursuant to K.S.A. 12-1677a and amendments thereto;

(c) direct obligations of the Government;

(d) the Borrower’s temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto;

(e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Borrower is located which are insured by the
Federal Deposit Insurance Corporation or collateralized by securities described in clause (c) of this definition;

(f) obligations of the federal national mortgage association, federal home loan banks or the federal home loan mortgage corporation;

(g) repurchase agreements for securities described in clauses (c) or (f) of this definition;

(h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody’s or Standard & Poor’s;

(i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (c) or (f) of this definition;

(j) receipts evidencing ownership interests in securities or portions thereof described in clauses (c) or (f) of this definition;

(k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same;

(l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in clauses (c) or (f) of this definition; or

(m) other investment obligations authorized by the laws of the State and approved in writing by the Bond Insurer, all as may be further restricted or modified by amendments to applicable State law.


“Bankruptcy Related Event” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt
Service in accordance with the provisions of Section 8 (Payment of Principal and Interest) and such failure is not cured within thirty (30) days following notification by the WIFIA Credit Provider of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Net Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Utility Indebtedness, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Net Revenues may be sold or otherwise disposed of pursuant to a sale or disposition of such Net Revenues in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Owners, funds on deposit in any of the Funds and Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any other Utility Indebtedness Documents for application to the prepayment or repayment of any principal amount of the Utility Indebtedness other than in accordance with the provisions of the Bond Resolutions.

“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the capital costs of the Utility (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the Utility (including the Project) for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Credit Provider as of the Effective Date, which model shall be provided to the WIFIA Credit Provider as a fully functional Microsoft Excel-based financial model or such other format requested by the WIFIA Credit Provider.

“Beneficial Owner” means, with respect to Bonds, any Owner of Bonds and any other Person who, directly or indirectly has the investment power with respect to any such Bonds.

“Bond Insurance Policy” means the municipal bond insurance policy or financial guaranty insurance policy issued by any Bond Insurer concurrently with the delivery of any Utility Indebtedness guaranteeing the scheduled payment when due of the principal of and interest on such Utility Indebtedness.

“Bond Insurer” means (a) with respect to the Series 2017A Bonds scheduled to mature in the years 2031, 2033, and 2037, Assured Guaranty Municipal Corp., a New York domiciled financial guaranty insurance company, or any successor thereto; (b) with respect to the Series 2019A Bonds scheduled to mature in the years 2032 through 2039, inclusive, Build America Mutual Assurance Company, a New York domiciled mutual insurance corporation, or any successor thereto; and (c) the entity set forth in the supplemental resolution authorizing any other Additional Indebtedness.
“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

“Bond Registrar” means: (a) with respect to the WIFIA Bond, the Paying Agent, and its successors and assigns; and (b) with respect to Additional Bonds, the entity designated as Bond Registrar in the resolution authorizing such Additional Bonds.

“Bond Reserve Account” has the meaning provided in Section 14(i)(ii)(B) (Affirmative Covenants – Establishment and Ratification of Funds and Accounts).

“Bond Reserve Requirement” means, collectively or individually, as the context requires, the bond reserve requirement for each series of Outstanding Parity Bonds and any bond reserve requirement for any subsequent series of Parity Bonds, as applicable; provided that there shall be no bond reserve requirement for the WIFIA Bond and the WIFIA Credit Provider shall have no Lien on the Bond Reserve Account or any bond reserve subaccount established in connection with the issuance of other Parity Indebtedness.

“Bond Resolutions” means, collectively, the Outstanding Parity Bond Resolutions, the WIFIA Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

“Bonds” means, collectively, the Outstanding Parity Bonds, the WIFIA Bond and any Additional Bonds.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Credit Provider in accordance with Section 15(i) (Negative Covenants – Fiscal Year).

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 21 (Borrower’s Authorized Representative).

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Wichita, Kansas.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the date that is six (6) months prior to the Level Payment Commencement Date, subject to earlier termination as set forth in Section 8(b) (Payment of Principal and Interest – Capitalized Interest Period).

“Closing Certificate” has the meaning provided in Section 11(a)(ix) (Conditions Precedent – Conditions Precedent to Effectiveness).
“Code” means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

“Congress” means the Congress of the United States of America.

“Construction Period” means the period from the Effective Date through the Substantial Completion Date.

“Construction Period Servicing Fee” has the meaning set forth in Section 10(a)(ii) (Fees and Expenses – Fees).

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as Schedule II (Construction Schedule), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Credit Provider pursuant to Section 16(c) (Reporting Requirements – Construction Reporting) most recently approved by the WIFIA Credit Provider.

“Consultant” means the Consulting Engineer, the Independent Accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Borrower for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolutions.

“Consulting Engineer” means an independent engineer or engineering firm or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, at the time employed by the Borrower for the purpose of carrying out the duties imposed on the Consulting Engineer by the Bond Resolutions.

“Contractual Obligation” means, as to any Person, any contractual provision or any pledge issued or entered into by such Person under any indenture, resolution, contract, agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property or assets is bound.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling” and “Controlled by” have meanings correlative to the foregoing.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at https://www.bls.gov/news.release/cpi.t01.htm.

“Credit Amortization Schedule” means the Credit Amortization Schedule reflected in the applicable column of Exhibit F (WIFIA Debt Service), as amended from time to time in accordance with Section 8(f) (Payment of Principal and Interest – Adjustments to Credit Amortization Schedule).
“Current Expenses” means, as applied to either component of the Utility, the Borrower’s reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Borrower or by improvement districts heretofore annexed by the Borrower to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Borrower under the provisions of the WIFIA Bond Resolution or by law. “Current Expenses” shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

“Debt Service Coverage Ratio” means, for any Borrower Fiscal Year: (a) with respect to the Rate Covenant, the ratio determined by dividing (i) a numerator equal to the Net Revenues for such Borrower Fiscal Year by (ii) a denominator equal to the Debt Service Requirements or the Payment to the City, as applicable, for such Borrower Fiscal Year; and (b) with respect to Additional Indebtedness, the ratio determined by dividing (i) a numerator equal to the average Net Revenues for the two (2) prior Borrower Fiscal Years by (ii) a denominator equal to the Maximum Annual Debt Service; provided that with respect to Additional Indebtedness that is proposed to be Parity Indebtedness, Debt Service Requirements with respect to Subordinate Obligations and General Obligation Indebtedness shall be disregarded.

“Debt Service Requirements” means, with respect to all or any Utility Indebtedness or General Obligation Indebtedness, as the context requires, the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on such Utility Indebtedness or General Obligation Indebtedness for the period of time for which calculated; provided that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

“Default” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.
“Default Rate” means an interest rate equal to the lesser of (a) the sum of (i) the WIFIA Interest Rate plus (ii) two hundred (200) basis points and (b) the sum of (i) the daily yield for ten-year treasury bonds published by The Bond Buyer, New York, New York, on the Monday immediately preceding the Effective Date and (ii) four hundred (400) basis points.

“Depreciation and Replacement Account” has the meaning provided in Section 14(i)(ii)(C) (Affirmative Covenants – Establishment and Ratification of Funds and Accounts).

“Depreciation and Replacement Account Requirement” means an amount equal to fifteen percent (15%) of the Operating Revenues of the Utility for the preceding Borrower Fiscal Year.

“Derivative” means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

“Development Default” means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Credit Provider, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by January 31, 2027.

“Dollars” and “$” means the lawful currency of the United States of America.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget approved by the WIFIA Credit Provider, which are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

(a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, and replacement activities;

(c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or

(d) capitalized interest (with respect to Utility Indebtedness other than the WIFIA Credit Facility) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that Eligible Project Costs must be consistent with the Utility Revenue Bond Act and all applicable federal law, including the Act.
“Eligible Project Costs Documentation” has the meaning provided in Section 1 of Exhibit D (Requisition Procedures and Form of Requisition).

“EMMA” means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)1 of the Securities Exchange Act of 1934, as amended, and its successors.

“Environmental Laws” has the meaning provided in Section 12(p) (Representations and Warranties of Borrower – Environmental Matters).

“EPA” means the United States Environmental Protection Agency.

“Event of Default” has the meaning provided in Section 17(a) (Events of Default and Remedies).

“Event of Loss” means any event or series of events that causes any portion of the Utility to be damaged, destroyed or rendered unfit for normal use in any material respect for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

“Existing Indebtedness” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in Schedule III (Existing Indebtedness).

“Federal Fiscal Year” means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“Final Disbursement Date” means the earliest of (a) the date on which the WIFIA Credit Facility has been disbursed in full; (b) the date on which the Borrower has certified to the WIFIA Credit Provider that it will not request any further disbursements under the WIFIA Credit Facility; (c) the date on which the WIFIA Credit Provider terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Credit Facility in accordance with Section 17 (Events of Default and Remedies); and (d) the date that is one (1) year after the Substantial Completion Date.

“Final Maturity Date” means the earliest of (a) October 1, 2059 (or such earlier date as is set forth in an updated Exhibit F (WIFIA Debt Service) pursuant to Section 8(f) (Payment of Principal and Interest – Adjustments to Credit Amortization Schedule)); (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date; and (c) the Principal Payment Date immediately preceding the date that is forty (40) years following the Effective Date.

“Financial Statements” has the meaning provided in Section 12(t) (Representations and Warranties of Borrower – Financial Statements).
“**Fixed Level Payment**” has the meaning provided in Section 9(c) (*Payment of Principal and Interest – Fixed Level Payments*).

“**Flow of Funds**” has the meaning provided in **Schedule V** (*Flow of Funds*).

“**Funds and Accounts**” means funds and accounts created pursuant to or referred to in the Bond Resolutions.

“**GAAP**” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the United States of America.

“**General Obligation Indebtedness**” means any of the Borrower’s general obligation bonds issued for improvements to the Utility.

“**Government**” means the United States of America and its departments and agencies.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Gross Revenues**” means all income and revenues derived and collected by the Borrower from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

“**Hedging Transaction**” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases; provided that in no event shall any such transaction be for any speculative purpose.

“**Improvement Account**” has the meaning provided in Section 14(i)(ii)(D) (*Affirmative Covenants – Establishment and Ratification of Funds and Accounts*).

“**Indemnitee**” has the meaning provided in Section 32 (*Indemnification*). 

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“Independent Accountant” means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Borrower for the purpose of carrying out the duties imposed on the Independent Accountant by the Bond Resolutions.

“Index Rate” means the rate of interest set forth in The Bond Buyer Revenue Bond Index (or, in the event that The Bond Buyer does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

“Initial Disbursement Date” means the date of the first disbursement of the WIFIA Credit Facility.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Interest Payment Date” means each April 1 and October 1.

“Interim Indebtedness” means Utility Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘bbb-’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“Level Payment Commencement Date” means the earliest to occur of (a) April 1, 2029; (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (Payment of Principal and Interest – Capitalized Interest Period) due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth (5th) anniversary of the Substantial Completion Date.

“Level Payment Period” means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the WIFIA Credit Provider hereunder have been irrevocably paid in full in cash).

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Long-Term Indebtedness” means Utility Indebtedness having an original Stated Maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.
“Material Adverse Effect” means a material adverse effect on (a) the Utility, the Net Revenues or the Gross Revenues, (b) the business, operations, properties or condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any WIFIA Credit Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Credit Document, (e) the validity, enforceability or priority of the Liens provided under the WIFIA Credit Documents on the Net Revenues or (f) the WIFIA Credit Provider’s rights or remedies available under any WIFIA Credit Document.

“Maturity” means, when used with respect to any Utility Indebtedness, the date on which the principal of such Utility Indebtedness becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

“Maximum Annual Debt Service” means the maximum amount of Debt Service Requirements as computed for the then current or any future Borrower Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Utility Indebtedness shall be reduced by the value of cash and Authorized Investments on deposit in the subaccount of the Bond Reserve Account applicable to such series, so long as such subaccount for such Utility Indebtedness is maintained at the Bond Reserve Requirement.

“Maximum Capitalized Interest Amount” means the maximum amount of capitalized interest as set forth in the WIFIA Bond.

“MDG” means million of gallons per day.

“Moody’s” means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower.

“Nationally Recognized Rating Agency” means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the Finding of No Significant Impact for the Project issued by EPA on March 11, 2020 in accordance with NEPA.

“Net Proceeds” means any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

“Net Revenues” means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; provided that such
amount shall exclude Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

“Non-Debarment Certificate” means a certificate, signed by the Borrower’s Authorized Representative, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995), substantially in the form attached hereto as Exhibit C (Form of Non-Debarment Certificate).

“Non-Lobbying Certificate” means a certificate, signed by the Borrower’s Authorized Representative, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as Exhibit E (Form of Non-Lobbying Certificate).

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Period Servicing Fee” has the meaning set forth in Section 10(a)(iii) (Fees and Expenses – Fees).

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding” means, when used with reference to any Utility Indebtedness, as of a particular date of determination, all Utility Indebtedness theretofore, authenticated and delivered, except the following Utility Indebtedness:

(a) Utility Indebtedness theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolutions;

(b) Utility Indebtedness deemed to be paid in accordance with the provisions of the Bond Resolutions;

(c) Utility Indebtedness in exchange for or in lieu of which other Utility Indebtedness has been authenticated and delivered under the Bond Resolutions; and

(d) Utility Indebtedness, the principal or interest of which has been paid by the Bond Insurer.

“Outstanding Parity Bond Resolution” means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.
“Outstanding Parity Bonds” means the bonds of the Borrower that have been issued or incurred prior to the Effective Date and standing on a parity and equality with the WIFIA Bond with respect to the Lien on the Net Revenues, as described in Part A of Schedule III (Existing Indebtedness).

“Outstanding Parity Indebtedness” means, collectively or individually, as the context requires, the Outstanding Parity Bonds and the Outstanding Parity Obligations.

“Outstanding Parity Obligations” means the leases or other obligations, other than the Parity Bonds, of the Borrower that have been issued or incurred prior to the Effective Date, payable from the Net Revenues and standing on a parity and equality with the Parity Bonds with respect to the Lien on the Net Revenues, as described in Part B of Schedule III (Existing Indebtedness).

“Outstanding WIFIA Credit Balance” means (i) the aggregate principal amount of the WIFIA Credit Facility drawn by the Borrower plus (ii) capitalized interest added to the principal balance of the WIFIA Credit Facility minus (iii) the aggregate principal amount of the WIFIA Credit Facility (including capitalized interest) repaid by the Borrower, as determined in accordance with Section 8(f) (Payment of Principal and Interest – Adjustments to Credit Amortization Schedule).

“Owner” means, when used with respect to any Utility Indebtedness, the Person in whose name such Utility Indebtedness is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of the Bond Resolutions, and the Owner of the Utility Indebtedness, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Utility Indebtedness. For the avoidance of doubt, the WIFIA Credit Provider is the Owner of the WIFIA Bond.

“Parity Bonds” means the Outstanding Parity Bonds, the WIFIA Bond and any Additional Parity Bonds; provided that the WIFIA Bond is not secured by the Bond Reserve Account.

“Parity Indebtedness” means, collectively or individually, as the context requires, the Parity Bonds and the Parity Obligations.

“Parity Obligations” means the Outstanding Parity Obligations and any Additional Parity Obligations.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Paying Agent” means (a) with respect to the Outstanding Parity Bonds, the State Treasurer, and its successors and assigns; (b) with respect to the WIFIA Bond, Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns; and (c) with respect to Additional Indebtedness, the entity designated as Paying Agent in the resolution authorizing such Additional Indebtedness.

“Payment Date” means each Interest Payment Date and each Principal Payment Date.
“Payment Default” has the meaning provided in Section 17(a)(i) (Events of Default and Remedies – Payment Default).

“Payment to the City” means the payment to the Borrower’s general fund as a payment for operation of the Utility, the amount of which shall be governed by the terms of such ordinances of the Borrower which are then in effect with respect to the then outstanding Utility Indebtedness.

“Permitted Liens” means:

(a) Liens imposed pursuant to the WIFIA Credit Documents and the other Utility Indebtedness Documents;

(b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(k) (Affirmative Covenants – Material Obligations);

(c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(k) (Affirmative Covenants – Material Obligations);

(d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (Events of Default and Remedies – Material Adverse Judgment); and

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Principal and Interest Account” has the meaning provided in Section 14(i)(ii)(E) (Affirmative Covenants – Establishment and Ratification of Funds and Accounts).

“Principal and Interest WIFIA Subaccount” has the meaning provided in Section 14(i)(i) (Affirmative Covenants – Establishment and Ratification of Funds and Accounts).

“Principal Payment Date” means each October 1.

“Principal Project Contract” means each contract of the Borrower set forth in Schedule 12(n) (Principal Project Contracts).

“Principal Project Party” means any Person (other than the Borrower) party to a Principal Project Contract.

“Project” means the design and construction of a 120 MGD firm capacity drinking water treatment facility located in Wichita, Kansas on a 75.5-acre tract approximately bordered by 21st Street to the north, a levee for the Wichita-Valley Center Floodway to the east, and Zoo Boulevard to the southwest, including an administration/laboratory building, a maintenance building, a stormwater pump station, and a backup power generation building and off-site piping and utilities necessary for the operation of the facility, including a 66-inch raw water pipeline, known as the Cheney raw water crossover pipeline, and a 64-inch new finished water bypass pipeline at the existing treatment plant, known as the Hess water line.

“Project Budget” means the budget for the Project attached to this Agreement as Schedule I (Project Budget) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

“Projected Substantial Completion Date” means January 31, 2025, as such date may be adjusted in accordance with Section 16(c) (Reporting Requirements – Construction Reporting).

“Public Benefits Report” has the meaning provided in Section 16(d) (Reporting Requirements – Public Benefits Report).

“Rate Covenant” means the requirements specified in Section 14(a) (Affirmative Covenants – Rate Covenant).

“Related Documents” means the WIFIA Credit Documents, the other Utility Indebtedness Documents and the Principal Project Contracts.

“Requisition” has the meaning provided in Section 4(a) (Disbursement Conditions; Approval of Requisition).

“Revenue Fund” has the meaning provided in Section 14(i)(ii)(A) (Affirmative Covenants – Establishment and Ratification of Funds and Accounts).

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.
“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.


“Series 2019A Bonds” means the Borrower’s Water and Sewer Utility Revenue Bonds, Series 2019A, dated March 1, 2019, authorized and issued by the Borrower pursuant to Ordinance No. 50-925 and Resolution No. 19-055.

“Servicer” means such entity or entities as the WIFIA Credit Provider shall designate from time to time to perform, or assist the WIFIA Credit Provider in performing, certain duties hereunder.

“Servicing Fee” means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

“Servicing Set-Up Fee” has the meaning set forth in Section 10(a)(i) (Fees and Expenses – Fees).

“Sewer Utility” means the sanitary sewer system owned and operated by the Borrower, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

“Short-Term Indebtedness” means Utility Indebtedness having an original Maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

“Standard & Poor’s” means Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower.

“State” has the meaning provided in the preamble hereto.

“State Treasurer” means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.
“Stated Maturity” means, when used with respect to any Utility Indebtedness or any installment of interest thereon, the date specified in such Utility Indebtedness and the Bond Resolutions as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

“Statutory Limitations” means, with respect to the Borrower, the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.) and the Budget Law (K.S.A. 79-2925 et seq.).

“Subordinate Bonds” means any bonds secured by the Net Revenues hereafter issued on a subordinate lien basis to any Parity Bonds.

“Subordinate Indebtedness” means, collectively or individually, as the context requires, the Subordinate Bonds and Subordinate Obligations.

“Subordinate Obligations” means any leases or other obligations, other than the Subordinate Bonds, of the Borrower hereafter issued or incurred, payable from the Net Revenues and secured by a lien on the Net Revenues, which lien is junior to that of any Parity Obligations.

“Substantial Completion” means, with respect to the Project, the stage at which the Project is able to perform the functions for which the Project is designed.

“Substantial Completion Date” means the date on which the Borrower certifies to the WIFIA Credit Provider, with evidence satisfactory to the WIFIA Credit Provider, that Substantial Completion has occurred.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the WIFIA Credit Documents or any other Utility Indebtedness Document to be paid into any fund or account upon the incurrence of the WIFIA Credit Facility or any other Utility Indebtedness, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower, in each case in connection with the Project (other than the WIFIA Credit Facility); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not
constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code, as in effect from time to time in the State.

“Utility” means the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

“Utility Indebtedness” means, collectively or individually, as the context requires, the Parity Indebtedness and the Subordinate Indebtedness.

“Utility Indebtedness Document” means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any Utility Indebtedness is incurred by the Borrower.

“Utility Revenue Bond Act” has the meaning provided in the recitals hereto.

“Value” means, for purposes of the Bond Resolutions, the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times), the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or in The New York Times, the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Borrower in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest.

“Water Utility” means the waterworks system owned and operated by the Borrower and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

“WIFIA” has the meaning provided in the recitals hereto.

“WIFIA Bond” means the Borrower’s not to exceed $331,000,000 principal amount Taxable Water and Sewer Utility Revenue Bond, Series 2020B (WIFIA) issued and delivered by the Borrower in substantially the form of Exhibit A (Form of WIFIA Bond).
“WIFIA Bond Effective Date” means the date on which the WIFIA Bond is issued and all conditions precedent specified in Section 11(b) (Conditions Precedent to WIFIA Bond Effective Date) have been satisfied or waived in writing by the WIFIA Credit Provider in its sole discretion.

“WIFIA Bond Resolution” has the meaning provided in the recitals hereto.

“WIFIA Credit Documents” means this Agreement, as incorporated by the WIFIA Bond Resolution, the WIFIA Bond, the WIFIA Ordinance and the WIFIA Bond Resolution.

“WIFIA Credit Facility” means the secured credit facility made by the WIFIA Credit Provider to the Borrower on the terms and conditions set forth herein, pursuant to the Act and the Utility Revenue Bond Act, in a principal amount not to exceed $280,860,714 (excluding capitalized interest in an amount no greater than the Maximum Capitalized Interest Amount), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“WIFIA Credit Provider” has the meaning provided in the preamble hereto.

“WIFIA Credit Provider’s Authorized Representative” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (WIFIA Credit Provider’s Authorized Representative).

“WIFIA Debt Service” means with respect to any Payment Date occurring on or after the Level Payment Commencement Date, the principal portion of the Outstanding WIFIA Credit Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on Exhibit F (WIFIA Debt Service) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (Payment of Principal and Interest – Payment of WIFIA Debt Service).

“WIFIA Interest Rate” has the meaning provided in Section 6 (Interest Rate).

“WIFIA Ordinance” means Ordinance No. 51-___, passed by the Borrower on April 21, 2020.

Section 2. Interpretation.

(a) Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

(f) Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement.

(g) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (Notices) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Credit Facility proceeds” or similar phrasing shall be construed as meaning the same thing as “paying the purchase price of the WIFIA Bond”.

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Credit Facility, it is intended that such change be reflected in the WIFIA Bond. Whenever there is a prepayment of the WIFIA Credit Facility, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

(m) All references to the “WIFIA Bond Resolution” or similar phrase referring to the WIFIA Bond Resolution in any WIFIA Credit Document or any other Related Document shall be construed to include the terms of this Agreement for all purposes.

ARTICLE II
THE WIFIA CREDIT FACILITY

Section 3. **WIFIA Credit Amount.** The principal amount of the WIFIA Credit Facility shall not exceed $280,860,714. Capitalized interest on the WIFIA Credit Facility shall be limited
to the Maximum Capitalized Interest Amount. WIFIA Credit Facility proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions; Approval of Requisition) and Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements).

Section 4. Disbursement Conditions; Approval of Requisition.

(a) WIFIA Credit Facility proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project. If the Borrower intends to utilize the WIFIA Credit Facility proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the Borrower shall demonstrate to the satisfaction of the WIFIA Credit Provider that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the WIFIA Credit Facility shall be made pursuant to a requisition and certification (a “Requisition”) in the form set forth in Appendix One (Form of Requisition) to Exhibit D (Requisition Procedures and Form of Requisition), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Credit Provider, all in accordance with the procedures of Exhibit D (Requisition Procedures and Form of Requisition) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements); provided that no disbursements of WIFIA Credit Facility proceeds shall be made after the Final Disbursement Date. The Borrower shall provide to the Paying Agent and Bond Registrar a copy of each such Requisition submitted by the Borrower.

(b) Each Requisition shall include a certification by the Borrower certifying that the amount for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of WIFIA Credit Facility proceeds.

(c) The Borrower shall deliver copies of each Requisition to the WIFIA Credit Provider and the Servicer (if any) on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Credit Provider shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Credit Provider approval or denial shall be substantially in the form annexed hereto as Appendix Two ([Approval/Disapproval] of the WIFIA Credit Provider) to Exhibit D (Requisition Procedures and Form of Requisition). In no event shall disbursements be made more than once each month.

(d) At the time of any disbursement, the sum of all prior disbursements of WIFIA Credit Facility proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Credit Disbursement Schedule, as may be amended from time to time in accordance with the terms of this Agreement, and the then applicable Annual Maximum Disbursement Certificate. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Credit Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the next succeeding Federal Fiscal Year up to the last anticipated date of disbursement set forth in the Anticipated WIFIA
Credit Disbursement Schedule, having the effect of automatically updating the Anticipated WIFIA Credit Disbursement Schedule without need for the WIFIA Credit Provider’s approval. The Borrower may also amend the Anticipated WIFIA Credit Disbursement Schedule by submitting a revised version thereof to the WIFIA Credit Provider no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Credit Disbursement Schedule shall become effective upon the WIFIA Credit Provider’s approval thereof, which approval shall be granted in the WIFIA Credit Provider’s sole discretion.

Section 5. Term. The term of the WIFIA Credit Facility shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Credit Balance (the “WIFIA Interest Rate”) shall be ___ and _____ hundredths percent (___%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Credit Balance from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Credit Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured or waived (if applicable) in accordance with the terms of this Agreement and (ii) the Outstanding WIFIA Credit Balance has been irrevocably paid in full in immediately available funds. For the avoidance of doubt, interest on the WIFIA Credit Facility (and the WIFIA Bond) shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Credit Provider) have been disbursed to the Borrower for use on the Project in accordance with Section 4 (Disbursement Conditions; Approval of Requisition). For the avoidance of doubt, the Outstanding WIFIA Bond Balance (as defined in the WIFIA Bond Resolution) shall be the Outstanding WIFIA Credit Balance, as calculated pursuant to terms hereof.

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Credit Facility and the WIFIA Bond, and concurrently with the issuance and delivery of this Agreement and the subsequent issuance of the WIFIA Bond, the Borrower hereby irrevocably pledges, assigns and grants to the WIFIA Credit Provider for its benefit, Liens on the Net Revenues and shall deliver to the WIFIA Credit Provider, as the registered owner, the WIFIA Bond. The Liens securing the obligations under the WIFIA Credit Documents shall be (i) pari passu in right of payment and right of security with the Liens securing all other Parity Indebtedness and (ii) senior in right of payment and right of security to the Liens securing all Subordinate Indebtedness. The obligations of the Borrower to pay WIFIA Debt Service under this Agreement and the WIFIA Bond constitute Parity Indebtedness, provided that the WIFIA Bond is not secured by the Bond Reserve Account and the WIFIA Credit Provider shall have no Lien with respect to any bond reserve subaccount established in connection with the issuance of other Parity Indebtedness.
b) Except for Permitted Liens, the Net Revenues will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with the pledge of the Borrower created under the WIFIA Credit Documents for the benefit of the WIFIA Credit Provider. Except for Permitted Liens (other than clause (a) thereof), the Net Revenues will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is senior to the pledge of the Borrower created under the WIFIA Credit Documents for the benefit of the WIFIA Credit Provider. All organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) All Gross Revenues shall, immediately upon receipt thereof, be deposited by the Borrower into the Revenue Fund. Amounts deposited in the Revenue Fund shall be applied in the order of priority described, and in accordance with the Flow of Funds.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) No WIFIA Debt Service shall be due or payable prior to the Level Payment Commencement Date. On each Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay WIFIA Debt Service by making (A) semi-annual payments of interest, on each Interest Payment Date, (B) annual payments of principal, on each Principal Payment Date, and (C) payments of any other amounts on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any other date on which such payment is due hereunder or under the WIFIA Bond); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date with the same force and effect as if made on the applicable Payment Date. Payments of WIFIA Debt Service shall be made in the amounts and on the Payment Dates as set forth in Exhibit F (WIFIA Debt Service), as the same may be revised pursuant to Section 8(f) (Payment of Principal and Interest – Adjustments to Credit Amortization Schedule), and shall be calculated by the WIFIA Credit Provider in such manner that the Outstanding WIFIA Credit Balance is reduced to $0 on the Final Maturity Date. The WIFIA Credit Provider shall provide to the Paying Agent and Bond Registrar notice of all revisions to the Credit Amortization Schedule with respect to the payment of WIFIA Debt Service.

(ii) Notwithstanding anything herein to the contrary, the Outstanding WIFIA Credit Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date and any other date on which such payment is due hereunder or under the WIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Credit Facility is required to be made during the Capitalized Interest Period. On each Payment Date occurring during the Capitalized Interest Period, and on the day immediately following the end of the Capitalized Interest Period, interest accrued on the WIFIA Credit Facility in the six (6) month period ending immediately prior to such date (or such shorter period if the Capitalized Interest Period ends other than on a March 31 or September 30) shall be capitalized and added to the Outstanding WIFIA Credit Balance. Within thirty (30) days after the end of the
Capitalized Interest Period, the WIFIA Credit Provider shall give written notice to the Borrower stating the Outstanding WIFIA Credit Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Credit Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower from the WIFIA Credit Provider that an Event of Default has occurred, in which case the provisions of this Section 8(b) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be capitalized. For purposes of this Section 8(b), an Event of Default under Section 17(a)(v) (Events of Default and Remedies – Cross Default with Utility Indebtedness Documents) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of any Utility Indebtedness (other than the WIFIA Credit Facility) when due, regardless of whether any holder of the applicable Utility Indebtedness, or any legal order, has waived, permitted deferral of, or forgiven any such payment. To the extent that any prepayment of the WIFIA Credit Facility is made during the Capitalized Interest Period, such prepayment shall be applied to the Outstanding WIFIA Credit Balance as provided in Section 9(c) (Prepayment – General Prepayment Instructions) and reflected in a revised Exhibit F (WIFIA Debt Service). The WIFIA Credit Provider shall provide a copy of any notification delivered to the Borrower under this Section 8(b) to the Paying Agent and Bond Registrar.

(c) Fixed Level Payments. During the Level Payment Period, the Borrower shall make payments of principal on each Principal Payment Date and payments of interest on each Interest Payment Date. The amount consisting of (i) the interest payment due on April 1 of any calendar year plus (ii) the sum of the principal and interest payments due on October 1 of such calendar year, will be approximately equal in amount for each such period during the Level Payment Period (each such amount, including the first payment of WIFIA Debt Service, which shall be the payment of principal and interest on the Level Payment Commencement Date, a “Fixed Level Payment”). The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding WIFIA Credit Balance as of the Level Payment Commencement Date shall be reduced to $0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding WIFIA Credit Balance at the rate per annum set forth in Section 6 (Interest Rate) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the WIFIA Credit Facility are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the WIFIA Credit Provider shall give written notice to the Borrower (with a copy to the Paying Agent and Bond Registrar) of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing such notice shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Credit Documents. To the extent that any prepayment of the WIFIA Credit Facility is made during the Level Payment Period in addition to the Fixed Level Payments, such prepayment shall be applied to the remaining Outstanding WIFIA Credit Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 9(c) (Prepayment – General Prepayment Instructions) and reflected in a revised Exhibit F (WIFIA Debt Service).
(d) **WIFIA Bond.** As evidence of the Borrower’s obligation to repay the WIFIA Credit Facility, the Borrower shall issue and deliver to the WIFIA Credit Provider, within ninety (90) days of the Effective Date, the WIFIA Bond substantially in the form of Exhibit A (Form of WIFIA Bond), having a maximum principal amount of $331,000,000, bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Credit Facility and any prepayment of principal in respect of the WIFIA Credit Facility shall be treated as a redemption in respect of the WIFIA Bond.

(e) **Manner of Payment.** Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in Schedule IV (WIFIA Payment Instructions), as may be modified in writing from time to time by the WIFIA Credit Provider. The Borrower shall make any such payment or portion thereof with funds then on deposit in the Principal and Interest WIFIA Subaccount in accordance with the Flow of Funds.

(f) **Adjustments to Credit Amortization Schedule.**

(i) The Outstanding WIFIA Credit Balance will be (A) increased on each occasion on which the WIFIA Credit Provider disburses credit facility proceeds hereunder, by the amount of such disbursement of credit facility proceeds; (B) increased on each occasion on which interest on the WIFIA Credit Facility is capitalized pursuant to the provisions of Section 8(b) (Payment of Principal and Interest – Capitalized Interest Period), by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the Outstanding WIFIA Credit Balance, by the amount of principal so paid. The WIFIA Credit Provider shall provide the Borrower (with a copy to the Paying Agent and Bond Registrar) written notice of each change to the Outstanding WIFIA Credit Balance, which shall also be the Outstanding WIFIA Bond Balance (as defined in the WIFIA Bond Resolution). The WIFIA Credit Provider’s determination of the Outstanding WIFIA Credit Balance shall be deemed conclusive absent manifest error. Amounts borrowed and repaid may not be reborrowed.

(ii) The WIFIA Credit Provider is hereby authorized to modify the Credit Amortization Schedule included in Exhibit F (WIFIA Debt Service) from time to time, in accordance with the principles set forth below in this Section 8(f), to reflect (A) any change to the Outstanding WIFIA Credit Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (C) such other information as the WIFIA Credit Provider may determine is necessary for administering the WIFIA Credit Facility and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Credit Amortization Schedule as a result of changes in the Outstanding WIFIA Credit Balance shall be applied to reduce future payments due on the WIFIA Bond in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(c) (Prepayment – General Prepayment Instructions). Absent manifest error, the WIFIA Credit Provider’s determination of such matters as set forth on Exhibit F (WIFIA Debt Service) shall be conclusive evidence
thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other WIFIA Credit Document. The WIFIA Credit Provider shall provide the Borrower (with a copy to the Paying Agent and Bond Registrar) with a copy of Exhibit F (WIFIA Debt Service) as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Credit Documents.

Section 9. Prepayment.

(a) The Borrower may prepay the WIFIA Credit Facility in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of $1,000,000 or any integral multiple of $1.00 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Credit Provider such principal amount of the WIFIA Credit Facility to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, which shall be a Payment Date unless otherwise agreed by the WIFIA Credit Provider. Each prepayment of the WIFIA Credit Facility pursuant to this Section 9(a) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Credit Provider not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Credit Provider. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Credit Provider. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) Borrower’s Certificate. Each prepayment pursuant to this Section 9 shall be accompanied by a certificate signed by the Borrower’s Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(c) General Prepayment Instructions. Upon the WIFIA Credit Provider’s receipt of confirmation that payment in full in immediately available funds of the entire Outstanding WIFIA Credit Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Credit Provider shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the Bond Registrar. If the Borrower prepayments only part of the unpaid balance of principal of the WIFIA Credit Facility, the WIFIA Credit Provider may make a notation on Exhibit F (WIFIA Debt Service) indicating the amount of principal of and interest on the WIFIA Credit Facility then being prepaid and the WIFIA Credit Provider shall revise the Credit Amortization Schedule to reflect substantially level debt service using the same methodology used in Section 8(c) (Payment of Principal and Interest – Fixed Level Payments). Absent manifest error, the WIFIA Credit Provider’s determination of such matters as set forth on Exhibit F (WIFIA Debt Service) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other WIFIA Credit Document. All partial prepayments of principal shall be applied to reduce future payments due on
the WIFIA Credit Facility in inverse order of maturity. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Credit Facility shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 10. Fees and Expenses.

(a) Fees. The Borrower shall pay to the WIFIA Credit Provider:

(i) a servicing set-up fee equal to $20,800 (the “Servicing Set-Up Fee”), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the Initial Disbursement Date);

(ii) an annual construction period servicing fee equal to $20,800 (the “Construction Period Servicing Fee”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the Initial Disbursement Date), in a pro-rated amount equal to $8,670; and

(iii) an annual operating period servicing fee equal to $7,810 (the “Operating Period Servicing Fee”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Credit Provider shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Credit Provider on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Credit Provider, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Credit Documents and the transactions hereby and thereby
contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Liens on the Net Revenues, or any provision of this Agreement or any of the other WIFIA Credit Documents or the rights of the WIFIA Credit Provider thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Credit Documents, including during the pendency of any Event of Default.

(d) Subject to Statutory Limitations, the obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other WIFIA Credit Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III
CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Credit Provider in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Credit Provider this Agreement, each other WIFIA Credit Document, each in form and substance satisfactory to the WIFIA Credit Provider, provided that the Borrower may deliver the WIFIA Bond within ninety (90) days after the Effective Date.

(ii) The Borrower shall have delivered to the WIFIA Credit Provider complete and fully executed copies of each Utility Indebtedness Document (other than the WIFIA Credit Documents), together with any amendments, supplements, waivers or modifications thereto that have been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) Upon request by the WIFIA Credit Provider, the Borrower shall have delivered to the WIFIA Credit Provider complete and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iv) The Borrower shall have delivered to the WIFIA Credit Provider a copy of its Organizational Documents, as in effect on the Effective Date, along with a
certification in the Closing Certificate that such Organizational Documents are in full force and effect.

(v) The Borrower shall have delivered to the WIFIA Credit Provider all further instruments and documents (including any resolutions, ordinances, and supplements) other than the Related Documents as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents.

(vi) Counsel to the Borrower shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth in Exhibit G-1 (Opinions Required from Counsel to Borrower on Effective Date).)

(vii) The Borrower shall have delivered to the WIFIA Credit Provider the Non-Debarment Certificate.

(viii) The Borrower shall have delivered to the WIFIA Credit Provider the Non-Lobbying Certificate.

(ix) The Borrower shall have delivered to the WIFIA Credit Provider a certificate, signed by the Borrower’s Authorized Representative, substantially in the form attached hereto as Exhibit H (Form of Closing Certificate) (the “Closing Certificate”), designating the Borrower’s Authorized Representative, confirming such person’s position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Credit Provider, has provided evidence satisfactory to the WIFIA Credit Provider of such compliance):

(A) the aggregate of all funds committed to the development and construction of the Project as set forth in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(B) Other than approval of the transcript related to the issuance and registration of the WIFIA Bond pursuant to the requirements set forth in K.S.A. 10-108, the Borrower has obtained all Governmental Approvals necessary (x) as of the Effective Date in connection with the Project and (y) to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(C) as of the Effective Date, (x) the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount
of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(D) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(E) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(F) the Borrower has (x) obtained a Federal Employer Identification Number, (y) obtained a Data Universal Numbering System number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov);

(G) the representations and warranties of the Borrower set forth in the WIFIA Credit Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(H) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since October 29, 2019.

(x) The Borrower shall have provided evidence to the WIFIA Credit Provider’s satisfaction of the assignment by at least two (2) Nationally Recognized Rating Agencies of an Investment Grade Rating, one (1) of which must be a public rating, on the WIFIA Credit Facility and the other Outstanding Parity Indebtedness issued for the Project, if any, along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(xi) The Borrower shall have delivered to the WIFIA Credit Provider a Base Case Financial Model in form and substance acceptable to the WIFIA Credit Provider, along with a certification in the Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Gross Revenues are sufficient to meet the Credit Amortization Schedule, (B) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date; (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Credit Provider and (D) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xii) The Borrower shall have delivered to the WIFIA Credit Provider (A) certificates of insurance along with a certification in the Closing Certificate that such
insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (Affirmative Covenants – Insurance; Net Proceeds) and (B) at the WIFIA Credit Provider’s request, copies of such insurance policies and/or, if applicable, documents pertaining to the Borrower’s self-insurance program.

(xiii) The Borrower shall have delivered to the WIFIA Credit Provider the Public Benefits Report.

(xiv) The Borrower shall have paid in full all invoices delivered by the WIFIA Credit Provider to the Borrower as of the Effective Date for the fees and expenses of the WIFIA Credit Provider’s counsel and financial advisors and any auditors or other consultants retained by the WIFIA Credit Provider for the purposes hereof.

(xv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Credit Provider, all in form and substance satisfactory to the WIFIA Credit Provider.

(b) Conditions Precedent to WIFIA Bond Effective Date. Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate and the WIFIA Credit Provider shall have no obligation hereunder in the event that the WIFIA Bond Effective Date does not occur on or before the date that is ninety (90) days after the Effective Date (or such later date consented to by the WIFIA Credit Provider in its sole discretion). The Borrower’s obligations under Section 10 (Fees and Expenses) and Section 32 (Indemnification) shall survive any such termination of this Agreement. In no event shall the WIFIA Bond Effective Date be deemed to have occurred until each of the following conditions has been satisfied or waived in writing by the WIFIA Credit Provider in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Credit Provider the WIFIA Bond in form and substance satisfactory to the WIFIA Credit Provider.

(ii) The Borrower shall have obtained approval of the transcript related to the issuance and registration of the WIFIA Bond pursuant to the requirements set forth in K.S.A. 10-108, and such approval shall be final and non-appealable, and in full force and effect (and not subject to any notice of violation, breach, or revocation).

(iii) Bond counsel to the Borrower shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth in Exhibit G-2 (Opinions Required from Bond Counsel on WIFIA Bond Effective Date)).

(iv) The representations and warranties of the Borrower set forth in this Agreement (including Section 12 (Representations and Warranties of Borrower)) and in each other Related Document shall be true and correct as of the WIFIA Bond Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
(v) None of the credit ratings provided in satisfaction of the condition precedent specified in Section 11(a)(x) (Conditions Precedent to Effectiveness) shall have been reduced, withdrawn or suspended as of the WIFIA Bond Effective Date; provided that if any such credit rating has been reduced, such reduced credit rating shall be at least an Investment Grade Rating as of the WIFIA Bond Effective Date.

(vi) The Borrower shall have delivered to the WIFIA Credit Provider a certificate, signed by the Borrower’s Authorized Representative, confirming satisfaction of the conditions set forth in Sections 11(b)(ii), (iv) and (v).

(c) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Credit Provider shall have no obligation to make any disbursement of WIFIA Credit Facility proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Credit Provider in its sole discretion:

(i) With respect to the initial disbursement of the WIFIA Credit Facility, the WIFIA Bond Effective Date shall have occurred.

(ii) The Borrower shall have certified to the WIFIA Credit Provider that (A) the aggregate amount of all disbursements of the WIFIA Credit Facility (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) will not exceed (1) the maximum principal amount of the WIFIA Credit Facility, (2) the amount of Eligible Project Costs paid or incurred by the Borrower or (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Credit Disbursement Schedule; (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Credit Facility, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(iii) (A) The Borrower shall have provided to the WIFIA Credit Provider a certificate executed by the Borrower’s Authorized Representative (1) setting forth, for the then current Federal Fiscal Year, the maximum amount that may be disbursed under the WIFIA Credit Facility for such Federal Fiscal Year and (2) evidencing that the Borrower satisfies the requirements for the issuance of additional Parity Indebtedness under the Bond Resolutions in such amount (such certificate, the “Annual Maximum Disbursement Certificate”); and (B) bond counsel to the Borrower shall have delivered to the WIFIA Credit Provider the legal opinions and reliance letter in the form set forth on Exhibit G-3 (Opinions and Reliance Letter Required from Bond Counsel in Connection with Disbursement), in each case, with respect to the applicable disbursement and capitalized interest on such disbursement. The documents described in this Section may satisfy the requirements for multiple disbursements, which in the aggregate, equal the amount set forth on the applicable Annual Maximum Disbursement Certificate.
(iv) The Borrower shall have provided the Annual Budget or financial plan in each case for the then current Borrower Fiscal Year in compliance with the requirements of Section 16(a) (Reporting Requirements – Annual Budget; Financial Plan).

(v) The Borrower shall have delivered to the WIFIA Credit Provider a Requisition that complies with the provisions of Section 4 (Disbursement Conditions; Approval of Requisition) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Credit Provider shall have approved (or be deemed to have approved in accordance with Section 4(c) (Disbursement Conditions; Approval of Requisition)) such Requisition. The Borrower’s Authorized Representative shall also certify in such Requisition that:

(A) all Governmental Approvals necessary as of the time of such disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(B) each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the requirements of Section 14(f) (Affirmative Covenants – Insurance; Net Proceeds) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(C) at the time of, and immediately after giving effect to, any disbursement of WIFIA Credit Facility proceeds then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document shall have occurred and be continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other WIFIA Credit Document shall have occurred and be continuing;

(D) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since October 29, 2019;

(E) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider; and

(F) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (Representations and Warranties of Borrower)) and in each other Related Document shall be true and correct as of each
date on which any disbursement of the WIFIA Credit Facility is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(vi) To the extent not previously delivered to the WIFIA Credit Provider, the Borrower shall have delivered to the WIFIA Credit Provider copies of any Utility Indebtedness Documents (including any amendment, waiver, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(vii) To the extent not previously delivered to the WIFIA Credit Provider, the Borrower shall have provided copies of any Principal Project Contracts (including any amendment, waiver, modification or supplement thereto) along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(viii) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (Fees and Expenses) and (B) all invoices received from the WIFIA Credit Provider as of the date of disbursement of the WIFIA Credit Facility and delivered by the WIFIA Credit Provider to the Borrower, for the fees and expenses of the WIFIA Credit Provider’s counsel and financial advisors and any auditors or other consultants retained by the WIFIA Credit Provider for the purposes hereof.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (Representations and Warranties of Borrower – Officers’ Authorization), the first sentence of Section 12(f) (Representations and Warranties of Borrower – Litigation), Section 12(k) (Representations and Warranties of Borrower – Credit Ratings), and the first sentence of Section 12(n) (Representations and Warranties of Borrower – Principal Project Contracts), as of each date on which any disbursement of the WIFIA Credit Facility is requested or made:

(a) Organization; Power and Authority. The Borrower is a city of the first class, duly created, organized and validly existing under the Constitution and laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement, as fully incorporated by the WIFIA Bond Resolution, and the WIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the other Related Documents.

(b) Officers’ Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications
or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower’s Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. There is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Utility, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Utility, the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower’s knowledge, there are no actions of the type described above pending or, threatened
against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower’s ability to receive Gross Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model or the Annual Budget or financial plan delivered pursuant to Section 16(a) (Reporting Requirements – Annual Budget; Financial Plan). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. Pursuant to the terms hereof, as security for the WIFIA Credit Facility, and concurrently with the issuance and delivery of this Agreement and subsequent issuance of the WIFIA Bond, the Borrower has irrevocably pledged, assigned and granted to the WIFIA Credit Provider for its benefit, Liens on the Net Revenues and has delivered (or, in the case of this representation and warranty made as of the Effective Date, shall deliver) to the WIFIA Credit Provider, as the registered owner, the WIFIA Bond. The Liens securing the obligations under this Agreement and the WIFIA Bond are (i) pari passu in right of payment and right of security with the Liens securing all other Parity Indebtedness and (ii) senior in right of payment and right of security to the Liens securing all Subordinate Indebtedness. The obligations of the Borrower to pay WIFIA Debt Service under this Agreement and the WIFIA Bond constitute Parity Indebtedness; provided that the WIFIA Bond is not secured by a Bond Reserve Account and the WIFIA Credit Provider shall have no Lien on any bond reserve subaccount established in connection with any other Parity Indebtedness. Neither the attachment, validity, enforceability or priority of the Liens on the Net Revenues granted pursuant to the terms hereof is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vii) (Conditions Precedent – Conditions Precedent to Effectiveness).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws.

(i) The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§ 3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. § 3914 (relating to American iron and steel products).
(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower’s knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(iv) The Borrower is not (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has not violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds of the WIFIA Credit Facility or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. The WIFIA Credit Facility and the other Outstanding Parity Indebtedness issued for the Project have received an Investment Grade Rating, one (1) of which is a public rating, from at least two (2) Nationally Recognized Rating Agencies, written evidence of such ratings has been provided to the WIFIA Credit Provider prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document (excluding Principal Project Contracts), has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date other than approval of the transcript related to the issuance and registration of the WIFIA Bond pursuant to the requirements set forth in K.S.A. 10-108 and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.
(n) **Principal Project Contracts.** Attached as **Schedule 12(n)** *(Principal Project Contracts)* is a list of the Principal Project Contracts. With respect to each Principal Project Contract that has been entered into on or prior to any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied and (z) the Borrower has delivered to the WIFIA Credit Provider a fully executed, complete and correct copy of each such Principal Project Contract, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower’s knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any Principal Project Contract, and to the knowledge of the Borrower no other party to any Principal Project Contract is in breach of any material term therein or in default thereunder.

(o) **Information.** The information furnished by, or on behalf of, the Borrower to the WIFIA Credit Provider, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and the Annual Budget or financial plan delivered pursuant to Section 16(a) *(Reporting Requirements – Annual Budget; Financial Plan)* which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished.

(p) **Environmental Matters.** The Borrower is in compliance with all laws applicable to the Utility (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Utility (including the Project) (collectively, the “**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Credit Provider all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) **Sufficient Rights.** The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Utility (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Utility (including the Project). As of any date on which this representation and warranty is made, the
Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the Utility (including the Project) and to perform its obligations under the Principal Project Contracts to which it is a party.

(r) **Insurance.** The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower’s self-insurance program is actuarially sound.

(s) **No Liens.** Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Net Revenues, the Utility, the Project, the Gross Revenues, the properties or assets in relation to the Project, or the Borrower’s respective rights in any of the foregoing.

(t) **Financial Statements.** Each income statement, balance sheet and statement of operations and cash flows (collectively, “Financial Statements”) delivered to the WIFIA Credit Provider pursuant to Section 16(b) (Reporting Requirements – Annual Financial Statements) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the periods to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(u) **Securities Laws.** Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws, and the WIFIA Bond Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

(v) **Taxes.** The Borrower has (i) filed all tax returns required by applicable laws to be filed by it and (ii) paid all taxes payable by it that have become due pursuant to such tax returns and all other material taxes and assessments payable by it that have become due (other than those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP).

(w) **Sufficient Funds.** The amount of the WIFIA Credit Facility, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Base Case Financial Model and the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(x) **Sovereign Immunity.** An action, suit or proceeding may be brought or maintained against the Borrower, either upon a contract made by the Borrower within the scope of its authority, including this Agreement or any of the other Related Documents to which the
Borrower is a party, or for injury suffered by the WIFIA Credit Provider arising from any act or omission of the Borrower.

(y) **Patriot Act.** The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(z) **No Federal Debt.** The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. **Representations and Warranties of WIFIA Credit Provider.** The WIFIA Credit Provider represents and warrants that:

(a) **Power and Authority.** The WIFIA Credit Provider has all requisite power and authority to make the WIFIA Credit Facility and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) **Due Execution; Enforceability.** The Related Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Credit Provider, and are legally valid and binding agreements of the WIFIA Credit Provider, enforceable in accordance with their terms.

(c) **Officers’ Authorization.** The officers of the WIFIA Credit Provider executing each of the Related Documents to which the WIFIA Credit Provider is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Credit Provider.

**ARTICLE V**

**COVENANTS**

Section 14. **Affirmative Covenants.** The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Credit Provider no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Credit Provider waives compliance in writing:

(a) **Rate Covenant.**

(i) The Borrower, in accordance with and subject to applicable law, shall fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Utility as will produce Gross Revenues sufficient to: (A) pay the Current Expenses; (B) pay the Debt Service Requirements on the Utility Indebtedness as and when the same become due at the Maturity thereof or on any Interest Payment Date; (C) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility as provided in the Bond Resolutions; and (D) enable the Borrower to have in each Borrower Fiscal Year, a Debt Service Coverage Ratio of not less than (1) 1.20 on all Parity Indebtedness at the time Outstanding; (2) 1.00 on all Subordinate Indebtedness at the time Outstanding; (3) 1.00 on all General Obligation
Indebtedness at the time Outstanding; and (4) 1.00 with respect to the Payment to the City; provided that, in determining the Net Revenues for purposes of the calculation of the Debt Service Coverage Ratio, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable Borrower Fiscal Year, as determined by the Consultant, may be taken into account, and that, without giving effect to any such adjustments from rate increases, the Debt Service Coverage Ratio shall be not less than 1.00 of the current Borrower Fiscal Year’s Debt Service Requirements for all Utility Indebtedness.

(ii) The Borrower shall, from time to time as often as necessary, in accordance with and subject to applicable law, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues will be sufficient to cover the obligations under the provisions of the Bond Resolutions. If in any Borrower Fiscal Year, Net Revenues are an amount less than as provided in Section 14(a)(i) (Affirmative Covenants – Rate Covenant), the Borrower will make adjustments to such rates, fees and charges to bring the Utility into compliance with this covenant. It shall be the policy of the Borrower that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues with respect to Utility Indebtedness issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

(b) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Net Revenues (whether now existing or hereafter arising) granted to the WIFIA Credit Provider for its benefit pursuant to the WIFIA Credit Documents, or intended so to be granted pursuant to the WIFIA Credit Documents, or which the Borrower may become bound to grant. The Borrower shall at all times maintain the Net Revenues free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the WIFIA Credit Documents, other than as permitted by the Bond Resolutions, including this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Net Revenues granted pursuant to the WIFIA Credit Documents for the benefit of the WIFIA Credit Provider against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Credit Facility solely for purposes permitted by applicable law and under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, the Governmental Approvals in connection with the Project, and the prudent utility practice.
(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the Utility (including the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the most recent Annual Budget or financial plan delivered by the Borrower pursuant to Section 16(a) (Reporting Requirements – Annual Budget; Financial Plan) (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Utility (including the Project)) and (ii) maintain the Utility (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business and the operation and maintenance of the Project.

(f) Insurance; Net Proceeds.

(i) The Borrower shall carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the Event of Loss, the Borrower shall use the Net Proceeds of such insurance to repair, reconstruct or replace the damaged or destroyed property, or if such repair, reconstruction or replacement is unnecessary, then such Net Proceeds shall be used in redeeming or paying off Outstanding Utility Indebtedness, in accordance with their call provisions. The Borrower also shall carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State’s tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the Borrower may establish a self-insurance program which shall provide substantially the same protection for the Owners.

(ii) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers’ compensation insurance, to reflect the WIFIA Credit Provider as an additional insured to the extent of its insurable interest.

(iii) Promptly upon request by the WIFIA Credit Provider, the Borrower shall make available for inspection at the place of business of such underlying policy holder copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Project. All such policies shall be available at all reasonable times for inspection by the WIFIA Credit Provider, its agents and representatives.
(g) **Maintain Legal Structure.** The Borrower shall maintain its existence as a city of the first class organized and existing under its Organizational Documents and the laws of the State.

(h) **Utility Funds and Accounts; Authorized Investments.**

(i) The Borrower shall maintain the Revenue Fund in accordance with the terms hereof and the other WIFIA Credit Documents. All Gross Revenues received shall be deposited into the Revenue Fund when and as received in trust for the benefit of the holders of the Utility Indebtedness, subject to the application of Gross Revenues in accordance with the Flow of Funds.

(ii) **Deposits and Investment of Moneys.**

(A) Moneys in each of the Funds and Accounts shall be deposited and shall be adequately secured as provided by the laws of the State.

(B) Moneys held in any Fund or Account may be invested in accordance with the Bond Resolutions, in Authorized Investments; provided that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such Fund or Account was established; provided, further, that Authorized Investments in the Bond Reserve Account shall have an average aggregate weighted term to maturity not greater than five years. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account. All earnings on investments held in the Bond Reserve Account shall accrue to and become a part of the Bond Reserve Account until the amount on deposit in the Bond Reserve Account shall aggregate the Bond Reserve Requirement; thereafter, all such earnings shall be credited to the Principal and Interest Account. All earnings on investments held in the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until the amount on deposit in the Depreciation and Replacement Account shall aggregate the Depreciation and Replacement Requirement; thereafter, all such earnings shall be credited to the Revenue Fund.

(C) The Value of any Fund or Account shall be determined at the end of each calendar month. Such valuation shall also be made in conjunction with redemption of any Utility Indebtedness.

(i) **Establishment and Ratification of Funds and Accounts.**

(i) Simultaneously with the issuance of the WIFIA Bond, there shall be created within the Treasury of the Borrower (a) a Principal and Interest Subaccount for the WIFIA Bond (the “**Principal and Interest WIFIA Subaccount**”) and (b) a Water Utility Projects Fund for Taxable Water and Sewer Utility Revenue Bond, Series 2020B (WIFIA). Such Funds and Accounts shall be administered in accordance with the provisions of the WIFIA Credit Documents so long as the WIFIA Bond is Outstanding. Amounts on deposit in the Principal and Interest WIFIA Subaccount shall be applied solely to pay the principal
and interest due with respect to the WIFIA Credit Facility and for no other purpose. Amounts on deposit in the Water Utility Projects Fund for Taxable Water and Sewer Utility Revenue Bond, Series 2020B (WIFIA) shall be applied solely to pay Eligible Project Costs and for no other purpose. The Funds and Accounts referred to in this Section 14(i)(i) shall be administered in accordance with the provisions of the WIFIA Bond Resolution.

(ii) The following separate Funds and Accounts created and established in the Treasury of the Borrower are hereby ratified and confirmed by the Borrower and each such Fund and Account is in full force and effect:

(A) Water and Sewer Utility Revenue Fund (the “Revenue Fund”);
(B) Water and Sewer Utility Bond Reserve Account (the “Bond Reserve Account”);
(C) Water and Sewer Utility Depreciation and Replacement Account (the “Depreciation and Replacement Account”);
(D) Water and Sewer Utility Improvement Account (the “Improvement Account”); and
(E) Water and Sewer Utility Principal and Interest Account (the “Principal and Interest Account”).

The Funds and Accounts referred to in this Section 14(i)(ii) shall be administered in accordance with the provisions of Bond Resolutions so long as the Utility Indebtedness is Outstanding.

(j) Compliance with Laws.

(i) The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(j) (including with respect to the Davis-Bacon Act requirements).
(iii) No use of proceeds of the WIFIA Credit Facility or any other transaction contemplated by this Agreement or any other Related Document shall violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) **Material Obligations.** The Borrower shall pay its material obligations payable from Gross Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Gross Revenues or other assets of the Utility, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the Utility or any part thereof or on the Gross Revenues or the Net Revenues; provided that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(l) **SAM Registration.** The Borrower shall (i) obtain prior to the Effective Date (and provide such registration information to the WIFIA Credit Provider) and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date until the Final Disbursement Date, provide to the WIFIA Credit Provider evidence of such active registration status with no active exclusions reflected in such registration.

(m) **DUNS Number.** The Borrower shall (i) obtain prior to the Effective Date (and provide such number to the WIFIA Credit Provider) and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “DUNS Number”) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Credit Provider evidence of the continuing effectiveness of such DUNS Number, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider under this Agreement have been irrevocably paid in full in immediately available funds.

(n) **Immunity.** To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Credit Document.

(o) **Accounting and Audit Procedures.**

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Gross Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, WIFIA Credit Facility requisitions submitted, WIFIA Credit Facility proceeds received, payments made by the Borrower with regard to
the Project, and other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Credit Facility, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 for 2020 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Credit Provider, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Credit Facility, to the WIFIA Credit Provider, or the designee thereof, for any such project or programmatic audit.

(p) Access: Records.

(i) So long as the WIFIA Credit Facility or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Credit Facility shall have been paid in full, the WIFIA Credit Provider shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower’s expense, and to discuss the Borrower’s affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Credit Provider the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(p) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Credit Provider may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Credit Provider in connection with the WIFIA Credit Provider’s exercise of its rights under this Section 14(p) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all files relating to the Project and the WIFIA Credit Facility until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA Credit Facility or this Agreement is finally resolved or, if the WIFIA Credit Provider has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Credit Provider and the Borrower. The Borrower shall provide to the WIFIA Credit Provider in a timely manner all records and documentation relating to the Project that the WIFIA Credit Provider may reasonably request from time to time.
(q) **Additional Rights.** In the event that the Borrower shall, directly or indirectly, enter into, consent to, or otherwise grant any Contractual Obligation, which provides any counterparty to such Contractual Obligation with rights to accelerate any Utility Indebtedness or other obligations (the “**Additional Rights**”), then such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the WIFIA Credit Provider shall have the benefit of such Additional Rights including the right to accelerate the WIFIA Credit Facility pursuant to Section 17(b) (Events of Default and Remedies) or Section 17(c)(vii) (Events of Default and Remedies). The Borrower shall promptly, upon entering into or otherwise consenting to a Contractual Obligation containing such Additional Rights, notify the WIFIA Credit Provider of such Contractual Obligation and enter into an amendment to this Agreement to incorporate such Additional Rights herein; provided that the WIFIA Credit Provider shall have the benefit of such Additional Rights even if the Borrower fails to provide such notice or enter into an amendment hereto to incorporate such Additional Rights into this Agreement. As of the Effective Date, the Borrower does not have Contractual Obligations that contain Additional Rights.

Section 15. **Negative Covenants.** The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Credit Provider no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Credit Provider waives compliance in writing:

(a) **Additional Indebtedness.** The Borrower shall not create, incur or suffer to exist (i) any Utility Indebtedness or other obligations the payments of which are senior or prior in right to (A) the payment by the Borrower of the WIFIA Credit Facility and the other Parity Indebtedness or (B) the Lien on the Net Revenues in favor of the WIFIA Credit Provider or (ii) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs, that are secured by a Lien on any assets or property of the Borrower other than the Net Revenues.

(b) **Issuance of Additional Parity Indebtedness.**

(i) The Borrower shall not issue any Additional Parity Indebtedness unless the following conditions are met:

(A) the Borrower shall not be in default in the payment of the Debt Service Requirements on any Parity Indebtedness then Outstanding or in making any payment at the time required to be made into the Funds and Accounts (unless such Additional Parity Indebtedness is being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing;

(B) the Borrower shall have delivered the following:

(1) for issuance of any Long-Term Indebtedness, a certificate signed by the Borrower evidencing that the Debt Service Coverage Ratio on all Parity Indebtedness for the two Borrower Fiscal Years immediately preceding the issuance of such Additional Parity Indebtedness, as reflected by information provided by the Independent
Accountant, shall be not less than 1.20, including such Additional Parity Indebtedness proposed to be issued. In the event that the Borrower has instituted any increase in rates for the use and services of the Utility and such increase shall not have been in effect during the full two (2) Borrower Fiscal Years immediately preceding the issuance of such proposed Additional Parity Indebtedness, the additional Net Revenues which would have resulted from the operation of the Utility during such two (2) preceding Borrower Fiscal Years had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Debt Service Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant;

(2) for issuance of any Short-Term Indebtedness, a certificate signed by the Borrower evidencing any one of the following: (1) the principal amount of all Outstanding Short-Term Indebtedness does not exceed fifteen percent (15%) of the Gross Revenues for the most recently ended Borrower Fiscal Year for which financial information is available from the Independent Accountant; (2) the Short-Term Indebtedness could be incurred assuming it was Long-Term Indebtedness; or (3) the Borrower has received a certificate of a Consultant to the effect that it is such Consultant’s opinion that it is reasonable to assume that the Borrower will be able to refinance such Short-Term Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Short-Term Indebtedness when it is assumed that such Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Short-Term Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement); and

(3) for issuance of any Interim Indebtedness, a certificate signed by the Borrower evidencing either of the following: (1) the Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness or (2) the Borrower has received a certificate of a Consultant to the effect that it is such Consultant’s opinion that it is reasonable to assume that the Borrower will be able to refinance such Interim Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Interim Indebtedness when it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Interim Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement);
(C) the issuance of Additional Parity Indebtedness is permitted by the laws of the State;

(D) with respect to the issuance of Additional Parity Bonds, an additional deposit to the Bond Reserve Account shall be made to bring the Bond Reserve Account to an amount equal to the Bond Reserve Requirement; and

(E) the ordinance and/or resolution authorizing such Additional Parity Indebtedness shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in the Bond Resolutions.

(ii) The Borrower shall have the right, without complying with the provisions of the foregoing terms and conditions of the issuance of Additional Parity Indebtedness, for the purpose of refunding any Parity Indebtedness then Outstanding, and such Additional Parity Indebtedness so issued shall enjoy complete equality of pledge as did the Parity Indebtedness that was refunded.

(iii) Additional Parity Indebtedness shall stand on a parity with other Parity Indebtedness and shall enjoy complete equality or lien on and claim against the Net Revenues, and the Borrower may make equal provision for the payment of Debt Service Requirements on such Additional Parity Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable debt service accounts and debt service reserve accounts for the payment of the Debt Service Requirements on such Additional Parity Indebtedness and the interest thereon out of moneys in the Revenue Fund.

(c) Issuance of Subordinate Indebtedness. The Borrower shall have the right to issue Subordinate Indebtedness for any lawful purpose related to the operation of and benefiting the Utility and to provide that the Debt Service Requirements on such Subordinate Indebtedness shall be payable out of the Net Revenues, provided that, at the time of the issuance of such Subordinate Indebtedness, the Borrower shall be in default in the performance of any other covenant or agreement contained in the Bond Resolutions (unless such Subordinate Indebtedness shall be issued to cure such default and shall be junior and subordinate to the Parity Indebtedness) so that if at any time the Borrower shall be in default in paying either interest on or principal of the Parity Indebtedness, or the Borrower is in default in payment of Current Expenses, Debt Service Requirements on Parity Indebtedness or transfers required by the Bond Resolutions prior to the payment of Debt Service Requirements on Subordinate Indebtedness, the Borrower shall make no payments of Debt Service Requirements on such Subordinate Indebtedness until such default is cured.

(d) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Credit Provider, (i) extinguish or impair the Liens on the Net Revenues granted pursuant to this Agreement or any other WIFIA Credit Document, (ii) amend, modify, replace or supplement the WIFIA Bond Resolution or the WIFIA Ordinance or permit a waiver of any provision thereof or any other WIFIA Credit Document, (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Credit Provider or could reasonably be expected to result in a Material Adverse Effect, (iv) terminate,
assign or replace any Related Document (other than the replacement of any Principal Project Contract permitted under Section 17(a)(x) (Events of Default and Remedies – Default Under Principal Project Contracts)) in a manner that could adversely affect the WIFIA Credit Provider’s security or could reasonably be expected to have a Material Adverse Effect, or (v) subject to Section 14(q) (Affirmative Covenants – Additional Rights), provide any counterparty to a Contractual Obligation the right to accelerate any Utility Indebtedness or other obligations.

(e) **No Prohibited Liens.** Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Net Revenues, the Utility, the Project, the Gross Revenues, the properties or assets in relation to the Project, or the Borrower’s respective rights in any of the foregoing.

(f) **Restricted Payments and Transfers.** The Borrower shall not permit Gross Revenues, or any Fund or Account or any other fund or account held under the Bond Resolutions, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Utility, except (i) as permitted pursuant to clause (a)(vii) of the Flow of Funds or (ii) with the prior consent of the WIFIA Credit Provider, which consent shall be in the WIFIA Credit Provider’s sole discretion.

(g) **Restrictions on Payment to the City.** If (but only for so long as) any credit rating on any of the Outstanding Parity Indebtedness from a Nationally Recognized Rating Agency ceases to be at least ‘A-’, ‘A3’ or the equivalent rating from a Nationally Recognized Rating Agency, as applicable, or is withdrawn or suspended, the Borrower shall not permit, for any Borrower Fiscal Year, Gross Revenues, or any Fund or Account or any other fund or account held by or on behalf of the Borrower, to be paid or transferred or otherwise applied for the Payment to the City in excess of an amount equal to twenty percent (20%) of the Gross Revenues for such Borrower Fiscal Year, except with the prior consent of the WIFIA Credit Provider, which consent shall be in the WIFIA Credit Provider’s sole discretion.

(h) **Restrictions on Mortgage or Sale of Utility.** The Borrower shall not mortgage, pledge or otherwise encumber the Utility or any part thereof, nor shall it sell, lease or otherwise dispose of the Utility or any material part thereof; provided that the Borrower may:

(i) sell at fair market value any portion of the Utility which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Utility, and in the event of sale, the Borrower shall apply the proceeds to either (A) redemption of Outstanding Utility Indebtedness in accordance with the provisions governing repayment of Utility Indebtedness in advance of Stated Maturity, or (B) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Utility as provided hereunder;

(ii) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Borrower;

(iii) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with Sections
15(a) (Negative Covenants – Additional Indebtedness), 15(b) (Negative Covenants – Issuance of Additional Parity Indebtedness) and 15(c) (Negative Covenants – Issuance of Subordinate Indebtedness), as applicable; or

(iv) sell, lease or convey all or substantially all of the Utility to another entity or enter into a management contract with another entity if:

(A) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Code § 501(c)(3), and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding Utility Indebtedness according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of the WIFIA Credit Documents;

(B) If there remains unpaid any Utility Indebtedness which bears interest that is not includable in gross income under the Code, the Borrower receives an opinion of bond counsel to the Borrower, in form and substance satisfactory to the Borrower, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Utility Indebtedness, would not cause the interest payable on such Utility Indebtedness to become includable in gross income under the Code;

(C) The Borrower receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under the WIFIA Credit Documents;

(D) Such transferee entity possesses such licenses to operate the Utility as may be required if it is to operate the Utility;

(E) The Borrower receives an opinion of bond counsel to the Borrower, in form and substance satisfactory to the Borrower, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section 15(h); and

(F) To the extent any Utility Indebtedness is insured by any Bond Insurance Policy, the Borrower receives the written consent of the Bond Insurer.

(i) Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except to the extent permitted by law and with thirty (30) days’ prior written notice to the WIFIA Credit Provider.

(j) Hedging. Other than Hedging Transactions, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or
“collar” transactions, futures, or any other hedging transaction without the prior written consent of the WIFIA Credit Provider.

Section 16. Reporting Requirements.

(a) Annual Budget; Financial Plan.

(i) The Borrower shall provide to the WIFIA Credit Provider not later than ninety (90) days after the beginning of each Borrower Fiscal Year (A) the Annual Budget or (B) a financial plan either (1) in the form of, and containing substantially similar information to, Exhibit L (Form of Financial Plan), or (2) demonstrating to the satisfaction of the WIFIA Credit Provider that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and including the Borrower’s capital improvement plan, major maintenance plan, projected rates and charges, projected Net Revenues, projected debt outstanding and annual debt service, and projected operation and maintenance costs of the Utility for a reasonable projection period consistent with the Borrower’s operating and financial planning.

(ii) The delivery of the Annual Budget or the financial plan pursuant to Section 16(a)(i) (Reporting Requirements – Annual Budget; Financial Plan) to the WIFIA Credit Provider shall constitute a representation and warranty by the Borrower that such documents reflect the Borrower’s reasonable expectations, using assumptions that the Borrower believes to be reasonable, of the Utility’s expected operations, including capital costs, capital spending schedule, rates and revenues or charges (if applicable), Gross Revenues, Current Expenses, major maintenance costs, financing structure and other scheduling, cost and financing elements.

(b) Annual Financial Statements. The Borrower shall deliver to the WIFIA Credit Provider, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year:

(i) a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); provided that the failure of the Borrow to furnish the audited financial statements required herein within such one hundred eighty (180)-day period shall not constitute a Default or Event of Default so long as the Borrower furnishes to the WIFIA Credit Provider such financial statements within ninety (90) days after the end of such period; and
(ii) together with each delivery of such annual audited financial statements, a certificate signed by the Borrower’s Authorized Representative, stating whether or not, to the Borrower’s knowledge, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

(c) Construction Reporting. The WIFIA Credit Provider shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation or other information as shall be requested by the WIFIA Credit Provider or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Credit Provider, on a quarterly basis, a report on the status of the Project, substantially in the form of Exhibit J (Form of Quarterly Report). The report shall be executed by the Borrower’s Authorized Representative and, for any quarter, shall be delivered to the WIFIA Credit Provider within thirty (30) days of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Credit Provider of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the Utility (if any), and a certification of the Borrower’s Authorized Representative that the new date could not reasonably be expected to result in a Material Adverse Effect.

(d) Public Benefits Report. The Borrower shall deliver to the WIFIA Credit Provider a report, in the form of Exhibit K (Form of Public Benefits Report) (the “Public Benefits Report”), (i) on or before the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described under this Section 16(d) may be made publicly available by the WIFIA Credit Provider at its discretion.

(e) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Credit Provider with written notification at least thirty (30) days prior to instituting any increase to the aggregate Total Project Costs in an amount equal to or greater than ten percent (10%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the Utility. The Borrower’s notice shall demonstrate that the proposed increase is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Credit Provider’s security or the Borrower’s ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.
Operations and Maintenance. The WIFIA Credit Provider shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project’s operations and, as the WIFIA Credit Provider may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The Borrower agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation, or other information requested by the WIFIA Credit Provider. The WIFIA Credit Provider has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(f). On or prior to the Substantial Completion Date, the Borrower shall deliver to the WIFIA Credit Provider an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Credit Provider.

Notices.

(i) The Borrower shall, within fifteen (15) days (or such other time as specified below) after the Borrower learns of the occurrence, give the WIFIA Credit Provider notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in Exhibit I (Form of Certificate of Substantial Completion);

(B) Defaults; Events of Default: any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower that could reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower’s plans to remedy or mitigate the effects of such failure or delay;
(E) **Environmental Notices:** any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) **Amendments:** except as otherwise agreed by the WIFIA Credit Provider in writing, copies of fully executed amendments, modifications, replacements or supplements to any Related Document within ten (10) days following execution thereof; provided that such notice can be accomplished through an email to the WIFIA Credit Provider that includes a link to the posting of the relevant documents on EMMA;

(G) **Related Document Defaults:** any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided that such notice can be accomplished through an email to the WIFIA Credit Provider that includes a link to the posting of the relevant documents on EMMA;

(H) **Uncontrollable Force:** the occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Project;

(I) **Ratings Changes:** any change in the rating assigned to the WIFIA Credit Facility or any other Utility Indebtedness, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided that such notice can be accomplished through an email to the WIFIA Credit Provider that includes a link to the posting of the relevant documents on EMMA;

(J) **2 C.F.R. § 180.350 Notices:** any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(K) **Postings on EMMA:** the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any Outstanding Utility Indebtedness relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through an email to the WIFIA Credit Provider that includes a link to the posting of the relevant document on EMMA;

(L) **Other Adverse Events:** the occurrence of any other event or condition, including any notice of breach from a contract counterparty or any holder of any Utility Indebtedness, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.
(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (Substantial Completion), (F) (Amendments), (I) (Ratings Changes) (in the case of a ratings upgrade), or (K) (Postings on EMMA)), the Borrower’s Authorized Representative shall provide a statement to the WIFIA Credit Provider setting forth the actions the Borrower proposes to take with respect thereto. The Borrower shall also provide the WIFIA Credit Provider with any further information reasonably requested by the WIFIA Credit Provider from time to time concerning the matters described in clause (i) above.

(h) Requested Information. The Borrower shall, at any time while the WIFIA Credit Facility remains outstanding, promptly deliver to the WIFIA Credit Provider such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Utility, the Project, the Net Revenues or the Gross Revenues as the WIFIA Credit Provider may from time to time reasonably request.

ARTICLE VI
EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

(a) An “Event of Default” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Credit Facility (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (Payment of Principal and Interest)) when and as the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a “Payment Default”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Credit Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Credit Provider of written notice thereof or (B) the Borrower’s knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Credit
Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Credit Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 17(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (Representations and Warranties of Borrower – No Debarment), Section 12(j) (Representations and Warranties of Borrower – Compliance with Laws), or Section 12(y) (Representations and Warranties of Borrower – Patriot Act), (C) in the reasonable determination of the WIFIA Credit Provider, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Credit Provider, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Acceleration of Utility Indebtedness. Any acceleration shall occur of the maturity of any Utility Indebtedness, or any such Utility Indebtedness shall not be paid in full upon the final maturity thereof.

(v) Cross Default with Utility Indebtedness Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under any Utility Indebtedness Document (other than any WIFIA Credit Document), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Utility Indebtedness Document (as the case may be) with respect to such default, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vi) Material Adverse Judgment. Any final, non-appealable judgment related to the Net Revenues, the Gross Revenues, the Utility or the Project shall be entered against the Borrower which has a Material Adverse Effect.

(vii) Occurrence of Bankruptcy Related Event. A Bankruptcy Related Event shall occur.

(viii) Invalidity of WIFIA Credit Documents. (A) Any WIFIA Credit Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Credit Document to which it is a party or denies it has any further liability under any WIFIA Credit Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Credit Document to which it is a party; (B) this Agreement or any other applicable WIFIA Credit Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding lien on any material portion of the Net Revenues other than as a result of actions or a failure to act by, and within the control of, the WIFIA
Credit Provider, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the priority of the WIFIA Credit Provider’s Lien on the Net Revenues or in the value of the Net Revenues.

(ix) Development Default. A Development Default shall occur.

(x) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided that no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(x) if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (A) entered into with another counterparty that (1) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or is otherwise reasonably acceptable to the WIFIA Credit Provider), (2) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (3) is not, at the time of such replacement, in violation of any applicable laws; (B) on substantially the same terms and conditions as the Principal Project Contract being replaced (or is otherwise reasonably acceptable to the WIFIA Credit Provider) and (C) effective as of the date of termination of the Principal Project Contract being replaced.

(xi) Cessation of System Operations. Following the Substantial Completion Date, operation of the Utility shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) or (B) the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay), debt service for all Utility Indebtedness (including WIFIA Debt Service) and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Credit Provider hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Credit Facility shall automatically be deemed terminated, and, if the WIFIA Credit Provider has a right to accelerate the WIFIA Credit Facility pursuant to Section 14(q) (Affirmative Covenants – Additional Rights), the Outstanding WIFIA Credit Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond and the other WIFIA Credit Documents, shall automatically become
immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(c) Upon the occurrence of any Event of Default, the WIFIA Credit Provider, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) the WIFIA Credit Provider may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Credit Facility;

(ii) the WIFIA Credit Provider may cease permitting interest on the WIFIA Credit Facility to be capitalized;

(iii) the WIFIA Credit Provider may apply the Default Rate provisions of Section 6 (Interest Rate);

(iv) the WIFIA Credit Provider may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Credit Provider and notify other departments and agencies of such default;

(v) the WIFIA Credit Provider shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable;

(vi) subject to the terms of the WIFIA Bond Resolution, the WIFIA Credit Provider shall have all of the rights and remedies of a creditor and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Credit Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Credit Documents; provided that, notwithstanding anything to the contrary set forth in any WIFIA Credit Document, without the consent of any other Person, the WIFIA Credit Provider shall be entitled to take such action, including a mandamus action against the Borrower and its officials, to enforce the performance by the Borrower of any provisions of this Agreement; and

(vii) if the WIFIA Credit Provider has a right to accelerate the WIFIA Credit Facility pursuant to Section 14(q) (Affirmative Covenants – Additional Rights), the WIFIA Credit Provider may declare the Outstanding WIFIA Credit Balance to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond and the other WIFIA Credit Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.
(d) No action taken pursuant to this Section 17 shall relieve the Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Credit Documents, all of which shall survive any such action; provided that all amounts payable to the WIFIA Credit Provider under the WIFIA Credit Documents, including this Agreement, shall be payable solely from the Net Revenues.

ARTICLE VII
MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Credit Provider makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Credit Provider be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the Utility (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Credit Provider or the Borrower or any Person executing this Agreement or any of the other WIFIA Credit Documents shall be personally liable on this Agreement or such other WIFIA Credit Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Credit Provider, solely by virtue of the WIFIA Credit Facility, and the Borrower agrees, subject to Statutory Limitations, to indemnify and hold the WIFIA Credit Provider, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Credit Facility, and that no third party creditor of the Borrower shall have any right against the WIFIA Credit Provider with respect to the WIFIA Credit Facility made pursuant to this Agreement.

Section 21. Borrower’s Authorized Representative. The Borrower shall at all times have appointed a Borrower’s Authorized Representative by designating such Person or Persons from time to time to act on the Borrower’s behalf pursuant to a written certificate furnished to the WIFIA Credit Provider and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22. WIFIA Credit Provider’s Authorized Representative. The WIFIA Credit Provider hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (Notices), to serve as the WIFIA Credit Provider’s Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Credit Provider’s Authorized Representative. The WIFIA Credit Provider shall provide notice to the Borrower within a reasonable time period following the succession.
Section 23. **Servicer.** The WIFIA Credit Provider may from time to time designate another entity or entities to perform, or assist the WIFIA Credit Provider in performing, the duties of the Servicer or specified duties of the WIFIA Credit Provider under this Agreement and the WIFIA Bond. The WIFIA Credit Provider shall give the Borrower (with a copy to the Paying Agent and Bond Registrar) written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Credit Provider shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Credit Provider shall have delegated to such Servicer. The WIFIA Credit Provider may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. **Amendments and Waivers.** No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Bond shall in any event be effective without the prior written consent of each of the parties hereto.

Section 25. **Governing Law.** This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. **Severability.** In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower’s rights or obligations hereunder or under the WIFIA Bond nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Credit Provider.

Section 28. **Remedies Not Exclusive.** No remedy conferred herein or in the WIFIA Bond or reserved to the WIFIA Credit Provider is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the WIFIA Bond or now or hereafter existing at law or in equity or by statute.

Section 29. **Delay or Omission Not Waiver.** No delay or omission of the WIFIA Credit Provider to exercise any right or remedy provided hereunder or under the WIFIA Bond upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or the WIFIA Bond or by law to the WIFIA Credit Provider may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Credit Provider.
Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (Notices) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Credit Provider:
Environmental Protection Agency
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to Borrower:
City of Wichita, Kansas
455 N. Main Street
Wichita, KS 67202
Attention: Director of Public Works & Utilities
Email: AKing@wichita.gov

If to the Paying Agent and Bond Registrar:
Security Bank of Kansas City
Corporate Trust Department
200 W. Douglas, Suite 612
Wichita, KS 67202
Email: bmosher@securitybankkc.com

Unless otherwise instructed by the WIFIA Credit Provider’s Authorized Representative, all notices to the WIFIA Credit Provider should be made by email to the email address noted above for the WIFIA Credit Provider. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Credit Provider’s Authorized Representative, with respect to notices to the WIFIA Credit Provider or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.
Section 32. **Indemnification.** Subject to Statutory Limitations, the Borrower shall, to the extent permitted by law, indemnify the WIFIA Credit Provider and any official, employee, agent, advisor or representative of the WIFIA Credit Provider (each such Person being herein referred to as an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Credit Facility or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Credit Provider shall assert, and each of the Borrower and the WIFIA Credit Provider hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Credit Facility or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. **Sale of WIFIA Credit Facility.** The WIFIA Credit Provider shall not sell the WIFIA Credit Facility at any time prior to the Substantial Completion Date. After such date, the WIFIA Credit Provider may sell the WIFIA Credit Facility to another entity or reoffer the WIFIA Credit Facility into the capital markets only in accordance with the provisions of this
Section 33. Such sale or reoffering shall be on such terms as the WIFIA Credit Provider shall deem advisable; provided that no such sale shall obligate the Borrower to provide any disclosure materials or make any representations or agreements in connection with such sale or reoffering. However, in making such sale or reoffering the WIFIA Credit Provider shall not change the terms and conditions of the WIFIA Credit Facility without the prior written consent of the Borrower in accordance with Section 24 (Amendments and Waivers). The WIFIA Credit Provider shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Credit Facility, written notice to the Borrower of the WIFIA Credit Provider’s intention to consummate such a sale or reoffering; provided that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Credit Provider to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Credit Provider, for any reason, does not sell the WIFIA Credit Facility.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Credit Balance, together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 32 (Indemnification), the reporting and record keeping requirements of Section 14(p) (Affirmative Covenants – Access; Records) and the payment requirements of Section 10 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 36. Integration. This Agreement, together with the other WIFIA Credit Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page intentionally left blank; signature pages immediately follow.]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF WICHITA, KANSAS,
by its authorized representative

By: _____________________________
Name: __________________________
Title: ___________________________
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency

By: ______________________________
Name: Andrew R. Wheeler
Title: Administrator
## SCHEDULE I

### PROJECT BUDGET

<table>
<thead>
<tr>
<th>Sources</th>
<th>Percent (%)</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>WIFIA Loan</td>
<td>49%</td>
<td>$280,860,714</td>
</tr>
<tr>
<td>SRF Loan</td>
<td>47%</td>
<td>$267,342,000</td>
</tr>
<tr>
<td>Water Utility Funds</td>
<td>2%</td>
<td>$11,620,317</td>
</tr>
<tr>
<td>Revenue Bonds</td>
<td>2%</td>
<td>$13,362,100</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td><strong>100%</strong></td>
<td><strong>$573,185,131</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Element</th>
<th>Description</th>
<th>Estimated Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dev. Ph.</td>
<td>Development Phase Activities</td>
<td>$555,631</td>
</tr>
<tr>
<td>NWWTF</td>
<td>Phase 1 – Preliminary Design and development of Cost Proposal for NWWTF</td>
<td>$5,999,999</td>
</tr>
<tr>
<td></td>
<td>Phase 2 – Final Design and Construction of NWWTF</td>
<td>$494,255,000</td>
</tr>
<tr>
<td>Elect. Service</td>
<td>Design/Construction of Electrical Service Infrastructure</td>
<td>$11,650,000</td>
</tr>
<tr>
<td>Other Project Related</td>
<td>Land Acquisition Costs</td>
<td>$10,400,000</td>
</tr>
<tr>
<td>Costs - Add Alternates</td>
<td>Hess Reservoir Improvements</td>
<td>$12,000,000</td>
</tr>
<tr>
<td></td>
<td>Right-of-way and Site Improvements</td>
<td>$1,750,000</td>
</tr>
<tr>
<td>OSR</td>
<td>Phase 1 – Owner’s Site Representative</td>
<td>$789,886</td>
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<tr>
<td></td>
<td>Phase 2 - Owner’s Site Representative</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Financial</td>
<td>SRF Capitalized Interest</td>
<td>$15,384,615</td>
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<tr>
<td></td>
<td>WIFIA Application Costs</td>
<td>$400,000</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td></td>
<td><strong>$573,185,131</strong></td>
</tr>
<tr>
<td><strong>Total Eligible Project Costs</strong></td>
<td></td>
<td><strong>$573,185,131</strong></td>
</tr>
<tr>
<td><strong>Total Project Costs</strong></td>
<td></td>
<td><strong>$573,185,131</strong></td>
</tr>
</tbody>
</table>
# SCHEDULE II
CONSTRUCTION SCHEDULE

<table>
<thead>
<tr>
<th>Project Element</th>
<th>Design</th>
<th>Construction Start</th>
<th>Substantial Completion (Contractual Concept)</th>
<th>Final Completion (WIFIA Substantial Completion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Phase</td>
<td>January 2018</td>
<td>NA</td>
<td>NA</td>
<td>July 2018</td>
</tr>
<tr>
<td>NWWT Phase 1 (Preliminary Design)</td>
<td>February 2019</td>
<td>NA</td>
<td>NA</td>
<td>December 2019</td>
</tr>
<tr>
<td>NWWT Phase 2 (Design and Construction)</td>
<td>January 2020</td>
<td>September 2020</td>
<td>September 2024</td>
<td>January 2025</td>
</tr>
<tr>
<td>Electrical Service</td>
<td>January 2021 (Estimate)</td>
<td>July 2021</td>
<td>September 2023</td>
<td>December 2023</td>
</tr>
<tr>
<td>Land Acquisition</td>
<td>October 2019</td>
<td>NA</td>
<td>NA</td>
<td>January 2021</td>
</tr>
<tr>
<td>Hess Reservoir Improvement</td>
<td>Fall 2020 (Estimate)</td>
<td>TBD</td>
<td>September 2024</td>
<td>January 2025</td>
</tr>
<tr>
<td>Right-of-Way and Site Improvements</td>
<td>Fall 2020 (Estimate)</td>
<td>TBD</td>
<td>September 2024</td>
<td>January 2025</td>
</tr>
</tbody>
</table>
### SCHEDULE III

**EXISTING INDEBTEDNESS**

A. **Outstanding Parity Bonds**

<table>
<thead>
<tr>
<th>Agreement/Series</th>
<th>Outstanding Principal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010, issued pursuant to Ordinance No. 48-834 and Resolution No. 10-257, with a final Stated Maturity of October 1, 2030</td>
<td>$795,000</td>
</tr>
<tr>
<td>2. Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011, issued pursuant to Ordinance No. 49-148 and Resolution No. 11-260, with a final Stated Maturity of October 1, 2028</td>
<td>$15,590,000</td>
</tr>
<tr>
<td>3. Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012, issued pursuant to Ordinance No. 49-266 and Resolution No. 12-090, with a final Stated Maturity of October 1, 2032</td>
<td>$12,060,000</td>
</tr>
<tr>
<td>4. Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, dated August 1, 2014, issued pursuant to Ordinance No. 49-786 and Resolution No. 14-188, with a final Stated Maturity of October 1, 2030</td>
<td>$22,620,000</td>
</tr>
<tr>
<td>5. Water and Sewer Utility Revenue Bonds, Series 2014B, dated December 1, 2014, issued pursuant to Ordinance No. 49-901 and Resolution No. 14-370, with a final Stated Maturity of October 1, 2034</td>
<td>$10,400,000</td>
</tr>
<tr>
<td>6. Water and Sewer Utility Refunding Revenue Bonds, Series 2015B, dated April 1, 2015, issued pursuant to Ordinance No. 49-975 and Resolution No. 15-086, with a final Stated Maturity of October 1, 2031</td>
<td>$28,625,000</td>
</tr>
<tr>
<td>7. Water and Sewer Utility Revenue Bonds, Series 2015C, dated November 1, 2015, issued pursuant to Ordinance No. 50-096 and Resolution No. 15-341, with a final Stated Maturity of October 1, 2035</td>
<td>$20,750,000</td>
</tr>
<tr>
<td>8. Water and Sewer Utility Refunding Revenue Bonds, Series 2015D, dated November 1, 2015, issued pursuant to Ordinance No. 50-097 and Resolution No. 15-342, with a final Stated Maturity of October 1, 2032</td>
<td>$19,165,000</td>
</tr>
<tr>
<td>9. Water and Sewer Utility Revenue Bonds, Series 2016A, dated August 1, 2016, issued pursuant to Ordinance No.</td>
<td>$21,355,000</td>
</tr>
</tbody>
</table>
50-294 and Resolution No. 16-200, with a final Stated Maturity of October 1, 2036

10. Water and Sewer Utility Refunding Revenue Bonds, Series 2016B, dated August 1, 2016, issued pursuant to Ordinance No. 50-295 and Resolution No. 16-201, with a final Stated Maturity of October 1, 2039

11. Water and Sewer Utility Revenue Bonds, Series 2017A, dated June 1, 2017, issued pursuant to Ordinance No. 50-536 and Resolution No. 17-187, with a final Stated Maturity of October 1, 2037

12. Water and Sewer Utility Refunding Revenue Bonds, Series 2017B, dated December 1, 2017, issued pursuant to Ordinance No. 50-650 and Resolution No. 17-454, with a final Stated Maturity of October 1, 2030

13. Water and Sewer Utility Revenue Bonds, Series 2019A, dated March 1, 2019, issued pursuant to Ordinance No. 50-925 and Resolution No. 19-055, with a final Stated Maturity of October 1, 2039

14. Water and Sewer Utility Refunding Revenue Bonds, Series 2019B (Taxable Under Federal Law), dated December 1, 2019, issued pursuant to Ordinance No. 51-139 and Resolution No. 19-431, with a final Stated Maturity of October 1, 2030

$91,755,000

$61,115,000

$19,355,000

$44,465,000

$49,910,000

B. Outstanding Parity Obligations

None.

C. General Obligation Indebtedness

<table>
<thead>
<tr>
<th>Agreement/Series</th>
<th>Outstanding Principal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General Obligation Bonds, Series 811, dated October 1, 2014, issued pursuant</td>
<td>$110,710,000</td>
</tr>
<tr>
<td>to Ordinance No. 49-830 and Resolution No. 14-276, with a final Stated Maturity</td>
<td></td>
</tr>
<tr>
<td>of June 1, 2034</td>
<td></td>
</tr>
</tbody>
</table>

D. Other Utility Indebtedness of the Borrower

None.
SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV
Use of Pay.gov to make payments to EPA is the preferred electronic payment method. In Pay.gov, users can track their payments to EPA and schedule recurring or automatic payments. Although it is not mandatory to register for a user id to access and use Pay.Gov, registration is recommended to have access to all Pay.gov system functionality.

1. Access the Pay.gov system by going to https://www.pay.gov and search for WIFIA or click on the following hyperlink to directly launch the WIFIA Loan Collection & Fees Form.
2. Provide the following information on your payment to ensure proper credit:
   - Remitter's contact phone number
   - Company/Organization Name as it appears on EPA document
   - Complete address, including city, state, zip code
   - Project Name
   - Loan Number: this is EPA WIFIA Loan number, NOT the remitter's number
   - From the “Payment Type” drop down menu select the type from the Fee Notice letter
   - Other Description: please note the reference number from the Fee Notice letter
3. Follow the remaining on-screen instructions to successfully process the payment to EPA.
4. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 2 FEDWIRE
Wire transfers made through FedWire are an alternative electronic wire transfer initiated between the borrower and its organization’s financial institution (bank) and EPA. FedWire is typically used to initiate financial institution (bank) generated “same day” electronic payments.

Borrowers must work within the processing guidelines established by their bank, which may include processing cutoffs, transaction fees, and other bank requirements.

Banks that do not maintain an account at a Federal Reserve Bank (FRB) must use the services of correspondent banks that do have an FRB account. To process a payment using FedWire please:

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 3 CHECK PAYMENTS (Not allowed for payment of Principal or Interest)

1. Send checks to:
   - USPS Mailing Address
     Laura Collier
     USEPA Headquarters
     William Jefferson Clinton Building
     1200 Pennsylvania Avenue, N. W.
     Mail Code: 2733R
     Washington, DC 20460
   - Courier Address (e.g., FEDEX, UPS)
     Courier Address
     Laura Collier
     Ronald Reagan Building
     1300 Pennsylvania Ave., N.W.
     Rm # 81164
     Washington, DC 20004

2. Provide the following information on your check payment to ensure proper credit please:
   - Company/remitter's name (borrower name as it appears on EPA document)
   - Complete address, including city, state, zip
   - Remitter’s point of contact person and phone number
   - EPA WIFIA Loan # (NOT the remitter's number)
- Payment Type/Reason for payment from the Fee Notice letter
- Reference number from the Fee Notice letter.

3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been submitted.

**NOTES:**

1. When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

2. As of the Effective Date, EPA is temporarily unable to accept paper checks due to the COVID-19 response. Prior to sending any paper check, contact EPA to determine whether paper checks are acceptable for payment at the time.

---

**Attachment 1 – FedWire Payment Form and Instructions**

**U.S. Environmental Protection Agency**

**FUNDS TRANSFER DEPOSIT**

**INSTRUCTIONS:** Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.

**TO**

<table>
<thead>
<tr>
<th>PC</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>021030004</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FROM</th>
<th>SENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL</td>
<td></td>
</tr>
<tr>
<td>REF</td>
<td></td>
</tr>
<tr>
<td>AMOUNT</td>
<td>$</td>
</tr>
</tbody>
</table>

| RECEIVER | TREAS NYC/(68010099)EPA |

**THIRD PARTY INFORMATION**

The above FedWire form presented to your bank *(who will initiate and transmit the FedWire payment)* MUST contain all details below: *

<table>
<thead>
<tr>
<th>TO (ABA)</th>
<th>021030004</th>
</tr>
</thead>
<tbody>
<tr>
<td>TYPE</td>
<td>10</td>
</tr>
<tr>
<td>RECEIVER</td>
<td>TREAS NYC/(68010099)EPA</td>
</tr>
</tbody>
</table>

**THIRD PARTY INFORMATION**

To ensure proper credit please include the following information on your payment:
- Company/remitter's name (borrower name as it appears on EPA document)
- Complete address, including city, state, zip code
- Remitter's point of contact person and phone number
- EPA WIFIA Loan # (NOT the remitter's number)
- Payment Type/Reason for payment from the Fee Notice letter
- Reference number from the Fee Notice letter

*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.*

---

**For questions about payments to EPA please contact EPA's Office of the Controller:**
Phone: 202-564-7593. Voicemails can be left when calling outside business hours.
Email: OCFO-OC-ACAD-WIFIA@epa.gov

For questions about the WIFIA program:
Email: wifia@epa.gov
SCHEDULE V

FLOW OF FUNDS

(a) The Borrower’s Gross Revenues shall be deposited into the Revenue Fund and applied in the following order of priority (the “Flow of Funds”):

(i) first, to pay the cost of Current Expenses currently as bills accrue. Such amount as may be necessary in the opinion of the governing body of the Borrower to pay the reasonable and proper Current Expenses for the next succeeding sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other funds and accounts;

(ii) second, to transfer on the first day of each month to the Principal and Interest Account, for credit to the respective subaccounts thereof, a proportionate amount necessary to meet on each Payment Date the payment of all interest on and principal of the Parity Indebtedness. All amounts transferred and credited to the various Principal and Interest subaccounts shall be expended and used by the Borrower for the sole purpose of paying the Debt Service Requirements of respective Parity Indebtedness as and when the same become due at Maturity and on each Payment Date. If at any time the moneys in the Revenue Fund are insufficient to make in full the transfers at the time required to be made to the Principal and Interest Account and to the subaccounts established to pay the principal of and interest on any Parity Indebtedness, the available moneys in the Revenue Fund shall be divided among such debt service accounts in proportion to the respective principal or interest amounts, as applicable, of such Parity Indebtedness at the time Outstanding which are payable from the moneys in such Principal and Interest subaccounts;

(iii) third, to transfer monthly to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement. Except as hereinafter provided, all amounts transferred and credited to the Bond Reserve Account shall be expended and used by the Borrower solely to prevent any default in the payment of interest on or principal of the Parity Indebtedness on any Maturity date or Payment Date if the moneys in the respective Principal and Interest subaccounts are insufficient to pay the Debt Service Requirements of such Parity Indebtedness as they become due. So long as the moneys in the Bond Reserve Account aggregate the Bond Reserve Requirement, no further transfers to such account shall be required, but if the Borrower is ever required to expend and use a part of the moneys in any subaccount for the purpose herein authorized and such expenditure reduces the amount of the moneys in such subaccount below the Bond Reserve Requirement for such subaccount, or if the Value of any such subaccount is below the Bond Reserve Requirement for such subaccount, the Borrower shall make monthly payments into such subaccount so that the moneys in such subaccount shall again aggregate the Bond Reserve Requirement for such subaccount within twelve (12) months of such deficiency;

(iv) fourth, to transfer monthly to the debt service account(s) for any Subordinate Indebtedness, to the extent necessary to meet on each Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Indebtedness. The
amounts required to be transferred and credited to the debt service account(s) for any Subordinate Indebtedness shall be made at the same time and on a parity with the amounts at the time required to be transferred and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Indebtedness;

(v) fifth, to transfer monthly to the Depreciation and Replacement Account minimum monthly amounts so that the moneys in the Depreciation and Replacement Account will equal the Depreciation and Replacement Account Requirement within a period of thirty (30) months from the date of the first such transfer. Except as hereinafter provided, moneys in the Depreciation and Replacement Account shall be expended and used by the Borrower for the purpose of: (A) making extraordinary maintenance and repairs to the Utility, (B) making capital improvements in and to the Utility, and (C) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay Current Expenses. After the moneys in the Depreciation and Replacement Account aggregate the Depreciation and Replacement Account Requirement, no further transfers to the Depreciation and Replacement Account shall be required, but if the Borrower is ever required to expend a part of the moneys in the Depreciation and Replacement Account for its authorized purposes and such expenditure reduces the amount of the moneys in the Depreciation and Replacement Account below the Depreciation and Replacement Requirement, then the Borrower shall resume and continue to transfer minimum monthly amounts to the Depreciation and Replacement Account so that the moneys in such account aggregate the Depreciation and Replacement Requirement within a period of eighteen (18) months of such deficiency;

(vi) sixth, to transfer monthly to such funds or accounts of the Borrower determined by the Director of Finance of the Borrower, proportionate monthly amounts equal to the Debt Service Requirements on General Obligation Indebtedness accruing in the next twelve (12) months; and

(vii) seventh, to transfer monthly to such funds or accounts of the Borrower determined by the Director of Finance of the Borrower, proportionate amounts equal to the next required Payment to the City.

(b) WIFIA Debt Service shall be payable at the foregoing clause (a)(ii) in the Flow of Funds.

(c) On each January 1, all moneys in the Revenue Fund not then required for payment of the Current Expenses and all transfers required by the foregoing clauses (a)(i) to (a)(vi) hereof for the immediately following ninety (90) days shall be transferred to the Improvement Account. When the Pre-2014 Bonds are no longer Outstanding, transfers from the Revenue Fund to the Improvement Account may be made on a monthly basis in such amounts as may be determined by the Director of Finance of the Borrower. Moneys in the Improvement Account shall not be expended and used for purposes other than:

(i) Paying the Current Expenses;
(ii) Paying the cost of extending, enlarging or improving the Utility;

(iii) Preventing default in, making payments into or increasing the amounts in any of the funds and accounts or other payments required by the foregoing clauses (a)(i) to (a)(vii) hereof;

(iv) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Borrower, purchasing in the open market at fair market value, any Utility Indebtedness or General Obligation Indebtedness;

(v) Ownership, operation or maintenance of, or capital improvements to, the Utility and benefiting the Utility; or

(vi) To make transfers to the Revenue Fund.

(d) If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Borrower will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in the Flow of Funds.
## SCHEDULE 12(n)

### PRINCIPAL PROJECT CONTRACTS

<table>
<thead>
<tr>
<th>Contract</th>
<th>Date</th>
<th>Parties</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement Between Owner and Design-Builder for Progressive Design-Build of the City of Wichita’s Northwest Water Treatment Facility (NWWTF)</td>
<td>February 12, 2019, as amended on October 3, 2019, December 3, 2019, and February 11, 2020</td>
<td>Wichita Water Partners Joint Venture and The City of Wichita Kansas</td>
<td>Progressive design-build contract with respect to the construction of the Project</td>
</tr>
<tr>
<td>Agreement Between Owner and Owner’s Site Representative</td>
<td>April 9, 2019, as amended on December 3, 2019</td>
<td>Garver, LLC and The City of Wichita Kansas</td>
<td>Contract to provide oversight and management of the design-build contract for the Project</td>
</tr>
</tbody>
</table>
EXHIBIT A
FORM OF WIFIA BOND

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF SEDGWICK
CITY OF WICHITA
TAXABLE WATER AND SEWER UTILITY REVENUE BOND
SERIES 2020B (WIFIA)

WIFIA Bond Effective Date: May 14, 2020
Maximum Principal Amount: $331,000,000, consisting of (i) the maximum principal amount of the WIFIA Credit Facility, which is equal to $280,860,714, plus (ii) the maximum capitalized interest amount equal to $50,139,286
Interest Rate Per Annum: ______
Maturity Date: October 1, 2059

CITY OF WICHITA, KANSAS, a city of the first class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “Issuer”), for value received, hereby promises to pay to the order of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “WIFIA Credit Provider”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the WIFIA Credit Provider (such lesser amount being hereinafter referred to as the “Outstanding Principal Sum”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Credit Agreement (as defined below)) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, as more fully described in the WIFIA Credit Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Credit Agreement in accordance with Exhibit F (WIFIA Debt Service) to the WIFIA Credit Agreement, as revised from time to time in accordance with the WIFIA Credit Agreement, until paid in full (which Exhibit F, as modified from time to time in accordance with the terms of the WIFIA Credit Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Credit Provider is hereby authorized to modify the Credit Amortization Schedule included in Exhibit F to the WIFIA Credit Agreement from time to time in accordance with the terms of the WIFIA Credit Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Issuer thereunder. Absent manifest error, the WIFIA Credit Provider’s determination of such matters as set forth on Exhibit F to the WIFIA Credit Agreement shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Issuer’s obligations hereunder or under any other WIFIA Credit Document.

Payments hereon are to be made in accordance with Section 8(e) (Payment of Principal and Interest – Manner of Payment) and Section 31 (Notices) of the WIFIA Credit Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Substantial Completion Date occurs on any date prior to October 1, 2024, this WIFIA Bond shall be deemed to be amended to change the due date to the Principal Payment Date immediately preceding the date that is thirty-five (35) years following such Substantial Completion Date without any further action required on the part of the Issuer or the WIFIA Credit Provider

NYDOCS02/1216968.12 A-1
and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Credit Provider. Any such amendment shall be reflected in a revised Exhibit F.

This WIFIA Bond has been issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 et seq. and K.S.A. 10-1201 et seq., as amended by Charter Ordinance No. 211, all as amended and supplemented, and all other provisions of the laws of the State of Kansas applicable thereto. This WIFIA Bond has been executed pursuant to that certain WIFIA Credit Agreement, dated as of April 23, 2020, between the WIFIA Credit Provider and the Issuer (the “WIFIA Credit Agreement”) and is issued to evidence the obligation of the Issuer under the WIFIA Credit Agreement to repay the credit facilities made by the WIFIA Credit Provider and any other payments of any kind required to be paid by the Issuer under the WIFIA Credit Agreement or the other WIFIA Credit Documents referred to therein. Reference is made to the WIFIA Credit Agreement for details relating to the Issuer’s obligations hereunder. All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Credit Agreement.

This WIFIA Bond is a special obligation of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the taxing power of the Issuer is not pledged to the payment of this WIFIA Bond either as to principal or interest. This WIFIA Bond shall not be or constitute a general obligation of the Issuer, nor shall its constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction. This WIFIA Bond shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with the Outstanding Parity Bonds of the Issuer and any Parity Indebtedness to be issued; provided that this WIFIA Bond is not secured by a Bond Reserve Account and the WIFIA Credit Provider shall have no Lien on any bond reserve subaccount established in connection with any other Parity Indebtedness.

This WIFIA Bond may be prepaid at the option of the Issuer in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Credit Agreement; provided that such prepayments shall be in principal amounts of at least $1,000,000 or any integral multiple of $1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Credit Provider all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Credit Agreement.

Any delay on the part of the WIFIA Credit Provider in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this WIFIA Bond have happened, exist and have been performed as so required. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, CITY OF WICHITA, KANSAS has caused this WIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the WIFIA Bond Effective Date set forth above.
CITY OF WICHITA, KANSAS,
by its authorized representative

(SEAL)

By: ______________________________
Name: Brandon J. Whipple
Title: Mayor

ATTEST:

__________________________
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Series 2020B (WIFIA) Bond is the WIFIA Bond of the City of Wichita, Kansas, described in Resolution No. 20-___ adopted on April 21, 2020.

Registration Date:

SECURITY BANK OF KANSAS CITY,
WICHITA, KANSAS,
as Bond Registrar and Paying Agent

By: ______________________________
Authorized Signature
CERTIFICATE OF CLERK

STATE OF KANSAS
COUNTY OF SEDGWICK

The undersigned, Clerk of the City of Wichita, Kansas, does hereby certify that the within Series 2020B (WIFIA) Bond has been duly registered in my office according to law as of May 14, 2020.

WITNESS my hand and official seal.

(Facsimile Seal) (facsimile)
Clerk

CERTIFICATE OF STATE TREASURER

OFFICE OF THE TREASURER, STATE OF KANSAS

JAKE LATURNER, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Series 2020B (WIFIA) Bond has been filed in the office of the State Treasurer, and that this Series 2020B (WIFIA) Bond was registered in such office according to law on ________________.

WITNESS my hand and official seal.

(Facsimile Seal) By: __________________________
Treasurer of the State of Kansas

Registration Number: 0709-087-051420-___

______________________________
(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby unconditionally sells, assigns and transfers unto

(Please insert Social Security or other identifying number of assignee(s)):

the within note and all rights thereunder.

Dated: ____________________

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.
# EXHIBIT B

**ANTICIPATED WIFIA CREDIT DISBURSEMENT SCHEDULE**

<table>
<thead>
<tr>
<th>Federal Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$50,284,644</td>
</tr>
<tr>
<td>2022</td>
<td>$84,100,068</td>
</tr>
<tr>
<td>2023</td>
<td>$100,113,114</td>
</tr>
<tr>
<td>2024</td>
<td>$46,362,888</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$280,860,714</strong></td>
</tr>
</tbody>
</table>
EXHIBIT C

FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of CITY OF WICHITA, KANSAS (the “Borrower”), hereby certifies that CITY OF WICHITA, KANSAS has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement, dated as of April 23, 2020, by and between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

Dated: April 23, 2020

CITY OF WICHITA, KANSAS,
by its authorized representative

By: ____________________________
Name:
Title:
EXHIBIT D

REQUISITION PROCEDURES AND FORM OF REQUISITION

This Exhibit D sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of WIFIA Credit Facility proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Credit Provider may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Credit Provider contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Credit Provider under the WIFIA Credit Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Credit Provider to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the WIFIA Credit Agreement during the term thereof.

Section 1 General Requirements. All requests by the Borrower for the disbursement of WIFIA Credit Facility proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Credit Provider, in accordance with Section 31 (Notices) of the WIFIA Credit Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Credit Provider and completed and executed by the Borrower’s Authorized Representative. The form of Requisition is attached as Appendix One (Form of Requisition) to this Exhibit D. All notifications delivered to the Borrower pursuant to the terms hereof shall also be provided in the same format to the Paying Agent and Bond Registrar for the WIFIA Bond.

Supporting documentation should be submitted with the Requisition. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Credit Facility to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Credit Facility proceeds, whether paid from funds of the Borrower or proceeds of Utility Indebtedness issued by the Borrower, including for the purpose of paying or redeeming such Utility Indebtedness, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the “Eligible Project Costs Documentation”). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Credit Provider to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs. The WIFIA Credit Provider shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Credit Provider as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

The WIFIA Credit Provider agrees to promptly send to the Borrower in accordance with Section 31 (Notices) of the WIFIA Credit Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two ([Approval/Disapproval] of the WIFIA Credit Provider) to this Exhibit D setting forth the date of receipt by the WIFIA Credit Provider of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Credit Provider. All disbursement requests must be received by the WIFIA Credit
Provider at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Credit Provider, the WIFIA Credit Provider will notify the Borrower of such approval and of the amount so approved.

Section 2. **Rejection.** A Requisition may be rejected in whole or in part by the WIFIA Credit Provider if it is: (a) submitted without signature; (b) submitted under signature of a Person other than a Borrower’s Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Credit Facility; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(c) (Reporting Requirements – Construction Reporting), and (iii) a copy of the most recent update to the Borrower’s risk register, if requested by the WIFIA Credit Provider.

The WIFIA Credit Provider will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Credit Facility proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Credit Provider will so notify the Borrower.

Section 3. **Correction.** A Requisition containing an apparent mathematical error will be corrected by the WIFIA Credit Provider, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. **Withholding.** The WIFIA Credit Provider shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Credit Facility proceeds if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the Borrower (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Credit Provider to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Credit Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Credit Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (Disbursement Conditions; Approval of Requisition) and Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements) of the WIFIA Credit Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreement; provided that in such case of Section 4(v), the WIFIA Credit Provider may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.
APPENDIX 1
FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: NORTHWEST WATER TREATMENT FACILITY (NWWTF) PROJECT (WIFIA Ref N18108KS)

Ladies and Gentlemen:

Pursuant to Section 4 (Disbursement Conditions; Approval of Requisition) of the WIFIA Credit Agreement, dated as of April 23, 2020 (the “WIFIA Credit Agreement”), by and between CITY OF WICHITA, KANSAS (the “Borrower”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Credit Agreement.

In connection with this Requisition the undersigned, as the Borrower’s Authorized Representative, hereby represents and certifies the following:

<table>
<thead>
<tr>
<th></th>
<th>Project name</th>
<th>Northwest Water Treatment Facility (NWWTF) Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Borrower name</td>
<td>City of Wichita, Kansas</td>
</tr>
<tr>
<td>3.</td>
<td>WIFIA reference number</td>
<td>18108KS</td>
</tr>
<tr>
<td>4.</td>
<td>Requisition number</td>
<td>[___]</td>
</tr>
<tr>
<td>5.</td>
<td>Requested disbursement amount</td>
<td>$[___]</td>
</tr>
<tr>
<td>6.</td>
<td>Requested disbursement date (the “Disbursement Date”)</td>
<td>[___]</td>
</tr>
<tr>
<td>7.</td>
<td>Total amounts previously disbursed under the WIFIA Credit Agreement</td>
<td>$[___]</td>
</tr>
<tr>
<td>8.</td>
<td>Wire instructions</td>
<td>[___]</td>
</tr>
</tbody>
</table>

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Credit Facility proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of Short-Term Indebtedness or Interim Indebtedness (an “Interim Financing”), except as set forth below:
<table>
<thead>
<tr>
<th>Source of Interim Financing</th>
<th>Amount of Interim Financing</th>
</tr>
</thead>
<tbody>
<tr>
<td>[___]</td>
<td>$[___]</td>
</tr>
<tr>
<td><strong>Total Amount of Interim Financing</strong></td>
<td><strong>$[___]</strong></td>
</tr>
</tbody>
</table>

The portion of the amount requisitioned equal to the total amount of the Interim Financing set forth above will be promptly applied by the Borrower to either (i) discharge a like principal amount of such Interim Financing or (ii) reimburse the applicable fund or account from which the proceeds of such Interim Financing were spent.]¹

10. The aggregate amount of all disbursements of the WIFIA Credit Facility (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Credit Agreement) does not exceed (a) the maximum principal amount of the WIFIA Credit Facility, (b) the amount of Eligible Project Costs paid or incurred by the Borrower, (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Credit Disbursement Schedule, (d) the aggregate principal amount of the Annual Maximum Disbursement Certificates heretofore submitted by the Borrower; or (e) the “Maximum Principal Amount” set forth in the WIFIA Bond.

11. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Credit Facility, that will be sufficient to pay the reasonably anticipated remaining Total Project Costs.

12. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

13. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).

14. Each of the insurance policies maintained by the Borrower pursuant to Section 14(f) (Affirmative Covenants – Insurance; Net Proceeds) of the WIFIA Credit Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

¹This alternative should be included when requisitioned amounts are for the purpose of paying or redeeming, in whole or in part, amounts owed by the Borrower under an Interim Financing the proceeds of which were applied to pay Eligible Project Costs.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the Effective Date.

16. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider.

17. The representations and warranties of the Borrower set forth in the WIFIA Credit Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).

18. Each Utility Indebtedness Document and Principal Project Contract that has been delivered by the Borrower to the WIFIA Credit Provider pursuant to Sections 11(c)(vi) and (vii) (Conditions Precedent – Conditions Precedent to Disbursements), as applicable, is complete, fully executed and in full force and effect.

19. The current estimated percentage of physical completion of the Project is [___]%.

20. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower [(or to be used to pay Eligible Project Costs previously paid from proceeds of any Interim Financing)] by the above-requested disbursement has been delivered by the Borrower to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Credit Provider][below:]
The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

<table>
<thead>
<tr>
<th>Vendor or Contractor Name</th>
<th>Invoice Number</th>
<th>Invoice Date</th>
<th>Payment Date</th>
<th>Invoice Amount</th>
<th>WIFIA Requested Amount</th>
<th>Activity Type</th>
<th>Description of Activity</th>
<th>Approved Amount</th>
<th>Notes</th>
</tr>
</thead>
</table>

2 If seeking reimbursement for internal costs, enter “Internally financed activities.”

3 Vendor’s number indicated on the invoice sent to the Borrower.

4 If the amount requested for reimbursement by the WIFIA Credit Provider is less than the total amount of the invoice, include an explanation for the difference.

5 Specify whether activity is: (a) Development phase activity, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) Construction, which includes construction, reconstruction, rehabilitation and replacement activities; (c) Acquisition of real property, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) Carrying costs, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) WIFIA fees, including for application and credit processing; or (f) Other, with an explanation in the “Description of Activity” column.

6 Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.
CITY OF WICHITA, KANSAS,

By its authorized representative
By: ________________________________
Name: ______________________________
Title: ______________________________
APPENDIX TWO TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE WIFIA CREDIT PROVIDER
(To be delivered to the Borrower)

Requisition Number [_______________] is [approved in the amount of $[_________]] [approved in part in the amount of $[_________]] [not approved, for the reasons set forth in Annex A attached hereto,]\(^7\) by the WIFIA Credit Provider (as defined herein) pursuant to Section 4 (Disbursement Conditions; Approval of Requisition) of the WIFIA Credit Agreement, dated as of April 23, 2020, by and between City of Wichita, Kansas (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”).

Any determination, action or failure to act by the WIFIA Credit Provider with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA Credit Provider’s sole discretion, and in no event shall the WIFIA Credit Provider be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator

By: ___________________________
WIFIA Credit Provider’s Authorized Representative
Name:
Title:
Dated:

---

\(^7\) If there is any partial or full denial of approval, the WIFIA Credit Provider should provide a separate attachment setting forth the reasons for such partial or full denial of approval.
EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of CITY OF WICHITA, KANSAS (the “Borrower”), hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Credit Facility.

(b) If any funds other than proceeds of the WIFIA Credit Facility have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Credit Facility, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement, dated as of April 23, 2020 (the “WIFIA Credit Agreement”), by and between the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”), and the Borrower, as the same may be amended from time to time.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Credit Provider entered into the WIFIA Credit Agreement. Submission of this certification is a prerequisite to the effectiveness of the WIFIA Credit Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Dated: April 23, 2020

CITY OF WICHITA, KANSAS,
by its authorized representative

By:

_______________________________________
Name:
Title:
EXHIBIT F

WIFIA DEBT SERVICE
EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO BORROWER ON EFFECTIVE DATE

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party;

(c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;

(e) other than approval of the transcript related to the WIFIA Bond pursuant to the requirements set forth in K.S.A. 10-108, no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;

(g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and

(h) to the knowledge of such counsel after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with (i) the Related Documents or (ii) the Utility (with respect to the Project), in each case that are pending.

(i) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the Related Documents.
EXHIBIT G-2

OPINIONS REQUIRED FROM BOND COUNSEL ON WIFIA BOND EFFECTIVE DATE

An opinion of bond counsel, dated as of the WIFIA Bond Effective Date, to the effect that:

(a) the Borrower has been duly created and organized and validly exists as a city of the first class under the Constitution and laws of the State of Kansas (the “State”), with good right and power to issue the WIFIA Bond;

(b) the Borrower has the right and power under the laws of the State to enter into each Related Document, and each Related Document has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions;

(c) the WIFIA Bond (i) is secured by the Net Revenues, (ii) is a Parity Bond, (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) ranks pari passu in right of payment and right of security with all other Party Indebtedness and senior in right of payment and right of security to all Subordinate Indebtedness; provided that the WIFIA Bond is not secured by the Bond Reserve Account and the owner of the WIFIA Bond shall have no lien on the bond reserve subaccounts established in connection with other Parity Indebtedness;

(d) the WIFIA Credit Agreement, as fully incorporated by the WIFIA Bond Resolution, creates the valid and binding assignment and pledge of the Net Revenues to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) all actions by the Borrower that are required for the application of Gross Revenues as required under the WIFIA Credit Agreement and under the other WIFIA Credit Documents have been duly and lawfully made;

(f) the Borrower has complied with the requirements of State law to lawfully pledge the Net Revenues and use the Gross Revenues as required by the terms of the WIFIA Credit Agreement and the other WIFIA Credit Documents; and
EXHIBIT G-3

OPINIONS AND RELIANCE LETTER REQUIRED FROM BOND COUNSEL IN CONNECTION WITH DISBURSEMENT

I. OPINION

An opinion of bond counsel, dated as of the date of each Annual Maximum Disbursement Certificate, to the effect that:

(a) the WIFIA Bond has been duly authorized, executed and delivered by the Borrower under the laws of the State, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions; and

(b) the WIFIA Bond, to the extent represented by Disbursement No. [__] (and the capitalized interest with respect to such disbursement) (i) is secured by the Net Revenues, (ii) is a Parity Bond, (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) ranks pari passu in right of payment and right of security with all other Party Indebtedness and senior in right of payment and right of security to all Subordinate Indebtedness; provided that the WIFIA Bond is not secured by the Bond Reserve Account and the owner of the WIFIA Bond shall have no lien on the bond reserve subaccounts established in connection with other Parity Indebtedness.

II. RELIANCE LETTER

A letter of bond counsel, addressed to the WIFIA Credit Provider, dated as of the date of the opinion referred to in Part I above, to the effect that:

We have as of this date delivered our legal opinion, copy attached, with respect to the subject disbursements under the WIFIA Bond. You are entitled to rely upon such opinion as if it had been addressed to you originally. We have served only as bond counsel to the Borrower in connection with the WIFIA Credit Documents and have not and are not representing any other party in connection with the WIFIA Credit Documents. Therefore, no attorney-client relationship shall arise by virtue of our addressing this opinion to persons other than the Borrower.
EXHIBIT H

FORM OF CLOSING CERTIFICATE

April 23, 2020

Reference is made to that certain WIFIA Credit Agreement, dated as of April 23, 2020 (the “WIFIA Credit Agreement”), by and among City of Wichita, Kansas (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement.

In connection with Section 11(a) (Conditions Precedent – Conditions Precedent to Effectiveness) of the WIFIA Credit Agreement, the undersigned, [______________], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(ix) of the WIFIA Credit Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (Borrower’s Authorized Representative) of the WIFIA Credit Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Credit Agreement, attached hereto as Annex B are copies of each Utility Indebtedness Document, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

(c) [pursuant to Section 11(a)(iii) of the WIFIA Credit Agreement, the Borrower has delivered to the WIFIA Credit Provider copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;]8

(d) pursuant to Section 11(a)(iv) of the WIFIA Credit Agreement, attached hereto as Annex C is a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date, which Organizational Documents are in full force and effect;

(e) pursuant to Section 11(a)(v) of the WIFIA Credit Agreement, other than the Related Documents, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or to perform its obligations under, the WIFIA Credit Documents to which

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8 Include bracketed language if requested by the WIFIA Credit Provider.
it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents;

(f) pursuant to Section 11(a)(ix)(A) of the WIFIA Credit Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(g) pursuant to Section 11(a)(ix)(B) of the WIFIA Credit Agreement, other than approval of the transcript related to the issuance and registration of the WIFIA Bond pursuant to the requirements set forth in K.S.A. 10-108, the Borrower has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(h) pursuant to Section 11(a)(ix)(C) of the WIFIA Credit Agreement, (i) the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(i) pursuant to Section 11(a)(ix)(D) of the WIFIA Credit Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(j) pursuant to Section 11(a)(ix)(E) of the WIFIA Credit Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(k) pursuant to Section 11(a)(ix)(F) of the WIFIA Credit Agreement, (i) the Borrower’s Federal Employer Identification Number is 48-6000653, (ii) the Borrower’s Data Universal Numbering System number is 04-306-3460, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex D;

(l) pursuant to Section 11(a)(ix)(G) of the WIFIA Credit Agreement, the representations and warranties of the Borrower set forth in the WIFIA Credit Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
(m) pursuant to Section 11(a)(ix)(H) of the WIFIA Credit Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since October 29, 2019;

(n) pursuant to Section 11(a)(x) of the WIFIA Credit Agreement, none of the rating letters delivered to the WIFIA Credit Provider pursuant to such Section 11(a)(x) has been reduced, withdrawn or suspended as of the Effective Date;

(o) pursuant to Section 11(a)(xi) of the WIFIA Credit Agreement, attached hereto as Annex E is the Base Case Financial Model, which (i) demonstrates that projected Gross Revenues are sufficient to meet the Credit Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Credit Provider, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(xi); [and]

(p) pursuant to Section 11(a)(xii) of the WIFIA Credit Agreement, attached hereto as Annex F are certificates of insurance, and such insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (Affirmative Covenants – Insurance; Net Proceeds) of the WIFIA Credit Agreement[; and][.]

(q) [any other attachments or provisions as may apply to the WIFIA Credit Agreement].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

CITY OF WICHITA, KANSAS,
by its authorized representative

By: ______________________________
Name:
Title:
ANNEX A TO EXHIBIT H

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the City Clerk of City of Wichita, Kansas, a city of the first class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “Borrower”), and as such she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Credit Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Credit Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Signature</th>
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<tbody>
<tr>
<td>Brandon J. Whipple</td>
<td>Mayor</td>
<td>__________________</td>
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<tr>
<td>Shawn Henning</td>
<td>Director of Finance</td>
<td>__________________</td>
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<tr>
<td>Alan King</td>
<td>Director of Public Works &amp; Utilities</td>
<td>__________________</td>
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IN WITNESS WHEREOF, the undersigned has executed this certificate as of this 23rd day of April, 2020.

CITY OF WICHITA, KANSAS,
by its authorized representative

By: ________________________________
Name: Karen Sublett
Title: City Clerk
EXHIBIT I

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460

**Project:** Northwest Water Treatment Facility (NWWTF) Project (WIFIA – N18108KS)

Dear Director:

This certificate is provided pursuant to Section 16(g)(i)(A) (Reporting Requirements – Notices – Substantial Completion) of that certain WIFIA Credit Agreement (the “WIFIA Credit Agreement”), dated as of April 23, 2020 by and between City of Wichita, Kansas (the “Borrower”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “WIFIA Credit Provider”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Credit Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Credit Provider that:

(a) on [insert date Substantial Completion requirements were satisfied], the Project satisfied each of the requirements for Substantial Completion set forth in the [insert reference to the design-build or similar agreements for the Project];

(b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and

(c) Substantial Completion, as defined in the WIFIA Credit Agreement, has been achieved.

CITY OF WICHITA, KANSAS,
by its authorized representative

By: _______________________________
Name: ____________________________
Title: ____________________________

NYDOCS02/1216968.12 I-1
EXHIBIT J

FORM OF QUARTERLY REPORT

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
WIFIA_Portfolio@epa.gov

Re: Northwest Water Treatment Facility (NWWTF) Project (WIFIA – N18108KS)

This Quarterly Report for the period of [insert relevant quarterly period] is provided pursuant to Section 16(c) (Reporting Requirements – Construction Reporting) of the WIFIA Credit Agreement, dated as of April 23, 2020 (the “WIFIA Credit Agreement”), by and between City of Wichita, Kansas (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Credit Provider”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Credit Agreement.

(i) Amount Expended

<table>
<thead>
<tr>
<th>Principal Project Contract (PPC)</th>
<th>Original Contract Amount</th>
<th>Change Orders to Date</th>
<th>Total Estimated Costs</th>
<th>Estimated Costs to Complete</th>
<th>Costs Earned or Paid Through Previous Reporting period</th>
<th>Current Reporting Period Costs Earned or Paid</th>
<th>Total Costs Earned or Paid to date</th>
<th>% Costs Earned or Paid to Date</th>
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(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:

...
Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:

<table>
<thead>
<tr>
<th>Principal Project Contract (PPC)</th>
<th>NTP Effective Date</th>
<th>Original Time for Completion (days)</th>
<th>Original Contract Completion (date)</th>
<th>Time Added to Date (days)</th>
<th>Current Contract Completion (date)</th>
<th>Days Elapsed</th>
<th>% Contract Duration</th>
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(iii) Substantial Completion Date

Current projection for the Substantial Completion Date:

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

(iv) Material Problems (if any)

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

(v) Proposed or pending change orders that exceed the threshold set out in Section 16(e) (Reporting Requirements – Modifications to Total Project Costs) or could reasonably be expected to result in a Material Adverse Effect

(vi) Other matters related to the Project

Date: _______________________

CITY OF WICHITA, KANSAS,

by its authorized representative

By: ________________________

Name: ______________________

Title: ______________________
EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

City of Wichita
Northwest Water Treatment Facility

Pursuant to Section 11(a)(xiii) and Section 16(d) of the WIFIA Credit Agreement, City of Wichita, Kansas (the “Borrower”) is providing this Public Benefits Report in connection with the Northwest Water Treatment Facility (NWWTF) Project (WIFIA – N18108KS):

(i) The estimated interest savings the Borrower is realizing through the use of the WIFIA Credit Facility compared to comparable market rate financing:

The estimated interest savings from use of the WIFIA Credit Facility compared to a comparable market rate financing is $[__] million on a gross savings basis.

(ii) With respect to the report delivered [on or prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) days following the Substantial Completion Date], the number of jobs projected to be created by the Project during each period described below:

The Borrower projects [__] direct and indirect jobs to be created by the Project during the period between [(1)] the Effective Date and the Substantial Completion Date[(2)] the Substantial Completion Date and the fifth (5th) anniversary of the Substantial Completion Date].

(iii) Whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:

[___].

(iv) The amount by which the Project will increase the volume of potable water produced (measured in MGD [as of Substantial Completion][annually]):

The Project will produce up to [___] MGD.

__________
9 Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

10 Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.
EXHIBIT L

FORM OF FINANCIAL PLAN